LegCo Panel on Food Safety and Environmental Hygiene

ALIGNMENT OF MARKET RENTAL ADJUSTMENT MECHANISM AND OTHER RELATED MATTERS

Purpose

This paper informs Members of the Administration's proposal regarding the alignment of the market rental adjustment mechanisms and other practices relating to the letting of public market stalls.

Background

- 2. Before the reorganisation of municipal services, the Provisional Urban Council (PUC) and the Provisional Regional Council (ProRC) were responsible for public markets in the urban area and New Territories respectively. The two Councils adopted different market rental adjustment mechanisms and practices relating to the letting of market stalls.
- 3. In brief, both PUC and ProRC used the Open Market Rent (OMR) assessed by the Rating and Valuation Department (RVD) as a basis for assessment of the renewal rent and then adjusted it according to some pre-set formula in determining the new rent for market stalls during tenancy renewal. In the case of the former PUC, rental adjustment was made with reference to the difference between the contractual rent (i.e. the last rent specified in the tenancy agreement) and the prevailing OMR. The increase would be capped by the prevailing increase in consumer price index (A) (CPI(A)) plus a pre-set percentage. For market stalls under the former ProRC which were acquired through open auctions, tenants were required to pay the OMR upon tenancy renewal if the current rent is lower than the OMR. For market stalls acquired through restricted auctions where tenants were mostly former licensed hawkers or market tenants affected by clearance and redevelopment, rental adjustment would be made with reference to the difference between the contractual rent and OMR. The rent would be increased gradually by phases to achieve a certain pre-set percentage of OMR. However, unlike PUC's practice, there was no cap for the increases. Details of the rental adjustment mechanisms of the former PUC and ProRC are at Annex A.

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Review

4. During the reorganisation, the Administration undertook to review and align the different market rental adjustment mechanisms and practices within two years. An inter-departmental working group was set up under FEHD in July 2000 to review and align the different market rental adjustment mechanisms and practices of the two former PMCs. The review is now complete. The working group considers that the letting and operation of market stalls are basically commercial activities. As a general principle, rental should be set at the open market level. However, in view of the fact that the current rental of a considerable number of market stalls, particularly those in the markets of the former PUC area, are significantly below the open market level, it would be desirable to bring up the current rental to the market level gradually by phases so as to minimize the impact of any rental adjustments on the tenants.

Proposed aligned rental adjustment mechanism

- 5. After careful deliberation, the working group proposes to align the rental adjustment mechanisms as follows:
 - For new tenants who obtain market stalls through open auction at market rent, they will be required to pay OMR as assessed by RVD upon tenancy renewal in future. This is in line with previous ProRC's practice.
 - For existing tenants who are paying a rent (current rent (CR))¹ higher than the OMR as assessed by RVD, the new rent for the new tenancy will be the OMR. This is more generous than previous PMCs' practices where ProRC would still charge CR upon renewal despite the prevailing OMR being lower than CR. For the PUC, they would only reduce the rent by a certain percentage as determined by the rental adjustment formula.
 - For existing tenants, if the CR is lower than the OMR, the rent will only be increased according to a phased schedule in order to minimise its impact on the tenants. The rent level will be gradually brought up by equal increments over each 3-year tenancy period such that the rent will reach a specific "target percentage" of OMR by the end of each tenancy. The "target

¹ Current rent is the rent currently paid by the tenants just before tenancy renewal, as specified in the tenancy agreements. However, due to the rental freeze/reduction extension, the rent paid by most tenants are in fact a reduced/frozen rent approximately 30% lower than the rent specified in the tenancy agreements. In adopting the new aligned formula, we will use the actual rent paid by the tenant instead.

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- percentage" will be determined having regard to the difference between CR and OMR. Details of the proposed formula and the respective "target percentages" are provided in **Annex B**.
- We also propose to impose a cap of 20% as the maximum possible annual increase rate. This will further contain the impact on the tenants and avoid any sudden steep increase in rent.

