

# Report No. 51 of the Director of Audit — Chapter 6

## MANAGEMENT OF PUBLIC MARKETS

### Summary

1. Since January 2000, the Food and Environmental Hygiene Department (FEHD) has taken over the responsibility for managing public markets. As at 30 June 2008, the FEHD managed 104 public markets, comprising 79 wet markets and 25 stand-alone cooked food markets (CFMs), under the Public Health and Municipal Services Ordinance (Cap. 132). These markets together provided a total of 14,900 stalls, of which 11,390 (76%) were let out and 3,510 (24%) were vacant. In 2007-08, the FEHD incurred a deficit of \$160 million in operating the public markets.

#### Audit reviews

2. In 2003, the Audit Commission (Audit) reported that many market stalls were vacant or non-trading, and large operating deficits were incurred at some public markets. In May 2008, the Administration informed the Legislative Council (LegCo) that the Food and Health Bureau (FHB) and the FEHD were reviewing the policy on the provision of public markets. Audit has recently conducted a follow-up review of the FEHD's management of public markets with a view to identifying areas for further improvement and providing timely input to the public market policy review.

#### Usage of public markets

3. *Vibrant and less vibrant public markets.* Given the high cost of building and operating public markets, Audit sample checked 25 markets to ascertain if they were providing active market services to the community. Whilst some of the markets checked were very vibrant and well patronised, Audit is concerned that some less vibrant ones were not providing active market services. They had very poor patronage and a large number of vacant and non-trading stalls.

4. ***Need to review individual public markets.*** Arising from the current public market policy review, the FHB and the FEHD would use the criteria of “consistently high vacancy rate exceeding 60%” and “big deficits” to assess the viability of a public market. Audit, however, noted that many less vibrant public markets, though not meeting the stall vacancy rate of 60%, had very low patronage and had incurred deficits. These markets were not providing active market services. *Audit has recommended that the Secretary for Food and Health and the Director of Food and Environmental Hygiene should conduct an early review of those public markets identified to have very low usage and which are not providing active market services.*

5. ***Need to review attainment of objectives of providing public markets.*** Public markets were provided to meet the needs of the community and to resite hawkers. With the decreasing number of licensed hawkers and the proliferation of supermarkets and fresh provision shops in recent years, the demand for public markets has changed. *Audit has recommended that the Secretary for Food and Health and the Director of Food and Environmental Hygiene should: (a) review whether the objectives of meeting the needs of the community and resiting hawkers have already been met with the existing provision of public markets; and (b) formulate the Government’s strategy for the provision of public markets (which may include consolidating stalls in multi-storey markets onto a single floor to vacate space for alternative use).*

6. ***Need to review provision of CFMs.*** The current public market policy review does not cover CFMs. Some CFMs incurred deficits and had high stall vacancy rates. With the abundance of restaurants and food premises, the need for CFMs as alternative catering facilities may have diminished. *Audit has recommended that the Secretary for Food and Health and the Director of Food and Environmental Hygiene should consider conducting a separate review of the provision of CFMs in due course.*

#### **Market stall rentals and charges**

7. ***Lower-than-market rentals.*** The rentals paid by stall tenants were generally below the Open Market Rental mainly because: (a) the initial rentals for those who were ex-licensed hawkers or old market ex-tenants were set at concessionary rates; and (b) following the 1998 rental reduction, stall rentals have been frozen at the reduced level. As a result, some very vibrant public markets showed big deficits. Traders might also have been discouraged to rent market stalls through open auctions as some existing tenants are paying lower rentals for similar stalls.

