

**For discussion  
8 January 2013**

**LegCo Panel on Food Safety and Environmental Hygiene**

**Proposed Rental Adjustment Mechanism for Public Market Stalls**

**PURPOSE**

In July 2009 and December 2010, the Administration consulted this Panel on two earlier proposals on the rental adjustment mechanism for public market stalls. This paper seeks Members' views on a further revised proposal that has been developed by the Administration in the light of views received in the two previous rounds of consultation.

**BACKGROUND**

2. In keeping with the circumstances then prevailing at a time when society as a whole recognised that we should assist hawkers displaced by re-siting projects in adapting to the operating environment in public markets, the two former Municipal Councils ("MCs") had put in place concessionary rental arrangements<sup>1</sup> for these hawkers upon relocation to public markets. That said, each of the two former MCs had its own rental adjustment mechanism, underpinned by policies established in the course of time, for determining the rental level upon renewal of tenancy. Both include the policy of using the open market rental ("OMR")<sup>2</sup> as a basis for assessing the renewal rent and adjusting it according to some pre-set formula in determining the new

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<sup>1</sup> For example, the former Urban Council implemented a 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. The scheme was extended to itinerant hawker licences in the New Territories in 2003.

<sup>2</sup> OMR is assessed annually by the Rating and Valuation Department ("RVD"). In assessing the OMR, RVD mainly makes reference to the auction results of similar stalls in the same market and other markets. Other factors taken into 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.

rent for market stalls during tenancy renewal<sup>3</sup>.

3. In 1998, due to the then poor state of the economy, the two former MCs decided to reduce public market rental across-the-board by 30%. Public market rental has since been frozen at the reduced level. The latest extension of the rental freeze period will end on 31 December 2013.

4. In 2001, after the re-organisation of municipal services, the Administration consulted this Panel on proposals on the alignment of market rental adjustment mechanism and other related arrangements<sup>4</sup>. 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.

5. The majority of public market tenants have since been paying rents below the OMR. In his Report No. 51 on the Management of Public Markets published in October 2008, the Director of Audit expressed concern over the situation and recommended that the Food and Health Bureau (“FHB”) and the Food and Environmental Hygiene Department (“FEHD”) should devise a rental adjustment mechanism for consideration by the Panel. 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.

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<sup>3</sup> In the case of the former Provisional Urban Council (“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 Provisional Regional Council which were acquired through open auctions, tenants were required to pay the OMR upon tenancy renewal if the current rent is 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.

<sup>4</sup> LC Paper No. CB(2)1642/00-01(03).

## **PREVIOUS PROPOSALS**

### **The 2009 Proposal – Open Market Rental**

6. In July 2009, having drawn reference from the rental adjustment mechanism of the two former MCs, the Administration sought the Panel's views on a 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<sup>5</sup>.

7. At the request of the Panel, the Administration consulted market tenants and trade representatives. In September and October 2009, FEHD organised 11 consultation meetings with representatives of market tenants and traders to seek their views 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 general, representatives of market tenants and operators objected to adjusting stall rentals based on the OMR. They considered that the method adopted by the Rating and Valuation Department ("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 to those of commercial premises in general and objected to RVD's adoption of a commercial approach in determining stall rentals. Some suggested alternatives based on other parameters including the movement of the Consumer Price Index (A) ("CPI(A)").

8. 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 the light of tenants' strong objection to adjusting stall rentals based on the OMR, we undertook to re-examine the proposals.

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<sup>5</sup> LC Paper No. CB(2)2155/08-09(05).

## **The 2010 Proposal – Actual Market Rental**

9. Taking into account the views expressed by Panel Members and the market tenants and the trade, the Administration had reviewed the proposed mechanism and reverted to the Panel in December 2010 with a revised proposal, under which market stall tenants would have their rentals increased by equal annual increments during a three-year tenancy period to the level of the actual average rental (“AAR”) or the OMR, whichever is the lower<sup>6</sup>. With a view to minimising the impact on tenants, the 2010 proposal adopted AAR of the stalls of the same category of business (e.g. meat stalls, vegetable stalls, etc.) in the same market as the basis for rental adjustment, resulting in a general reduction in the magnitude of rental adjustments whilst ensuring rental parity within individual markets. We also proposed a compassionate arrangement whereby tenants with genuine difficulties in coping with rental adjustment could apply to the Director of Food and Environmental Hygiene for discretionary rental increase adjustment.

10. Under the 2010 proposals, the magnitude of rental adjustments and hence the impact on stall tenants would be more moderate than that under the original proposals put forward in 2009. This notwithstanding, the Panel was of the view that the then prevailing business environment in public markets was still poor and urged the Administration to shelf the proposal and continue the rental freeze.

