

立法會
Legislative Council

Ref : CB2/PL/FE

LC Paper No. CB(2)2366/08-09
(These minutes have been seen
by the Administration)

Panel on Food Safety and Environmental Hygiene

**Minutes of special meeting
held on Tuesday, 2 June 2009, at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming, JP (Chairman)
Hon WONG Yung-kan, SBS, JP (Deputy Chairman)
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, JP
Hon Alan LEONG Kah-kit, SC
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon WONG Yuk-man
- Members attending** : Hon CHAN Kam-lam, SBS, JP
Hon CHAN Hak-kan
Hon Tanya CHAN
Dr Hon Priscilla LEUNG Mei-fun
- Member absent** : Dr Hon LEUNG Ka-lau
- Public Officers attending** : Item I

Prof Gabriel M LEUNG, JP
Under Secretary for Food and Health

Mr Francis HO
Principal Assistant Secretary for Food and Health (Food) 2

Mr CHEUK Wing-hing, JP
Director of Food and Environmental Hygiene

Ms Alice LAU Yim, JP
Deputy Director of Food and Environmental Hygiene
(Environmental Hygiene)

Ms Rhonda LO Yuet-ye, JP
Assistant Director of Food and Environmental Hygiene
(Operations) 2

Attendance by invitation : Item I

Federation of Hong Kong Kowloon New Territories Hawker Associations

Mr CHAN Yuen-fai

Mr WONG Chiu-yin

全港公共街市販商大聯盟

Mr WONG Chai-wai

Mr LUI Kwok-wai

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2)5

Staff in attendance : Miss Joanne FONG
Senior Council Secretary (2)6

Ms Sandy HAU
Legislative Assistant (2)5

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I. Public market tenancy renewal exercise
(LC Paper Nos. CB(2)1715/08-09(01) & (02))

The Chairman invited deputations to give views on the public market tenancy renewal exercise.

Views of deputations

2. Representatives from the Federation of Hong Kong Kowloon New Territories Hawker Associations expressed dissatisfaction about the failure of the Food and Environmental Hygiene Department (FEHD) in consulting public

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market stall tenants about the content of the new tenancy agreement, before initiating the public market tenancy renewal exercise. They requested FEHD to

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- (a) immediately abort the public market tenancy renewal exercise, and extend those tenancies which would expire on 30 June 2009 for one year up to 30 June 2010. In the meantime, FEHD should consult the tenants, as well as this Panel, on the content of the new tenancy agreement;
- (b) allow business partners (合夥人) and registered assistants of market tenants to sign the new tenancy agreements; and
- (c) exempt those market stall tenants who were ex-licensed hawkers from applying a Business Registration (BR) Certificate.

3. Representatives from 全港公共街市販商大聯盟 presented their views as set out in the submission (LC Paper No. CB(2)1715/08-09(02)). Specifically, they were as follows -

- (a) the Administration should not use the recommendations of the Audit Commission and the Public Accounts Committee (PAC) of the Legislative Council (LegCo) to unilaterally revise the content of the public market tenancy agreement, which was against contractual spirit. Moreover, FEHD staff should refrain from coercing tenants to sign the new tenancy agreements which they did not fully understand and/or accept;
- (b) applying a "user-pays" principle in recovering costs for operating the public markets from tenants was unacceptable, having regard to the important social functions of public markets in meeting the needs of the community and resiting hawkers; and
- (c) the Administration should take active steps to enhance the business environment of the existing markets to improve their competitiveness, such as providing air-conditioning for market stalls. It was discriminatory of FEHD to provide all its offices in public markets with air-conditioning, whilst FEHD would only provide air-conditioning for a public market if not less than 85% of the market stalls therein were let out.

The Administration's response

4. Under Secretary for Food and Health (USFH) said that in 2008, the Audit Commission reviewed the management of public markets and identified problem areas for improvement. PAC also criticised the management of public

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markets and expressed serious concern about the practice of not recovering from stall tenants rates paid on their behalf as well as the air-conditioning cost. PAC also considered stall subletting unacceptable. To respond positively to the views of the Audit Commission and PAC, including criticism over FEHD's successive tenancy extension, there was a need for the Administration to act promptly and enter into new tenancy agreements with market tenants instead of further extending their existing tenancies.