Assessment of the impact on tenants

- 6. Our preliminary assessment is that our proposed rental adjustment mechanism would have a small to moderate impact on the tenants. In fact, tenants in the New Territories will experience a lower increase when compared with that under the ProRC's formula. As for tenants in the urban area, they will only experience an increase which is marginally higher than that under the PUC's formula. A table comparing the percentage increase under our proposed new formula, the previous PUC formula and ProRC formula is at **Annex C.**
- 7. We have also analysed the actual impact on the tenants based on a sample of about 20% of the tenants in the urban area and another sample of about 10% of the tenants in the New Territories. The findings are summarised in **Annex D**. In brief, for the urban area, about 70% of the tenants will experience an annual *increase of under \$200* or a decrease in rent. Another 25% will face *an increase between \$201 to \$500*. For the New Territories, about 75% of the tenants will experience an annual *increase of under \$200* or a decrease in rent. Another 23% will face an *increase between \$201 to \$500*.

Other related matters

8. The working group has also taken the opportunity to examine other practices of the two former PMCs relating to the letting of market stall tenancies with a view to aligning them. The major ones include duration of the tenancy, recovery of charges, rental deposit and frequency for paying rent. A list of the working group's key recommendations is at **Annex E**.

Next Step

9. We intend to consult the stall tenants, Market Management Consultative Committees, the trade associations as well as the District Councils in the coming months regarding the proposed aligned rental adjustment mechanism and other related practices.

Advice sought

10. Members are invited to give their views on the proposed aligned market rental adjustment mechanism and other related practices.

Environment and Food Bureau Food and Environmental Hygiene Department May 2001

The rental adjustment formulaE of PUC and PRORC

Rental Adjustment Formulae of PUC

There are two rental adjustment formulae under PUC, namely, *CPI formula* and *OMR formula*. The new rent would be the lower of CPI or OMR formula.

I. Where Open Market Rent (OMR) is greater than Current Rent (CR)

Step 1:

Upon tenancy renewal, PUC would first obtain the latest open market rent (OMR) assessed by RVD

Step 2:

PUC will determine the different annual increments under the CPI formula and the OMR formula

"CPI formula"

Step 2-(1):

PUC would compare the current rent (CR) with OMR and determine the increment having regard to the relationship between OMR and CR.

Category	Condition	Increment
1.	If OMR is greater than the current rent (CR) but	Inflation rate ¹
	not more than 150% of CR	
2.	If OMR is greater than 150% of CR but not more	Inflation rate plus 5%
	than 200% of CR	
3.	If OMR is greater than 200% of CR but not more	Inflation rate plus 6%
	than 250% of CR	
4.	If OMR is greater than 250% of CR but not more	Inflation rate plus 7%
	than 300% of CR	
5.	If OMR is greater than 300% of CR but not more	Inflation rate plus 8%
	than 350% of CR	
6.	If OMR is greater than 350% of CR but not more	Inflation rate plus 9%
	than 400% of CR	
7.	If OMR is greater than 400% of CR	Inflation rate plus 10%

¹ Inflation rate is the prevailing increase in the Consumer Price Index (A).

For example:

A tenant is paying \$1000 per month, and the latest OMR is \$1,800 :-

The OMR is <u>180%</u> of CR. As the condition corresponds to the one under <u>Category 2</u>, the tenant will face an increase equivalent to the prevailing inflation rate plus 5%. (Take the inflation rate for 1997, which is about 6% to illustrate –

The first year increment = $1,000 \times (6+5)\% = 1000 \times 11\% = 110$

"OMR formula"

Step 2 - (1): Then, PUC will obtain a "modified OMR" in accordance with the following table.

