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Panel on Food Safety and Environmental Hygiene

Subcommittee on Issues Relating to Public Markets

Background brief prepared by the Legislative Council Secretariat for the meeting on 6 March 2018

Issues relating to public markets

Purpose

This paper provides background information on issues relating to public markets, and summarizes the major views and concerns expressed by Members on the subject at meetings of the Panel on Food Safety and Environmental Hygiene ("the Panel") and the Subcommittee on Issues Relating to Public Markets ("the former Subcommittee") formed under the Panel in the Fifth Legislative Council ("LegCo").

Background

2. According to the Administration, public markets were provided by the two former Municipal Councils ("MCs") in early years for resiting hawkers with a view to improving street hygiene and alleviating street obstruction. To pursue this objective, the positioning and functions of public markets as well as market layout and stall design were to a large extent developed in the form of bazaars, while concessionary rental arrangements were made to encourage hawkers to move into public markets. Since the late 1990s, as the number of licensed hawkers has decreased significantly, the main positioning and functions of public markets as a means to resiting hawkers and supporting the hawker policy were no longer valid. The design and layout of newly built public markets have evolved to provide bigger stalls and wider passageways. Following the dissolution of the former MCs on 1 January 2000, the Food and Environmental Hygiene Department ("FEHD") has taken over the responsibility

for managing public markets. FEHD is currently managing 75 public markets that sell wet and dry goods¹.

The Subcommittee formed under the Panel in the Fifth LegCo

3. At its meeting on 8 January 2013, the Panel appointed the former Subcommittee to study issues relating to the policy and business environment of public markets and follow up on issues relating to the installation of air-conditioning facilities in public markets. The former Subcommittee completed its work in September 2015 and put forward a number of recommendations report in Panel Paper its to the (LC No. CB(2)2142/14-15(01)). A summary of the recommendations is in Appendix I.

Members' major views and concerns

4. Members' major views and concerns on the subject are summarized in the ensuing paragraphs.

Positioning, functions and usage of public markets

5. During the deliberations of the former Subcommittee, Members expressed the view that despite the proliferation of supermarkets and fresh provision shops in recent years, public markets still served as a major source of fresh provisions for the general public and provided employment opportunities for the grassroots. Some Members considered it desirable for the Government to subsidize the operation of public markets in view of their important social functions. Members were also concerned about the high vacancy rates in a number of public markets and the prevalence of non-operating stalls. There was a suggestion that the Administration could better utilize a few public markets with very low occupancy rates by converting them into community facilities providing leisure and cultural services and/or other social services.

6. The Administration advised that it had made sustained efforts to enhance the operating environment and competitiveness of public markets. According to the Administration, the occupancy of public markets was influenced by many factors, such as competition from retail outlets selling similar commodities in the vicinity and demographic changes in the district. To enhance the utilization of public markets, FEHD had carried out inspections regularly, and enforcement action would be taken against stall operators that were found to be not operating their business for seven consecutive days. Since July 2009, FEHD had widened the trade mix by introducing service trades,

¹ The above information is obtained from the website of FEHD on 2 March 2018.

light refreshment and bakery stalls. In addition, starting from February 2009, the upset auction prices were lowered to 80% and 60% of the open market rentals for stalls which had been left vacant for six months and eight months respectively in order to boost the occupancy rate of public markets. FEHD had also started to let out small stalls through short-term tenancies on a trial basis since October 2010. For individual public markets with very high vacancy rates, FEHD would consider relocating stall operators that were previously scattered on different floors to the same floor so as to increase the patronage.

7. Members had called on the Administration to introduce new promotional strategies to enhance the operating environment of public markets. As advised by the Administration, FEHD would launch a series of new promotional programmes to attract more people to visit the public markets and the estimated expenditure for market promotional activities in 2017-2018 was \$7 million.

