

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

A. Introduction

The Audit Commission ("Audit") conducted a review on the public cooked food markets managed by the Food and Environmental Hygiene Department ("FEHD").

Background

2. On-street cooked food stalls operated by hawkers have a long history in Hong Kong. According to the Director of Audit's Report ("Audit Report"), it has been the Government's policy since the early 1970s that no new hawker licences should be issued under normal circumstances and on-street licensed cooked food hawkers should be put into off-street public cooked food markets. The public cooked food markets managed by FEHD include the following three types:

- Cooked Food Hawker Bazaars ("CFHBs"): CFHBs are free-standing markets. Stall operators must be licensed cooked food hawkers;
- Cooked Food Markets ("CFMs"): CFMs are also free-standing markets. Stalls are let, under a tenancy agreement, to operators not holding any hawker licence. Holders of hawker licences must surrender their licences before they are allowed to operate a CFM stall; and
- Cooked Food Centres ("CFCs"): CFCs are attached to public markets that sell wet and dry goods. Similar to CFMs, stalls are let, under a tenancy agreement, to operators not holding any hawker licence.

As at 31 May 2015, a total of 75 public cooked food markets were managed by FEHD. This comprised 11 CFHBs, 25 CFMs and 39 CFCs. FEHD has been responsible for managing public cooked food markets as part of the work under its Market Management and Hawker Control programme. As mentioned in paragraph 1.4 of the Audit Report, the staff establishment for the entire Market Management and Hawker Control programme in 2014-2015 was about 3 650 and the estimated financial provision was about \$1,690 million. The Food and Health Bureau ("FHB") is the Government's policy bureau overseeing FEHD's work, including setting the policy on public cooked food markets as well as hawkers and public markets. At the request of the Committee, FEHD provided an organization chart of a typical District Environmental Hygiene Office in FEHD and the establishment of FEHD staff responsible for management of CFMs, CFCs and CFHBs as at 30 April 2015 in *Appendix 29* and *Appendix 30* respectively.

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3. The Legislative Council ("LegCo") Panel on Food Safety and Environmental Hygiene ("the FSEH Panel") has set up two subcommittees, namely the Subcommittee on Issues Relating to Public Markets and the Subcommittee on Hawker Policy to study public markets issues and hawker policy respectively. The Committee noted that FHB had advised the Subcommittee on Issues Relating to Public Markets that a consultancy study was commissioned in December 2013 to improve the operating environment of public markets and the final report of the study was presented to the Subcommittee in June 2015. FHB also agreed with the Subcommittee on Hawker Policy on the several principles for hawker policy formulation, including the benefits of a bottom-up approach and FHB's role to facilitate liaison with the relevant bureaux and departments on any district-led proposals with community consensus¹. These two subcommittees will submit reports under their respective terms of reference in second half of 2015.

4. Director of Audit conducted a review of the FEHD's management of public markets in 2003 and a follow-up review in 2008. Based on Audit's findings, the Committee conducted public hearings on public markets managed by FEHD in December 2003 and December 2008 and the findings were reported in the Committee's Report No. 41 of February 2004 and Report No. 51 of February 2009 respectively.

5. The Committee held one public hearing on 11 May 2015 to receive evidence on the findings and observations of the Audit Report.

The Committee's Report

6. The Committee's Report sets out the evidence gathered from witnesses. The Report is divided into the following parts:

- Introduction (Part A) (paragraphs 1 to 8);
- Vacancy rates of markets (Part B) (paragraphs 9 to 16);
- Provision of facilities in markets (Part C) (paragraphs 17 to 27);
- Management of market stalls (Part D) (paragraphs 28 to 34);

¹ Please refer to FHB's paper on "Proposals on Hawker Management" (LC Paper No. CB(4)561/14-15(01) for details of the principles and the Administration's proposals.

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- Management of stall rentals and charges (Part E) (paragraphs 35 to 36);
- Way forward (Part F) (paragraphs 37 to 43); and
- Conclusions and recommendations (Part G) (paragraphs 44 to 46).

Opening statement by Secretary for Food and Health

7. **Dr KO Wing-man, Secretary for Food and Health** made an opening statement at the beginning of the Committee's public hearing held on 11 May 2015, the summary of which is as follows:

- the Administration accepted the observations and recommendations made in the Audit Report and FEHD had already put into practice some of Audit's recommendations and was considering how to implement the others;
- the Administration recognized the need to formulate exit plans for CFHBs with high vacancy rates to ensure that scarce land resources were released for redevelopment. CFHBs were designed to serve as a transitional arrangement and hence were not built for long-term use. With no new hawker licences issued since 1972 to fill the stalls left vacant and some hawker licensees passed away or surrendered their licences, a progressive increase in the vacancy rate over time was an inevitable process;
- taking into account the fact that most of the hawker licensees operating in CFHBs were coming from the grassroots, the Administration had been adopting a relatively accommodating approach and consciously refrained from forcing the operators to move out in order to avoid causing significant social acrimony. This gave rise to the present state of high vacancy;
- FEHD would step up its efforts to actively formulate improvement or exit plans for individual CFHBs, having regard to their business viability, the needs of the respective communities, the availability of resources as well as the implications for stakeholders, with a view to ensuring better utilization of scarce land resources; and
- FEHD would also examine the redevelopment potential of other public cooked food market sites to release the land for other uses.

The full text of the Secretary for Food and Health's opening statement is in *Appendix 31*.

8. **Miss Vivian LAU Lee-kwan, Director of Food and Environmental Hygiene** made an opening statement at the beginning of the Committee's public hearing held on 11 May 2015, the summary of which is as follows:

- FEHD was taking follow-up actions regarding Audit's recommendation to expedite the implementation of fire safety measures at public cooked food markets. After the release of the Audit Report, FEHD had joined hands with the Fire Services Department ("FSD") and the Electrical and Mechanical Services Department ("EMSD") in conducting a review of the fire risk at individual public cooked food venues, in the hope of finding ways to enhance the fire safety thereof as soon as possible. Enforcement actions would be taken against violations of relevant safety regulations. This might include cancelling the licences of hawkers or terminating the tenancy agreements of tenants of CFCs/CFMs as appropriate;
- on the issue of electricity supply, FEHD would liaise with the Architectural Services Department ("ArchSD") to review the adequacy of electricity supply in CFMs and CFCs, including assessing the feasibility and cost-effectiveness of upgrading the supply for cooked food venues with sub-standard electricity supply. FEHD would take necessary follow-up actions as appropriate;
- regarding air-conditioning, FEHD would work with relevant departments on the upgrading work and the stakeholders on proposals to retrofit air-conditioning systems;
- inspections would be stepped up to guard against violations of rules and regulations by stall operators of cooked food markets. FEHD staff had been reminded to conduct timely inspections, record the details and take follow-up actions against irregularities or non-compliant cases, such as installation of air-conditioners without FEHD's prior approval;
- FEHD had reminded staff to act strictly in accordance with the prevailing guidelines on the appointment of deputies by licensed hawkers in CFHBs; and

- FEHD would continue with its effort in identifying a suitable rental adjustment mechanism and setting up arrangements to recover the rates and air-conditioning charges.

