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Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 16 April 2013**

**Improvement of operating environment of public markets
and related issues**

Purpose

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

Background

Management of public markets

2. Public markets were provided by the former Urban Council ("UC") and Regional Council ("RC") to meet the needs of the community and resite hawkers who would otherwise be trading on-street causing environmental nuisance and congestion to pedestrian and vehicular traffic. Since the dissolution of the then Provisional UC and Provisional RC on 1 January 2000, the Food and Environmental Hygiene Department ("FEHD") has taken over the responsibility for managing public markets.

3. At present, FEHD is responsible for managing 77 public markets and 25 free-standing cooked food markets, providing a total of some 14 450 stalls. The overall occupancy rate is about 89%.

4. Although FEHD has taken over the responsibility of the management of public markets in 2000, it has continued to adopt the versions of tenancy agreements used by the former UC and RC despite their considerable discrepancies. This successive extension of old tenancies has been criticized by the Audit Commission as well as the Public Accounts Committee ("PAC") of the Legislative Council ("LegCo"). In response to the views of the Audit Commission and PAC, FEHD agreed to review and align the different public market tenancy agreements, market rental adjustment mechanisms and arrangements for the recovery of rates and air-conditioning charges. It put forward proposals and revised proposals on the above subjects as well as a one-off tenancy transfer scheme in 2009, 2010 and 2013 respectively.

Proposals on the rental adjustment mechanism

5. As at February 2009, the average rental paid by all public market stall tenants was about 60% of the open market rental ("OMR"). OMR is assessed by the Rating and Valuation Department ("RVD"), having taken into account the general situation of Hong Kong, the actual conditions of individual markets as well as relevant factors such as the area and location of stalls and the location of the markets. It would also make reference from the rental information of shops selling similar commodities in nearby private premises and make appropriate adjustments accordingly. Following the publication of Reports No. 51 of the Director of Audit and PAC in 2008, the Administration proposed a rental adjustment mechanism in July 2009, under which the rentals of all market stalls were to be increased by equal annual increments so that the rentals would reach 80% of OMR in six years, and a cap of \$1,500 would be imposed on the monthly rental as the maximum annual increase ("the 2009 proposal"). As both the Panel and representatives of market tenants and traders objected to adjusting stall rentals based on OMR, the Administration proposed a new rental adjustment mechanism in December 2010 ("the 2010 proposal"). Under the 2010 proposal, the actual average rental of stalls of the same category of business in the same market ("AAR") would be used as the basis of the rental adjustment mechanism. The level of rental the stall tenant should pay would be determined by AAR or OMR, whichever was the lower. The rentals would be increased to the AAR or OMR level by equal annual increments during a three-year tenancy period. Different rental increase caps would also be

introduced for tenants of non-cooked food stalls and cooked food stalls. A compassionate arrangement for disadvantaged tenants would also be put in place. Tenants who met certain requirements in relation to age, business turnover, years of renting the stall, etc., might apply to the Director of Food and Environmental Hygiene on compassionate ground for discretionary rental increase adjustment.

6. The 2010 proposal met with strong objection from market stall tenants and members of the Panel. They considered that the proposal still carried significant adverse impact on the operation of public market rental stalls and due regard had not been given to the social functions and historical background of public markets. In the light of this, the Administration proposed in January 2013 a further revised rental adjustment mechanism under which the market rentals would be adjusted in accordance with the movement of the average CPI(A) of the past three years, with the increase capped at 5% or OMR, whichever was the lower ("the 2013 proposal"). In the Administration's view, the effect of rental adjustments under the 2013 proposal would be mild and affordable to tenants. As the changes in rental would be pegged with the movement of CPI(A), the rental would be adjusted downwards in case of deflation.

Proposals on arrangements for recovery of air-conditioning charges

7. Due to historical reasons, air-conditioned markets in different regions of Hong Kong adopt different arrangements in recovering air-conditioning charges. There are also tenants who have never paid any air-conditioning charges. According to the Administration, separate charging is currently adopted for 70% of the stalls in air-conditioned markets. In the light of this, the Administration proposed in the 2009 proposal that the same arrangement of separate charging should be applied to the remaining 30% of tenants so that FEHD could recover costs based on actual expenses. Despite repeated calls from the Panel and many tenants to charge the air-conditioning cost pro rata to the stall areas, the Administration maintained its view that public areas were an integral and inalienable part of the market trading environment, and it was common practice in all government rental properties to include public areas in the calculation of air-conditioning charges payable by tenants. Yet, having regard to the concerns expressed by the Panel and tenants, the Administration proposed in the 2010 proposal that the increase in air-conditioning charges would be distributed evenly over the first three-year tenancy period and a cap would be imposed on the monthly increment allowed each year. As members still considered it

unfair for the market stall tenants to pay for the air-conditioning charges for common areas in public markets, they called on the Administration to revisit the proposal.