Proposals of the consultancy study to improve the operating environment of public markets

8. Members considered that the Administration should take actions to improve the layout design and daily management of public markets, making them more attractive to the general public and boosting their usage rate. The former Subcommittee was advised that a consultant was commissioned to commence a consultancy study in December 2013 ("the consultancy study") to assist in developing proposals for improving the operating environment of public markets.² Members noted that the consultancy study had provided improvement proposals for six selected markets which were intended to serve as prototypes for reference to other markets.³ To fully utilize the improved hardware, the consultant considered it necessary to introduce changes to the software, including tenants' behaviour and practices in using market facilities, and in particular, the need for them to engage in active trading and in keeping the markets neat, tidy, vibrant and appealing as a shopping venue.

² According to the Administration's information note provided to the Panel in August 2013 (LC Paper No. CB(2)1694/12-13(01)), the scope of the consultancy study included (a) tendering views on the functions and positioning of public markets; (b) surveying the public markets and coming up with concrete improvement proposals for five or six representative ones; (c) providing some general suggestions for the routine improvement works for public markets; and (d) suggesting ways and pragmatic measures to preserve market stalls that are selling traditional commodities or involving traditional specialty.

³ The six selected markets were Tsuen Wan Market, Yau Ma Tei Market, Ngau Chi Wan Market, Sheung Fung Street Market, Lockhart Road Market and Wing Fong Street Market.

9. Members raised concern about the representativeness of the six selected public markets as well as the extent to which these six markets could provide reference to other public markets. Some Members queried whether the implementation of the consultant's improvement proposals could significantly improve the operating environment and increase the patronage of public markets. Members also stressed that the Administration should ensure that there would be adequate consultation with stall tenants before implementing the consultant's proposals on the physical design and layout of public markets.

10. According to the information provided by the Administration to the Panel in March 2017, FEHD had consulted the Market Management Consultative Committees ("MMCCs") of four of the six selected markets and would follow-up with the other markets in accordance with the established procedures and mechanism. In 2017-2018, FEHD planned to commence improvement works for Lockhart Road Market. The scope of improvement works for Sheung Fung Street Market was also being finalized in consultation with relevant departments.

11. As regards the management model for public markets, many Members expressed objection to the consultant's proposal for subletting the management of public markets to a single operator, given the experience of privatizing the commercial facilities (including markets) of the Housing Authority. They considered that the Administration should devise a new management model which could enhance the partnership between FEHD and stall tenants and cultivate a sense of ownership and a sense of responsibility among stall tenants.

12. The Administration advised that it was open to any proposal for improving the management of public markets. The Administration agreed that there was a need to explore various options conducive to better management of public markets including, for example, stepping up FEHD's management and enforcement work, enhancing tenants' input in the management of markets, and reviewing the market management consultative mechanism, etc. Nevertheless, the Administration would need to prioritize the reforms in line with the availability of resources and the readiness of major stakeholders.

Provision of air-conditioning facilities in public markets

Threshold for the retrofitting of air-conditioning facilities in public markets

13. The former Subcommittee passed a motion urging the Administration to remove the threshold of tenants' support at 85% as the requirement for the public retrofitting of air-conditioning systems in markets. and to comprehensively review the criteria adopted in the retrofitting of air-conditioning systems. In response to the motion passed by the former Subcommittee, the Administration advised that it had decided to, with effect from 1 July 2015, lower the threshold of tenants' support from 85% to 80%. While welcoming the Administration's decision, Members remained of the view that the Administration should further revise and lower the threshold. Some Members considered that it was more reasonable to set the threshold between 60% and 70% and that the Administration should adopt a more responsive and flexible approach in taking forward proposals for retrofitting of air-conditioning facilities in both public markets and cooked food centres, for example, by accepting floor-by-floor proposals for retrofitting of air-conditioning facilities.

14. The Administration explained that when a public market was installed with the air-conditioning facilities, all tenants would have to pay for the recurrent expenses, including the electricity charges and general maintenance The additional operating cost related to the air-conditioning facilities costs. was a factor that existing tenants might not have taken into account when they bid for their public market stalls. Tenants who did not wish to pay these charges would have to move out of the public market. In addition, the installation work of air-conditioning facilities often involved partial or complete closure of the public market for a certain period of time, thus disrupting business and affecting the livelihood of tenants. If the threshold was set too low, it might give rise to strong discontent and grievances among those stall tenants who did not support the proposal to install air-conditioning facilities in the At the request of the former Subcommittee, the Administration agreed market. to keep the 80% threshold under regular review.

