

For discussion

on 10 November 2009

LegCo Panel on Food Safety and Environmental Hygiene

**Consultation on the Positioning and Functions of Public Markets and
Related Matters**

PURPOSE

In the past two months, the Administration consulted Market Management Consultative Committees (MMCCs), market trader organisations and trade associations on the positioning, functions and usage of public markets, as well as the proposals relating to the public market rental adjustment mechanism and arrangements to recover air-conditioning charges and rates. This paper reports on the results of the consultation.

BACKGROUND

2. On 14 July 2009, the Legislative Council Panel on Food Safety and Environmental Hygiene (the Panel) discussed two papers submitted by the Administration entitled “The Positioning, Functions and Usage of Public Markets” [LC Paper No. CB(2)2155/08-09(04)] and “Public Market Stall Rentals and Charges” [LC Paper No. CB(2)2155/08-09(05)]. The two papers respectively briefed Members on the Administration’s preliminary thinking on issues involving the positioning, functions and usage of public markets, the proposed rental adjustment mechanism, and the recovery of air-conditioning charges and rates under the “user-pays” principle. During the discussion, Members generally considered that the issues should be handled in a prudent manner in view of their complexity and far-reaching implications. At the request of the Panel, the Administration undertook at the meeting to consult market tenants and market trader organisations on the

proposals set out in the above two papers, and to report on the results of the consultation in due course.

CONSULTATION ARRANGEMENTS

3. To obtain views from representatives of market tenants and traders, the Food and Environmental Hygiene Department (FEHD) organised 11 consultation meetings in September and October 2009. Nine of these meetings were district-based, each covering two to three districts and inviting all market tenants and District Council (DC) members who sit on the MMCCs of the districts concerned. Over 700 representatives of MMCCs, stall tenants and market trader organisations attended the nine consultation meetings. The other two meetings were held to consult representatives of relevant market trader organisations and trade associations. A list of market trader organisations and trade associations which attended the meetings is at **Annex**. Apart from gathering views from the trade on the proposals set out in the two papers mentioned in paragraph 2 above, discussion was also held with the representatives on the major amendments proposed to be incorporated in the new tenancy agreement and the tenancy renewal arrangement, etc (results of the consultation in this respect will be reported separately to the Panel in due course).

CONSULTATION RESULTS

4. Those who attended the consultation meetings actively expressed their views and offered suggestions on various issues. A few representatives of market trader organisations attended all the consultation meetings of their own accord. Based on the views and suggestions gathered in the consultation meetings, the mainstream views as well as other comments received are summarised in the following paragraphs.

The Positioning, Functions and Usage of Public Markets

5. Regarding the positioning and functions of public markets, the Administration has pointed out in the paper of July 2009 that public markets are one of the major sources of fresh provisions as far as the grassroots are concerned. This important social function of public markets is unquestionable. In fact, since the turnover in public markets is fast, members of the public prefer to buy fresh foods in markets. Public markets have an advantage over other retail outlets in this aspect and they fulfil their functions well. Another function of public markets is to provide employment opportunities for the grassroots. In the consultation

meetings, those who spoke generally shared the Administration's view in this regard. Some representatives remarked that public markets were built by the two former Municipal Councils mainly to resite on-street hawkers so as to improve environmental hygiene. In the past, concessionary arrangements were made to attract hawkers to move into public markets for operation and compensate for their loss arising from surrendering the right to trade legally on street. They were of the view that any change to such arrangements would be tantamount to a breach of the Administration's promise made in the past. Also, significant increases in stall rental might cause a great number of tenants to terminate their tenancies, resulting in a surge in market stall vacancy rate. Some tenants might even be forced to revert to on-street hawking and this would defeat the original purpose of building public markets.

