

立法會

Legislative Council

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LC Paper No. CB(2)2339/09-10

(These minutes have been seen
by the Administration)

Panel on Food Safety and Environmental Hygiene

**Minutes of special meeting
held on Monday, 3 May 2010, at 4:30 pm
in the Chamber of the Legislative Council Building**

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| Members present | : Hon Fred LI Wah-ming, SBS, 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, SBS, JP
Hon KAM Nai-wai, MH |
| Members attending | : Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Hon Audrey EU Yuet-mee, SC, JP
Hon LEE Wing-tat
Hon WONG Sing-chi |
| Member absent | : Dr Hon LEUNG Ka-lau |
| Public Officers attending | : <u>Item I</u>
Prof Gabriel M LEUNG, JP
Under Secretary for Food and Health

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

Ms Rhonda LO Yuet-yee, JP
Deputy Director of Food and Environmental Hygiene
(Environmental Hygiene) (Acting) |

Attendance by : Item I
invitation

Federation of Hong Kong Kowloon New Territories Hawker
Associations

Mr TSANG Kam-ming

Mr CHAN Wai-por

Mr CHEUNG Chi-keung

Mr WONG Chiu-yin

Mr WONG Yin-wa

全港公共街市販商大聯盟

Mr WONG Chai-wai

Mr LUI Kwok-wai

Mr WONG Ching-keung

Mr TANG Bing-lung

Mr WONG Chai-chung

荃灣楊屋道街市商戶聯會

Mr LAM Fook-chuen

北河街街市檯商協會

Mr WONG Wing-nam

大成街街市檯商協會

Mr HUI Chi-kuen

香港仔天光墟市集小販會

Mr YEUNG Wai-chuen

聯和墟街市商販協會

Mr LEE Ping-yiu

Hong Kong Southern District Public Market Development
Concerns Group

Mr Carl CHING Lok-suen

柴芳街街市檔戶

Ms NG Siu-fung

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

Staff in attendance : Miss Josephine SO
Senior Council Secretary (2) 1

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Further discussion on alignment of public market tenancy agreements and one-off tenancy transfer scheme for operators

(LC Paper Nos. CB(2)1230/09-10(03), CB(2)1308/09-10(02),
CB(2)1423/09-10(01) to (04) and CB(2)1457/09-10(01) to (02))

Views of deputations

At the invitation of the Chairman, representatives from the following organisations took turns to express views on the alignment of public market tenancy agreements by the Food and Environmental Hygiene Department ("FEHD") and its introduction of the one-off tenancy transfer scheme for operators -

- (a) Federation of Hong Kong Kowloon New Territories Hawker Associations;

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- (b) 全港公共街市販商大聯盟;
 - (c) 荃灣楊屋道街市商戶聯會;
 - (d) 北河街街市檯商協會;
 - (e) 大成街街市檯商協會;
 - (f) 香港仔天光墟市集小販會;
 - (g) 聯和墟街市商販協會;
 - (h) Hong Kong Southern District Public Market Development Concerns Group; and
 - (i) 榮芳街街市檔戶.
2. In gist, representatives of the organisations expressed the following views -
- (a) the Administration should include a preamble in the tenancy agreement to recognise the historical background and social functions of public markets stalls;
 - (b) the Administration should continue its long-standing practice of paying rates on behalf of market tenants;
 - (c) the air-conditioning charges attributable to common areas of markets, such as passages and lobbies, should be borne by the Government, while tenants should only pay charges pro rata to their stall areas;
 - (d) the Administration should revise or remove from the new tenancy agreement unreasonable clauses which imposed a heavy burden on market tenants or affected the normal operation of market stalls, including clauses 4(j)(ii), 5(b), 11(a)(iv) and 11(b);
 - (e) the Administration should further consult market tenants before introducing a new rental adjustment mechanism; and
 - (f) the Administration should improve the trading/operating environment of public markets, before asking stall tenants to bear air-conditioning charges and rates or proposing the alignment of public market stall rentals with the open market rental.

