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Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by the Legislative Council Secretariat
for the special meeting on 3 May 2010**

**Alignment of public market tenancy agreements
and one-off transfer scheme for operators**

Purpose

This paper gives an account of the past discussions by the Panel on Food Safety and Environmental Hygiene ("the Panel") on the alignment of public market tenancy agreements and one-off transfer scheme for operators.

Background

2. In 2008, the Audit Commission reviewed the management of public markets and identified problem areas for improvement. The Public Accounts Committee ("PAC") of the Legislative Council ("LegCo") also criticised the management of public markets and expressed serious concern about successive tenancy extension by the Food and Environmental Hygiene Department ("FEHD"), the practice of not recovering from stall tenants rates paid on their behalf as well as the air-conditioning cost, and the problem of stall subletting.

3. Since FEHD was established in 2000 and took over the responsibility of the management of public markets, it has continued to adopt the versions of tenancy agreements used by the two former Provisional Municipal Councils, despite their considerable discrepancies. In response to the views of the Audit Commission and PAC, FEHD has decided to enter into new tenancy agreements with market tenants instead of further extending their existing tenancies. Opportunity has also been taken to align the different versions of tenancy agreements currently in use and itemise in the new tenancy agreement existing public market management measures so as to achieve consistency in market management and enable tenants' better understanding of the contents and requirements of the tenancy agreements.

4. The new tenancy agreement template is applicable to all public markets in the territory, and has incorporated the following major amendments when compared with the old versions -

- (a) it states explicitly that the rent is exclusive of rates, air-conditioning charge (if applicable) and other miscellaneous payments, all of which should be paid by the tenant separately. The Government may, by giving the tenant not less than one month's notice, adjust the air-conditioning charge;
- (b) it requires the tenant to display in a conspicuous manner at the stall the Business Registration Certificate issued in the name of the tenant;
- (c) it confers to the Government the right to vary the category of prescribed commodities to be sold at vacant stalls or the use of these stalls to meet the operational need of the market; and
- (d) it requires the tenant to comply with the Government's request for an interview within 14 days, except with an acceptable reason.

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 will be valid for a period of one year up to 30 June 2010.

Past discussions by the Panel

Meeting on 2 June 2009

5. The Panel held a special meeting on 2 June 2009 to listen to the views of two market trader organisations on the signing of new public market tenancy agreements.

6. Members criticised the Administration for not first seeking the views of the Panel and conducting thorough consultation with public market stall tenants, before arranging for some 10 000 market stall tenants, whose tenancies would expire on 30 June 2009, to sign the new tenancy agreements as from 13 May 2009. Hon Alan LEONG also criticised the Administration for failing to first rationalise the positioning, functions and subsidisation of public markets, as recommended by PAC, which was tantamount to putting the cart before the horse.

7. The Administration explained that before inviting tenants to sign new tenancy agreements, FEHD met with market trader associations and Market Management Consultative Committees ("MMCCs") 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 also 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. As at 1 June 2009, FEHD had concluded new tenancies with about 2 690 tenants.

8. The Administration pointed out that 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. 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.

9. On requiring stall tenants to comply with the Government's request for an interview within 14 days, the Administration advised that 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. The Administration hoped to report to the Panel on its stance regarding the status of business partners of market tenants in operating the stalls in an early opportunity.

10. Members passed a motion urging the Administration to suspend the signing of the new public market tenancy agreements for one year and to extend the tenancy agreements with stall tenants for one year; in the meantime, the Administration should consult the views of the Panel and public market stall tenants on the terms of the new tenancy agreements and formulate a clear policy on the positioning, functions and subsidisation of public markets before deciding on the way forward; in addition, FEHD should also give due recognition to the status of the partners and assistants of market stallholders under the new market tenancy agreements.

11. 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 30 June 2010.

Meeting on 8 December 2009

12. On 8 December 2009, the Administration briefed the Panel on the outcome of the consultation on the alignment of public market tenancy

agreements and related matters conducted by FEHD.

13. Members were advised that having carefully considered the concerns expressed by tenant representatives and traders on the tenancy agreement template drawn up by FEHD earlier, amendments would be made to the template as follows -

- (a) unnecessary clauses would be removed to make the template simple and easy to understand;
- (b) new clauses, such as requiring the tenant to display conspicuously at the stall the Business Registration Certificate issued in his/her name; and when FEHD called upon the tenant for an interview for the purpose of execution of the tenancy agreement, the tenant should duly comply within 14 days or provide an acceptable reason for non-compliance, would be added to step up the prevention of stall subletting;
- (c) clauses on the restriction of the keeping of dogs, cats or other pets and the requirement to produce records of business operation of the stall would be removed; and
- (d) the circumstances in which the tenant should be responsible for repair or compensation in the event of any loss or damage to stall fixtures and fittings provided by the Government, other than those arising from normal wear and tear, would be clearly spelt out in the template.

FEHD would distribute the revised tenancy agreement template to MMCCs and trader associations to seek their specific views, before finalising the tenancy agreement template to enable the signing of new tenancy agreements with tenants before 30 June 2010.

