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Panel on Food Safety and Environmental Hygiene

Background brief prepared by the Legislative Council Secretariat for the meeting on 14 July 2009

Alignment of market rental adjustment mechanisms

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 market rental adjustment mechanisms.

Background

2. Public markets were provided by the former Urban Council and the former Regional Council in the urban area and New Territories respectively to meet the needs of the community and to resite hawkers who would otherwise be trading on-street causing environmental nuisance and congestion to pedestrian and vehicular traffic. Since the dissolution of the then Provisional Urban Council (PUC) and the Provisional Regional Council (ProRC) on 1 January 2000, the Food and Environmental Hygiene Department (FEHD) has taken over the responsibility for managing the public markets.

3. The two former provisional municipal councils (PMCs) adopted different market rental adjustment mechanisms and practices relating to the letting of market stalls. 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) 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 was 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.

4. In July 2000, an inter-departmental working group was set up under FEHD to review and align the different market rental mechanisms and practices, including duration of tenancy, recovery of charges, rental deposit and frequency for paying rent, of the two former PMCs.

Past discussions

5. At the meeting on 28 May 2001, the Administration briefed the Panel of its proposals to align the market rental mechanisms of the two former PMCs as follows -

(a) For new tenants who obtained market stalls through open auction at market rent, they would be required to pay OMR as assessed by RVD upon tenancy renewal in future.

(b) For existing tenants who were paying a rent (current rent (CR)) higher than the OMR as assessed by RVD, the new rent for the new tenancy would be the OMR.

(c) For existing tenants, if the CR was lower than the OMR, the rent would only be increased according to a phased schedule in order to minimise its impact on the tenants. The rent level would be gradually brought up by equal increments over each three-year tenancy period such that the rent would reach a specific "target percentage" of OMR by the end of each tenancy. The "target percentage" would be determined having regard to the difference between CR and OMR.

(d) A cap of 20% as the maximum possible annual increase rate would be imposed to contain the impact on the tenants and avoid any sudden steep increase in rent.

6. Members noted that the Administration had 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. In brief, for the urban area, about 70% of the tenants would experience an annual increase of under $200 or a decrease in rent. Another 25% would face an increase between $201 and $500. For the New Territories, about 75% of the tenants would experience an annual increase of under $200 or a decrease in rent. Another 23% will face an increase between $201 and $500.

7. Members generally considered that the proposed formulae for alignment of market rental adjustment would result in rental increase to tenants and did not support it. Some members were of the view that the Administration should reduce the rent under the present economic downtown, whilst others considered that the Administration should first improve the conditions of its markets before considering any rental adjustment.

8. The Administration advised that OMR should not be interpreted as the prevailing rental for a similar sized private shop in the same locality. OMR was simply a reference used in rental assessment and was based on various factors, such as the latest bid price for a similar stall in the same market, the different rating factors attributed to the unique features of the stall (such as its proximity to escalators), customer flow, etc. The Administration further advised that taking into account the prevailing economic climate and the hardship faced by some stallholders, it had decided to extend the rental freeze of public market stalls until 31 December 2001. The Administration would discuss with the trade on ways to improve market environment. However, stallholders should also find ways to attract customers.

9. At the meeting of the Panel on 5 October 2001, the Administration informed members of the outcome of its consultation with the District Councils, trade associations and the Market Management Consultative Committees on its proposals to align the market rental mechanisms and other related matters. Members noted that the general sentiment was not supportive of introducing the new alignment mechanism and the possible consequential rental adjustment at this juncture of economic downturn.

10. The Administration believed that the proposed mechanism could strike a balance between establishing a fair level of rental based on OMR in the long term and minimising the impact of any possible rental increase on market stall tenants. The new mechanism was simpler, fairer and easier to administer than the existing ones.

11. Members remained of the view that it was not the opportune time to increase market rental in view of the present economic downturn and the weak business after the 11 September incident. The Administration should consider reducing the market rental to help stall tenants tide over difficult times, and take active steps to enhance the business environment of the existing markets in improving their competitiveness, such as providing air-conditioning for market stalls. The Administration was requested to take note of members' views as well as those expressed during the consultation period, and to revert to the Panel before considering implementation of the mechanism.

Relevant papers

12. Members are invited to access the Legislative Council website (http://www.legco.gov.hk) for details of the papers and minutes of the relevant meetings.

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