15. According to the information provided by the Administration to the Panel in March 2017, FEHD had consulted MMCCs of all relevant markets, and was taking forward progressively in accordance with the established procedures and mechanism including securing the necessary funding for the initiative for 11 public markets/cooked food centres which had obtained adequate support from tenants.⁴

Air-conditioning charging arrangement

16. During the deliberations of the former Subcommittee, many Members considered that market stall operators should not be required to pay the

⁴ According to the supplementary information provided by the Administration to the Panel in January 2018 (LC Paper No. CB(2)804/17-18(01)), the 11 public markets/cooked food centres are Tai Wai Market, Tsuen Wan Market, Yeung Uk Road Market, Aberdeen Market and its cooked food centre as well as the cooked food centres of Shui Wo Street Market, Electric Road Market, Fa Yuen Street Market, Ngau Chi Wan Market, Ngau Tau Kwok Market, Quarry Bay Market and Shek Tong Tsui Market. The Panel will consider the proposal on installation of air-conditioning system at Tai Wai Market at its meeting on 13 March 2018.

air-conditioning charges for common areas in public markets such as the passageways. They suggested that air-conditioning charges attributable to public areas of markets should be borne by the Government and tenants should only pay charges on the basis of the actual size of their stall areas. Some Members took the view that if stall operators were required to pay air-conditioning charges only for their actual stall areas, more stall operators would support the proposals for retrofitting of air-conditioning facilities in public markets. The Administration was urged to review the existing air-conditioning charging arrangement.

17. The Administration advised that the high capital costs of retrofitting of air-conditioning facilities were borne entirely by the Government. Unlike landlords in private commercial venues, who sought to recover the capital costs of retrofitting of air-conditioning facilities through rental adjustments, the Government did not recover the capital costs. As tenants in public markets were commercial operators, further Government subsidy in the form of air-conditioning charges might give rise to unfair competition between stalls in public markets and similar retail operators in private commercial retail premises, especially those in areas nearby, and inconsistency in the cost sharing methods applicable to stalls in public markets and other Government rental properties.

18. The Administration further advised that it was not appropriate to draw a direct comparison between commercial shopping arcades and public markets as there were fundamental differences between the two though they were both The common areas in public markets were in reality part of the retail outlets. trading environment, as customers in public markets stayed in the corridor (i.e. the common areas) when choosing and purchasing the goods. Also, tenants in commercial shopping arcade were generally required to pay management fees. In contrast, public market tenants were not required to pay any management fees. The proposal to exclude the public areas of markets from the calculation of air-conditioning charges payable by tenants would deviate from the existing practice in all Government rental properties. Since public areas were integral parts of the market trading environment and were used by the patrons of the stalls, the Administration considered it reasonable for tenants to pay for the relevant air-conditioning charges.

Rental adjustment policy

19. Members noted that the Administration's overall policy for public markets was to charge tenants according to the open market rentals ("OMR"). The rentals of public market stalls were normally set according to the open auction prices. The upset auction prices of market stalls were determined with reference to OMR as assessed by the Rating and Valuation Department ("RVD"). In assessing the rental value of market stalls, RVD would take into account the

general economic situation of Hong Kong, the actual conditions of individual markets and other relevant factors. Nonetheless, the public market rentals had been frozen since 1998 after an across-the-board reduction by 30% by the two former MCs in the light of the then economic situation. The rental freeze had been extended for a number of times until 30 June 2017.

20. In March 2017, the Administration advised the Panel that pending a comprehensive review of the market rental adjustment mechanism, upon expiry of the rental freeze on 1 July 2017, an arrangement would be put in place to adjust market rentals annually to catch up with inflation. Specifically, the rentals of public market stalls would be adjusted annually upon renewal of tenancy agreement or on the due date for rental adjustment as to be specified in the tenancy agreement, as the case might be, in line with the average of the year-on-year rates of change in Consumer Price Index(A) in the 12-month period six months before renewal of tenancy agreement or preceding the due date for rental adjustment. Members expressed objection to the market rental adjustment arrangement as proposed by the Administration, and considered that the Administration should improve the operating environment of public markets before adjusting the rentals. The Panel passed three motions urging the Administration to, inter alia, shelve the plan of effecting rental increase after 1 July 2017 and maintain the rental freeze for public markets so as to alleviate the difficulties faced by stall tenants.⁵