The Administration's response to the views expressed by deputations

3. Under Secretary for Food and Health ("USFH") responded with the following points -

- (a) the Administration recognised and appreciated the historical background and social functions of public market traders;
- (b) as regards the proposal from tenant representatives and traders for inclusion of a preamble in the tenancy agreement to recognise the historical background and social functions of public markets, the Administration needed more time to examine the feasibility of this suggestion. Legal advice had to be sought from the Department of Justice;
- (c) the Administration considered the successive extension of old tenancies in the past not desirable. In its review of the management of public markets in 2008, the Audit Commission raised concern over this arrangement and recommended that FEHD should consider renewing tenancy agreements with market tenants instead of repeatedly extending their existing tenancies. In fact, most of the clauses in the revised tenancy agreement template were drawn from provisions in different versions of the existing tenancy agreements. New clauses were added to step up the prevention of stall subletting. They gave effect to requirements which were reasonable and feasible. For example, a tenant was required to display conspicuously at the stall the Business Registration Certificate issued in his/her name. In view of this, the Administration invited tenants whose tenancies were due to expire on 30 June 2010 to appear in person to sign the tenancy agreements by that date. However, noting that some tenants needed more time for consideration, tenants would be allowed to choose either the new tenancy agreement template or the original tenancy agreement (including the additional clauses and conditions previously conveyed to tenants through letters by FEHD);
- (d) the one-off tenancy transfer scheme aimed to resolve the historical problems arising from the resiting of hawkers into public markets in the past and to regularise the status of public market stall operators. It might help address the problem of stall subletting in public markets. The Administration proposed to allow any person who had been a registered assistant of the stall concerned for at least three years, or any person who had invested in the business of the stall concerned for at least three years, to apply for taking over the status of a tenant with the consent of the original tenant and on producing documentary proof. FEHD would consider each application for transfer of tenancy on its own merits. Once the application was approved, the transferee should enter into a new tenancy agreement based on the revised

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aligned template with the Government, with the same tenancy term as that of the tenancy to be renewed by those tenants whose current tenancies were due to expire on 30 June 2010;

- (e) the Administration was aware of the tenants' concern over the operating environment of public markets. As announced earlier, the Administration had decided to further extend the rental freeze of public market stalls for another year ending 30 June 2011. With the further extension of the rental freeze, stall tenants whose tenancies were due to expire on 30 June 2010 would be charged the prevailing rentals for another year until 30 June 2011;
- (f) on the rental level, as some Members and trader associations considered that successful transferees under the one-off tenancy transfer scheme should be charged the existing stall rental instead of the open market rental, the Administration suggested that successful transferees should pay the actual average rental of stalls of the same category (e.g. wet goods stalls, meat stalls, cooked food stalls, etc.) in the same market, or the rental payable by the original tenant at the time of the transfer of tenancy, whichever was the higher. If there were more than 10 stalls of the same category in a market, one each of the highest and lowest rental-paying stalls would be excluded from the calculation of the actual average rental. This arrangement had fully taken into account the affordability of transferees and would also help ensure fairness to sitting tenants of the same category of stalls as the rental payable by a transferee would be comparable to that of similar stalls in the market concerned; and
- (g) it should be noted that the Government had adopted the views of Members and rolled out enhancement policy to carry out improvement works to and launch promotions for public markets.

4. Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) (Acting) supplemented that -

- (a) the clauses to which Mr CHEUNG Chi-keung and Mr WONG Wing-nam referred, including 4(j)(ii), 5(b), 11(a)(iv) and 11(b), were not new and were merely a replication of provisions in different versions of the existing tenancy agreements;
- (b) the new tenancy agreement template was applicable to all public markets in the territory. When compared with the old versions, the new agreement template had incorporated the following two major amendments -
 - (i) it required the tenant to display in a conspicuous manner at the stall the Business Registration Certificate issued in the name of

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the tenant; and

- (ii) it required the tenant to comply with the Government's request for an interview within 14 days, except with an acceptable reason.

Discussion

5. Ms Audrey EU, Mr CHAN Kam-lam and Mr WONG Sing-chi stressed the importance of revitalising and improving the operating environment of public markets. Ms EU and Mr WONG considered that the Administration should first address the positioning, functions and usage of public markets, and improve the operating environment of all markets before requiring tenants to sign the new tenancy agreement by 30 June 2010. Mr CHAN said that the Administration should come up with a comprehensive and long-term plan to improve the operating environment of public markets.