11. The Panel also held a special meeting in February 2011 to hear the views of deputations on the revised proposals. Deputations generally considered that the 2010 proposal would still carry significant adverse impact on the operation and survival of market stall tenants and that the Administration had not given due regard to the social functions and historical background of public markets. The Panel also passed a motion urging the Government to continue to freeze public market rental and opposing to the adoption of the proposed rental adjustment mechanism based on the AAR or OMR.

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<sup>6</sup> LC Paper No. CB(2)492/10-11(03).

## UPDATED POSITION ON THE RENTAL LEVEL

12. Since 1998, the rental freeze had been extended 13 times. The latest extension of the rental freeze period will end on 31 December 2013.

13. As at 30 September 2012, 12 850 stalls in the public markets and cooked food markets managed by FEHD were let out. Of these, 73% are let out at a rental lower than the OMR. The breakdown is set out below:

<b>Rental Level</b>	<b>Number of Tenants</b> (as at 30 September 2012)
<b>More than OMR</b>	<b>1 825 (14%)</b>
<b>Equal to OMR</b>	<b>1 703 (13%)</b>
70% – 99% of OMR	4 169 (33%)
50% – 69% of OMR	2 478 (19%)
30% – 49% of OMR	1 858 (14%)
Less than 30% of OMR	817 (7%)
<b>Total:</b>	<b>12 850 (100%)</b>

14. The distribution of tenants by actual rental level is as follows:

<b>Rental Level (per month)</b>	<b>Number of tenants</b> (as at 30 September 2012)
Equal to / less than \$200	292 (2%)
\$201 – \$1,000	3 049 (24%)
\$1,001 – \$3,000	6 135 (48%)
\$3,001 – \$5,000	1 797 (14%)
\$5,001 – \$9,000	1 211 (9%)
More than \$9,000	366 (3%)
<b>Total:</b>	<b>12 850 (100%)</b>

15. The relevant expenditure on public market management and revenue from public market rentals were \$575.0 million and \$407.1 million in 2011-12. There was hence a deficit of \$167.9 million in the operation and management of public markets in 2011-12.

## **FURTHER REVISED PROPOSAL**

16. The Administration recognises 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. That said, market stalls are basically commercial premises let out by the Government to traders for business operation. From the perspective of public finance, and in line with the established mechanism of the former MCs, recovery of the OMR should remain the long-term objective of the Government. However, as the majority of public market operators are self-employed traders engaged in small business and low-skilled workers, the Administration fully agrees that any adjustment in rental should not be radical and has to be made in a gradual way sensitive to the overall affordability of these traders, so that the impact on tenants could be kept within acceptable bounds.

### **The 2013 Proposal – Consumer Price Index (A)**

17. Having regard to the above principles as well as the views and suggestions hitherto articulated by Panel Members and deputations of market stall tenants and traders, as a start, the Administration now proposes a further revised mechanism. Under our 2013 proposal, the market rentals will be adjusted in accordance with **the movement of the average CPI(A) of the past three years<sup>7</sup>, with the increase capped at 5% or the OMR, whichever is the lower.** This is similar to one of the counter-proposals received from individual tenant representatives during the consultation held in 2009 (please see paragraph 7 above)<sup>8</sup>.

18. For stall tenants who are paying rental above the OMR level, their rental would be adjusted downwards to the OMR level. By the same token, for those who are paying the same as the OMR level, their rental would remain unchanged.

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<sup>7</sup> The figure for 2009, 2010 and 2011 is about 2.9%.

<sup>8</sup> The results of the consultation are summarised in the paper titled “Consultation on the Positioning and Functions of Public Markets and Related Matters” (LC Paper No. CB(2)197/09-10(04)) discussed by this Panel at the meeting on 10 November 2009. Paragraph 11(b) of the paper states that: “stalls rentals should be adjusted according to the Consumer Price Index (or a percentage thereof) or by pegging to the civil service pay adjustment mechanism”.

### *Mild financial impact*

19. The financial impact of the 2013 proposal on stall tenants is gentle. Different from the 2009 and 2010 proposals (whereby stall tenants would have their rentals increased in a tenancy period by equal annual increments), stall rentals under the current proposal will be adjusted every three years upon tenancy renewal, with no annual increment. In other words, the rental after adjustment at the beginning of Year 1 will maintain at the same level until the expiry of the same 3-year tenancy. The proposed rental adjustment formula will apply to all tenants irrespective of their “historical background”.

20. At present, over 70% of stall tenants are paying monthly rental not exceeding \$3,000. For these tenants, the actual amounts of rental increase every three years will be no more than \$87 ( $\$3,000 \times 2.9\%$ ) since the average yearly changes in CPI(A) for 2009, 2010 and 2011 stood at 2.9%.

21. We consider that under this 2013 proposal, the effect of adjustments would be mild and affordable to tenants.

### *Downward adjustment allowed*

22. Consistent with our proposal to peg the changes in rental with the movement of the CPI(A), in case of a negative CPI(A)<sup>9</sup>, the rental would be adjusted downwards accordingly.

