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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 22 February 2011**

Public market rentals and air-conditioning charges

Purpose

This paper summarizes major concerns of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the rentals, air-conditioning charges and recovery of rates in public markets.

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 criticized 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 took over the responsibility of the management of public markets in 2000, 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 tenancies. Opportunity has also been taken to align the different versions of tenancy agreements currently in use and itemize 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. On the alignment of public market tenancy agreements, the Administration proposed to distribute the revised tenancy agreement template to Market Management Consultative Committees and trader associations in order to seek their specific views. The template would be further improved as necessary, and then finalized with a view to completing the signing of new tenancy agreements with tenants before 30 June 2010. The new tenancy agreement template is applicable to all public markets in the territory. One of the major amendments in the new tenancy agreement is that it has stated explicitly that the rent is exclusive of rates, air-conditioning charges (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 charges. The Administration also proposed to introduce a one-off transfer scheme to resolve the historical problem of the status of public market stall operators arising from the resiting of hawkers into public markets in the past.

5. The Administration has decided earlier to extend the rental freeze for public markets for 12 months to 30 June 2010. Having regard to the tenants' concern, the Administration has extended the rental freeze of public market stalls for another year ending 30 June 2011. With the further extension of the rental freeze, stall tenants whose tenancies are due to expire on 30 June 2010 will be charged the prevailing rentals for another year until 30 June 2011.

Deliberations by the Panel

Public market rentals

6. In July 2009, the Administration sought the Panel's views on the proposed rental adjustment mechanism, under which the rentals of all market stalls were to be increased by equal annual increments so that the rentals would reach 80% of the open market rental ("OMR") in six years, and a cap of \$1,500 would be imposed on the monthly rental as the maximum annual increase.

7. The Administration advised that although the proposed rental adjustment mechanism aimed at bringing public market rentals generally reaching 80% of OMR in six years' time, no implementation timetable had

been set in this regard. In determining the timing for the implementation of the proposed rental adjustment mechanism, the Administration would keep track of the trend of the local economy and take into account the operating environment of the tenants. The Administration would consult traders' associations and Market Management Consultative Committees after listening to the views of the Panel. Results of the consultation would be reported to the Panel in due course. As some 34% of tenants were paying rental at 80% or above of OMR, the proposed rental adjustment mechanism, if implemented, would only affect some 66% of tenants. The Administration further advised that OMR was a reference provided by the Rating and Valuation Department for use in rental assessment. It was based on various factors, such as the latest bid price for a similar stall in the same market, the location of the market, the different rating factors attributed to the unique features of the stall concerned (such as its proximity to escalators), and customer flow.

8. In the context of examining the alignment of public market tenancy agreements and one-off tenancy transfer scheme for operators, some members and trade associations considered that successful transferees under the one-off tenancy transfer scheme should be charged the existing stall rental instead of OMR. In response, the Administration suggested that successful transferees should 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 same 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 ("AAR").

9. Members expressed concern about the financial pressure on the stall operators if such an arrangement was adopted. Members enquired whether the Administration had given due regard to the historical factors and different background of public market tenants in coming up with the proposed arrangement and whether it would consider imposing a ceiling to cap the market stalls, in implementing the one-off transfer scheme.

10. The Administration advised that if the application for taking over the status of a tenant under the one-off transfer scheme was approved, the transferee would have to enter into a new tenancy agreement with the Government and pay the actual average rental of stalls of the same category in the same market. The Administration reiterated that the arrangement had fully taken into account the affordability of transferees and would also help ensure fairness to sitting tenants of the same category of stalls as the

rental payable by a transferee would be comparable to that of similar stalls in the market concerned.

11. Some members opined that the Administration should first address the positioning, functions and usage of public markets, and improve the operating environment of public markets instead of requiring tenants to sign new tenancy agreements by 30 June 2010.

12. The Administration responded that it was committed to improving the operating environment of public markets. During 2007 to 2010, the Administration had earmarked a total of \$230 million to improve the environmental hygiene and the ventilation system of 17 existing public markets so as to enhance the competitiveness of these markets.

13. Members welcomed the Administration's decision to further extend the rental freeze of public market stalls for another year until 30 June 2011. Members hoped that the Administration would not increase the stall rentals afterwards unilaterally, before consultation with members and stakeholders was carried out and consensus was reached on the rental adjustment mechanism. The Administration assured members that on matters relating to public market rental and charges, concrete decisions would only be made after full consultation with the Panel and trade representatives.

