

**For discussion
14 December 2010**

**LegCo Panel on Food Safety and Environmental Hygiene
Public Market Stall Rentals and Air-conditioning Charges**

PURPOSE

In November 2009, the Administration reported to the Legislative Council Panel on Food Safety and Environmental Hygiene (the Panel) the results of the consultation with the trade on the proposals relating to the public market stall rental adjustment mechanism and arrangements to recover air-conditioning charges and rates. At the meeting, we undertook to re-examine the proposed rental adjustment mechanism. This paper seeks Members' views on the new proposals put forward by the Administration for the rental adjustment mechanism and arrangements to recover air-conditioning charges.

RENTAL ADJUSTMENT MECHANISM

Background

2. All along, the two former Municipal Councils (MCs) had adopted different public market stall rental adjustment mechanisms of their own. In the early days, to assist hawkers affected by the re-siting projects to adapt to the operating environment of public markets, the two former MCs put in place concessionary rental arrangements. The former Urban Council implemented the voluntary surrender scheme for itinerant hawker licences in the 1990s, under which itinerant hawkers were allowed to pay a concessionary monthly rental equivalent to one twelfth of the licence fee (i.e. approximately \$120) for their market stalls in the first tenancy. Similar scheme had not been provided by the former Regional Council.¹ However, it is noteworthy that both of the former MCs had their own mechanisms, underpinned by established policies, for determining rental level upon stall tenancy renewal and gradually adjusting the rentals on the basis of the open market rental (OMR) assessed by the Rating and Valuation Department (RVD).

¹ The scheme was extended to itinerant hawker licences in the New Territories in 2003.

3. In 1998, the two former Provisional MCs reduced the rentals of public market stalls by 30% across-the-board in light of the economic situation at that time, and the rentals have been frozen at that level ever since. After the re-organisation of municipal services, the Administration consulted the Panel on proposals on the alignment of market rental adjustment mechanism and other related arrangements in 2001.² In view of the economic downturn at the time, the Panel considered that it was not an opportune time to increase stall rentals, and therefore no consensus was reached on the rental adjustment mechanism. Public market rental (together with air-conditioning charges) has been frozen since 2001. As a result, quite a number of tenants of public markets are paying rentals substantially below the OMR.

4. As the Administration has not advanced any proposals on rental adjustment mechanism for discussion since 2001, the Director of Audit recommended in his Report No. 51 published in 2008 that the Administration should put up as soon as possible a suitable and aligned rental adjustment mechanism. The Audit Commission also pointed out that as some tenants were paying extremely low rental while tenants renting stalls of similar sizes through open auctions had to pay higher rental, this arrangement might discourage potential tenants from renting market stalls through open auctions. Furthermore, as the rental of some stalls was low, this might increase the risk of subletting market stalls for financial gains. The Public Accounts Committee urged the Administration to work out an appropriate mechanism as soon as possible to address the problem of rental disparity.

5. 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 OMR in six years, and a cap of \$1,500 would be imposed on the monthly rental as the maximum annual increase.³ The Food and Environmental Hygiene Department (FEHD) organised 11 consultation meetings in September and October 2009 to solicit views from representatives of market tenants and traders on matters pertaining to market charges and tenancy agreements, including the proposed rental adjustment mechanism. Attendees included members of the Market Management Consultative Committees, market tenants, representatives of market trader organisations and District Council members of the respective districts. In

² LC Paper No. CB(2)1642/00-01(03).

³ LC Paper No. CB(2)2155/08-09(05).

general, representatives of market tenants and traders objected to adjusting stall rentals based on the OMR. They considered that the method adopted by the RVD in assessing the rentals could not accurately reflect the rental value of the stalls and that the RVD over-estimated the viability and patronage of public markets. They stressed that the operating conditions of public markets were in no way comparable with those of commercial premises in general and objected to RVD's adoption of a commercial approach in determining stall rentals. In November 2009, the Administration reported to the Panel the results of the consultation and elaborated on the methodology adopted by the RVD in assessing the OMR. In light of tenants' views on the proposed rental adjustment mechanism, we undertook to re-examine the proposals.

6. We wish to reiterate that in assessing the OMR, the RVD mainly makes reference to the auction results of similar stalls in the same market and other markets. 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.