21. According to the Administration, cumulative inflation between 1998 and 2016 was 26.2%. In addition, the operating deficit of public markets had been progressively rising from \$168 million in 2011-2012 to \$294 million in 2015-2016, and was expected to further rise to \$414 million in 2016-2017. Tenants in the public markets were essentially commercial operations. As a matter of principle, the situation of subsidizing with taxpayers' money the commercial operations in public markets that were not subject to any means-testing should be addressed. The consultancy study had also pointed out that the continuation of low rentals for many of the public market stalls was one of the reasons contributing to the sub-optimal use of such stalls which in turn dampened the vibrancy of public markets. Pending a comprehensive review of the market rental adjustment mechanism and other related charges, which the Government intended to conduct in the near future and which might take some more time, the rental adjustment arrangement only aimed to catch up The Administration held the view that the financial impact on with inflation. the tenants would be mild, with an increase in monthly rentals of about \$69 on average for a non-cooked food stall and about \$168 for a cooked food stall for the first year of the renewed tenancy. It was thus reasonable to proceed with

⁵ For the wordings of the three motions passed by the Panel and the Administration's response, please refer to CB(2)998/16-17(01) and CB(2)1085/16-17(01) respectively.

the rental adjustment arrangement.

22. Noting that FEHD currently paid rates on behalf of stall tenants, some Members urged the Administration to continue this practice so as to support small business operations in public markets. The Administration pointed out that the old tenancy agreements had stipulated that tenants were responsible for payment of rentals as well as all the rates, taxes, other charges, etc., in respect of the stalls. FEHD had, however, paid rates on behalf of the stall tenants all along and had not recovered the rates from them. The Director of Audit had recommended that the Administration should explore recovering the rates payable by the tenants. This requirement was in line with the "user pays" principle adopted by the Administration in other public properties. The Administration would discuss with RVD rates assessment of public market stalls, with a view to identifying a way forward that would balance the interests of the tenants and safeguarding the prudent use of public money.

Correlation between rental levels and price levels

23. The Panel was advised at its meeting in June 2017 that in order to find out, in particular, whether there was any relationship between the prices of fresh food items and market rentals, FEHD had commissioned a consultant in the latter half of 2016 to carry out a survey on the prices of fresh food items sold in four major fresh food retail channels, namely public markets managed by FEHD, Link REIT markets ("Link markets"), supermarkets and other fresh food retail outlets in the neighbourhood. The Administration advised that according to the survey findings, the assumption that items sold at FEHD markets were necessarily cheaper than those sold at other retail outlets was not supported by facts nor data. Despite the low rentals paid by the tenants of public markets, no significant price difference had been observed in the public markets when compared to Link markets, supermarkets and neighbourhood fresh food retail While no simple, causal relationship between rent and price levels was outlets. observed, rent was only one of the components of operating costs and not the determinant of retail price. Other factors were also at play, such as costs of goods, staff costs, transportation costs, supply and demand in the vicinity (especially the availability or otherwise of substitute outlets/products), market positioning. established consumer relationship, reputation, etc. The Administration stressed that tenants of public markets were free to determine and adjust the prices of their goods and the Government did not have control over the prices of the goods sold in public markets.

24. Notwithstanding the above findings, some Members considered that the Administration should conduct a follow-up survey, the scope and coverage of which should be expanded to include areas/housing estates where public markets were not provided and fresh food markets were being monopolized by Link

REIT or private enterprises.

Provision of new markets

25. Another grave concern of the former Subcommittee was the lack of public markets in newly developed districts, such as Tin Shui Wai and Tung Chung. Members considered that while the Hong Kong Planning Standards and Guidelines had set out the factors pertaining to the provision of public markets, community needs should be an overriding factor in deciding whether a new market should be established.