The full text of the Director of Food and Environmental Hygiene's opening statement is in *Appendix 32*.

B. Vacancy rates of markets

9. The Committee noted from paragraph 2.3 of the Audit Report that as at 31 December 2014, the average vacancy rate of the 11 CFHBs was 61%, which was significantly higher than 6% for 25 CFMs and 3% for 39 CFCs. From Table 3 of the Audit Report, it was observed that six CFHBs had vacancy rates ranging from 67% to 85%. Noting that some CFHBs with high vacancy rates were located in close vicinity (such as Case 1 in the Audit Report: Ma Kok Street CFHB (75% vacancy rate) was located in Tsuen Wan and with less than 10 minutes' walking distance from Luen Yan Street CFHB (81% vacancy rate)), the Committee enquired whether FHB and FEHD had any plan to consolidate these CFHBs with high vacancy rates.

10. **Secretary for Food and Health** said at the public hearing and supplemented through his letter of 2 June 2015 (in *Appendix 33*) that:

- FEHD was taking steps to close the Tai Lin Pai Road CFHB and two other CFHBs. Discussion with the cooked food hawkers affected by the exit plans had started. Among these three sites, that of Tai Lin Pai Road CFHB had been included in the 2015-2016 land sale programme. Kwai Tsing District Council was consulted in April 2015 and raised no objection to the proposal to close this CFHB. 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;
- CFHBs were designed to serve as a transitional arrangement and hence were not built in the first place with an intent for long-term use. If fire safety or infrastructural issues were at stake, FEHD would consider conducting upgrading works. For instance, funding has been earmarked to refurbish and upgrade the fire safety facilities in Woosung Street Temporary CFHB and Haiphong Road Temporary

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CFHB. However, any proposal that entailed large-scale refurbishment and a large amount of public funds with an intent for long-term use would require careful examination against a number of considerations, including the viability of the specific CFHB and whether the actual needs of the local community so warranted;

- besides, any such moves might affect the work plans of other policy bureaux and went beyond the purview of FHB. As proposals to consolidate individual CFHB(s) could well hinge on factors other than the value-for-money consideration, the Administration was of the view that the subject matter could be followed up in other appropriate channels, such as the LegCo FSEH Panel;
- on consolidation of CFHBs, proximity of location and availability of vacant stalls were relevant considerations, as cooked food hawkers were 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 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 refurbishment and upgrading of fire safety works being planned for Woosung Street Temporary CFHB, the number of stalls there was expected to be reduced. FEHD would closely monitor work progress with a view to putting this CFHB to its best use after the completion of the works;
- for the remaining eight CFHBs, including those located at temporary sites, FEHD would 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; and
- the cost of social acrimony associated with non-renewal of hawker licences and forced eviction of existing CFHB stall operators would need to be taken into account when considering the exit plans and development for CFHBs.

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11. The Committee noted that in the consultancy study of public markets and the review on hawker policy, the development of public cooked food markets had not been included. In response to the Committee's enquiry, **Secretary for Food and Health** explained that the Administration had not neglected the development of public cooked food markets as the issue would have been touched upon in the consultancy study and the review on hawker policy. For CFCs, they formed part of public markets. In reviewing the hawker policy, some proposals would be relevant to public cooked food markets, such as converting existing public market with low occupancy into an off-street cooked food centre.

12. According to paragraph 2.17(e) of the Audit Report, FEHD commissioned a consultant in 2011 to assess the business viability of three public markets and six CFHBs. **Director of Food and Environmental Hygiene** said at the public hearing that based on the findings, FEHD advised the Financial Services and the Treasury Bureau ("FSTB") and the Planning Department in 2013 that the sites of two markets and four CFHBs could be released for redevelopment. At the request of the Committee, **Secretary for Food and Health** provided the executive summary of the survey results in *Appendix 34*.

13. According to paragraph 2.9 and Appendix D of the Audit Report, there were nine public cooked food markets located at temporary sites. These public cooked food markets were built on the temporary sites between 1972 and 1984. However, the Committee was concerned that the Administration had not formulated any future development plans for these markets which had been located at temporary sites for more than 30 years. The Committee asked the Administration if it would formulate exit plans for the markets at temporary sites.

14. **Secretary for Food and Health** replied in his letter of 2 June 2015 (in Appendix 33) that apart from six CFHBs, two CFMs and one CFC were also currently located at temporary sites. FHB and FEHD would work with other government departments, particularly the Planning Department and the 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 CFM, for instance, Planning Department consulted Sham Shui Po District Council at its meeting in January 2013 on the plan to earmark the site to be used 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.

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15. The Committee enquired if FHB would consider launching an ex-gratia scheme to provide incentives for hawker licensees to surrender their licences voluntarily or to relocate to another CFHB. As such, it would facilitate the closure or consolidation of CFHBs.

16. **Secretary for Food and Health** agreed at the public hearing that providing incentives would be one of the possible options to relocate hawkers to another CFHB for the purpose of consolidating CFHBs with high vacancy rates.

C. Provision of facilities in markets

Fire safety measures

17. The Committee noted from paragraphs 3.3 and 3.4 of the Audit Report that in a meeting between FEHD, FSD and ArchSD, it was concluded that the fire safety measures stipulated in the Fire Safety (Commercial Premises) Ordinance (Cap. 502), namely, installation of automatic sprinkler system; automatic cut-off device for mechanical ventilating systems; emergency lighting; fire hydrant and hose reel system; manual fire alarm; and portable fire extinguisher ("stipulated fire safety measures"), were the minimum requirements for CFCs, CFMs and CFHBs. However, according to paragraph 3.6 and Table 6 in the Audit Report, of the 75 public cooked food markets, only 33 (44%) had implemented all the six stipulated measures. In particular, 13 CFMs had only implemented four or fewer measures while no CFHBs had implemented more than two stipulated measures. The Committee enquired about FEHD's plan to upgrade the fire safety measures for the remaining 42 public cooked food markets.