7. Due to the historical reasons stated in paragraphs 2 and 3 above, of the 12 188 let-out stalls⁴ in the public markets and cooked food markets under the management of the FEHD, more than 60% are let out at a rental lower than the OMR: 520 tenants (4%) are paying rental at a level below 30% of the OMR; 2 312 tenants (19%) are paying rental at a level between 30% and 59% of the OMR; 2 603 tenants (22%) are paying rental at a level between 60% and 79% of the OMR; 2 213 tenants (18%) are paying rental at a level between 80% and 99% of the OMR; and 4 540 tenants (37%) are paying rental not less than the OMR. The distribution of tenants by actual rental level is set out in the **Annex**.

Promoting Development of Markets

8. We recognise that public markets serve important social functions in that they are major sources of fresh provisions for the public at large and provide employment opportunities for the grassroots. Over the years, we are committed to promoting the development of public markets by enhancing their business environment and competitiveness. This has been achieved through construction of new markets, regular maintenance and effective management. FEHD has made tremendous efforts in this regard, and will continue to implement improvement measures to boost the competitiveness of public markets. Such measures include:

⁴ Number of let-out stalls as at May 2010.

- (1) carrying out regular maintenance and improvement works in public markets. The scope of works includes improvement to the drainage, ventilation, lighting and fire services provisions, and replacement of wall and ceiling finishes and floor tiles. Over the past three years, the FEHD spent over \$230 million on improvement projects;
- (2) installing in each cooked food centre a signboard listing all its stalls to facilitate the public in making their choices, and retrofitting public address systems in some public markets;
- (3) with effect from February 2009, lowering the upset auction prices to 80% and 60% of the OMR for stalls left vacant for six months and eight months or more respectively in order to boost the occupancy rate of public markets. As at October 2010, a total of 1 421 stalls had been let out through this arrangement;
- (4) starting from July 2009, gradually introducing service trades, light refreshment and bakery stalls with a view to diversifying public market services; furthermore, starting in October this year, letting out small stalls through short-term tenancy on a trial basis to allow more flexibility for prospective tenants;
- (5) continuing to organise promotional activities (including celebratory activities for traditional festivals e.g. Lunar New Year and Mid-Autumn Festival, talks on seasonal soup and dietic therapy, and cooking demonstrations) from time to time to attract and broaden patronage; and installing in each public market a board displaying the weekly “Recipes of Chef’s Daily Recommendation” to attract more people to shop in public markets; and
- (6) publishing a well-illustrated booklet in 10 different languages in mid-2010, listing over 500 common food items, goods and service trades available in public markets to facilitate and encourage patronage of public markets by members of various ethnic groups.

Basic Considerations

9. The Administration agrees that while introducing a sustainable rental adjustment mechanism, we must make sure that it will not put the tenants under too much financial pressure. In drawing up the mechanism, we have taken into consideration the following factors:

- (1) The Audit Commission pointed out in its report that the extremely low rental paid by some public market tenants for various reasons might discourage potential tenants from renting market stalls through open auctions and increase the risk of subletting market stalls for financial gains. In this connection, we consider that any rental adjustment mechanism should serve primarily to minimise rental disparity among stalls of the same category in the same market. This will ensure that the incentive for stall subletting is eliminated at source, thus rationalising market management. In the same vein, the Administration introduced the one-off tenancy transfer scheme in July this year and has brought the unduly low rentals of some stalls to the actual average rental level; and
- (2) the Administration considers that as there is a whole host of historical factors that have led to such problems as rental disparity, disconnection of the overall actual rental level from the OMR, etc., it is of paramount importance to put the rental adjustment mechanism onto the right track in a progressive manner, and not in one go. The mechanism must take into account tenants' overall affordability and be sustainable so that tenants can make realistic estimations of their operational costs.

The Newly Proposed Rental Adjustment Mechanism

10. On the basis of the above considerations, we propose a new rental adjustment mechanism for Members' comments.

Actual average rental

11. First of all, considering that tenants hold a different view on adjusting stall rentals based on the OMR, we propose to use the actual average rental⁵ of stalls of the same category of business (e.g. wet goods stalls, meat stalls, cooked food stalls, etc) in the same market as the basis of the rental adjustment mechanism. Under the mechanism, for stalls paying a rental lower than the actual average rental, their rentals will be increased to the actual average rental level by equal annual increments during a three-year tenancy period. As this rental adjustment is based on the average rental paid by stalls of the same category of business in the same market, the uniqueness of individual markets can be fully taken into consideration and it will be fair to all tenants of the same category of stalls in the same market. Endorsed by the Panel at its meeting in April 2010, this rental adjustment basis has been adopted for the one-off tenancy transfer scheme.