6. Tenant and trader representatives considered that public markets were "community facilities". Some of them even considered public markets as a kind of social welfare since they were serving the whole population, providing them with good quality commodities at reasonable prices. By the same token, it was reasonable for the Government to provide subsidies for public markets as it would benefit not only the tenants but also the general public. Besides, some opined that goods sold in public markets were in general cheaper than those in supermarkets, which helped maintain price stability. Some even expressed that since the functions of public markets were to serve the public, the Government should not regard operating deficits as subsidies. Moreover, some tenants considered that the deficits were largely attributed to vacant stalls and improper management. In the consultation meetings, attendees did not express views on the level of the Government's subsidisation of public market operation.

7. Most tenants and traders reflected that running public market stalls was their important means of livelihood, and agreed that the existence of public markets had provided them and their families with business and job opportunities. They added that this had not only promoted social stability and harmony, but also helped reduce the public expenditure on providing welfare to the unemployed. Therefore, the Government should not focus only on the operational aspect of public markets.

8. As regards the usage and operation of markets, those who expressed their views generally considered that they were not satisfactory because of outdated market facilities, poor environment, keen competition from shops in neighbouring areas, lack of flexibility in operation, restrictions on business hours and types of goods sold, etc. Due to keen competition, low patronage and viability problem, they believed the best selling point of public markets was that they offered commodities of good

quality at reasonable prices. In order to maintain this positioning and their edge over other competitors, it was important that the Government should subsidise the operation of public markets. Otherwise, should the operating costs of tenants rise, such increased expenses would be shifted to the public, thus further affecting the attractiveness of markets. In short, they considered that the Administration should upgrade market facilities with a view to attracting more customers, enhancing the competitiveness of public markets and retaining public markets to serve the grassroots.

Rental Adjustment Mechanism

9. As pointed out in the paper submitted to the Panel in July, the Administration recognises the need to progressively align market stall rentals with the open market rental (OMR) in the long run. This is also in line with the public market rental policy adopted by the two former Municipal Councils. However, as the majority of public market traders are self-employed and are relatively low-skilled workers, any adjustment in rental should not be too radical and has to be made in a gradual manner, taking into account the overall affordability of these traders and the prevailing economic situation, so that the impact on tenants can be reduced to a reasonable and acceptable level. Therefore, it is proposed in the paper that market rentals should be adjusted in two phases, each covering a three-year tenancy period. In the first tenancy period, tenants paying less than 60% of the OMR for their stalls will have their rentals increased by three equal annual increments so that the rentals will reach 60% of the OMR at the end of the three-year tenancy period. During the second tenancy, the rentals will be further increased on the same basis until they reach 80% of the OMR. In addition, we propose to set the minimum monthly rental under the rental adjustment mechanism at \$600 (if the OMR of a stall is below \$600, its minimum rental will be set at the OMR) as a reasonable basic charge of providing tenants with basic market facilities and management services. A cap of \$1,500 is also proposed for the monthly rental as the maximum annual increase. Under the rental adjustment mechanism, among the approximately 11 000 existing tenants, 5 009 tenants (44%) will have their rentals increased in their first tenancy, with an average monthly rental increase of \$306, ranging from \$1 at the lowest to \$1,500 at the highest (70% of these 114 stalls are cooked food stalls). For about 77% of the tenants (i.e. 3 878 stalls), the monthly rental increase would not exceed \$500. On the assumption that the OMR remains unchanged, when the second tenancy term commences, 7 286 tenants (64%) will be affected. The average monthly rental increase will be \$262, ranging from \$1 at the lowest to \$1,500 at the highest. Progressively raising market stall rentals by phases to a certain level of the OMR will help narrow down the rental disparity within the same market. Meanwhile, the Government will continue to provide a certain degree of subsidy for public markets.