Recovery of rates

8. The old tenancy agreements have stipulated that tenants are responsible for payment of rental as well as all the rates, taxes, other charges, etc., in respect of the stalls. FEHD has, however, paid rates on behalf of the stall tenants all along and has not recovered the rates from them. The Administration proposed in the 2009 proposal that the rates should be paid by the stall tenants and RVD would assess the rates levels of market stalls. Since the assessment is still in progress, FEHD will continue the existing practice of paying rates on behalf of the stall tenants.

One-off tenancy transfer scheme

9. The Administration also proposed to introduce a one-off tenancy transfer scheme in the 2010 proposal to regularize the status of public market stall operators and to resolve the historical problem of the status of public market stall operators arising from the resiting of hawkers into public markets. The Administration proposed to allow any person who had been a registered assistant of the stall concerned for at least three years, or any person who had invested in the business of the stall concerned for at least three years, to apply for taking over the status of a tenant with the consent of the original tenant and on producing documentary proof. It was also proposed that successful transferees should pay AAR or the rental payable by the original tenant at the time of transfer of tenancy, whichever was higher.

Rentals of public market stalls

10. The rental of public market stalls was reduced across-the-board by 30% in 1998 and has been frozen at the reduced level since then. The Administration has recently announced the further extension of the rental freeze for 12 months until 31 December 2013.

Deliberations by the Panel

11. The Panel discussed issues relating to the business environment of public market stalls at a number of meetings between 2009 and 2013 and received views of deputations at four meetings. The deliberations and concerns of members on the business environment of public market stalls, including rentals, air-conditioning charges and recovery of rates in public markets are summarized below.

Public market rentals and the rental adjustment mechanism

12. Members expressed strong objection to the proposed rental adjustment mechanisms put forward by the Administration in 2009, and 2010. They questioned the validity and appropriateness of using OMR in assessing public market stall rentals, as the facilities of public markets were outdated and their environment and management were far from satisfactory. In their view, the business environment for market stall operators was already difficult because of the upsurge in the inflation rate. The proposed rental adjustment mechanism of bringing the existing rentals to the level of OMR would impose additional financial burden to the market stall operators and in turn, the general public would suffer from higher prices in staple food. Members considered that any increase in the public market rentals would have an adverse impact on the social functions of public markets in providing active market services to the community. They suggested that the Administration should take steps to improve the customer flow and the management of public markets first before considering an increase in the public market rentals.

13. Members also considered it unreasonable to use AAR as the basis of rental adjustments since the patronage of a stall depended very much on its location. The Administration should take into account the location of individual stalls in determining the level of their rentals and should not solely average out the rentals of the stalls of the same category of business in the same market to calculate the rental adjustments. Some members pointed out that in several public markets, the rentals of stalls of the same category of business varied significantly. Using AAR as the basis of rental adjustments would be unfair as the increment in rentals would be substantial.

14. Members generally agreed that the Administration should subsidize the operation of public markets in view of its important social functions. Public markets were the major sources of fresh provisions for the public at large and

provided employment opportunities for the grassroots. The Administration should help sustain the operations of small businesses and take steps to prevent monopoly of supermarkets.

15. The Administration clarified that OMR was not the prevailing rental in the commercial market. It was the market rental assessed by RVD by making reference to the location of the public market, the layout and size of the market stalls, the location of the stalls within the market, the customer flow and their historical background. 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 a par with the commercial market, but to rectify the long standing problem of having different versions of rental adjustment mechanisms in the territory. While OMR would reflect adequately the prevailing rental values, it had not taken into account the uniqueness of individual markets in the light of the historical considerations. As there was a host of historical factors that had led to the problem of rental disparity, a rental adjustment mechanism based on AAR would help minimize rental disparity among stalls of the same category of business in the same market. The Administration stressed that it was open-minded on the level of rental adjustment and the timetable to implement the mechanism.

16. Members were generally of the view that the AAR approach would probably result in a substantial increment. Some members considered that using the median rental as the basis of the rental adjustment mechanism would be more desirable to minimize rental disparity and they urged the Administration to explore more options for consideration.

17. While welcoming the Administration's decision to further extend the rental freeze of public market stalls, members called on the Administration not to increase the stall rentals unilaterally. Decision on the rental adjustment mechanism should be made through consultation and consensus. The Administration assured members that on matters relating to public market rentals and air-conditioning charges, decisions would only be made after full consultation with the Panel and trade representatives.