23. More than 1 800 existing stall tenants (i.e. around 14%) who are currently paying rental above the OMR level would benefit from a rental decrease if the proposed mechanism is implemented.

## **ENHANCING THE BUSINESS ENVIRONMENT OF PUBLIC MARKETS**

24. Over the years, we have made sustained efforts to promote the further development of public markets by enhancing their business environment and competitiveness. FEHD will continue to implement improvement measures in this respect. Such measures include:

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<sup>9</sup> We experienced negative CPI(A) changes in the years from 1999 to 2003.

- (a) carrying out regular maintenance and improvement works in public markets. The scope of works includes improvement to the drainage, ventilation, lighting, fire services, signage and lavatory provisions, replacement of floor tiles, and provision of barrier free access. Over the past three years, the FEHD spent over \$170 million on improvement projects which does not include maintenance and replacement of facilities such as replacement of escalators;
- (b) 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;
- (c) 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 respectively in order to boost the occupancy rate of public markets. As at November 2012, a total of 2 252 stalls had been let out through this arrangement;
- (d) starting from July 2009, gradually introducing service trades, light refreshment and bakery stalls with a view to diversifying the services provided at public market and letting out since October 2010 small stalls through short-term tenancy on a trial basis to allow more flexibility for prospective tenants;
- (e) continuing to organise promotional activities (including celebratory activities for traditional festivals e.g. Lunar New Year and Mid-Autumn Festival, and thematic exhibitions and talks with cooking demonstrations) from time to time to attract and broaden patronage including the display of “Recipes of Chef’s Daily Recommendation” in four languages (Chinese, English, Filipino and Indonesian) to attract more people to shop in public markets; and
- (f) publishing a well-illustrated booklet in 10 languages, 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, and publishing quarterly newsletters to provide updated market information.



## AIR-CONDITIONING CHARGES

25. Under the current practice, whilst the Government is responsible for the capital costs for installing and maintaining the air-conditioning system, the recurrent expenses including electricity charges and daily maintenance costs are borne by stall tenants. At present, over 70% of stall tenants in air-conditioned markets are paying air-conditioning charges under the separate charging arrangement<sup>10</sup>. In accordance with the “user-pays” principle and upholding fair play, we have earlier proposed extension of the same charging arrangement to the remaining tenants.

26. During the consultation in 2009 and at the special Panel meeting held in February 2011, representatives of market stall tenants and traders considered that as public markets were community facilities, air-conditioning charges should not be borne solely by tenants. They felt strongly 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. Some other representatives were of the view that the operating environment of public markets was difficult particularly for those with no air-conditioning and they called for the Government to enhance the operating environment of public markets including the installation of air-conditioning systems.

27. In his 2003 Report No. 41, the Director of Audit observed that the lack of an air-conditioning system in a market does not necessarily lead to a high vacancy rate. Of the 102 public markets currently in operation, 32 have been retrofitted or installed with air-conditioning. Judging from the market stall vacancy rate, there is no evidence to show that markets with air conditioning are more popular with bidders. Under the existing arrangement, the Administration would install air-conditioning systems in a public market if not less than 85% of the stall tenants of the market endorsed the installation and agreed to bear the electricity charges and costs of daily general maintenance after installation. We have so far maintained the threshold at 85%, a relatively high level, for good reasons. First, once air-conditioning is installed, all tenants will have to pay for the electricity charges and costs of daily general maintenance afterwards, not only for the few summer months, but all year

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<sup>10</sup> Under such an arrangement, the calculation and payment of air-conditioning charges and rental are handled separately.

round as the system will work for the purpose of ventilation. This additional operating cost is not something that an operator has taken into account when he bids for a public market stall. If an operator refuses to pay, he would have no choice but to move out of the market. This is liable to cause serious hardship and difficulties to the livelihood of a larger number of tenants if the percentage threshold is lowered.

28. Installation of air-conditioning system often involves partial or complete closure of the market for months, which disrupts business and may adversely affect the livelihood of the operators. We believe therefore it is only fair that a proposal to install an air-conditioning system should not proceed until and unless a vast majority of tenants agree to pay for the charges and accept the disruption of business during the construction stage. Other than the sustainability of markets and tenants' wishes, the physical conditions of some old market buildings, which were constructed at a time when the installation of air conditioning systems was not contemplated, may impose insurmountable constraints on the feasibility of retrofitting projects.

29. We note the opinion expressed by the Panel and tenant representatives in 2009 and 2010 summarised in paragraph 26 above, including the conditions under which installation of air-conditioning should be embarked upon and the basis on which air-conditioning charges are to be worked out. Before coming up with a revised proposal, we would like to hear further views on the subject, if any, of air-conditioning in public markets.

## **ADVICE SOUGHT**

30. Subject to Members' comments, we propose to implement the revised rental adjustment mechanism upon expiry of the current rental freeze on 31 December 2013.

**Food and Health Bureau  
Food and Environmental Hygiene Department  
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