

立法會

Legislative Council

LC Paper No. CB(2)431/09-10(05)

Ref : CB2/PL/FE

Panel on Food Safety and Environmental Hygiene

Background brief prepared by the Legislative Council Secretariat for the meeting on 8 December 2009

Alignment of public market tenancy agreements

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.

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. In response to the views of the Audit Commission and PAC, FEHD has decided to enter new tenancy agreements with stall 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 align market management and enable tenants to have a better understanding of the requirements. Since FEHD was established in 2000 and took over the responsibility of management of public markets, it has adopted the different versions of tenancy agreements used by the former Provisional Municipal Councils, with considerable discrepancies.

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

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 signing of the new public market tenancy agreements for one year until 30 June 2010.

Latest development

12. The Administration advised the Panel on 10 November 2009 that having consulted MMCCs, market trader organisations and associations in the past September and October, it proposed to gradually recover air-conditioning charges over a two-year period under the "users-pay" principle. In determining

the timing for the implementation of the new air-conditioning charging mechanism, the Administration would keep track of the trend of the local economy and take into account the operating environment of the tenants. As for the recovery of rates, the Administration had been in discussion with the Ratings and Valuation Department on the specific arrangements for assessing the rates of individual market tenants. As the assessment would involve lots of administrative work and human resources, it was estimated that the required work would take more than a year to complete. The Administration would proceed to consider the specific arrangements for the recovery of rates when the details of rates assessment were finalised.

13. The Administration will brief the Panel on the major amendments proposed to be incorporated in the new tenancy agreement and the tenancy renewal arrangement on 8 December 2009.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
2 December 2009