Air-conditioning charges

14. Members shared the deputations' views that the air-conditioning charges attributable to common areas of markets, such as passages and lobbies, should be borne by the Government, while tenants should only pay charges pro rata to their stall areas. Members considered that the Administration should devise a new mechanism for the calculation of air-conditioning charges payable by stall tenants.

15. The Administration responded that the Government had all along been responsible for all capital costs for installing the air-conditioning systems in public markets and the costs for subsequent large-scale or system maintenance, while electricity charges and daily maintenance costs were borne by stall tenants on a pro rata basis of floor area. 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. 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. Based on the "user-pays" principle, the Administration considered that this arrangement should remain unchanged. However, the Administration would review whether the existing air-conditioning charging mechanism could be fine-tuned by excluding more common areas of markets.

16. Members expressed dissatisfaction with the Administration's slow follow-up with the exclusion of common areas of markets from the calculation of air-conditioning charges and the improvement of the operating environment of public markets. Members reiterated that the Administration should improve the operating environment of public markets first. Some members had suggested that air-conditioning systems should be installed in all public markets.

17. The Administration explained that it had reserved a provision of \$33 million for improvement works for public markets, including upgrading the ventilation systems in seven markets. As regards the proposal for installation of air-conditioning systems for all public markets, the Administration advised that according to past experience and assessments, the project costs for the installation were very high. As partial closure of the market might be required during the course of installation works, the installation of air-conditioning systems for all public markets would be subject to the support from tenants. Currently, if the agreement of 85% or more of the tenants supported the installation of the air-conditioning system and bearing the recurrent expenditure such as the electricity charges and maintenance fees, the Administration would consider the feasibility of implementing the project. The Administration would review the required percentage of tenant agreement and consider members' proposal in connection with other measures to improve the operating environment of public markets.

Recovery of rates

18. The Panel passed a motion at its meeting on 13 April 2010 urging the Administration to continue to pay rates on behalf of public market stall tenants in the territory, so as to support small operations in markets. Members called on the Administration to respect the consensus view of the Panel and actively follow up on the matter. In members' view, the Administration should continue its long-standing practice of paying rates on behalf of market stall tenants.

19. The Administration pledged that the arrangement of paying rates on behalf of the public market stall tenants would be maintained. However,

the Administration pointed out that it was stipulated in the original tenancy agreements that tenants were responsible for the payment of rates in respect of the stalls. This requirement was in line with the "user-pays" principles adopted by the Government in other public properties. Having regard to the grave 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. The Administration would seek members' view again on the specific arrangements for the recovery of rates when the details of rates assessment were finalized.

The Administration's new proposals for the rental adjustment mechanism and arrangements to recover air-conditioning charges

20. At the meeting on 14 December 2010, the Panel was briefed on the new proposals put forward by the Administration for the rental adjustment mechanism and arrangement to recover air-conditioning charges.

Proposed rental adjustment mechanism

21. Under the proposed rental adjustment mechanism, for stalls paying a rental lower than AAR, their rentals would be increased to the AAR level by equal annual increments during a three-year tenancy period. If OMR of a stall is lower than AAR, the rental payable by the stall tenant should be set at OMR only.

22. Some members considered that the proposed rental adjustment mechanism failed to take into account different historical reasons for the operators to move into public markets. Notably, some operators were re-sited to public markets by the Administration in order to regulate street hawking activities while others might be attracted by the concessionary rental arrangements introduced by the Administration in the light of high vacancy rate in public markets. It was unfair to these stall operators if the public market rentals were adjusted across the board. Some members were of the view that using the median rental as the basis of rental adjustment mechanism would be more desirable to minimize rental disparity than the AAR approach if the highest and the lowest rentals varied greatly.

23. Some members pointed out that the lacklustre operating environment of public markets was unattractive to potential operators and customers. In these members' view, the Administration should improve the business

environment of public markets so as to attract more potential operators and customers and induce the operators to continue their business in public markets. When the operators could make a profit, they would be willing to pay a higher rent.