18. **Director of Food and Environmental Hygiene** explained at the public hearing and **Secretary for Food and Health** supplemented in his letter of 12 June 2015 (in *Appendix 35*) that:

CFCs

- out of the 39 CFCs, 31² are equipped with all the six stipulated fire safety measures;

2 Centre Street Market CFC was originally counted as not having installed the automatic cut-off device in the Audit Report. However, based on the latest advice of the works departments, an automatic cut-off system has already been installed to stop, in case of a fire outbreak, the ventilating/air-conditioning system for the whole building in which the CFC is housed. Hence, the number of CFCs equipped with all the six stipulated fire safety measures is now revised to 31 as opposed to 30 in Table 6 of the Audit Report.

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- seven of the eight remaining CFCs are provided with five fire safety measures. What remains outstanding was the automatic cut-off device for mechanical ventilating system. These seven CFCs were Kwu Tung Market Shopping Centre CFC, Sha Tau Kok Market CFC, Kam Tin Market CFC, Heung Che Street Market CFC, Quarry Bay Market CFC, Tin Wan Market CFC and Yue Kwong Road Market CFC. According to FSD's latest advice, since there was no central air-conditioning/ventilating system in these seven CFCs, the automatic cut-off device for mechanical ventilating system was not necessary;
- in respect of the one remaining CFC, i.e. Sham Tseng Temporary Market CFC, two of the six fire safety installations were outstanding, namely the automatic cut-off device for mechanical ventilating system and the automatic sprinkler system. Given that there was no central air-conditioning/ ventilating system in this CFC, an automatic cut-off device was not necessary. As regards the automatic sprinkler system, ArchSD's advice to FEHD was that because the temporary market was located under a flyover, the construction of a sprinkler pump room, water tank and trench for sprinkler pipe would not be feasible without major refurbishment. ArchSD would conduct a feasibility study on an alternative proposal for a sprinkler system in view of the site constraints and latest statutory requirements;

CFMs and CFHBs

- subsequent to the meeting with FSD in 2003 and following the spirit of the Fire Safety (Commercial Premises) Ordinance (Cap. 502), FEHD had reviewed the fire safety measures at CFCs and public markets selling dry and wet goods and implemented plans to upgrade their fire safety measures. In addition, FEHD had implemented fire safety upgrading works at three of the 25 CFMs, namely Kik Yeung Road CFM, Kin Yip Street CFM and Tai Tong Road CFM. A thorough record search did not reveal the reason why the other CFMs and the CFHBs were not covered in the review then. FEHD's conjecture was that it might be a question of priority;
- as at the end of 2014, four or more of the six fire safety measures mentioned above had been implemented at 15 of the 25 CFMs. It was acknowledged that fewer than four such measures were available in the remaining 10 CFMs; and six of the 11 CFHBs were yet to be acted upon. FEHD had since been working closely with ArchSD, FSD and

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the relevant departments to improve fire safety at these relevant cooked food venues;

- as of June 2015, all CFHBs were provided with portable fire extinguishers;
- action was being taken by FEHD to install, in the coming six months, emergency lighting and manual fire alarm in all CFMs and CFHBs where such devices were lacking at present; and
- for installation of the remaining three fire safety measures (viz. fire hydrant and hose reel system, automatic sprinkler system and automatic cut-off device for mechanical ventilating system), owing to the need to resolve the technical issues involved and consult relevant departments, more time would be needed. For installation of fire hydrant, hose reels and fire sprinkler system, it would be necessary to identify suitable space in the cooked food venues for construction of water tanks and the associated plant rooms. The location and operation of the water tanks or plant rooms should avoid affecting existing installations in the venues. In particular, detailed structural assessment was required to ensure that the cooked food venues could support the loading imposed by the additional structures. In addition, the fire safety design/installation proposal as well as the water supply for the fire safety system would require separate approval by FSD and the Water Supplies Department respectively. FEHD would work with the relevant departments to conduct studies as soon as possible to ascertain the feasibility of installing these fire safety measures in CFMs and CFHBs where such devices were lacking at present.

19. In response to the Committee's enquiry, **Secretary for Food and Health** supplemented on the other fire safety measures in his letter of 12 June 2015 (in Appendix 35) as follows:

- to enhance the awareness of FEHD staff responsible for the management of CFCs/CFMs/CFHBs and stall tenants on fire safety, FEHD would, with the assistance of FSD, arrange fire safety talks for them on topics such as "Common Fire Safety Irregularities", "What to do in case of fire", "Proper Use of Fire-fighting Equipment", and "Safe Use of Dangerous Goods". Fire drills would also be organized;

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- FEHD and FSD would also carry out fire hazard abatement actions at cooked food venues where the situation so warranted. FEHD would enhance fire safety management in the cooked food venues, including disseminating fire safety messages to cooked food stall operators during routine inspections and taking appropriate follow-up action should any potential fire risks be identified in connection with the operation of the stalls; and
- separately, EMSD would continue to provide engineering support to FEHD in promoting and ensuring electrical and gas safety in public cooked food markets and take appropriate enforcement actions according to the relevant statutory requirements.

Electricity supply for stall operation

20. According to paragraph 3.17 of the Audit Report, as at December 2014, no CFM, and only two CFCs, had electricity supply that met the FEHD's 60-ampere ("A") standard. The Committee noted from Case 4 in the Audit Report that occasional electricity outages for the Kwun Tong Ferry Concourse CFM resulting from overloading (capacity available to each stall in the CFM was only 10A, falling short of the 60A standard) had adversely affected the operation of the CFM. Overloading may also cause fire hazards and have safety implications for the stall operators and patrons. The Committee enquired about the Administration's plan to upgrade the electricity supply for those CFMs and CFCs with inadequate electricity supply and the follow-up actions for those markets with lower standards for electricity supply to ensure that overloading would not occur.

21. **Director of Food and Environmental Hygiene** advised at the public hearing that FEHD had liaised with ArchSD, EMSD and related power companies on exploring the feasibility of upgrading electricity supply system for those public cooked food markets with sub-standard systems. Taking Case 4 in the Audit Report on the Kwun Tong Ferry Concourse CFM as an illustration, **Director of Food and Environmental Hygiene** said at the public hearing that the CFM was built in 1984 with the capacity available to each stall at 10A. Starting from 2008, FEHD had explored with ArchSD to upgrade the electricity supply system, such as building an off-site transformer. As all 29 stalls of the CFM had been let to operators and there were space constraints for a new transformer room, FEHD would continue to discuss with ArchSD and the power company on upgrading the electricity supply system without affecting the number of stalls. At the request of the Committee, **Secretary for Food and Health** provided relevant correspondence with ArchSD and other

relevant parties on upgrading the electricity supply for Kwun Tong Ferry Concourse CFM in *Appendix 36*.

