

**CONTROLLING OFFICER'S REPLY**

**FHB(FE)365**

**(Question Serial No. 5017)**

Head: (49) Food and Environmental Hygiene Department

Subhead (No. & title): (-) Not specified

Programme: (2) Environmental Hygiene and Related Services

Controlling Officer: Director of Food and Environmental Hygiene (Miss Vivian LAU)

Director of Bureau: Secretary for Food and Health

Question:

In recent years, the Food and Environmental Hygiene Department issued on many occasions Notices to Remove Obstruction under the Public Health and Municipal Services Ordinance (Cap. 132) to elderly scavengers who were ordered to remove the articles placed on roads and pavements within 4 hours, otherwise further enforcement actions would be taken. Some members of the public point out that there have long been commercial publicity materials displayed on streets, newspapers displayed and distributed by printed media at the exits of mass transit railway stations, pedestrian crossings and major pedestrian thoroughfares, as well as street posts set up by organisations with hanging banners to promote their notions in various districts over the territory. They query why no enforcement actions are taken against the parties concerned. In this connection, please advise me of the following:

- (1) the number of complaints received against street obstructions and unsightliness caused by the articles of elderly scavengers in various districts over the territory, among which the numbers of cases where Notices were issued and prosecutions were taken respectively, as well as the ordinance(s) under which the prosecutions were taken in the past 5 years (2012-2017);
- (2) the number of complaints received against street obstructions caused by commercial activities (including demonstrations and promotion of commercial products, as well as telecommunications services like registration for broadband internet and mobile network services) and publicity activities by organisations in various districts over the territory, among which the numbers of cases where Notices were issued and prosecutions were taken respectively in the past 5 years (2012-2017);
- (3) the number of complaints received against the display and distribution of newspapers by printed media at exits of mass transit railway stations, pedestrian crossings and major pedestrian thoroughfares in various districts over the territory, among which the numbers of cases where Notices were issued and prosecutions were taken respectively in the past 5 years (2012-2017); and

- (4) whether the Department takes into account the identities of the persons being complained and the seriousness of the cases in deciding whether to take enforcement actions against the complaints received in (1) to (3) or not; if yes, the specific enforcement standards and legal basis.

Asked by: Hon SHIU Ka-chun (Member Question No. (LegCo use): 263)

Reply:

- (1) The information sought is provided below -

Year	2013	2014	2015	2016	2017
Number of complaints	150	109	75	137	124
Number of Notices to Remove Obstruction issued	54	52	59	72	84
Number of prosecutions under the Public Health and Municipal Services Ordinance (Cap. 132)	0	0	0	2	1

- (2) The Food and Environmental Hygiene Department (the Department) may take enforcement actions against illegal hawking and obstruction of public places under section 83B of the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance) and/or section 4A of the Summary Offences Ordinance (Cap. 228). On illegal display or affixing of bills or posters on Government land, the Department may take enforcement actions under section 104(A)1 of the Ordinance. The publicity materials concerned will be removed by the Department, and a fixed penalty notice (FPN) of \$1,500 issued to the offender at the scene under the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570). In the past 5 years, the number of complaints and enforcement actions against relevant activities is as follows -

Year	2013	2014	2015	2016	2017
Number of complaints	2 515	3 201	1 260	1 023	1 187
Number of prosecutions under section 4A of Cap. 228	823	573	350	269	240
Number of prosecutions under section 83(B)(1) of Cap. 132	6	4	5	0	0
Number of FPNs issued under Cap. 570	1 769	2 583	2 722	2 681	3 170

- (3) Distribution of free newspapers by printed media is not a violation of the law per se. However, the Department may issue an FPN of \$1,500 under the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) to any person depositing refuse in public places where there is sufficient evidence. The number of complaints against distribution of free newspapers in the past 5 years is as follows -

Year	2013	2014	2015	2016	2017
Number of complaints	50	43	39	41	36

The Department did not issue any FPN or institute any prosecution in this respect in the past 5 years.

- (4) From the legal perspective, staff of the Department are empowered to execute various Ordinances relating to environmental hygiene. It is their duty to take enforcement actions against offences. The laws should be enforced on a non-discriminatory basis. When taking enforcement actions against street obstructions caused by scavengers and commercial activities, staff of the Department are expected to exercise both reasonableness and sensitivity. Under the existing legislation, no particular person is granted immunity from prosecution. Frontline staff are required to take appropriate actions in accordance with operational guidelines issued by the Department with regard to the actual circumstances. When exercising discretion, they should be mindful of causing possible misunderstandings about selective or unfair enforcement, or even suspected act of harbouring.

Whether enforcement actions would be taken or not depends on the actual circumstances and the sufficiency of evidence, regardless of the identities of the persons being complained. The Department will assess the extent to which the public is affected and suitably deploy manpower and resources to enhance environmental hygiene.

- End -