CATEGORY	CONDITION	"Modified OMR" (MOMR)
I	If OMR is greater than the current rent (CR) but not more than 150% of CR	100% x OMR
II	If OMR is greater than 150% of CR but not more than 175% of CR	95% x OMR
III	If OMR is greater than 175% of CR but not more than 200% of CR	90% x OMR
IV	If OMR is greater than 200% of CR but not more than 250% of CR	85% x OMR
V	If OMR is greater than 250% of CR but not more than 300% of CR	80% x OMR
VI	If OMR is greater than 300% of CR but not more than 350% of CR	75% x OMR
VII	If OMR is greater than 350% of CR but not more than 400% of CR	70% x OMR
VIII	If OMR is greater than 400% of CR	65% x OMR

Using the same example:

A tenant is paying \$1000 per month, and the latest OMR is \$1,800 :-

The OMR is 180% of CR. As the condition corresponds to the one under Category III, the modified OMR will be equal to OMR x 90%, i.e. \$1,800 x 90% = 1,620.

Step 2 - (2):

PUC would then compare the current rent (CR) with the modified OMR (MOMR) and determine the target percentage of MOMR to be reach by the end of the third year, the last year of the tenancy agreement.

CATEGORY	CONDITION	Target percentage
A	If MOMR is greater than CR but not more than 200% of CR	100%
В	If MOMR is greater than 200% of CR but not more than 400% of CR	75%
С	If OMR is greater than 400% of CR	60%

Using the above example:

The tenant is paying \$1000 per month, and the latest OMR is \$1,800. Thus the MOMR is \$1,620 (90% of OMR).

The MOMR is <u>162%</u> of CR. As the condition corresponds to the one under <u>Category A</u>, the tenant will have to pay 100% of MOMR, i.e. \$1,620 by the third year.

Annual Increment =
$$(\$1,620 - \$1,000)/3$$

= $\$206$

Step 3:

PUC would then compare the average annual increment under the CPI formula with the annual increment under the OMR formula and take the lowest as the resultant increment.

II. Where CR is greater than OMR

Step 1:

Upon tenancy renewal, PUC would first obtain the OMR assessed by RVD

Step 2:

PUC will determine the different rental reduction under the CPI formula and the OMR formula

"CPI formula"

Step 2-(1):

PUC would compare the current rent (CR) with OMR and determine the reduction having regard to the relationship between OMR and CR.

Category	Condition	Reduction
1.	If CR is greater than OMR but not more than	Inflation rate minus 5%
	150% of OMR	
2.	If CR is greater than 150% OMR but not more	Inflation rate minus 6%
	than 200% of OMR	
3.	If CR is greater than 200% OMR but not more	Inflation rate minus 7%
	than 250% of OMR	
4.	If CR is greater than 250% OMR but not more	Inflation rate minus 8%
	than 300% of OMR	
5.	If CR is greater than 300% OMR but not more	Inflation rate minus 9%
	than 350% of OMR	
6.	If CR is greater than 350% of OMR	Inflation rate minus 10%

For example:

A tenant is paying \$1,800 per month, and the latest OMR is \$1,000 :-

The CR is <u>180%</u> of OMR. As the condition corresponds to the one under <u>Category 2</u>, the tenant will face a "reduction" equivalent to the prevailing inflation rate minus 6%. (Take the inflation rate for 1997, which is about 6% to illustrate –

The first year "reduction" = $\$1,000 \times (6-6)\% = \$1000 \times 0\% = \$0$, ie. the rent will **remain the same** under the CPI formula.)

"OMR formula"

The new rent will be the mid-point between OMR and CR throughout the tenancy period. Using the same example:

A tenant is paying \$1,800 per month, and the latest OMR is \$1,000 :-

The new rent = (\$1,800 + \$1,000)/2 = \$1,400.

The reduction = \$1,800 - \$1,400 =**net decrease of \\$400**.

Step 3:

PUC would then compare the average annual reduction under the CPI formula with the reduction under the OMR formula and take the highest reduction rate as the resultant reduction rate.

Rental Adjustment Formula of ProRC

I. Where CR is greater than OMR,

Step 1:

Upon tenancy renewal, ProRC would first obtain the latest open market rent (OMR) assessed by RVD

Step 2:

If the current rent is greater than OMR, the tenant will have to continue to pay the current rent after tenancy renewal (i.e.there will be no reduction in rent).

For example:

A tenant is paying \$1,800 per month, and the latest OMR is \$1,000 :-

The new rent = CR = \$1.800.