5. Director of Food and Environmental Hygiene (DFEH) supplemented that since FEHD was established in 2000 and took over the responsibility of the management of public markets, it had adopted the different versions of tenancy agreements used by the former Provisional Urban Council and the Provisional Regional Council, with considerable discrepancies. To facilitate market management, new tenancy clauses and conditions had been added from time to time and conveyed to tenants in writing for compliance. In response to the recommendations of the Audit Commission and PAC, decision was made to align the different versions of public market tenancy agreements currently in use, and spell out clearly in the new tenancy agreement existing public market management measures so as to align market management and enable tenants to have a better understanding of the requirements. The new tenancy agreement template was largely based on the provisions of the existing tenancy agreements for public markets in the urban area and the New Territories, with appropriate amendments to remove discrepancies, rendering the agreement more update, comprehensive and achieving greater consistency. The new tenancy agreement template was applicable to all public markets in the territory. Compared with the old versions, it had incorporated the following major amendments -

- (a) it stated explicitly that the rent was exclusive of rates, air-conditioning charge (if applicable) and other miscellaneous payments, all of which should be paid by the tenant separately. The Government might, by giving the tenant not less than one month's notice, adjust the air-conditioning charge;
- (b) it required the tenant to display in a conspicuous manner at the stall the BR Certificate issued in the name of the tenant;
- (c) it stated the Government's right to vary the category of prescribed commodities to be sold at the stall or the use of the stall to meet changing circumstances; and
- (d) it required the tenant to comply with the Government's request for an interview within 14 days, except with an acceptable reason.

6. DFEH further supplemented that -

- (a) FEHD had earlier issued letters to some 10 000 market stall

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tenants whose tenancies would expire on 30 June this year, inviting them to sign the new aligned tenancy agreements. In line with the Government's earlier decision to extend the rental freeze for public markets for 12 months to 30 June 2010, the new tenancies would be valid for a period of one year up to 30 June 2010. Before inviting tenants to sign new tenancy agreements, FEHD met with market trader associations and Market Management Consultative Committees in early May 2009 to brief them on the background for signing new tenancy agreements, and informed tenants individually in writing of the detailed arrangements. The new tenancy agreement template had also been posted on the notice board of each public market and kept in the office of market offices for tenants' easy reference. FEHD had issued letters in batches to invite tenants to sign new tenancies at its offices in the district concerned. Its staff also briefed the tenants on the content of the new tenancies before they signed the document. The exercise involved the signing of over 10 000 tenancies. To ensure timely completion in an orderly manner, depending on the number of cases to be handled, district offices had started to send out appointment letters in batches from 13 May 2009. As at 1 June 2009, FEHD had concluded new tenancies with about 2 690 tenants;

- (b) stating in the new tenancy agreement that rates and air-conditioning charges (if applicable) should be paid by the tenant separately was nothing new. Although the existing tenancy agreements stipulated that tenants were responsible for their rates payments, FEHD had never recovered from stall tenants the rates paid on their behalf because it simply followed the practice of the two former Provisional Municipal Councils of not recovering from stall tenants the rates paid on their behalf when it took over the management of public markets in 2000. Presently, only 31 of the 104 public markets were air-conditioned involving some 2 800 tenants. About 85% of these 2 800 tenants had been paying their air-conditioning charges to FEHD, whereas about 15% of them had not been charged air-conditioning cost because no air-conditioning charges had been levied on three markets which were retrofitted with air-conditioning systems in 2000. In line with the former Provisional Regional Council's decision of exempting tenants from paying air-conditioning charges until tenancy renewal and given that there had not been any tenancy renewal since 2000, FEHD had hitherto not levied on existing stall tenants (except new tenants) any air-conditioning charges;
- (c) requiring the tenant to display BR Certificate at the stall was not only to respond to the recommendations of the Audit Commission

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and PAC, but was a Business Registration Ordinance (Cap. 310) requirement;