22. The Committee enquired whether FEHD would prepare guidelines on the use of electrical appliances, in particular for those public cooked food markets with sub-standard electricity supply. In reply, **Secretary for Food and Health** stated in his letter of 12 June 2015 (in Appendix 35) that FEHD had drawn up, in consultation with EMSD, guidelines on electrical safety and use of electrical appliances in CFMs/CFCs for tenants' reference. A copy of the guidelines is in *Appendix 37*. FEHD would ensure that these guidelines are properly implemented and updated as necessary.

23. The Committee asked about the rationale for adopting the current FEHD standard of 60A and how this standard should be interpreted. In reply, **Director of Food and Environmental Hygiene** explained at the public hearing and **Secretary for Food and Health** supplemented in his letter of 12 June 2015 (in Appendix 35) that:

- the standard electricity supply requirement (i.e. three phase 60A) for cooked food stall was stipulated in Clause 3.29.1 of the "Handbook on Standard Features for Public Markets and Cooked Food Centres" issued by FEHD in December 2011. The same requirement was also found in the former Urban Services Department's document issued in 1999. However, no record could be found on how this standard was formulated by the former Urban Services Department or FEHD at that time; and
- as advised by ArchSD and EMSD, a three phase 60A power supply would provide electricity for equipment and appliances up to roughly 33 kilowatt. The provision was generally adequate in respect of commercial type electrical appliances such as cooking range, rice cooker, refrigerator, tea urn, toaster, etc. that were normally required for a cooked food stall. Taking domestic appliances supplied by 13A power sockets for illustration purpose, the three phase 60A electrical system could meet the power requirement for about 15 induction cookers or as many as 40 1.8-litre traditional rice cookers.

Air-conditioning of markets

24. The Committee noted from paragraph 3.28 and Case 7 of the Audit Report that some stall operators at public cooked food markets had installed standalone air-conditioners without FEHD's prior approval. The Committee enquired what enforcement actions had been taken by FEHD in this aspect.

25. **Secretary for Food and Health** replied in his letter of 2 June 2015 (in Appendix 33) that:

- in accordance with the existing enforcement guidelines, FEHD staff would 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 were rectified;
- FEHD had 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 would 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; and
- FEHD had reminded market stall tenants to seek prior approval before installing air-conditioners to avoid overloading the electricity system.

26. The Committee noted with concerns from paragraphs 3.24 and 3.25 of the Audit Report that as at December 2014, of the 75 public cooked food markets, only 22 (29%) were air-conditioned and poor ventilation was a major concern of operators and patrons of public cooked food markets, affecting the viability of the stalls. The Committee enquired about the successful cases of retrofitting of air-conditioning systems. As FEHD would only conduct a detailed technical feasibility study if not less than 85% of the stall operators of a market endorsed retrofitting an air-conditioning system and agreed to bear the recurrent costs, the Committee also asked about the average time taken between the surveys gauging the views of the stall operators on the retrofitting of air-conditioning systems to the actual completion of the retrofitting works.

27. **Secretary for Food and Health** said in his letter of 2 June 2015 (in Appendix 33) that retrofitting of air-conditioning system was carried out in three CFCs (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. 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 air-conditioning 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 of conducting the survey among stall operators to completion of the retrofitting works, it took about two to two-and-a-half years. This timeframe might serve general reference purpose. However, it should not be taken as a benchmark for future air-conditioning retrofitting projects as the circumstances of individual CFCs or CFMs may vary significantly.

D. Management of market stalls

28. The Committee noted from paragraphs 4.3, 4.6 and 4.7 and Case 8 in the Audit Report that some stall operators were suspected to have contravened the conditions in the tenancy agreements. The Committee enquired about whether FEHD would strengthen its inspections and how FEHD would handle the non-compliant cases.

29. **Secretary for Food and Health** responded in his letter of 2 June 2015 (in Appendix 33) that:

- under the current departmental policy, FEHD would 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 was considered serious in nature, FEHD might consider terminating the tenancy agreement upon one single conviction. A set of the relevant policy guidelines is in *Appendix 38*; and

- separately, FEHD would 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 in *Appendix 39*.

Use of communal area

30. As regards Case 8 in the Audit Report, **Secretary for Food and Health** stated in his letter of 2 June 2015 (in Appendix 33) that:

- the communal area in CFCs and CFMs was intended for the shared use of customers patronising the cooked food stalls. Therefore, individual tenants of cooked food stalls in CFCs and CFMs were 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 contained an express clause prohibiting the occupation of the communal seating area for exclusive use. The clause was read 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."

- policy letters had been 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 would 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". A copy of the letter is in *Appendix 40*; and
- notices were 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. A copy of the notice is in *Appendix 41*.

Sale of liquor

31. According to paragraph 4.6 of the Audit Report, during Audit's site visits to some CFMs and CFCs, it was found that some stalls sold liquor to patrons, and there

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were cases in which the liquor was sold and consumed in the communal area or inside the stall area. However, as at December 2014, none of the stalls in public cooked food markets had a liquor licence. The Committee asked Director of Food and Environmental Hygiene to clarify under what circumstances a stall would be required to have a liquor licence.

32. **Director of Food and Environmental Hygiene and Mr Edward CHAN Yiu-keung, Acting Assistant Director (Operations)2, Food and Environmental Hygiene Department** explained at the public hearing and **Secretary for Food and Health** supplemented in his letter of 2 June 2015 (in Appendix 33) that:

- according to the advice 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. 109B) if the consumption of the liquor did not take place in the stalls where the intoxicating drinks were sold; and
- in paragraph 4.9(c) of the Audit Report, DoJ's advice was described as being "preliminary". FEHD surmised that the then Provisional Urban Council's memo to DoJ might have given Audit 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 section 25A of DC(L)R did not apply to the sale of liquor in the 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 inset. FEHD would write to seek confirmation from DoJ on whether section 25A of DC(L)R applied to the sale of liquor in market stalls provided with communal seating areas.

33. In response to the Committee's enquiry about whether FEHD would consider issuing guidelines on activities allowed/disallowed under the tenancy agreement to facilitate the understanding of the tenants, **Secretary for Food and Health** said in his letter of 2 June 2015 (in Appendix 33) that there were clauses in the tenancy agreement governing the use and operation of stalls. A specimen of the latest version of the tenancy agreement is in **Appendix 42**. As the tenancy agreement and policy letter had 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 did not see a pressing need to issue separate guidelines on the same subjects. FEHD would step up sanction action against recalcitrant tenants who occupied tables and chairs in the communal seating area for their exclusive use.

