



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

Our ref. FHB/F/7/5

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(By e-mail)

2 June 2015

Mr Anthony CHU
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr CHU,

Public Accounts Committee

Consideration of Chapter 3 of the Director of Audit's Report No. 64

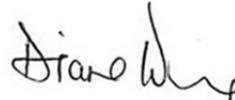
**Public cooked food markets managed by
the Food and Environmental Hygiene Department**

Thank you for your letter dated 12 May 2015.

As requested, information on items (a), (b), (g), (h), (i), (j), (k), (l), (n) and (o) are enclosed at **Annex** to facilitate the Public Accounts Committee's consideration of the captioned report.

We need more time to compile the information for items (c), (d), (e), (f) and (m) in view of the level of details required and the need to seek individual parties' consent for disclosure. We will submit them to you as soon as they are available.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Diane Wong". The signature is fluid and cursive, with a long vertical stroke extending downwards from the end of the name.

(Miss Diane Wong)
for Secretary for Food and Health

c.c.: Director of Food and Environmental Hygiene
Secretary for Financial Services and the Treasury
Director of Audit

Vacancy rates of markets

Item (a) – consultancy report commissioned by the Food and Environmental Health Depart (FEHD) in 2011

In 2011, FEHD had commissioned a survey on the viability of three public markets and six cooked food hawker bazaars (CFHBs). The executive summary of the survey results is attached at **Appendix A**. As far as CFHBs are concerned, FEHD has plans to close the Tai Lin Pai Road CFHB and two other CFHBs, and will continue to explore whether the other sites could be put to alternative uses.

Item (b) - consolidation of CFHBs and development of Cooked Food Markets (CFMs) at temporary sites

2. As reported at the Public Accounts Committee (PAC) hearing on 11 May 2015, FEHD is taking steps to close the Tai Lin Pai Road CFHB and two other CFHBs. We have started to discuss the exit plans with the cooked food hawkers being affected. Among these three sites, that of Tai Lin Pai Road CFHB has been included in the 2015-16 land sale programme. Kwai Tsing District Council raised no objection to the proposal to close this CFHB when being consulted in April 2015. On the other two CFHBs planned for closure, FEHD would continue the discussion with the licensed hawkers there with a view to finalizing the exit plans with them as soon as possible having regard to the timetable for any development of such sites.

3. Unlike the public wet markets of FEHD, CFHBs were meant to serve as a transitional arrangement and hence were not built in the first place with an intent for long-term use. Of course, if fire safety or infrastructural issues are at stake, FEHD would consider conducting upgrading works. For instance, funding has been earmarked to refurbish Woosung Street Temporary CFHB and Haiphong Road Temporary CFHB and to upgrade the fire safety facilities there. Any proposal that entails large-scale refurbishment and a large amount of public funds with an intent for long-term use would require careful examination against a

***Note by Clerk, PAC:** *Please see Appendix 34 of this Report for Appendix A.*

number of considerations, including the viability of the specific CFHB and whether the actual needs of the local community so warrant. Besides, such a move may affect the work plans of other policy bureaux and go beyond the purview of the Food and Health Bureau. As proposals to consolidate individual CFHB(s) could well hinge on factors other than the value-for-money consideration, we submit that the PAC is probably not the best forum for pursuing them. We suggest following this up in other appropriate channels, such as the Panel on Food Safety and Environmental Hygiene.

4. On consolidation of CFHBs, proximity of location and availability of vacant stalls are relevant considerations, as cooked food hawkers are often reluctant to move because of possible loss of the existing clientele. FEHD would also take into account the business viability and physical conditions of the CFHBs concerned, and whether improvement works, if considered necessary, would displace some of the hawking space within the Bazaar, thus limiting the scope for consolidation with other CFHBs. For instance, upon completion of renovation works being planned for Woosung Street Temporary CFHB, the number of stalls there is expected to be reduced. FEHD would closely monitor work progress with a view to putting the CFHB to its best use after renovation.

5. For the remaining eight CFHBs, including those located at temporary sites, FEHD will conduct regular review on their operation and consider if they should be vacated for other uses with regard to their business viability, community needs, resource availability and competing priorities. In endeavouring to deliver any plans formulated for individual CFHBs, FEHD would give due consideration to the interests of cooked food operators and other stakeholders who would be affected.