- (d) requiring the tenant to comply with the Government's request for an interview within 14 days, except with an acceptable reason, was not unreasonable. According to market stall tenancy agreement, a tenant was required to operate the stall in person or engage assistant(s) to run it for him. In the latter case, he would need to have his assistant registered with the relevant District Environmental Hygiene Offices. Moreover, this new term should help address the concern of PAC about the problem of stall subletting in public markets;
- (e) providing for the Government's right to vary the category of prescribed commodities to be sold at the stall or the use of the stall was intended to improve market vibrancy which in turn should increase patronage to the market. FEHD would, however, only exercise such right on vacant stalls. Revision would be made to the new tenancy agreement to put this point beyond doubt;
- (f) having regard to the different views on the arrangements for signing new tenancies raised by market tenants, LegCo Members and market trader associations, the Administration had decided to extend those tenancies which would expire on 30 June 2009 to another six months until 31 December 2009. In the meantime, FEHD would further explain to the tenants the content of the new tenancy agreement and work out the arrangements for recovery of rates and air-conditioning cost, before resuming inviting tenants to sign the agreements which would come into effect on 1 January 2010. Tenants who had signed the new agreements would be informed in writing individually that the commencement of their new tenancies would be postponed to 1 January 2010; and
- (g) deferring the commencement of the new tenancy agreement for six months was appropriate, as it should provide sufficient time for FEHD to further explain to tenants the content of the new tenancy agreement on the one hand and meet the views of the Audit Commission and PAC that FEHD should expeditiously implement measures to address the problems identified in the management of public markets on the other.

7. DFEH also pointed out that -

- (a) FEHD could not exempt stall tenants from applying for a BR Certificate, as the Business Registration Ordinance (Cap. 310) required every person who carried on business in Hong Kong to

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apply for a BR Certificate within one month from the date of commencement of the business, and to display a valid BR Certificate at the place of business;

- (b) the fact that FEHD offices in non-air-conditioned public markets were air-conditioned should not be taken as discriminatory against market tenants, as FEHD had to pay the air-conditioning cost. The threshold of 85% was necessary as the capital costs for installing air-conditioning system in public markets were huge and the majority of stall tenants must agree to bear the recurrent costs, i.e. for electricity and maintenance;
- (c) although FEHD incurred a deficit of \$160 million for 2007-2008 in operating the public markets, recovering rates and air-conditioning cost from market tenants amounting to some \$32 million a year was more for implementing the "user-pays" principle which was not unreasonable; and
- (d) FEHD had issued guidelines for its staff on how to apprise stall tenants on the content of the new tenancy agreement, by way of running a 35 to 45-minute Cantonese tape-recording on the public market tenancy renewal exercise at all of its district offices. Stall tenants and other members of the public alleging mishandling by FEHD staff were invited to make specific reports to FEHD for follow-up.

Discussion

8. Mr Tommy CHEUNG urged the Administration to improve the design and facilities of public markets, such as providing all public markets with air-conditioning systems, before making changes to the existing market rentals and charges. In view of the current economic downturn, Mr CHEUNG was of the view that the Administration should at least defer the commencement of the new tenancy agreement for one year.

9. Mr WONG Yung-kan referred members to the submission from the Democratic Alliance for the Betterment and Progress of Hong Kong tabled at the meeting (LC Paper No. CB(2)1767/08-09(01)), and urged the Administration to further extend the tenancies which would expire on 30 June 2009 for, say, one year up to 30 June 2010. In the meantime, FEHD should consult market tenants in reaching a consensus on the content of the new tenancies and addressing the status of business partners of market tenants in operating the stalls.

10. USFH responded that to defer the implementation of the new tenancy agreement for one year up to 1 July 2010 would be contrary to the

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recommendations of PAC that FEHD should expeditiously enter into new tenancy agreements with market tenants instead of further extending their existing tenancies, devise a suitable mechanism to recover from stall tenants the rates paid on their behalf as well as the air-conditioning cost, and address the problem of stall subletting. The Administration considered that deferring the implementation of the new tenancy agreement for six months up to 1 January 2010 would strike a right balance in responding positively to the recommendations of PAC and achieving a win-win situation for all.

11. Mr WONG Kwok-hing criticised the Administration for failing to first consult this Panel and market tenants, before inviting tenants to sign the new tenancy agreements. Mr WONG pointed out that it was the established practice of the Administration to first consult the two former Municipal Councils on its plan to introduce amendments to public market tenancy agreement in the past. Mr WONG requested the Administration to shelve the implementation of the new tenancy agreement until this Panel had thoroughly considered the content of the new tenancy agreement.

12. USFH responded that the Administration had planned to report to the Panel about the proposed arrangements to recover rates and the air-conditioning cost from tenants as well as the proposed rental adjustment mechanism in respect of public market stalls in July 2009. Mr WONG Kwok-hing remarked that he did not see the justification for the Administration to implement the new tenancy agreement on 1 January 2010 when the arrangements for recovering rates and the air-conditioning cost from tenants were yet to be finalised.