Actual average rental or OMR, whichever is the lower

12. As certain stalls have an OMR much lower than the actual rentals of other stalls of the same category due to special factors (such as remote location), it would be unfair to charge these stall tenants the actual average rental. As such, we suggest that if the OMR of a stall is lower than the actual average rental, the rental payable by the stall tenant should be set at the OMR only. In brief, upon the implementation of the proposed rental adjustment mechanism, market stall tenants will have their rentals increased in the first tenancy period (of three years) by equal annual increments to the level of the actual average rental or the OMR, whichever is the lower.

Different rental increase caps for non-cooked food stalls and cooked food stalls

13. The overall average rental of non-cooked food stalls is about half of that of cooked food stalls. To ensure that tenants' affordability is closely reflected in the mechanism, it is proposed that different rental increase caps should be introduced for tenants of non-cooked food stalls and cooked food stalls, with the maximum increase to be borne by non-cooked food stall tenants being lower than that by cooked food stall tenants.

Compassionate arrangement

⁵ If there are more than 10 stalls of the same category in a market, one each of the highest and lowest rental-paying stalls will be excluded from the calculation of the actual average rental, lest it is unduly affected by an exceptionally high or low rental of a single stall.

14. We believe that this proposed rental adjustment mechanism has struck a balance between tenants' affordability and the need for rental adjustment. Nonetheless, considering that some elderly tenants operating less competitive stalls may still have difficulties in coping with the modest rental adjustment under the proposed mechanism, we propose to put in place a compassionate arrangement for this group of disadvantaged tenants. Tenants who meet certain requirements in relation to say, age, business turnover, years of renting the stall, etc., may apply to the Director of Food and Environmental Hygiene (DFEH) on compassionate ground for discretionary rental increase adjustment. DFEH will consider each application according to a set of established criteria. Subject to the endorsement of the proposed rental adjustment mechanism by the Panel, FEHD will proceed to work out the application requirements and the level of rental increase concession.

15. We are of the view that the above rental adjustment mechanism should be a sustainable one. The rental value of a stall will be assessed by the RVD prior to the commencement of the next tenancy. The level of rental the stall tenant shall pay will be determined by the actual average rental or the OMR, whichever is the lower. We suggest that when the rentals of all market tenants reach the actual average rental or the OMR, the Administration will then decide whether the rental adjustment mechanism should be further revised in the light of the prevailing economic situation, business environment of markets, and difference between the actual average rental and the OMR.

ARRANGEMENTS FOR RECOVERY OF AIR-CONDITIONING CHARGES

Background

16. We proposed to the Panel in July 2009 that as separate charging⁶ was currently adopted for 70% of the stalls in air-conditioned markets, the same arrangement should be applied to the remaining stalls, and that the additional air-conditioning charges should be recovered over a two-year period. Between September and November 2009, when we consulted market tenants and trade representatives on the stall rental adjustment mechanism, we also sought their views on the arrangements to recover air-conditioning charges. Many representatives of tenants and

⁶ Under such arrangement, calculation and payment of air-conditioning charges and rental are handled separately.

trader organisations spoke against the “user-pays” principle. They considered that as markets are community facilities, air-conditioning expenses should not be borne solely by tenants. They were of the view that air-conditioning charges attributable to public areas of markets should be borne by the Government instead while tenants should only pay charges pro rata to their stall areas.

17. Subsequently, during the Panel’s discussions on the alignment of market tenancy agreements in April and May 2010, Members also proposed that the air-conditioning expenses attributable to public areas of markets should be borne by the Government, while tenants should only pay charges pro rata to their stall areas. The Administration assured the Panel that we would review the existing method for calculating air-conditioning charges payable by tenants.

18. As over 70% of stall tenants in air-conditioned markets are now paying air-conditioning charges under the separate charging arrangement, we consider that the same charging arrangement should be extended to the remaining tenants. This is to adhere to the principle of fair play, as every business organisation in Hong Kong has to pay electricity charges. As for the proposal to exclude public areas of markets from the amount of air-conditioning charges payable by tenants, after careful consideration, we have come to the view that as public areas are an integral and inalienable part of the market trading environment relating to the business of the stalls, it would not be appropriate to calculate the air-conditioning charges only pro rata to the tenants’ stall areas. In fact, it is a common practice in all government rental properties to include public areas in the calculation of air-conditioning charges payable by tenants. It is therefore necessary for the Administration to follow the established practice in calculating air-conditioning charges of public markets. Yet, having regard to the principle mentioned in paragraph 9(2) above, we will increase air-conditioning charges by phases over a number of years without setting a definite timetable for recovery of those charges.