6. Apart from six CFHBs (namely Woosung Street Temporary CFHB, Yu Chau West Street CFHB, Lai Yip Street CFHB, Haiphong Road Temporary CFHB, Reclamation Street CFHB and Stanley Market Open Space Hawker Bazaar), two cooked food markets (CFMs) and one cooked food centre (CFC) are also currently located at temporary sites. We would work with other government departments, particularly Planning Department and Lands Department, to ascertain the longer-term

land use of these sites and formulate exit plans as appropriate with regard to the business viability of such cooked food venues and community needs among other considerations. In the case of Cheung Sha Wan Cooked Food Market, for instance, Planning Department advised Sham Shui Po District Council at its meeting in January 2013 that the site had been earmarked for open space. In view of the relatively low occupancy rate of the market, FEHD would follow up with the relevant departments and explore how the site may be put to more gainful use with regard to community needs.

Provision of facilities in markets

Item (g) - measures taken against unauthorized installation of air-conditioner at CFMs and CFCs

7. In accordance with the existing enforcement guidelines, FEHD staff will take enforcement action under the Public Markets Regulation (Cap. 132BO) or issue warning letter for breaches of the tenancy agreement as appropriate to ensure that irregularities such as installation of standalone air-conditioners without prior authorisation are rectified.

8. FEHD has since March 2015 issued 41 verbal warnings and 30 first warning letters to CFM and CFC tenants who had been found to have installed air-conditioners without prior approval. The department will step up inspections and closely monitor the situation. Should non-compliance on the part of the tenants persist, FEHD would consider terminating their tenancy agreements upon accumulation of a given number of warning letters under the existing penalty system.

9. In addition, FEHD has reminded market stall tenants to seek prior approval before installing air-conditioners to avoid overloading the electricity system.

Item (h) – successful cases of retrofitting air-conditioning systems for CFMs and CFCs in the past 10 years

10. Retrofitting of air-conditioning (A/C) system was carried out in

three CFC (but no CFMs) in the past 10 years. The three CFCs concerned are Yue Wan Market CFC, Bowrington Road Market CFC, and Shek Wu Hui Market CFC.

11. Surveys gauging the views of market stall operators on the retrofitting works were conducted in February/March 2003. The three retrofitting projects had all attained a support rate of 85% or more. The necessary funds for carrying out the A/C retrofitting works at these three cooked food venues were approved in April 2003 and June 2004. Actual retrofitting works for Yue Wan Market CFC and Bowrington Road Market CFC began in April 2004 and were completed in April 2005. The retrofitting works for Shek Wu Hui Market CFC started in December 2004 and were completed in November 2005. In other words, from the time we conducted the survey among stall operators to completion of the retrofitting works, it took about 2 to 2.5 years. This timeframe may serve general reference purpose. However, it should not be taken as a benchmark for future A/C retrofitting projects as the circumstances of individual CFCs or CFMs may vary significantly.

Management of market stalls

Item (i) - guidelines on enforcement actions against non-compliant cases of market cooked food stall tenants

12. Under the current departmental policy, FEHD will consider terminating the tenancy agreement of a CFC/CFM operator if four offences (under any provisions of the Public Health and Municipal Services Ordinance, Cap. 132 or its subsidiary legislation) resulting in convictions have been registered against a stall within a period of 12 months. If the offence committed is considered serious in nature, FEHD may consider terminating the tenancy agreement upon one single conviction. A set of the relevant policy guidelines is at **Appendix B**.

13. Separately, FEHD will consider terminating the tenancy agreement if a tenant has accumulated three warning letters resulting from breaches of tenancy clauses/conditions within a period of six months. The relevant guidelines are at **Appendix C**.

***Note by Clerk, PAC:** *Please see Appendices 38 and 39 of this Report for Appendices B and C respectively.*

Item (j) –legal advice on consumption of liquor in CFCs and CFMs with communal seating areas

14. According to the advice we obtained in 1999, the Department of Justice (DoJ) was of the view that the sale of intoxicating drinks by cooked food stalls of Urban Council's markets (now FEHD's markets) constituted no offence under section 25A of the Dutiable Commodities (Liquor) Regulations (DC(L)R), Cap. 109 if the consumption of the liquor did not take place in the stalls where the intoxicating drinks were sold.

15. In paragraph 4.9(c) of the Audit Report, DoJ's advice was described as being "preliminary". We surmise that the then Provisional Urban Council's memo to DoJ might have given Audit Commission an impression that the legal advice was preliminary. Specifically, in his memo to DoJ in 1999, the Senior Legal Officer from the then Provisional Urban Council submitted his "preliminary view that s.25A of the DC(L)R, Cap. 109 does not apply to the sale of liquor in our market stalls, as the consumption of liquor does not take place in the same premises where liquor is sold" and sought DoJ's opinion. In response, DoJ reverted with the advice cited in the preceding paragraph. That said, FEHD will write to seek confirmation from DoJ on whether section 25A of Cap. 109 applies to the sale of liquor in market stalls provided with communal seating areas.