10. During the consultation exercise, the rental adjustment mechanism proposed by the Administration met with strong reaction from representatives of market tenants and traders. On the whole, they objected to adjusting stall rentals based on the OMR. This is mainly because they considered the method adopted by the Rating and Valuation Department (RVD) in assessing the OMR of stalls could not accurately reflect the rental value of the stalls. They stressed that the operating conditions of public markets were in no way comparable with those of commercial premises in general. They objected to RVD's adoption of a commercial approach in determining stall rentals. Many tenants found the OMR assessment unacceptable or questionable, arguing that the RVD over-estimated the viability and patronage of public markets. In this connection, we wish to point out that the RVD mainly makes reference to the auction results of stalls in the same market and other similar markets in assessing the OMR. Other factors for consideration include the trade permitted for operation, the size and layout of the stall, the location of the stall within the market and the location of the market. The RVD states that the rental data of shops selling similar market goods in nearby private developments are not major reference materials. Some tenants suggested setting up a "consultative committee" which will serve as a platform for the Government, the public and representatives of tenants to discuss the OMR assessment in order to enhance their acceptability.

11. Only a few individual tenant representatives put forward specific counter-proposals in response to the Administration's proposed rental adjustment mechanism. These proposals include:

- (a) stall rentals of all public markets should remain unchanged, or should even be reduced or frozen for at least two to three years;
- (b) stall rentals should be adjusted according to the Consumer Price Index (or a percentage thereof) or by pegging to the civil service pay adjustment mechanism;
- (c) the rental adjustment mechanism adopted by the former Regional Council should be referred to. By and large, the new rental upon tenancy renewal should be based on the current rental with not more than 25% increase or the OMR, whichever is the lower; and
- (d) the disparity in rentals for similar stalls is well recognised. However, having regard to historical factors and the different background of public market tenants, different rental adjustment options should be studied and formulated

for different groups of tenants. For example:

- (i) existing tenants who were offered rent reduction or rental freeze in the past should continue to have their rental frozen;
- (ii) for the small number of tenants who opted to operate in public markets by surrendering their hawker licences voluntarily years ago, the Administration might discuss the rental adjustment options with them first; and
- (iii) for tenants who have obtained their stall through open auction, since the rental payable has either exceeded or is close to the OMR, there was no need for discussion about rental adjustment.

12. In general, the representatives of market tenants and market trader organisations were of the view that the current economic environment and operating conditions did not warrant a rental increase. In addition, many of them did not accept the OMR assessment. Hence, they had reservation about the rental adjustment mechanism proposed by the Government. Only a few of them had offered the proposals as outlined in paragraph 11 above in relation to the specifics of the mechanism.

Recovery of Air-conditioning Charges

13. It is proposed in the paper of July 2009 that as separate charging was currently adopted for 70% of the stalls in air-conditioned public markets, the same arrangement should be applied to the remaining stalls (about 900 stalls), and that the additional air-conditioning charges should be gradually recovered over a two-year period.

14. Many representatives of stall tenants and market trader organisations spoke against the “user-pays” principle. They generally considered that markets as community facilities were used by all the people in Hong Kong. Therefore, air-conditioning charges should not be borne solely by tenants. Some held the view that the Electrical and Mechanical Services Department, which was responsible for the installation and maintenance of the air-conditioning systems in public markets, charged higher fees for their services when compared with private sector service providers and yet the air-conditioning quality was not satisfactory. Some suggested that the air-conditioning charges attributable to public areas such as passages and lobbies should be borne by the Government instead while tenants should only pay charges pro rata to their stall areas. Some market trader organisations held that air-conditioning charges should not include

maintenance costs, which should be borne fully by the Government. Some other trader organisations thought that the Government should stop levying air-conditioning charges. Many representatives requested the Government to improve the ventilation systems of all markets, including provision of air-conditioning facilities.

Collection of Rates Payment

15. The tenancy agreements for stalls in public markets stipulate that tenants are responsible for payment of rates in respect of their stalls. FEHD has paid rates on behalf of the stall tenants all along and has not recovered the rates from them. Representatives of the tenants and traders unanimously objected to the proposal that the rates should be paid by tenants. Some maintained the view that the Administration's current practice of paying rates on behalf of the tenants, which has been adopted for years, should continue.