18. Regarding the 2013 proposal, members were of the view that improving the business environment of public markets, in particular, the provision of air-conditioning facilities to all public markets was of utmost importance. In this regard, members stressed that there would not be any ready support for any proposals to increase the rentals of public market stalls unless the business

environment of public markets including the facilities and the customer flow of public markets, had been substantially improved.

19. Noting that public market stall tenants who had different historical backgrounds were paying different levels of rentals, some members took the view that the rentals of similar public market stalls should also be standardized to ensure fairness for these market tenants.

20. In response to members' views, the Administration undertook to review the policy, functions and positioning of public markets, as well as develop new initiatives to revitalize public markets.

Air-conditioning charges

21. Members shared the deputations' views that the air-conditioning charges attributable to the 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 requested the Administration to devise a new mechanism for the calculation of air-conditioning charges payable by stall tenants.

22. The Administration advised 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. In the Administration's view, it was 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 maintained its view 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.

23. 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. They stressed the need for the Administration to improve

the operating environment of public markets first before introducing any air-conditioning charges. Noting that there were still some public markets without air-conditioning, members called on the Administration to provide air-conditioning systems in these public markets so as to improve their operating environment.

24. 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 the 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.

25. The Panel passed two motions at its meeting on 22 February 2011 urging the Government to continue to freeze public market rental and hawker licence fee given its huge fiscal surplus; opposing to the Government's adoption of a new rental adjustment mechanism based on AAR or OMR; requesting the Government to calculate the air-conditioning charges of stalls according to the actual rental area; requesting the Government to allocate additional resources to improve the business environment of public markets; and requesting the Government to withdraw its paper on Public Market Stall Rentals and Air-conditioning Charges and to solicit afresh views of this Council and market traders.

Recovery of rates

26. 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 public markets. Members called on the Administration to respect the consensus view of the Panel and actively follow up the matter. In members' view, the Administration should

continue its long-standing practice of paying rates on behalf of market stall tenants.

27. The Administration pointed out that the original tenancy agreements had stipulated 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 RVD 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.

One-off tenancy transfer scheme

28. Some members and trade associations considered that successful transferees under the one-off tenancy transfer scheme should be charged the existing stall rentals. They expressed concern about the financial pressure on the transferees if the AAR approach was adopted. They requested the Administration to give due regard to the historical factors and different backgrounds of public market tenants. Consideration should also be given to imposing a ceiling to cap the rentals of the market stalls when implementing the one-off tenancy transfer scheme.

29. The Administration advised that successful transferees under the one-off tenancy transfer scheme would have to enter into a new tenancy agreement with the Government and pay AAR of stalls of the same category of business in the same market. This 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.

Improving the business environment of public markets

30. Members stressed the importance of revitalizing and improving the operating environment of public markets. They noted that the Administration had spent over \$230 million to carry out improvement works in public markets during the period of 2007 to 2010. Some members, however, considered that these improvement works were regular maintenance works only. Neither new

promotional strategies nor new designs with respect to the enhancement of the business environment of public markets had been introduced. The vacancy rate of some public markets remained high. They called on the Administration to address the positioning, functions and usage of public markets, and improve the operating environment of all markets such as the surrounding transportation network and direction of pedestrian flow before requiring tenants to sign the new tenancy agreement or pay the air-conditioning charges. There was also a suggestion that the Administration should draw up a comprehensive and long-term plan to improve the operating environment of public markets.

31. Despite repeated calls to improve the business environment of public markets, members considered that little progress had been made in this regard. Hence, members considered it high time to review the policy of public markets, in particular, the positioning, functions, usage and promotion of public markets with a view to improving the business environment and patronage of public markets. The Panel passed a motion at its meeting on 8 January 2013 that a subcommittee should be formed under the Panel to follow up on issues relating to the installation of air-conditioning systems, so as to bring early improvement to the operating environment of public markets. Members also agreed at the meeting that the scope of the study of the Subcommittee should also cover related issues such as the policy and business environment of public markets.

Relevant papers

32. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Relevant papers on improvement of operating environment of public markets and related issues

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	14.4.2009 (Item VI)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	2.6.2009 (Item I)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	14.7.2009 (Item IV and V)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	10.11.2009 (Item IV)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	8.12.2009 (Item V)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	13.4.2010 (Item IV)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	3.5.2010 (Item I)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	11.5.2010*	CB(2)1309/09-10(01)
Panel on Food Safety and Environmental Hygiene	14.12.2010 (Item IV)	Agenda Minutes CB(2)553/10-11(01) CB(2)588/10-11(01)
Panel on Food Safety and Environmental Hygiene	22.2.2011 (Item I)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	17.5.2011*	CB(2)1574/10-11(01)

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	8.1.2013	Agenda
Legislative Council	31.10.2012	Official Record of Proceeding (Question 4)
Legislative Council	19.12.2012	Question 9

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