6. USFH advised that the Administration was committed to improving the operating environment of public markets. During 2007 to 2010, the Administration had earmarked a total of \$230 million to improve the environmental hygiene and the ventilation system of 17 existing public markets so as to enhance the competitiveness of these markets. As regards the proposal of some Members for installation of air-conditioning systems for all public markets, USFH advised that based on past experiences and assessment results, the project costs for installing air-conditioning systems for public markets were very high. As partial closure of the market might be required during the course of installation work, the full cooperation of market tenants was also needed. The installation of air-conditioning systems in public markets was subject to the support from tenants. At present, if the agreement of 85% or more of the tenants was secured with regard to installing the air-conditioning system and bearing the recurrent expenditure such as the electricity charges and maintenance fees, the Administration would consider the feasibility of implementing the relevant project. After listening to Members' views, the Administration would examine whether it was feasible and reasonable to lower the tenant agreement threshold of 85% and would consider this in connection with other measures to improve the operating environment of public markets. As a matter of fact, there were divergent views on whether or not air-conditioning systems should be installed in public markets. While some considered that installing air-conditioning systems would enhance the appeal of public markets, some other market tenants were of the view that this would increase their operating cost.

7. Regarding the rental payable by successful transferees under the one-off transfer scheme, Ms Audrey EU expressed concern about the financial pressure on the stall operators, if the calculation method/arrangement mentioned in paragraph 3(f) above was adopted. Echoing her view, Mr Vincent FANG asked whether the Administration had given due regard to the historical factors and different background of public market tenants in coming up with such a decision to adopt the

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actual average rental of stalls of the same category in the same market as the stall rentals payable by successful transferees. The Chairman asked whether the Administration would consider imposing a ceiling to cap the market stalls, in implementing the one-off transfer scheme.

8. In response, USFH explained that the Administration proposed to allow, on a one-off basis, those eligible persons to apply for taking over the status of a tenant on producing relevant proof and with the consent of the original tenant. If an application was approved, the stall would be offered to the applicant. He/she would have to enter into a new tenancy agreement with the Government and pay the actual average rental of stalls of the same category in the same market. USFH reiterated that this arrangement had fully taken into account the affordability of transferees and would also help ensure fairness to sitting tenants of the same category of stalls as the rental payable by a transferee would be comparable to that of similar stalls in the market concerned.

9. Ms Audrey EU, Mr CHAN Kam-lam, Mr Vincent FANG, Mr WONG Sing-chi and Mr WONG Kwok-hing shared deputations' view that the air-conditioning charges attributable to common areas of public markets, such as passageways, should be borne by the Government while tenants should only pay charges pro rata to their stall areas. They asked whether the Administration had come to a decision to exclude common areas of public markets from the air-conditioning charges to be recovered from stall tenants.

10. The Chairman considered that the Administration should devise a new mechanism for the calculation of air-conditioning charges payable by stall tenants.

11. USFH responded that the Administration fully understood Members' concern over the air-conditioning charges attributable to common areas of public markets, such as passageways and lobbies. As a matter of fact, the Government had all along been responsible for all the capital costs for installing the air-conditioning systems in public markets and the costs for subsequent large-scale or system maintenance, while electricity charges and daily maintenance costs were borne by stall tenants on a pro rata basis of floor area. Based on the "user-pays" principle, this arrangement should remain unchanged. Nevertheless, the Administration would review whether the existing air-conditioning charging mechanism could be fine-tuned by excluding more common areas of markets from the amount of air-conditioning charges payable by stall tenants.

12. Mr LEUNG Yiu-chung and Mr KAM Nai-wai expressed dissatisfaction with the slow progress made by the Administration in following up the requests of Members and stall tenants for excluding common areas of markets from the calculation of air-conditioning charges payable by stall tenants and improving the operating environment of public markets. They said that the Administration should show its determination and sincerity by coming up with some concrete proposals to address Members' and deputations' concerns. They shared the views of Ms Audrey EU and Mr WONG Sing-chi that the Administration should first

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address the positioning and functions of public markets, and improve the operating environment of all markets before asking tenants to sign the new tenancy agreement by 30 June 2010.

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13. In response, USFH stressed that the Administration saw the need to enhance the operating environment of public markets. In 2010-2011, the Administration had set aside a provision of \$33 million for improvement work, including upgrading the ventilation systems in seven markets. The Administration would provide the Panel with more detailed information on the improvement works in the pipeline.

14. Mr CHAN Kam-lam called on the Administration to continue with its long-standing practice of paying rates on behalf of the tenants and not to recover rates from them. Mr WONG Kwok-hing recalled that the Panel had passed a motion at the meeting on 13 April 2010 urging the Administration to continue to pay the rates on behalf of public market stall tenants in the territory, so as to support small business operations in markets. He said that the Administration should respect the consensus view of the Panel and actively follow up on the matter.