CONSULTATION CONCLUSIONS AND WAY FORWARD

16. On the whole, tenant and trader representatives generally viewed that the current operating environment was difficult and that their businesses were facing intense competition. Therefore, instead of discussing the rental adjustment mechanism at this stage, the Administration should further upgrade market facilities in order to enhance the competitiveness of public markets. Moreover, they held strong views about the assessment of the OMR as the basis for determining stall rentals. We will, in conjunction with the relevant government departments, re-examine the proposed rental adjustment mechanism with reference to these views. Upon completion of our review, we will report to the Panel at a suitable juncture.

17. As regards the recovery of air-conditioning charges, we consider that since over 70% of the stall tenants of air-conditioned markets are already paying such charges under the separate charging mechanism, the same charging arrangement should be applied to the remaining stall tenants. In accordance with the mechanism as detailed in the Paper entitled "Public Market Stall Rentals and Charges", we propose to gradually recover air-conditioning charges over a two-year period under the "user-pays" principle. As regards the view that air-conditioning charges should not include maintenance costs, it should be noted that the capital costs as well as the costs of major maintenance works for air-conditioning systems of public markets are fully borne by the Government under the current practice; tenants are only responsible for the recurrent costs, including electricity charges and the costs of daily general maintenance.

18. As for the recovery of rates, it is stipulated in the tenancy agreement that tenants are responsible for the payment of rates. We consider that market tenants should pay rates of their stalls. We have been in discussion with the RVD on the specific arrangements for assessing the rates of individual market stalls. As the assessment will involve lots of administrative work and human resources, we estimate that the required work will take more than a year to complete. We will proceed to consider the specific arrangements for the recovery of rates when the details of rates assessment are finalised.

19. Regarding tenants' comments and recommendations on the improvement of market management and facilities, FEHD is planning to organise retreats for DC members, Area Committee members and MMCC representatives in December this year to gauge their views on market design and planning. FEHD will also share with the participants views of market patrons collected in the opinion surveys conducted earlier and jointly explore with them the feasible plans for upgrading the overall operation of public markets.

ADVICE SOUGHT

20. Members are invited to note the consultation results and comment on the contents of this paper.

**Food and Health Bureau
Food and Environmental Hygiene Department
November 2009**

**List of Market Trade Associations/Representatives
Attending Consultation Meetings**

1. Federation of Hong Kong Kowloon New Territories Hawker Associations
2. 全港公共街市販商大聯盟 (*With no English translation*)
3. Sai Ying Pun Market Fresh Fish Merchants' Association
4. Hong Kong and Kowloon Poultry Dealers and Workers Association
5. Five Categories Non-Staple Food Concern Group
6. Association of Yue Wan Market Stall Holders
7. 北角渣華道街市檯商互助委員會 (*With no English translation*)
8. Aberdeen Yue Kwong Road Market Merchant Association
9. 北角七姊妹道商戶協會 (*With no English translation*)
10. 田灣街市檯商協會 (*With no English translation*)
11. 西營盤/正街街市檯商聯誼會 (*With no English translation*)
12. Kowloon City Market Traders Association
13. 牛池灣街市檯商委員會 (*With no English translation*)
14. The Committee of Stall Keepers of Tai Shing Street Market
15. The Co-Operative Society of Stall Keepers of Hung Hom Market
16. Yaumatei Market Stall Lessees Association
17. Association of Stall Keepers of Pei Ho Street Market
18. Tai Po Central Market Merchant Association
19. Tai Wai Market Mutual Aid Committee
20. Tsuen Wan Yeung Uk Road Market Stall Owners Association
21. North Kwai Chung Market Association
22. Yuen Long Tai Kiu Market Fresh Fish Merchants Association
23. Yuen Long Tung Yick Market Fresh Fish Merchants Association
24. Tuen Mun San Hui Market Association Company Limited