II. Where OMR is greater than CR,

(a) For "open auction" tenants:

Step 1:

Upon tenancy renewal, ProRC would first obtain the latest open market rent (OMR) assessed by RVD

Step 2:

If the OMR is greater than current rent, the tenant will have to continue to pay OMR after tenancy renewal.

For example:

A tenant is paying \$1,000 per month, and the latest OMR is \$1,800 :-

The new rent = OMR = 1.800.

(b) For "restricted auction" tenants

Step 1:

Upon tenancy renewal, ProRC would first obtain the latest open market rent (OMR) assessed by RVD

Step 2:

If the OMR is greater than current rent, ProRC would compare the current rent (CR) with the OMR and determine the target percentage of OMR to be reach by the fourth year, the last year of the tenancy agreement.

Category	Condition	target percentage
1	CR is equal to or greater than 50% of OMR	100%
2	CR is between 25% and 50% of OMR	75%
3	CR is smaller than 25% of OMR	50%

For example:

A tenant is paying \$1,000 per month, and the latest OMR is \$3,000 :-

Thus, CR is 33.3% of OMR As the condition corresponds to the one under <u>Category 2</u>, the tenant will have to pay 75% of OMR, i.e. <u>\$2,250</u> by the fourth year.

The annual increment =
$$(\$2,250 - \$1,000)/4$$

= $\$312.5$

Annex B

Proposed Aligned Market Rental Adjustment Formula

Step 1:

Upon tenancy renewal, the Food and Environmental Hygiene Department (FEHD) will first obtain the latest open market rent (OMR) assessed by RVD

Step 2:

If the OMR is greater than current rent, FEHD will compare the current rent (CR) with the OMR and determine the target percentage of OMR to be reach by the third year, the last year of the tenancy agreement.

Category	Relationship between CR and OMR	Target Percentage
1	Current rent equal or less than 10% of OMR	20%
2	Current rent is greater than 10% but not more than 20% of OMR	30%
3	Current rent is greater than 20% but not more than 30% of OMR	40%
4	Current rent is greater than 30% but not more than 40% of OMR	50%
5	Current rent is greater than 40% but not more than 50% of OMR	60%
6	Current rent is greater than 50% but not more than 60% of OMR	70%
7	Current rent is greater than 60% but not more than 70% of OMR	80%
8	Current rent is greater than 70% but not more than 80% of OMR	90%
9	Current rent is greater than 80% but not more than 90% of OMR	100%
10	Current rent is greater than 90% but not more than 95% of OMR	100% (by 2 nd yr)
11	Current rent is greater than 95 of OMR	100% (by 1 st yr)

For example,

Annex B

A tenant is paying \$1,000 as current rent and OMR is \$1,800 :-

That is, CR is 55.5 % of OMR. As the condition corresponds to the one under Category 6, the tenant will have to pay 70% of OMR, i.e. \$1,260 by the third year.

The annual increment =
$$(\$1,260 - \$1,000)/3$$

= $\$86.7$ (or 8.67%)

Mathematically,

The annual increase = $[(OMR \times Target \ Percentage) - CR] / 3$

Table comparing percentage increase in rent under different mechanisms

Relationship between CR and OMR	max % increase under new mechanism	max % increase under PUC mechanism	max % increase under ProRC mechanism (for resitees only)	max % increase under ProRC mechanism (open auction tenants)
CR at 95.1% - 100 % of OMR	5.2%	change in CPI(A)	1.29%	5.15%
CR at 90.1% - 95% of OMR	5.5%	change in CPI(A)	2.75%	10.99%
CR at 80.1% - 90% of OMR	8.3%	change in CPI(A)	6.21%	24.84%
CR at 70.1% - 80% of OMR	9.5%	change in CPI(A)	10.66%	42.65%
CR at 60.1% - 70% of OMR	11.0%	5%+change in CPI(A)	16.60%	66.39%
CR at 50.1% - 60% of OMR	13.2%	5%+change in CPI(A)	24.90%	99.60%
CR at 40.1% - 50% of OMR	16.5%	6%+change in CPI(A)	21.76%	149.38%
CR at 30.1% - 40% of OMR	20%(capped)	8%+change in CPI(A)	37.29%	232.23%
CR at 20.1% - 30% of OMR	20%(capped)	10%+change in CPI(A)	49.70%	397.51%%
CR at 10.1% - 20% of OMR	20%(capped)	10%+change in CPI(A)	98.76%	890.10%
CR at 10% or less of OMR	20%(capped)	10%+change in CPI(A)	600.00%	4900.00%