Cases identified in Audit Report

34. In response to the Committee's enquiry about the follow-up actions taken by FEHD in respect of the cases identified in the Audit Report, **Secretary for Food and Health** replied in his letter of 2 June 2015 (in Appendix 33) that:

Adequacy of hygiene facilities

- 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 were 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 were built by the Administration to hygiene standards no less stringent than those required of a licensed restaurant. The relevant hygiene standards required 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 square metres of communal seating was also required for one stall (each of which was about 15 square metres in size);
- it was 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 a hygienic way, and ensure personal cleanliness, etc. FEHD would review from time to time if the current stipulations on conditions relating to food and environmental hygiene were adequate and would

enhance inspections to ensure tenants' compliance with the prevailing conditions;

Sale of liquor

- FEHD would 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; and

Unauthorized food factory operation

- 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 so far. The department would step up inspections and closely monitor the situation. Should non-compliance persist, FEHD would consider terminating their tenancy agreements under the existing sanction mechanism.

E. Management of stall rentals and charges

35. The Committee noted that in its Report No. 51 of February 2009, the Committee expressed serious concern that, amongst others, the problem of rental disparity in the same market had not been resolved; FHB and FEHD had not devised a rental adjustment mechanism; air-conditioning cost had not been recovered from stall tenants and rates were paid by FEHD on behalf of stall tenants and had not been recovered from the tenants, despite stipulation in the tenancy agreements that tenants were responsible for their rates payment. According to paragraph 5.9 and Table 9 in the Audit Report, the tenants of 389 stalls (40%) of CFMs and CFCs were paying less than 50% of the open market rental while 5% of the tenants were paying above the open market rental. As regards the recovery of air-conditioning costs, the Committee noted from paragraph 5.28 of the Audit Report that for 2013-2014, the amount of air-conditioning costs not recovered from stall operators was about \$16 million. The Committee was concerned about the lack of progress in these

subject matters and asked the Administration to provide an update on these subject matters.

36. **Director of Food and Environmental Hygiene** explained at the public hearing and **Secretary for Food and Health** supplemented in his letter of 2 June 2015 (in Appendix 33) that:

Market rental

- the Administration generally agreed with the Audit's recommendations on the question of rental for public markets, that is, the Administration needed a reasonable rental adjustment mechanism which allowed the rental of market stalls to catch up with the rental of broadly comparable stalls which were recently allocated through open auction in other public markets. The Administration had hitherto presented three different proposals to the LegCo FSEH Panel (in July 2009, December 2010 and January 2013 respectively)³. LegCo Members did not support the proposals;
- the low market stall rental did not only lead to operating deficits in the management of public markets, resulting in subsidization of commercial operations by public money. In the Administration's view, it was 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 incentivized tenants to put their stalls to optimal use was hardly conducive to the vibrancy of the markets;
- in 2013, FHB commissioned a consultant to assist in developing proposals for improving the operating environment of public markets, for the purpose of enabling them to fulfill the functions expected of them in present-day circumstances. FHB was due to go before the LegCo Subcommittee on Issues Relating to Public Markets in late June 2015 to present the general response to the recommendations in the final report of the consultancy study. The Administration would continue to discuss the way forward on the rental adjustment mechanism with the Subcommittee and the relevant stakeholders;

³ Please refer to the paper from FHB to the FSEH Panel (LC Paper No. CB(2)415/12-13(03)) in January 2013 on details of the rental adjustment mechanism proposed in 2009, 2010 and 2013. In gist, under the 2013 proposal, the market stall rentals would be adjusted in accordance with the movement of the average Consumer Price Index (A) of the past three years, with the increase capped at 5% or the open market rental, whichever is the lower.

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- FEHD was 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 was envisaged that any material change to the current practice which had become deeply entrenched over the years would draw fierce resistance and criticisms from the tenants. The proposed change might also have read-across implications on the renewal of tenancy for over 13 000 public market stalls selling wet and dry goods. The Administration would therefore gauge further the sentiments of the community as well as LegCo and District Councils and assess the impact on various stakeholders as part of the deliberation on the way forward;

Rates

- regarding the recovery of rates from market stalls, the Administration agreed that rates should be paid by the market stall tenants. At the request of the LegCo FSEH Panel, the Administration consulted public market tenants and trader organisations in 2009 on this subject. 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 Administration's current practice of paying rates on behalf of the tenants, which had been adopted for years, should continue;
- the FSEH Panel passed the following motion 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

- on the question of air-conditioning charges, it was Government policy that the recurrent expenses, including electricity charges and general maintenance costs, should be borne by market tenants. The Administration briefed the FSEH Panel on its views and proposals on the recovery of air-conditioning charges in public markets in July 2009 and December 2010⁴. The Panel did not support the proposals;

⁴ Please refer to the FHB's papers to the FSEH Panel for details of the proposals on the recovery of air-conditioning charges for public markets: LC Paper Nos. CB(2)2155/08-09(05) and CB(2)492/10-11(03).

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- in a paper presented to the LegCo Subcommittee on Issues Relating to Public Markets on 18 November 2014, the Administration 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 Administration 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 were due for renewal in end 2015. In the case of any existing FEHD markets for which the Administration sought to retrofit an air-conditioning system, the Administration would apply the same principles and amend the tenancy agreements with the tenants accordingly; and
- the Administration would 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.

F. Way forward

37. The Committee recalled that after the Committee's Report No. 51 was published in February 2009, the Administration, when replying to the FSEH Panel members' enquiries, seemed to have made the Committee accountable for FEHD's introduction of new tenancy agreement, which was objected to by many market stall tenants. The Committee stressed that the way FHB and FEHD had handled the matter gave the Committee the impression that they had been deliberately selective in using the conclusions and recommendations of the Committee in that only those that aligned with their proposed courses of action were focused on. While the Committee would monitor the Administration's progress in implementing the Committee's recommendations, it was the Administration which was responsible for how those measures should be implemented and ensuring their successful implementation. The Committee has reiterated this point in the public hearing to the Administration.

38. In response, **Secretary for Food and Health** assured the Committee at the public hearing that the Administration would consider the recommendations of Audit and the Committee and would not use any of these recommendations to justify the implementation of any stringent and unpopular measures.