13. Mr CHAN Kam-lam questioned the urgency for the Administration to implement the new tenancy agreement on 1 January 2010, as there was no mention in PAC Report No. 51 on the management of public markets that the Administration should rectify the identified problem areas through the implementation of a new tenancy agreement. Mr CHAN shared the view that the Administration should defer the implementation of the new tenancy agreement for at least one year, to allow sufficient time to iron out the different views and concerns of market tenants on the new tenancies.

14. Dr Priscilla LEUNG said that it was not an opportune time to implement the new tenancy agreement when Hong Kong's economy was still in the doldrums, as a result of the global financial turmoil. Dr LEUNG pointed out that the new tenancy agreement had caused great apprehension among market tenants as business partners and/or family members of market tenants might no longer be able to operate the stalls. Dr LEUNG urged the Administration to defer the implementation of the new tenancy agreement for at least one year, as requested also by the Environment and Hygiene Committee of the Sham Shui Po District Council in its submission tabled at the meeting (LC Paper No. CB(2)1767/08-09(02)).

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15. Mr CHAN Hak-kan questioned whether deferring the implementation of the new tenancy agreement for six months could provide sufficient time for FEHD to address the various views and concerns of market tenants. Mr CHAN pointed out that to his understanding, about 40%-50% of the stalls in public markets were operated by sublettees.

16. USFH reiterated that the implementation of the new tenancy agreement was to respond positively to the views of PAC that the Administration should expeditiously implement measures to address the identified problem areas in the management of public markets. DFEH supplemented as follows -

- (a) it was not the established practice of FEHD to first consult market tenants on any revision to the terms of the tenancy agreement before implementation. In the past years, over 10 new tenancy clauses and conditions had been added from time to time and conveyed to tenants for compliance;
- (b) in its Report No. 51 on the management of public markets, PAC acknowledged that DFEH would arrange for renewal of tenancies upon their expiry so that there would be an opportunity to verify the status of tenants and revise the tenancy conditions as appropriate, and urged DFEH to take effective measures to step up controls over stall subletting;
- (c) although the new tenancy agreement explicitly stated that tenants were responsible for payment of rates and air-conditioning charges, the arrangements to recover the air-conditioning cost and rates from tenants would be subject to the views of the Panel before implementation; and
- (d) the Administration hoped to report to the Panel of its stance regarding the status of business partners of market tenants in operating the stalls in an early opportunity.

17. Mr Vincent FANG said that although PAC urged the Administration to take effective measures to step up controls over market stall subletting, it was unreasonable for the Administration to address the problem overnight by requiring tenants to come to FEHD office to sign the new tenancy agreement in person, as many stalls had been operated by persons other than the tenants for a long time, not to mention that some of these tenants could no longer be traced. In the light of this and having regard to the present economic downturn, Mr FANG urged the Administration to defer the implementation of the new public market tenancy agreement for one year.

18. USFH responded that in the Government Minute in response to PAC Report No. 51 tabled at the meeting of the Council on 20 May 2009, the

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Administration set out the measures that it was taking and planning to take in response to PAC's recommendations to address the problem of stall subletting, including FEHD would arrange for tenancy renewal and require tenants to appear in person to sign a new tenancy agreement.

19. Mr Alan LEONG expressed dismay and great dissatisfaction about the Administration selectively using the conclusions and recommendations of PAC in justifying the introduction of the new tenancy agreement. In the conclusions and recommendations of PAC Report No. 51 on the subject of management of public markets, PAC "considers that: (a) in addition to land and building costs, public markets also cost the Government some \$500 million a year to operate. They must therefore serve the primary purpose of their existence, i.e. providing active market services to the community, otherwise they would not justify the high building and operation costs; and (b) the Administration's policy on the provision of public markets should be conducive to ensuring that the public markets can give full play to their functions to effectively serve the needs of the community". In the same vein, PAC urged the Administration to "complete the market surveys (to gauge the views of market patrons and stall tenants so as to assess the viability and value of public markets in the community) by June 2009 and, having regard to the result of the surveys, formulate clear policy on the provision of public markets, including the positioning, functions and appropriate level of Government's subsidisation of the operation of public markets. On market stall rentals and charges, PAC expressed serious concern that "the Food and Health Bureau and FEHD have not devised a suitable rental adjustment mechanism to deal with stall tenancy renewal cases after 30 June 2009 (the expiry date of the rental freeze period)".