14. Members were further advised that to resolve historical problems arising from scenarios such as several family members giving up on-street hawking in exchange for one market stall, those who met the following criteria would be allowed, on a one-off basis, to apply for taking over the status of a tenant on producing relevant proof and with the consent of the original tenant -

- (a) any person who had been a registered assistant of the stall concerned for at least three years; or
- (b) any person who had invested in the business of the stall concerned for at least three years.

The above one-off transfer scheme would expire along with the existing tenancy agreements on 30 June 2010. If an application was approved, the

stall would be offered to the applicant on signing a new tenancy agreement and at open market rental. The applicant would not be required to vacate the stall or suspend business when awaiting the outcome of his/her application.

15. Hon LEUNG Yiu-chung was of the view that the Administration should first improve the operating environment of public markets, and not set a deadline for signing the new tenancy agreements with tenants before 30 June 2010. The Administration did not see the justification for doing so, as the new template had already incorporated the views of representatives of market tenants and traders through 11 consultation meetings held in September and October 2009. The Administration was committed to improving the operating environment of public markets, details of which had been reported to members at the meeting on 10 November 2009.

16. On the rental of the new tenancy upon tenancy renewal, the Administration advised that the rental would be based on the prevailing rental should no consensus on market rental adjustment mechanism be reached before 30 June 2010.

17. Whilst expressing support for the one-off transfer scheme, Hon Fred LI was of the view that the scheme should, in addition to a registered assistant, also cover any person who took part in operating the stall in other capacities or forms. Hon CHAN Kam-lam was also of the view that any person who could produce proof that he was a registered assistant or business partner of the tenant concerned at the time of application should be eligible for the scheme provided that the application was supported by the sitting tenant.

18. On the suggestion of extending the deadline of implementing the one-off transfer scheme beyond 30 June 2010 to allow applicants more time to provide the relevant proof, the Administration advised that 30 June 2010 was merely the cut-off date for eligible persons to submit applications for the one-off transfer scheme. The processing of applications could continue after that date if necessary.

Meeting on 13 April 2010

19. At the Panel meeting on 13 April 2010, the Administration briefed members' on the views received during the consultation meetings with MMCCs and trader associations on the revised tenancy agreement template and the one-off transfer scheme for operators.

20. Some members, including Hon WONG Kwok-hing and Hon Vincent FANG, were of the view that that FEHD should continue its long-standing practice of paying rates on behalf of market stall tenants.

21. The Administration reiterated that the original tenancy agreements had already stipulated that tenants were responsible for the payment of rates in

respect of the stalls, which was in line with the "user-pays" principle adopted by the Government in respect of other public properties. To respond to the serious concern of the Audit Commission and PAC 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. As the assessment would involve considerable administrative work and human resources, it was estimated that the work required would take more than a year to complete. When the details of rates assessment were finalised, members' views on the specific arrangements for the recovery of rates would be sought again before deciding on the way forward.

22. On the suggestion that FEHD should only charge stall tenants air-conditioning charges in respect of their stall areas and not also the public areas of markets, the Administration considered it not unreasonable for tenants to pay air-conditioning charges attributable to those public areas of markets such as passageways which were an integral part of the market trading environment relating to the business of the stalls. Moreover, the amount of air-conditioning charges payable by each stall tenant for the common areas of the market was derived pro rata according to the area of individual stall versus the total area of all the stalls in the public market. Recovery of air-conditioning charges was already adopted for over 70% of the tenants in air-conditioned markets, and no objection had ever been raised from these tenants.

23. At the request of Hon Fred LI, the Administration agreed to examine which public areas in the markets could be excluded from recovering air-conditioning charges from stall tenants.

24. Question was raised as to whether, apart from the implementation of the one-off transfer scheme, there were other measures that would be implemented by FEHD to tackle the problem of stall subletting.

25. The Administration advised that a tenant was required to display conspicuously at the stall the Business Registration Certificate issued in his/her name. In case FEHD called upon the tenant for an interview for the purpose of execution of the public market tenancy agreement, the tenant must comply with such request within 14 days unless the tenant had submitted a reason which was acceptable to FEHD. Furthermore, a tenant should not cease or suspend business at the stall for seven days or more in any one calendar month without the prior consent of FEHD.

26. Whilst expressing support for the one-off transfer scheme, members were of the view that the Administration should take into account the historical background of public market stalls in determining market stall rentals.

27. The Administration advised that stall tenants whose tenancies were due to expire on 30 June 2010 would be charged the existing market rentals upon renewal, instead of open market rental, due to further extension of the rental freeze of public market stalls for another year until 30 June 2011. For successful transferees under the one-off tenancy transfer scheme, they would 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.

28. Members passed a motion urging the Administration to continue to pay rates on behalf of stall tenants. Members also agreed to hold a special meeting on 3 May 2010 to listen to the views of market associations.

Relevant papers

29. Members are invited to access LegCo website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meetings.

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