The Newly Proposed Mechanism for Recovery of Air-conditioning Charges

19. On the mechanism for recovery of air-conditioning charges, we now put forward a new proposal for Members’ comments. Due to historical reasons, air-conditioned markets in different regions adopted different arrangements in recovering air-conditioning charges. There are also tenants who have never paid any air-conditioning charges. In this connection, we propose to adopt the following approaches to recover

air-conditioning charges from different types of tenants while maintaining the existing method of calculating air-conditioning charges payable by tenants:

- (1) for tenants under the separate air-conditioning charging arrangement, their air-conditioning charges will be adjusted in accordance with the latest estimated air-conditioning expenses;
- (2) for tenants under the subsumed charging⁷ arrangement, they will be subject to separate charging and their air-conditioning charges will be calculated by comparing the latest estimated air-conditioning expenses for their stalls with the apportioned air-conditioning charges⁸ derived out of their total rental; and
- (3) for tenants of the three markets⁹ in the New Territories who have never paid air-conditioning expenses, their air-conditioning charges will be calculated in accordance with the latest estimated air-conditioning expenses.

20. Under the proposed mechanism, the increase in air-conditioning charges will be distributed evenly over the first three-year tenancy period. In order not to bring about a drastic rise in the operational cost of tenants paying air-conditioning charges, we propose to impose a cap on the monthly increment allowed each year, with the cap for non-cooked food stalls lower than that for cooked food stalls. The imposition of a cap has fully taken into account the affordability of the tenants as well as the need to recover the air-conditioning expenses. As a result of this arrangement, the existing unfair situation where some air-conditioned market tenants are not required to pay air-conditioning charges will be rectified. If there is any adjustment in electricity tariffs within the three-year tenancy period, it will be reflected correspondingly in the air-conditioning charges but the capped level still applies.

⁷ The former Urban Council did not levy separate air-conditioning charges for the public markets under its management. Instead, the RVD would include the air-conditioned environment as one of the factors in assessing stall rentals. Under such an arrangement, air-conditioning charges were included in the OMR (to be referred to as “subsumed charging”).

⁸ The method of calculation is to have the latest OMR and latest estimated air-conditioning expenses as the total, calculating the respective proportions of these two elements, and to apportion the total rent currently paid by the tenant under subsumed charging arrangement into actual rental and air-conditioning charge according to the respective proportions.

⁹ The former Regional Council decided, in the meeting of its Environmental Hygiene Committee held in June 1996, to exempt the tenants of Sha Tin Market, Yan Oi Market in Tuen Mun and Tai Kiu Market in Yuen Long from paying all the charges relating to the air-conditioning system until tenancy renewal.

21. Similar to the rental adjustment mechanism, the mechanism for recovery of air-conditioning charges should be sustainable. As such, tenants whose air-conditioning charges are still less than the air-conditioning expenses after the three-year tenancy period will continue to have the charges adjusted annually under the mechanism during the subsequent tenancy period(s).

OVERALL CHARGING ARRANGEMENTS FOR PUBLIC MARKETS

22. We consider the proposed rental adjustment mechanism and air-conditioning charges recovery arrangements to be practicable. As long as the caps on the adjustments of the rental and air-conditioning charges are set at appropriate levels, the effect of adjustments will be well within tenants' bounds of affordability.

23. Should the above mechanism be supported by the Panel, we would implement the relevant mechanisms upon the commencement of the next tenancy, under which we would enter a three-year tenancy with tenants.

RECOVERY OF RATES

24. We have been in discussion with the RVD on the assessment of rates levels of public market stalls. Since the work has yet been completed, FEHD will continue the existing practice of paying rates on behalf of the stall tenants.

ADVICE SOUGHT

25. Members are invited to comment on the proposed rental adjustment mechanism and air-conditioning charges recovery arrangements in respect of the market stalls.

**Food and Health Bureau
Food and Environmental Hygiene Department
December 2010**

Annex

**Distribution of Tenants by Actual Rental (AR) Level
(as at May 2010)**

	Number of tenants	Percentage (%)	Accumulated number of tenants	Accumulated percentage (%)
AR not more than \$200	267	2	267	2
AR between \$201 and \$1,000	2 713	22	2 980	24
AR between \$1,001 and \$3,000	5 953	49	8 933	73
AR between \$3,001 and \$5,000	1 754	14	10 687	87
AR between \$5,001 and \$9,000	1 172	10	11 859	97
AR above \$9,000	329	3	12 188	100
Total number of tenants	12 188	100	12 188	100