

For information

**LegCo Panel on Food Safety and Environmental Hygiene
Suggestion to Include a Preamble in Public Market
Tenancy Agreement**

Purpose

This paper informs Members of the progress of the Administration's study of the suggestion to include a preamble in the public market tenancy agreement and the way forward for related matters.

Background

2. In December 2009, the Legislative Council Panel on Food Safety and Environmental Hygiene ("the Panel") discussed matters relating to the alignment of public market tenancy agreements. Subsequently, the Food and Environmental Hygiene Department ("the FEHD") consulted representatives of market traders on the revised aligned tenancy agreement template. After taking into consideration the views of the Panel Members and market traders' representatives, the FEHD has further revised the tenancy agreement template to make the contents of the agreement more comprehensible to tenants.

3. The Panel discussed the aforementioned newly revised aligned public market tenancy agreement at its meeting on 13 April 2010, and convened a special meeting on 3 May for further discussion, with market trader organisations being present upon invitation to express their views. Some representatives of these organisations and Members attending the meeting considered that the historical background and social functions of public market traders should be recognised by the Administration and reflected by inclusion of a “preamble” in the tenancy agreement. At the meeting, the Administration undertook to examine the feasibility of this suggestion.

Progress of Follow-up Action

4. Public market tenancy agreement is a legally binding contract signed between the Government and market tenants. From the perspective of contract law, the preamble of a contract in general serves only to briefly introduce information related to the contract, rather than giving a detailed account of the historical background and/or social functions of a certain trade. Besides, since a preamble of a contract should not be inconsistent with other clauses of the contract, we need to examine carefully whether the suggestion can be implemented.

5. In fact, public markets do perform certain social functions, and traders have come from various backgrounds. As pointed out in the findings of the utilisation surveys on public markets and the review on their positioning and functions submitted by the Administration to the Panel last year, public markets are one of the major sources of fresh provisions for the grassroots, and they also

provide employment opportunities for many grassroots people. At present, the majority of public market traders originate from two groups: former hawkers who moved into markets as a result of the policy of the two former Municipal Councils in the early years regarding on-street hawking activities; and others who in later years acquired market stalls through open auction on an open market rental basis. When consulting the Panel on the proposed rental adjustment mechanism and arrangements to recover the air-conditioning cost and rates last year, the Administration stated explicitly that, as the majority of market traders were self-employed small traders and low-skilled workers, any adjustment in rental should not be too radical and should take into account the traders' overall affordability. It also pointed out that there was yet to be a concrete timetable for implementing the proposals relating to rentals, air-conditioning cost and rates.[#] The Administration has also announced earlier that the rental freeze of public market stalls would be further extended for another year until 30 June 2011. At the special meeting of the Panel on 3 May 2010, we reiterated that the Administration had no plan to adjust market rentals at this stage and pledged that the arrangement of paying rates on behalf of the public market stall tenants would be maintained. As for air-conditioning, at the request of the Panel and representatives of market traders, we stated that a review would be conducted on the existing method for calculating air-conditioning charges payable by tenants. On matters relating to public market rental and charges, concrete decisions will only be made after full consultation with the Panel and trade representatives.

[#] For the utilisation surveys on public markets and the review on their positioning and functions as well as details of the proposed rental adjustment mechanism and arrangements to recover the air-conditioning cost and rates, reference may be made to LC Paper Nos. CB(2)2155/08-09(04) and CB(2)2155/08-09(05).

Way Forward

6. The FEHD and relevant Government departments will continue to examine the suggestion to include a preamble in the public market tenancy agreement. If it is concluded that the suggestion is worthy of implementation, the Administration will consider drafting the relevant clauses in consultation with the stakeholders.

Food and Health Bureau

Food and Environmental Hygiene Department

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