Annex E

Summary of the Major Aligned Proposals Relating to Public Market Tenancies

Item	Subject	PUC Practice	ProRC Practice	Proposals
1.	Duration of tenancy	3 years	4 years	Having regard to the prevailing market practice and tenancies managed by the Housing Department (which usually range from 2-3 years), we propose — to align the duration of tenancy to 3 years.
2.		provides that the rent is inclusive of management fee and air-conditioning (A/C) charges, but excluding rates.	The tenancy agreement provides that the rent is exclusive of rates, management fee & A/C charges. The tenants are required to pay A/C charges separately.	Charging rates on individual tenants will involve enormous administrative work and cost and we do not intend to recover rates separately. In future assessment, OMR should include rates and management fees. As regards air-conditioning (A/C) charges, apart from the different arrangements of the former PUC and Pro RC, we note that the Housing Authority(HA)'s practice is to recover fully the recurrent cost as well as capital cost of A/C. Stall lessees have to pay a monthly A/C charge in addition to monthly rental. For Housing Society(HS), its practice is similar to the Housing Authority in recovering both the capital and recurrent costs of A/C. Having regard to the current practice of public markets in N.T and markets under HA and HS, we propose — to recover only the recurrent costs (including electricity charges and maintenance cost) from tenants in markets with A/C system. Existing tenants, particularly in the urban area who were not required to pay A/C charges in the past will only need to pay upon expiry of their

Item	Subject	PUC Practice	ProRC Practice	Proposals
				current tenancies.
3.	Rental deposit and payment frequency	Tenants are required to pay one-month rental deposit and 3- month rental in advance	Tenants are required to pay one-month rental deposit and three-month rental in advance.	Though the practices of the former PUC and ProRC are the same, this arrangement is unsatisfactory as the one-month deposit is not sufficient to cover rental payment in arrears while the three-month advance rent payment poses a heavy burden on tenants. In view of this, we propose- (a) to adopt the commercial practice of requiring two-month rental deposit; and (b) to do away with the three-month advance rental payment and collect rental monthly.
4.	Termination of tenancy agreement due to offences.		For any market stall, accumulation of three convictions of offences against any provision under Cap.132 and its sub. leg. within a period of 12 months will lead to the stall being placed under observation for 12 months. One more conviction during this "bound over" period would lead to termination of tenancy agreement. However, for serious offence, such as sell of fresh meat from an unapproved source, one conviction will lead to immediate termination	We consider that the former PUC's practice is clearer and easier to administer. Therefore, we propose (a) To adopt the former PUC practice, i.e. to terminate the tenancy upon 4 convictions of offences within 12 months; and . (b) To stipulate in tenancy agreements that for serious offences (such as sale of fresh meat from unapproved source) one conviction might lead to the immediate termination of tenancy. However, it should be noted that tenants will still have the right to appeal to the Municipal Services Appeals Board (MSAB) against the termination of tenancies.

Item	Subject	PUC Practice	ProRC Practice	Proposals
5.	improvement works (Stallholders might have to vacate their stalls, either by	PUC waived the rent of stalls affected during the improvement works period. It also provided rental waiver for a specified period before and after the works period.	stalls which were required to cease business during the improvement works period. It also provided rental waiver for a specified period after the works period. Moreover, it provided rental reduction	
	(b) In relation to resiting arrangement	PUC provided 2 months' rental waiver when resitees first move into a market.	ProRC did not provide any rental waiver for their resiting exercise.	To assist the tenants in re-establishing their business, we propose to - Waive their rental for the first 2 months after they move into the market stalls.