15. In response, USFH advised that the current practice of FEHD paying rates on behalf of the tenants had been adopted for years. The original tenancy agreements had however stipulated that tenants were responsible for the payment of rates in respect of the stalls. This requirement was in line with the "user-pays" principle adopted by the Government in other public properties. As explained at previous Panel meetings, given the serious concern of the Audit Commission and the Public Accounts Committee that the Administration had not collected the rates paid on behalf of stall tenants, the Food and Health Bureau and FEHD were in discussion with the Ratings and Valuation Department on the specific arrangements for assessing the rates of individual market stalls. The Administration would seek Members' views again on the specific arrangements for the recovery of rates when the details of rates assessment were finalised, before deciding on the way forward. USFH assured Members that the Administration would not unilaterally require stall tenants to pay rates in respect of their stalls without first consulting the Panel.

16. As regards the rationale for the Government to sign the tenancy agreement only with one prospective tenant even though the stall concerned was operated by several business partners and the issues arising from this Government policy as evidenced in the case cited by Mr Vincent FANG, Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) (Acting) advised that it was provided in the law that the Government should enter into a tenancy agreement with any one person instead of all business partners of the stall concerned. As such, the business partners should agree among themselves who should take up the tenant status.

17. Referring to an earlier question raised by a representative of a deputation on the provision which stated that the Government should have the right to terminate a tenancy agreement and re-enter the stall concerned in the event that the tenant had become bankrupt, Deputy Director of Food and Environmental Hygiene

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(Environmental Hygiene) (Acting) explained that when a person went bankrupt, his or her assets would be liquidated and administered by the Official Receiver's Office. As it was not up to the tenant to decide whether to continue the business or not, the Government considered this specific termination clause necessary and reasonable.

18. Mr WONG Kwok-hing welcomed the Administration's decision to further extend the rental freeze of public market stalls for another year until 30 June 2011. He hoped that the Administration would not increase the stall rentals afterward unilaterally, before consultation with Members and stakeholders was carried out and consensus was reached on the rental adjustment mechanism.

19. In response, USFH reiterated that the Administration had no plan to adjust market rentals at this stage, and the prevailing arrangement of paying rates on behalf of the public market stall tenants would be maintained. In addition, there was yet to be a concrete timetable for implementing the proposals relating to rentals, air-conditioning cost and rates. He assured Members that the rental adjustment mechanism would not be implemented without first consulting the Panel.

20. Mr LEE Wing-tat echoed Mr LEUNG Yiu-chung's view that the Administration should re-position public markets to enhance their viability and competitiveness. He suggested that the Administration should make reference to the approach adopted by The Link Management Limited in managing the private markets, with a view to increasing the attractiveness of public markets. USFH said that the Administration noted the suggestion.

21. Mr WONG Yung-kan said that there were still a number of outstanding issues, including the measures for improving the operating environment of public markets and the feasibility of excluding common areas of markets from the calculation of air-conditioning charges payable by stall tenants, which were not well addressed. He opined that the Administration should further consult market stall tenants to understand their views on these issues.

22. In response, USFH advised that it was the intention of the Administration to take forward those less controversial proposals first, i.e. the alignment of public market tenancy agreements and introduction of the one-off tenancy transfer scheme, among other possible measures for the improvement of public markets. Regarding the proposed rental adjustment mechanism and arrangements to recover air-conditioning charges and rates, the Administration would, in view of their complexity and far-reaching implications, carefully consider all the views expressed by tenant representatives and traders before taking a decision on the longer term direction. USFH said that the Administration would consult the Panel again when the details of the proposals were ready.

23. Concluding the discussion, the Chairman requested the Administration to seriously consider Members' and deputations' requests for adding a preamble into the new public market tenancy agreement so as to recognise the historical background and social functions of public markets and excluding more common

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areas of markets from the calculation of air-conditioning charges payable by stall tenants.

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24. USFH assured Members that the Administration would review whether the existing air-conditioning charging mechanism could be fine-tuned in response to Members' suggestions. On the issue of including a preamble in the new public market tenancy agreement to recognise the historical background and social functions of public markets, the Administration needed more time to examine carefully whether the request could be acceded to. The Administration would provide a response on the various issues raised by Members at the earliest possible opportunity.

(*Post-meeting note:* The Administration's response was circulated to members vide LC Paper No. CB(2)1740/09-10 on 7 June 2010.)

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

Council Business Division 2
Legislative Council Secretariat
5 October 2010