26. The Administration advised that in 2009, the Planning Department had made revisions to that part of the Hong Kong Planning Standards and Guidelines pertaining to the provision of public markets. Under the revised guidelines, it was suggested that apart from the population in the district concerned, other relevant factors should also be taken into account, including demographic mix, community needs, the availability of public and private market facilities nearby, the number of fresh provision retail outlets in the vicinity, and public sentiment towards the preservation of hawker areas, etc. When considering any proposal to establish a new market in a certain district, FEHD would, on a case-by-case basis, take into consideration various relevant factors.

Latest development

27. The Panel received a briefing by the Secretary for Food and Health on the Chief Executive's 2017 Policy Address at its meeting on 31 October 2017. Members were advised that the Government would build new public markets in Tung Chung New Town Extension Area, Hung Shui Kiu New Development Area and Tin Shui Wai. If necessary, the Government would study the need and the feasibility of providing new public markets.

28. The Government would also establish a dedicated team to conduct a comprehensive review of public markets, formulate specific and on-going measures in a systematic manner and put in resources, with a view to improving the facilities and management of public markets, as well as revitalizing existing public markets. The review would cover the positioning of public markets, distribution of existing and new markets, management mode and structure, rental adjustment mechanism, hardware improvement and ways to handle markets with relatively low patronage, etc. An Administrative Officer Staff Grade C post (D2) would be created for a period of five years in FEHD to lead the above dedicated team. According to the Administration, the post holder would, amongst others, oversee the implementation of those improvement recommendations put forward in the consultancy study, including (a) following

up the specific improvement proposals for six selected representative markets; (b) reviewing and enhancing the modes of operation and management of public markets including reviewing the market management consultation mechanism and enhancing the engagement with relevant stakeholders; (c) working out implementation plans for revitalization and consolidation of under-utilized markets; and (d) taking forward air-conditioning projects to improve the operating environment of public markets. The proposed creation of the above supernumerary directorate post in FEHD was approved by the Finance Committee at its meeting on 5 January 2018.

29. In his 2018-2019 Budget Speech, the Financial Secretary announced that apart from making available resources to build public markets in districts with such needs, \$2 billion would be earmarked for implementing a Market Modernization Programme over the next 10 years, which would entail a comprehensive review of existing markets and improvement works including early installation of air-conditioning systems, major overhaul or redevelopment.

Relevant questions raised at Council meetings

30. A list of relevant questions raised by Members at Council meetings in the Fifth and the Sixth LegCo is in **Appendix II**.

Relevant papers

31. A list of the relevant papers on the LegCo website is in **Appendix III**.

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Appendix I

Extract from the Report of the Subcommittee on Issues Relating to Public Markets formed under the Panel on Food Safety and Environmental Hygiene in the Fifth Legislative Council

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Recommendations

36. The Subcommittee urges the Administration to take into account the views and concerns expressed by members on various issues as set out above in considering and implementing the consultant's recommendations on improving the operating environment of public markets. The Subcommittee recommends that the Administration should -

- (a) take proactive measures to ensure that public markets are kept clean and hygienic so as to provide a decent and comfortable shopping environment accessible to patrons, and that stall tenants are willing to provide good quality commodities at affordable prices so as to increase the patronage of public markets;
- (b) consider how to better utilize public markets with very low occupancy rates, for example, by converting them into community facilities providing leisure and cultural services and/or other social services;
- (c) ensure that there will be adequate consultation with the concerned stall tenants and representatives of the Market Management Consultative Committees ("MMCCs") before implementing the consultant's improvement proposals for the physical design and layout of the six selected public markets and/or other markets;
- (d) provide the Panel with information on the outcomes of the consultation with the tenants and MMCCs of the six selected markets (and other markets, if any) and the finalized improvement plans;

- (e) ensure that the new management model to be devised for public markets will be able to develop a partnership between FEHD and stall tenants, and provide stall tenants with opportunities to participate in the decision-making process of the daily management of public markets to sustain improvement;
- (f) review comprehensively the criteria adopted in the retrofitting of air-conditioning facilities and consider further lowering the threshold of tenants' support at 80% as the requirement for the retrofitting of air-conditioning facilities in public markets;
- (g) consider measures to facilitate stall operators to reach a consensus on proposals for retrofitting air-conditioning facilities in public markets, and giving consideration to the suggestion of allowing the retrofitting of air-conditioning facilities in public markets on a floor-by-floor basis;
- (h) review the existing air-conditioning charging arrangement for public market stalls and give consideration to the suggestion of excluding common areas of markets from the amount of air-conditioning charges payable by stall tenants; and
- (i) review comprehensively its policy on the provision of new markets and consider ways to respond to the community needs for public markets in new districts.