Item (k) - guidelines on use of communal seating area in CFC and CFM

Use of Communal Area

16. The communal area in CFCs and CFMs is intended for the shared use of customers patronising the cooked food stalls. Therefore, individual tenants of cooked food stalls in CFCs and CFMs are not allowed to put the tables and chairs in the communal seating area to the exclusive use of their own customers. The tenancy agreement between FEHD and the tenants contains an express clause prohibiting the occupation of the communal seating area for exclusive use. The clause

reads as follows –

“The communal seating in cooked food centre/market is for the shared use of all customers. Tenants shall not occupy the communal seating area for their exclusive use in any way.”

17. Policy letters are issued to tenants informing them of the provisions including the condition pertaining to the proper use of the communal seating area. For tenants found in breach of this condition, consideration will be given to terminating their tenancy agreements if three warning letters have been accumulated within a period of six months under the “Warning Letters System”.

18. Notices are also displayed at conspicuous locations inside the CFCs/CFMs cautioning tenants against occupation of tables and chairs in the communal seating area for exclusive use.

19. A copy each of the letter and warning notice referred to in paragraphs 17 and 18 above could be found in **Appendix D** and **Appendix E** respectively.

Use of Stall

20. Separately, there are clauses in the tenancy agreement governing the use and operation of stalls. A specimen of the latest version of the tenancy agreement is at **Appendix F**.

21. As the tenancy agreement and policy letter have already set out the “Dos and Don’ts” applicable to the operation of the cooked food stalls and the use of the communal seating area, FEHD does not see a pressing need to issue separate guidelines on the same subjects. We will step up our sanction action against recalcitrant tenants who occupy tables and chairs in the communal seating area for their exclusive use.

***Note by Clerk, PAC:** *Please see Appendices 40, 41 and 42 of this Report for Appendices D, E and F respectively.*

Item (l) - follow-up actions on the cases referred to in paragraphs 4.5 to 4.7 of Director of Audit's report concerning adequacy of hygiene facilities, sale of liquor and unauthorised food factory operation

Adequacy of Hygiene Facilities

22. Under the Food Business Regulation (Exemption from Section 31(1)) Notice, Cap. 132Z, tenants carrying on the food business of a restaurant at a stall (including stalls in CFCs and CFMs) in a public market are exempted from holding a restaurant licence under section 31(1) of the Food Business Regulation, Cap. 132X. Despite such an exemption, stalls in CFCs and CFMs are built by the Government to hygiene standards no less stringent than those required of a licensed restaurant. The relevant hygiene standards require the provision of a ventilation and lighting system, mains water supply, toilets and means of refuse disposal, a stall with tiled walls and floor, and other facilities such as wash hand basin, sink, grease trap, floor drain, fumes extraction hood, cooking slab, etc. About 20 sq.m. of communal seating is also required for one stall (each of which is about 15 sq.m. in size).

23. In addition, it is incumbent upon the tenants to comply with the tenancy clauses and conditions relating to food and environmental hygiene, including wall/floor surface requirements, ablution and sanitary facilities, provision of food storage refrigerators, cupboards for utensils, sterilizer, food preparation table, etc. Although tenants are exempted from holding a restaurant licence, they are subject to the provisions of the Food Business Regulation, Cap. 132X in respect of food, premises and personal hygiene. For example, tenants must ensure the cleanliness of their stalls, protect food from risk of contamination, store food in an hygienic way, and ensure personal cleanliness, etc. FEHD will review from time to time if the current stipulations on conditions relating to food and environmental hygiene are adequate and will enhance inspections to ensure tenants' compliance with the prevailing conditions.

Sale of Liquor

24. According to DoJ's advice we obtained in 1999 (*re para 15 above*), the sale of intoxicating drinks by cooked food stalls in Urban

Council's markets (now FEHD's markets) constituted no offence under section 25A of the DC(L)R if the consumption of the liquor did not take place in the stalls where the intoxicating drinks were sold. FEHD will closely monitor the sale of liquor by cooked food stalls in FEHD markets and refer dubious cases (such as consumption of the liquor inside the stall area) to the Police for further investigation.

Unauthorised Food Factory Operation

25. In accordance with the existing enforcement guidelines, FEHD will take enforcement action under the Food Business Regulation (Cap. 132X) or issue warning letter for breaches of tenancy agreement as appropriate to curb irregularities such as operating food factory business (for example mass pig roasting for wholesale purpose or providing catering service without retail activities as required under the tenancy agreement). FEHD has since February 2015 conducted investigation into eight suspected cases of operating food factory business in cooked food stalls. A total of seven verbal warnings and 15 warning letters were issued to the tenants concerned. The department will step up inspections and closely monitor the situation. Should non-compliance persist, FEHD will consider terminating their tenancy agreements under the existing sanction mechanism.