20. Mr Alan LEONG pointed out that whilst PAC would monitor the progress of the measures to be implemented by the Administration in the Government Minute in response to PAC Report No. 51, it was the Administration which was responsible for how these measures should be implemented and ensuring their successful implementation. For the Administration not to first rationalise the positioning, functions and subsidisation of public markets and to work out the mechanisms for the recovery of rates and air-conditioning cost, before introducing the new tenancy agreement, was tantamount to putting the cart before the horse. Mr LEONG requested the Administration to nullify the signed new tenancy agreements, and to cease to implement the public market tenancy renewal exercise until a consensus had been reached on the positioning, functions and subsidisation of public markets, the rental adjustment mechanism in respect of public market stalls, and the arrangements to recover rates and air-conditioning cost from tenants.

21. Miss Tanya CHAN cited some of the unreasonable and harsh terms and conditions contained in the new tenancy agreement, such as clauses 3.3 and 3.6, and urged the Administration to nullify the signed new tenancy agreements in

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the first instance.

22. Mr KAM Nai-wai was of the view that if the Administration was intent on implementing the new tenancy agreement on 1 January 2010, it should first address the positioning, functions and appropriate level of Government's subsidisation of public market operation, the rental adjustment mechanism in respect of public market stalls, and the arrangements to recover rates and air-conditioning cost from tenants within six months' time.

23. USFH reiterated that it was the Administration's plan to report to this Panel the utilisation and patron opinion surveys on public markets and the proposed arrangements to recover rates and the air-conditioning cost from tenants as well as the proposed rental adjustment mechanism in respect of public market stalls in July 2009.

24. The Chairman recognised the Administration's efforts in rectifying the situation of the long-standing problem in relation to public market management, but expressed regret in its poor communication with the stakeholders resulting in their dissent and protest in this tenancy agreement signing exercise. The Chairman shared the view that the implementation of the new tenancy agreement should be deferred for one year. To address the long-standing practice of market stall subletting, the Chairman suggested that the Administration could make reference to the practice of The Link Management Limited in eradicating the problem of stall subletting by renting the stalls under its management to sublettees if the rent paid by the sublettees to the tenants was higher than the rent paid by the tenants to The Link and the sublettees were willing to enter into tenancy agreements with The Link to pay the higher rental.

Motion

25. Mr Vincent FANG moved a motion, seconded by Mr WONG Yung-kan and Mr Alan LEONG, and amended by Mr WONG Kwok-hing, as follows -

"本會動議：食環署先擱置新租約的簽署，並按原有租約條款，與公眾街市現有租戶續約 1 年；在此段期間，就新租約內容諮詢立法會食物安全及環境衛生事務委員會及街市租戶，妥善回應租戶訴求，就公眾街市的供應制訂清晰政策，包括公眾街市的定位、功能及政府對公眾街市經營的適當補貼水平，並在取得租戶共識後，再進行商訂新租約的內容。食環署亦應在新安排中，給予各枱商的合夥人和助手認可地位。"

(Translation)

"That this Panel moves that FEHD should first shelve the signing of new tenancy agreements and renew the agreements with existing public

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market tenants on the original tenancy terms for one year; and during this interim period, FEHD should consult the Legislative Council Panel on Food Safety and Environmental Hygiene and market tenants on the content of the new tenancies, properly address the tenants' requests, formulate a clear policy on the provision of public markets, including the positioning, functions and appropriate level of Government subsidisation to the operation of public markets, and discuss the content of the new tenancy agreement after reaching a consensus with the tenants; and FEHD should also give due recognition to the status of market stallholders' partners and assistants under the new arrangement."

26. The Chairman put Mr Vincent FANG's motion, as amended by Mr WONG Kwok-hing, to vote. Members present at the meeting voted in favour of Mr FANG's motion, as amended by Mr WONG. The Chairman declared that Mr FANG's motion, as amended by Mr WONG, was carried.

Conclusion

27. The Chairman requested and USFH agreed to revert to the Panel as soon as possible on the Administration's decision on the Panel's motion carried at the meeting.

28. USFH undertook to send individual letters to all of the 2 690 tenants who had signed the new tenancy agreement to inform them that their new tenancies would not come into effect on 1 July 2009, and to widely publicise at public markets to inform tenants of the latest development on the public market tenancy renewal exercise.

(Post-meeting note: The Administration informed the Panel on 9 June 2009 of its decision to suspend the implementation of the new public market tenancy agreement for one year until 1 July 2010.)

29. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 2
Legislative Council Secretariat
12 August 2009