Analysis of impact of proposed rental formula for markets in urban area

				1st year increase			
Current Rent		No of stalls	<u>%</u>	Av	erage	<u>range</u>	
\$				\$	%	\$	
0 -	1,000	568	30.7	66	11.1	16 -	197
1,001 -	2,000	602	32.5	133	9.1	9 -	393
2,001 -	3,000	263	14.2	209	8.5	8 -	592
3,001 -	4,000	159	8.6	285	8.1	0 -	736
4,001 -	5,000	122	6.6	380	8.4	161 -	735
5,001 -	6,000	78	4.2	467	8.5	99 -	946
6,001 -	7,000	12	0.6	649	9.9	275 -	997
7,001 -	8,000	18	1.0	423	5.6	200 -	716
8,001 -	9,000	15	0.8	478	5.7	196 -	729
9,001 -	10,000	3	0.2	749	7.8	678 -	811
10,001 -	15,000	3	0.2	615	5.9	578 -	691
15,001 -	20,000	3	0.2	488	2.6	0 -	933
20,001 -	25,000	3	0.2	1,213	5.9	1,017 -	1,311
	Total*:	1,849	100.0	180	9.4	0 -	1,311

^{*} Excluding cases with rental reduction due to OMR lower than current rent.

Analysis of impact of proposed rental formula for markets in urban area

	no.	%
Number of stalls with increase from \$0 - \$200	1,279	67.5%
Number of stalls with increase from \$201 - \$500	473	25.0%
Number of stalls with increase from \$501 - \$1,000	94	4.9%
Number of stalls with increase from \$1,000 - \$2,000	3	0.2%
Number of stalls with increase above \$2,000	0	0.0%
Number of stalls with rental reduction from \$0 - \$500	33	1.7%
Number of stalls with rental reduction from \$501 - \$1,000	4	0.2%
Number of stalls with rental reduction from \$1,000 - \$2,000	5	0.3%
Number of stalls with rental reduction from above \$2,000	3	0.2%
Number of samples	1,894	100.0%

Analysis of impact of proposed rental formula for markets in N.T.

					1st year increase				
Current Rent		No of stalls	<u>%</u>	avera	average		range		
\$				\$	%		\$		
0 -	1,000	19	5.0	59	7.7	0	-	187	
1,001 -	2,000	226	59.8	105	7.7	0	-	205	
2,001 -	3,000	8	2.1	141	5.9	60	-	233	
3,001 -	4,000	34	9.0	205	5.8	129	-	408	
4,001 -	5,000	34	9.0	302	6.8	0	-	514	
5,001 -	6,000	40	10.6	403	7.3	327	-	620	
6,001 -	7,000	15	4.0	456	7.2	347	-	673	
7,001 -	8,000	0	0.0	0	0.0	0	-	0	
8,001 -	9,000	2	0.5	705	8.4	477	-	933	
9,001 -	10,000	0	0.0	0	0.0	0	-	0	
10,001 -	15,000	0	0.0	0	0.0	0	-	0	
15,001 -	20,000	0	0.0	0	0.0	0	-	0	
20,001 -	25,000	0	0.0	0	0.0	0	-	0	
	Total*:	378	100.0	179	7.4	0	_	933	

^{*} Excluding cases with rental reduction due to OMR lower than current rent.

Analysis of impact of proposed rental formula for markets in N.T.

	no.	%
Number of stalls with increase from \$0 - \$200	275	66.6%
Number of stalls with increase from \$201 - \$500	94	22.7%
Number of stalls with increase from \$501 - \$1,000	9	2.2%
Number of stalls with increase from \$1,000 - \$2,000	0	0.0%
Number of stalls with increase above \$2,000	0	0.0%
Number of stalls with rental reduction from \$0 - \$500	24	5.8%
Number of stalls with rental reduction from \$501 - \$1,000	2	0.5%
Number of stalls with rental reduction from \$1,000 - \$2,000	5	1.2%
Number of stalls with rental reduction from above \$2,000	4	1.0%
Number of samples	413	100.0%