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39. The Committee noted from paragraph 6.5 of the Audit Report that in 2012, FSTB shortlisted some sites for further study by the Planning Department of their redevelopment potential. FSTB requested FEHD to review the possibility of releasing its 17 sites on the shortlist, including 12 sites at which five CFHBs, two CFMs and five CFCs were located. FEHD considered that three CFHB sites could be released. The Committee enquired about the progress on releasing these three sites.

40. **Director of Food and Environmental Hygiene** said at the public hearing and **Secretary for Food and Health** stated in his letter of 2 June 2015 (in Appendix 33) that on the three CFHBs sites which could be released, FEHD had started to discuss the exit plans with the affected cooked food hawkers. One of these sites, that is, Tai Lin Pai Road CFHB, had been included in the 2015-2016 land sale programme. FEHD had discussed about the exit arrangements for the stall operators of this CFHB. For the other two CFHBs, FEHD would continue the discussion with the relevant licensed hawkers 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 the ensuing discussions with the affected hawkers, FEHD could not be more specific at this stage on the work plan and timetable for vacating the sites. The Administration was nonetheless actively pursuing the exit plans with due regard to the wider public interest.

41. **Secretary for Food and Health** supplemented through his letter dated 25 June 2015 (in *Appendix 43*) that one of the two CFHBs mentioned in paragraph 40 above was the Yu Chau West Street CFHB. The latest development was that:

- on 23 June 2015, the Planning Department consulted the Sham Shui Po District Council on the proposed rezoning of a Government site currently housing the Yu Chau West Street CFHB and Wing Hong Street Temporary Refuse Collection Point from government, institution or community use to commercial use. The Planning Department would consider the views expressed by the Sham Shui Po District Council and submit the proposed amendments to the Metro Planning Committee of the Town Planning Board for consideration in accordance with the established procedures in the latter half of 2015; and
- since the restaurants within the industrial/commercial and business area of Cheung Sha Wan could already meet the catering needs of the

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working population thereof, and the utilization rate of Yu Chau West Street CFHB had been persistently low, permanent closure of Yu Chau West Street CFHB would not affect the provision of catering service in the area. FEHD, therefore, considered it appropriate to close the CFHB permanently and release the site for more gainful use. FEHD would draw up exit plans for the hawkers concerned taking into account the established policy and the hawkers' views.

42. The Committee enquired whether Secretary for Food and Health would consider the future planning of public cooked food markets together with the development of public markets and hawkers from a "development" perspective in order to achieve synergies.

43. **Secretary for Food and Health** said at the public hearing that while he basically agreed about the development of public cooked food markets, it was necessary to ensure the use of scarce land resources in an optimum way. On the one hand, the Administration would act as a facilitator in the development of public cooked food markets, hawkers and public markets in order to solicit the support of the public and LegCo for a suitable rental adjustment mechanism. On the other hand, FHB would need to obtain the necessary resources for the implementation of any new policies. It would have to study how to make more effective use of scarce resources, including those public cooked food markets with high vacancy rates.

G. Conclusions and recommendations

Overall comments

44. The Committee:

- notes that:

- (a) Hong Kong's reputation as a "gourmet's paradise" has been promoted to the world as one of the major tourist attractions and a great variety of cuisines are provided at different kinds of eateries catering for various customers;

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- (b) the cooked food markets in Singapore and Taiwan are great tourist attractions in view of their local flavours and they are value-for-money;
 - (c) the Legislative Council ("LegCo") Panel on Food Safety and Environmental Hygiene has formed two subcommittees, namely, the Subcommittee on Issues Relating to Public Markets and the Subcommittee on Hawker Policy, to study issues relating to public markets and hawker policy respectively. These two subcommittees will submit their reports under their respective terms of reference in the coming months; and
 - (d) the Committee conducted public hearings on public markets managed by the Food and Environmental Hygiene Department ("FEHD") in December 2003 and December 2008 and the findings are reported in its Reports No. 41 of February 2004 and No. 51 of February 2009 respectively;
- further notes from the Director of Audit's Report ("Audit Report") that in 2012, after reviewing about 4 500 government sites being used for providing various public facilities, the Financial Services and the Treasury Bureau ("FSTB") shortlisted some sites for further study by the Planning Department of their redevelopment potential. FSTB requested FEHD to review the possibility of releasing its 17 sites on the shortlist, including 12 sites at which five cooked food hawker bazaars ("CFHBs"), two cooked food markets ("CFMs") and five cooked food centres ("CFCs") were located⁵. FEHD considered that three CFHB sites could be released, and the remaining nine sites either needed to be retained to relocate operators in the three CFHBs, or had high occupancy rates;
 - considers that Secretary for Food and Health, with valuable sites for redevelopment at his disposal, should seize this opportunity as a leverage to expedite the formulation of a long-term policy on public cooked food markets, public markets and hawkers from a "development" perspective. This would entail liaising with other relevant bureaux to arrive at holistic policies and soliciting necessary resources to implement new initiatives to speed up the consolidation and development of public cooked food markets. In this connection, any new development plans for public markets, hawkers and public

⁵ Out of the 75 public cooked food markets, only 12 sites were included in the 2012 FSTB study.

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cooked food markets would inevitably involve integrated town planning issues;

- expresses serious concern about:
 - (a) the undesirable operational environment and hygiene conditions of most of the CFHBs, CFMs and CFCs, which cry out for modernization and upgrading of their facilities in order to enhance their viability;
 - (b) the lack of a clear government policy on the positioning, functions and subsidization of the public cooked food markets and the present policy appears to be archaic, fragmented and piecemeal which are not conducive to providing an attractive operational environment for the stall operators; and
 - (c) insufficient importance attached to public cooked food markets by the Food and Health Bureau ("FHB") and FEHD as the role and development of these markets had not been included in the consultancy study on public markets⁶ nor the review on hawker policy undertaken by FHB/FEHD;
- acknowledges that the incumbent Secretary for Food and Health has displayed sincerity and willingness to face squarely with the long-term problems associated with public cooked food markets;
- urges Secretary for Food and Health and Director of Food and Environmental Hygiene to:
 - (a) proactively formulate an integrated policy in taking forward the future development of public cooked food markets together with public markets and hawkers to achieve synergy. The policy should be formulated from a "development" perspective with a view to enhancing their viability, promoting them as tourist attractions and the provision of employment opportunities and affordable food as well as entrepreneurial opportunities in local areas; and
 - (b) thoroughly consult the relevant stakeholders before any new measures are implemented. In particular, it is necessary to adopt a people-oriented approach in handling issues relating to

⁶ The Administration commissioned a consultancy study to improve the operating environment of public markets in December 2013.