24. The Administration explained that the objective of the rental adjustment mechanism was neither to achieve the principle of full cost recovery nor to bring the rental of public market stalls on par with the commercial market, but to rectify the long standing problems of having different versions of rental adjustment mechanisms in the territory applicable in the Urban Council and Regional Council eras. The Administration further explained that as rentals in public markets had been frozen since 1998, some market stalls had been paying concessionary rentals which were far below OMR. As there was a host of historical factors that had led to the problem of disparity, a rental adjustment mechanism based on AAR would help minimise rental disparity among stalls of the same category in the same market on the one hand and take into account the historical problems on the other. The Administration stressed that it was open-minded on the level of rental adjustment and the timetable to implement the mechanism.

Proposed mechanism for recovery of air-conditioning charges

25. According to the Administration, the proposed mechanism for recovery of air-conditioning charges would rectify the existing unfair situation where some air-conditioned market tenants were not required to pay air-conditioning charges.

26. A concern was raised on whether it was reasonable to charge stall operators with the air-conditioning charges for common areas in public markets as this deviated from the arrangements in commercial premises. The Administration advised that the proposed arrangement was the same as that for other government premises. Moreover, the design of commercial premises was different from public markets in that customers would usually conduct their shopping in markets' common area. It was not appropriate to compare the arrangements to recover air-conditioning charges for commercial premises with those for the public markets.

27. The Panel will hold a special meeting on 22 February 2011 to receive views from stall operators and trader organisations on the proposals.

Relevant papers

28. A list of relevant papers is in the **Appendix** for members' easy reference. The papers are available on the LegCo website at <http://www.legco.gov.hk>.

Council Business Division 2
Legislative Council Secretariat
16 February 2011

Appendix

Relevant Papers/Documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion Debate</u>
Panel on Food Safety and Environmental Hygiene	2 June 2009	Administration's paper LC Paper No. CB(2)1715/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/fseh/papers/fe0602cb2-1715-1-e.pdf Minutes of meeting LC Paper No. CB(2)2366/08-09 http://www.legco.gov.hk/yr08-09/english/panels/fseh/minutes/fe20090602.pdf
	14 July 2009	Administration's paper LC Paper No. CB(2)2155/08-09(05) http://www.legco.gov.hk/yr08-09/english/panels/fseh/papers/fe0714cb2-2155-5-e.pdf Minutes of meeting LC Paper No. CB(2)2549/08-09 http://www.legco.gov.hk/yr08-09/english/panels/fseh/minutes/fe20090714.pdf
	10 November 2009	Administration's paper LC Paper No. CB(2)197/09-10(04) http://www.legco.gov.hk/yr09-10/english/panels/fseh/papers/fe1110cb2-197-4-e.pdf Minutes of meeting LC Paper No. CB(2)430/09-10 http://www.legco.gov.hk/yr09-10/english/panels/fseh/minutes/fe20091110.pdf

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion Debate</u>
	8 December 2009	Administration's paper LC Paper No. CB(2)431/09-10(04) http://www.legco.gov.hk/yr09-10/english/panels/fseh/papers/fe1208cb2-431-4-e.pdf Minutes of meeting LC Paper No. CB(2)618/09-10 http://www.legco.gov.hk/yr09-10/english/panels/fseh/minutes/fe20091208.pdf
	13 April 2010	Administration's paper LC Paper No. CB(2)1230/09-10(03) http://www.legco.gov.hk/yr09-10/english/panels/fseh/papers/fe0413cb2-1230-3-e.pdf Minutes of meeting LC Paper No. CB(2)1468/09-10 http://www.legco.gov.hk/yr09-10/english/panels/fseh/minutes/fe20100413.pdf
	3 May 2010	Administration's paper LC Paper No. CB(2)1230/09-10(03) http://www.legco.gov.hk/yr09-10/english/panels/fseh/papers/fe0413cb2-1230-3-e.pdf Minutes of meeting LC Paper No. CB(2)2339/09-10 http://www.legco.gov.hk/yr09-10/english/panels/fseh/minutes/fe20100503.pdf

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion Debate</u>
	14 December 2010	Administration's paper LC Paper No. CB(2)492/10-11(03) http://www.legco.gov.hk/yr10-11/english/panels/fseh/papers/fe1214cb2-492-3-e.pdf Minutes of meeting LC Paper No. CB(2)981/10-11 http://www.legco.gov.hk/yr10-11/english/panels/fseh/minutes/fe20101214.pdf

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