Management of stall rentals and charges

Item (n) - market rental, rates and air-conditioning charges of markets

Market Rental

26. We generally agree with the recommendations of the Audit Commission on the question of public market rental. We agree that the Government needs a reasonable rental adjustment mechanism which allows the rental of market stalls to catch up with the rental of broadly comparable stalls which are recently allocated through open auction in other public markets. We had hitherto presented three different proposals to the LegCo Panel on Food Safety and Environmental Hygiene (in July 2009, December 2010 and January 2013 respectively). LegCo

Members did not support the proposals.

27. We would like to point out that the low market rental does not only lead to operating deficits in the management of public markets, resulting in subsidisation of commercial operations by public money. In our view, it is also one of the root causes underlying various management problems facing FEHD staff responsible for public markets. The absence of a reasonable rental adjustment mechanism that incentivise tenants to put their stalls to optimal use is hardly conducive to the vibrancy of the markets.

28. In 2013, the Food and Health Bureau commissioned a consultant to assist in developing proposals for improving the operating environment of public markets, for the purpose of enabling them to fulfil the functions expected of them in present-day circumstances. We are due to go before the LegCo Subcommittee on Issues Relating to Public Markets in late June 2015 to present our general response to the recommendations in the final report of the consultancy study. We will continue to discuss the way forward on the rental adjustment mechanism with the LegCo Subcommittee and the relevant stakeholders.

29. FEHD is open to the suggestion of reviewing the existing practice of successively renewing the tenancies of cooked food market stalls, with regard to the pros and cons of putting the stalls to open auction upon expiry of the tenancy agreements. However, it is envisaged that any material change to the current practice which has become deeply entrenched over the years will draw fierce resistance and criticisms from the tenants. The proposed change may also have read-across implications on the renewal of tenancy for over 13 000 public market stalls selling wet and dry goods. We would therefore gauge further the sentiments of the community as well as Members of the LegCo and District Councils and assess the impact on various stakeholders as part of our deliberation on the way forward.

Rates

30. Regarding the recovery of rates from market stalls, we agree that rates should be paid by the market stall tenants. At the request of the

LegCo Panel on Food Safety and Environmental Hygiene, the Government consulted public market tenants and trader organisations in 2009 on this. As can be expected, since any change in practice would require them to pay more, they unanimously objected the proposal of requiring tenants to pay rates. Most of them held the view that the Government's current practice of paying rates on behalf of the tenants, which had been adopted for years, should continue.

31. The following motion, supported by all the Panel Members present, was passed at the meeting on 13 April 2010:

“That this Panel urges the Government to continue to pay the rates on behalf of public market stall tenants in the territory, so as to support small business operations in markets.”

Air-conditioning Charges of Markets

32. On the question of air-conditioning charges, it is Government policy that the recurrent expenses, including electricity charges and general maintenance costs, should be borne by market tenants. The Government briefed the LegCo Panel on Food Safety and Environmental Hygiene on its views and proposals on the recovery of air-conditioning charges in public markets in July 2009 and December 2010. The Panel did not support the proposals.

33. In a paper presented to the LegCo Subcommittee on Issues Relating to Public Markets on 18 November 2014, the Government made it clear that the present situation, under which different air-conditioning charging arrangements applied to different tenants, was less than fair or satisfactory. The Government intended to conduct a review to align the air-conditioning charging arrangements with regard to the “user pays” and “parity” principles, and amend the tenancy agreements of the relevant tenants when they are due for renewal in end 2015. In the case of any existing FEHD markets for which the Government seeks to retrofit an air-conditioning system, the Government would apply the same principles and amend the tenancy agreements with the tenants accordingly.

34. The Government will expedite the review to separate air-conditioning charges from rental charges while continuing the discussions with LegCo on the rental adjustment mechanism for public markets.

Way forward

Item (o) – way forward

35. On the three CFHBs mentioned in paragraphs 6.5 and 6.6 of the Audit Report, FEHD has started to discuss the exit plans with the affected cooked food hawkers. One of these sites has been included in the 2015-16 land sale programme. FEHD would continue the discussion with the licensed hawkers in the other two CFHBs with a view to finalizing the exit plans with them as soon as possible having regard to the timetable for any development of such sites. In order not to compromise the Government's position in our ensuing discussions with the affected hawkers, we cannot be more specific at this stage on our work plan and timetable for vacating the sites. We are nonetheless actively pursuing the exit plans with due regard to the wider public interest.