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public cooked food markets, such as the consolidation of markets with high vacancy rates after considering the history and particular circumstantial factors of each of these markets;

- cautions that the Administration should not introduce any stringent and unpopular measures relating to public cooked food markets under the pretext of responding to the recommendations of the Committee;
- considers that the development of public cooked food markets, public markets and hawkers should be considered alongside with the proposal of introducing Food Trucks to the mix of Hong Kong's existing food scene which was mentioned by the Financial Secretary in his 2015-2016 Budget Speech;

Vacancy rates of markets

- expresses serious concern and finds it unacceptable about the lax attitude of FHB and FEHD in handling the high vacancy rates of CFHBs and CFMs and some public cooked food markets which have been located at temporary sites for a long time as evidenced by the following:
 - (a) the average vacancy rate for 11 CFHBs was 61% and five CFHBs had a high vacancy rate of more than 70%. 79% (114 out of 144) of the vacant CFHB stalls had been vacant for more than 10 years as at 31 December 2014;
 - (b) as revealed by Cases 1 and 2 in the Audit Report, the Administration had not made sufficient efforts to consolidate CFHB stalls with high vacancy rates in the same district;
 - (c) nine public cooked food markets which were located at temporary sites as at December 2014 were built between 1972 and 1984. They had occupied the "temporary" sites for some 30 to 42 years. The Administration had not formulated a clear exit plan for any of these nine markets; and
 - (d) despite that the problem of high vacancy rates at some public markets had been identified in the Committee's Reports No. 41 and No. 51, the problem still persisted and had aggravated, in particular for CFHBs;

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- notes the explanation given by Secretary for Food and Health that it was the policy intention that CFHBs should be transient in nature for the purpose of resiting stall operators with hawker licences and they would be phased out eventually;
- considers that the above explanation should not be used as a pretext not to consolidate the sites currently occupied by CFHBs as both Secretary for Food and Health and Director of Food and Environmental Hygiene have to be accountable for the efficient and gainful use of precious land resources;
- urges Secretary for Food and Health to consider launching an enhanced ex-gratia payment scheme to encourage cooked food hawker licensees to surrender their licences voluntarily so as to expedite the consolidation of CFHBs with high vacancy rates and redevelop vacated CFHB sites for more gainful uses;
- urges Director of Food and Environmental Hygiene to:
 - (a) expedite the consolidation of CFHBs with high vacancy rates and formulate future development plans for public cooked food markets which are currently located at temporary sites; and
 - (b) consider modernizing and upgrading the facilities and operating environment of CFHBs and CFMs, where applicable, having regard to the expected operating period of these markets in order to lower their vacancy rates and enhance their attractiveness to the stall operators and the public;

Provision of facilities in markets

- emphasizes that safety is of utmost importance for the public cooked food operators and their customers and it is imperative that the Administration should implement all necessary measures to upgrade the fire safety facilities and electricity supply to meet the relevant requirements expeditiously;
- expresses serious concern and finds it unacceptable about the slow progress of FEHD in upgrading the fire safety measures and electricity supply for the public cooked food markets with details as follows:

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- (a) for CFHBs, all had only implemented two or less stipulated measures for fire safety⁷ while for CFMs, more than 50% (13 out of 25) had only implemented four or less stipulated measures for fire safety; and
 - (b) according to Audit analysis⁸ on the electricity supply for 25 CFMs and 39 CFCs, no CFM, and only two CFCs, had electricity supply that met the FEHD's 60-ampere standard;
- urges Director of Food and Environmental Hygiene to:
- (a) expedite the implementation of fire safety measures at public cooked food markets and update the implementation plan as necessary on a regular basis;
 - (b) assess the feasibility of upgrading the electricity supply having regard to the following factors: technical feasibility and cost implications, planning for future development of CFMs/CFCs, electricity consumption of CFMs/CFCs and risk exposure; and
 - (c) for those CFMs and CFCs not suitable for upgrading works, issue guidelines on the use of electrical appliances and strengthen regular inspections to ensure that the guidelines are followed properly, in particular for those high-consumption appliances, such as those stand-alone air-conditioners without FEHD's approval;
- expresses astonishment and grave concern and finds it unacceptable that only 22 out of the 75 public cooked food markets were air-conditioned as at December 2014;
- strongly urges Secretary for Food and Health and Director of Food and Environmental Hygiene to come up with a new policy to speed up the retrofitting of public cooked food markets with air-conditioning systems and work in close liaison with the relevant stakeholders to take forward any such proposal in a timely manner;

⁷ The six stipulated measures for fire safety are: (a) automatic sprinkler system; (b) automatic cut-off device for mechanical ventilating systems; (c) emergency lighting; (d) fire hydrant and hose reel system; (e) manual fire alarm; and (f) portable fire extinguisher.

⁸ See Table 7 of the Audit Report for details.

Management of market stalls

- expresses grave concern that:
 - (a) while public cooked food stalls in CFMs and CFCs are exempt from obtaining a restaurant licence, some stalls had operated at a scale much larger than the originally intended two tables and eight stools in the hawking area as in Case 8 in the Audit Report; and
 - (b) some public cooked food stalls had carried out regulated activities that may require a licence as evidenced by paragraphs 4.6 and 4.7 of the Audit Report;
- urges Director of Food and Environmental Hygiene to conduct necessary inspections and take appropriate follow-up actions on the cases identified in Case 8 and paragraphs 4.6 and 4.7 of the Audit Report;
- expresses grave concern about various areas for improvement as mentioned in paragraphs 4.18 to 4.24 of the Audit Report on routine inspections;
- urges Director of Food and Environmental Hygiene to enhance the inspections and take appropriate follow-up actions to rectify any irregularities at public cooked food markets;

Management of stall rentals and charges

- expresses grave concern that the following issues which were mentioned in the Committee's Report No. 51 of February 2009 have been outstanding for a long time:
 - (a) despite that deficits had been recorded in the management of public markets⁹, including the public cooked food markets, and 40% of the CFM and CFC stalls were paying 50% or less of the open market rent, the Administration still could not solicit support of the stakeholders and LegCo Members on a suitable rent adjustment mechanism;

⁹ According to paragraph 5.9 of the Audit Report, the deficit incurred for 2013-2014 was \$238 million.