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Relevant Council questions raised by Members in the Fifth and Sixth Legislative Council on Issues relating to public markets

Meeting	Date of meeting	Question
Legislative Council	31.10.2012	Official Record of Proceedings Pages 1021 to 1032 (oral question raised by Hon Alice MAK on "Setting up public markets")
	19.12.2012	Official Record of Proceedings Pages 3912 to 3917 (written question raised by Dr KWOK Ka-ki on "Pilot scheme to let public market stalls on short- term tenancies")
	26.6.2013	Official Record of Proceedings Pages 13892 to 13896 (written question raised by Hon CHAN Yuen-han on "Air-conditioning systems in public markets")
	9.4.2014	Official Record of Proceedings Pages 9542 to 9544 (written question raised by Hon LEUNG Yiu-chung on "Assistance to stall tenants in public markets")
	26.11.2014	Official Record of Proceedings Pages 2605 to 2612 (written question raised by Dr Hon Elizabeth QUAT on "Management of public markets")
	4.2.2015	Official Record of Proceedings Pages 5643 to 5652 (oral question raised by Dr Hon Elizabeth QUAT on "Provision of new public markets and retrofitting of air-conditioning systems in existing public markets")

Meeting	Date of meeting	Question
Legislative Council	24.2.2016	Official Record of Proceedings Pages 5871 to 5874 (written question raised by Hon WU Chi-wai on "Measures to improve operating environment of public markets")
	16.3.2016	Official Record of Proceedings Pages 6634 to 6637 (written question raised by Hon CHAN Han-pan on "Provision and management of public markets")
	16.3.2016	Official Record of Proceedings Pages 6649 to 6653 (written question raised by Hon Alice MAK on "Planning of public markets")
	22.6.2016	Official Record of Proceedings Pages 12219 to 12223 (written question raised by Hon TANG Ka-piu on "Retrofitting of air-conditioning systems in public markets")
	15.2.2017	Official Record of Proceedings Pages 3717 to 3723 (written question raised by Hon Fernando CHEUNG on "Provision of public markets in new towns")
	1.3.2017	Official Record of Proceedings Pages 4714 to 4723 (oral question raised by Hon Wilson OR on "Retrofitting air- conditioning systems for public markets")

Meeting	Date of meeting	Question
Legislative Council	15.11.2017	Official Record of Proceedings Pages 2285 to 2297 (oral question raised by Hon SHIU Ka-fai on "Retrofitting air-conditioning systems for public markets")

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Appendix III

Committee	Date of meeting	Paper
Panel on Food Safety and	8.1.2013	Agenda
Environmental Hygiene	(Item IV)	<u>Minutes</u>
("FSEH Panel")		
Subcommittee on Issues	25.3.2014	Agenda
Relating to Public Markets formed under FSEH Panel	(Item II)	Minutes
in the Fifth Legislative	29.4.2014	Agenda
Council ("the former Subcommittee")	(Item II)	Minutes
	23.6.2014	<u>Agenda</u>
	(Item III)	Minutes
	18.11.2014	Agenda
	(Items II and III)	Minutes
	20.1.2015	Agenda
	(Item I)	Minutes
	1.6.2015	Agenda
	(Item I)	Minutes
	29.6.2015	Agenda
	(Items I and II)	Minutes
FSEH Panel	-	Report of the former
		Subcommittee
	8.11.2016	Agenda
	(Item V)	<u>Minutes</u>
	14.3.2017	Agenda
	(Item VI)	<u>Minutes</u>
	11.4.2017	Agenda
	(Item V)	<u>Minutes</u>

Relevant papers on Issues relating to public markets

Committee	Date of meeting	Paper
FSEH Panel	13.6.2017 (Item VI)	Agenda Minutes
	31.10.2017 (Item I)	Agenda Minutes

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