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- (b) FHB and FEHD had not resolved the problem of rental disparity in the same market, i.e. some tenants (e.g. ex-licensed hawkers) are paying extremely low rentals whereas others renting similar stalls through open auctions were paying higher rentals;
 - (c) FEHD had not recovered from stall tenants the rates paid on their behalf, despite stipulation in the tenancy agreements that tenants were responsible for their rates payment; and
 - (d) air-conditioning costs were charged under two different arrangements, namely subsumed¹⁰ and separate¹¹ charging despite FEHD's intention to replace the subsumed charging arrangement with the separate-charging arrangement. Air-conditioning costs had been under-recovered from the stall tenants;
- expresses serious concern and finds it unacceptable that the air-conditioning costs under the separate charging arrangement had been frozen as the charge-out rates¹² of 2005 had all along been used to recover air-conditioning costs. This practice was adopted despite that FEHD had informed FSTB in June 2007 that the charge-out rates would be reviewed annually, and FEHD would apply the new charge-out rates to all new and renewed tenancies;
 - urges Secretary for Food and Health and Director of Food and Environmental Hygiene to expedite their efforts to:
 - (a) formulate a rental adjustment mechanism;
 - (b) explore the feasibility of charging rentals of public market stalls on an inclusive-of-rates basis, in order to recover the rates paid by FEHD on behalf of stall tenants; and
 - (c) separate the air-conditioning costs from the rental charges and use the updated charge-out rates to recover the air-conditioning costs under the separate charging arrangement; and

10 Under subsumed charging, air-conditioning costs are factored into the open market rentals and form part of the rentals.

11 Under separate charging, air-conditioning costs are charged separately from rentals.

12 The charge-out rate represents the recurrent cost of air-conditioning per unit area in the market. FEHD conducts specific exercises for compiling the rate. The last charge-out rates were compiled in 2010. See Note 30 of the Audit Report.

- notes that Secretary for Food and Health and Director of Food and Environmental Hygiene:
 - (a) briefed the LegCo Subcommittee on Issues Relating to Public Markets in June 2015 after the consultancy study on the function and positioning of public markets and measures to improve their operating environment is finalized and the preliminary proposals on a rental adjustment mechanism was raised for the discussion of the Subcommittee at the meeting; and
 - (b) will conduct a review to align the air-conditioning charging arrangements with regard to "user pays" and "parity" principles, and amend the tenancy agreements of the relevant tenants to adopt a separate charging arrangement when they are due for renewal by the end of 2015.

Specific comments

45. The Committee:

Vacancy rates of markets

- expresses serious concern and finds it unacceptable that:
 - (a) FEHD had not taken timely action to deal with the problem of high vacancy rates of CFHBs under the Government's policy of not issuing new hawker licences since the early 1970s. As at 31 December 2014, 11 CFHBs had a stall vacancy rate of 61% on average. Of a total of 144 vacant stalls in these 11 CFHBs, 114 (79%) stalls had been vacant for over 10 years;
 - (b) as at December 2014, six CFHBs, two CFMs and one CFC had been located at temporary sites for some 30 to 42 years. While in 2001 FEHD considered that the Cheung Sha Wan CFM, the largest one, should be closed down, it did not formulate any work plan to do so. The Cheung Sha Wan CFM continued to operate and 16 (57%) of its 28 stalls had been frozen for over a decade; and

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- (c) while FEHD intended that all genuinely non-viable hawker pitches and market pitches should be delisted, it had not conducted periodic reviews to assess the viability of each public cooked food market and its alternative use;
- notes that Secretary for Food and Health and Director of Food and Environmental Hygiene have generally agreed with the audit recommendations in paragraph 2.16 of the Audit Report;

Provision of facilities in markets

- expresses serious concern and finds it unacceptable that:
 - (a) while in 2003 FEHD decided to upgrade the fire safety measures at the markets, the progress had been slow and many markets had only upgraded a few fire safety measures;
 - (b) the electricity supply for most CFMs and CFCs had not been upgraded to meet the current standard set by FEHD. Sub-standard electricity supply had caused problems such as overloading of electricity system, and rendering the stalls unfit for letting, and retrofitting of air-conditioning systems not feasible; and
 - (c) only 22 (29%) of the 75 public cooked food markets were air-conditioned. Retrofitting of air-conditioning systems for some markets could not go ahead due to inadequate electricity supply. Some stall operators had installed standalone air-conditioners without FEHD's prior approval and without due consideration of the inadequate electricity supply, which could be a safety concern;
- notes that Secretary for Food and Health and Director of Food and Environmental Hygiene have agreed with the audit recommendations in paragraphs 3.11, 3.22 and 3.29 of the Audit Report;

Management of market stalls

- expresses grave concern that:
 - (a) while CFM and CFC stalls were intended for small-scale operation and might not meet the hygiene requirements and

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safety standards applicable to restaurants, some stalls were actually operating at a scale larger than traditional cooked food stalls;

- (b) some stalls without liquor licence sold liquor to patrons for consumption in the communal area or inside the stall area, and some stalls without food factory licence might be used as food factories; and
 - (c) there were inadequacies in FEHD's routine inspections of stalls in the public cooked food markets, including actions not taken on some irregularities such as obstruction of public areas and improper use of liquefied petroleum gas, and inspections not conducted in a timely manner in accordance with FEHD's requirements;
- notes that Secretary for Food and Health and Director of Food and Environmental Hygiene have agreed with the audit recommendations in paragraphs 4.8, 4.16 and 4.25 of the Audit Report;

Management of stall rentals and charges

- expresses grave concern that FEHD had not fully implemented its follow-up actions on the issues found in the 2008 audit review of public markets, including many stall tenants paying lower-than-market rentals, rates paid on behalf of stall tenants not recovered, and under-recovery of air-conditioning costs from stall tenants;
- notes that Secretary for Food and Health and Director of Food and Environmental Hygiene have generally agreed with the audit recommendations in paragraphs 5.12, 5.18 and 5.29 of the Audit Report;

Way forward

- notes that in 2012, FSTB selected some government sites to study their redevelopment potential. FEHD considered that three CFHB sites covered by the study could be released and started the negotiation with the licensees of two CFHBs on closure;

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- considers that FEHD should explore the redevelopment potential or alternative use of the 63¹³ public cooked food market sites not covered in the 2012 FSTB study, particularly those in prime areas and with high vacancy rates; and
- notes that Secretary for Food and Health and Director of Food and Environmental Hygiene have agreed with the audit recommendations in paragraph 6.9 of the Audit Report.

Follow-up action

46. The Committee wishes to be kept informed of the progress made in implementing the various recommendations made by the Committee and the Audit Commission.

13 Out of the 75 public cooked food markets, only 12 sites were included in the 2012 FSTB study.