8. ***The market rental adjustment mechanism.*** The former Provisional Urban Council (UC) and Provisional Regional Council (RC) adopted different rental adjustment mechanisms when renewing market stall tenancies. In January 2000, the Administration undertook to review and align the mechanisms within two years. In 2001, the Administration submitted a proposed mechanism to the LegCo Panel on Food Safety and Environmental Hygiene but it was then considered not opportune to put the proposed mechanism into operation. Up to September 2008, the Administration had not made further submission. Given the need to deal with stall tenancy renewal cases after the expiry of the current rental freeze period on 30 June 2009, *Audit has recommended that the Secretary for Food and Health and the Director of Food and Environmental Hygiene should put up for the LegCo Panel's consideration as soon as practicable a suitable and aligned rental adjustment mechanism.*

9. ***Rates paid on behalf of stall tenants.*** Since 2000, the FEHD had not recovered from the stall tenants the rates paid on their behalf, following the same practice as that of the Provisional UC and Provisional RC. However, the stall tenancy agreements stipulate that stall tenants are responsible for payment of rates in respect of their stalls. *Audit has recommended that the Director of Food and Environmental Hygiene should consult the Secretary for Food and Health and the Secretary for Financial Services and the Treasury on the recovery or the waiver of rates paid for stall tenants in the past years and the future payment arrangements.*

10. ***Recovery of air-conditioning cost.*** As at June 2008, 31 public markets were air-conditioned. Whilst the Government was responsible for the capital costs for installing the air-conditioning system in public markets, the recurrent costs of air-conditioning expenses would be borne by stall tenants. Audit, however, noted that, mainly because there had not been any revision of the air-conditioning charges during the rental freeze period, air-conditioning cost of some \$11 million a year had not been recovered from stall tenants. *Audit has recommended that the Director of Food and Environmental Hygiene should, in consultation with the Secretary for Food and Health and the Secretary for Financial Services and the Treasury, work out an appropriate long-term arrangement for the recovery of air-conditioning cost from stall tenants.*

### **Problem of stall subletting**

11. ***Risk of subletting.*** According to market stall tenancy agreement, a tenant is not allowed to sublet his stall. Nevertheless, a tenant may engage registered assistants (RAs) to run the stall for him. As at 31 July 2008, tenants of 55% of the let-out stalls had engaged RAs. As long as a tenant and his RAs kept the subletting deal to themselves, it would be difficult for the FEHD to prove a case of subletting. In recent years, the FEHD identified three cases of subletting, all of which were revealed upon complaints.

12. ***Inadequate controls over stall subletting.*** Audit examination of the FEHD's existing controls over subletting revealed inadequacies in that: (a) upon detection of any unauthorised persons in a stall, the tenant concerned is not penalised as long as he registers the persons with the FEHD; (b) the stall operator status checking procedures were not always fully complied with in a number of public markets; and (c) during the rental freeze period since 1999, the FEHD extended stall tenancies instead of renewing them. As tenants are expected to appear in person for tenancy renewal but not for tenancy extension, their status might not have been verified for years. *Audit has recommended that the Director of Food and Environmental Hygiene should: (a) step up the FEHD controls over subletting; (b) ensure that the FEHD/contractor staff do carry out the market stall inspections and supervisory checking as required; and (c) consider renewing (instead of repeatedly extending) tenancies at an opportune time.*

13. ***Possible subletting of market stalls.*** In July 2008, Audit selected stalls from four public markets (with higher subletting risks) for conducting business registration search in the Inland Revenue Department. The results indicated that for some stalls, the tenants were not the business owners. Instead, businesses were carried on by RAs or third parties. Given that the Government is heavily subsidising the public markets, improper subletting of market stalls for profit is unacceptable. *Audit has recommended that the Director of Food and Environmental Hygiene should follow up on the suspected subletting cases identified by Audit and conduct checking in other public markets to identify improper subletting.*

### **Management of a public market in Kowloon**

14. A market in Kowloon (Market A) occupies the ground floor (G/F) and basement of a multi-storey building. Since the commissioning of Market A in 1994, all stalls on the G/F have been let out to one tenant and those at the basement to another. At present, the G/F of Market A operates as a food court whereas the basement is run as a public market. The FEHD's inspections in April and November 2007 revealed that the basement stalls were not in business. Audit visited the basement on various occasions during May to July 2008 and found that: (a) there was no customer; and (b) many trading commodities specified in the tenancy agreement were unavailable.

15. The FEHD has outsourced the management and maintenance services (MMS) of Market A. Since 2000, the FEHD has awarded new MMS contracts three times through single tenders, i.e. to the two tenants in 2000 and 2003 and to the G/F tenant in 2006. In Audit's view, the arrangement of always awarding Market A's MMS contracts to the tenants without conducting market tests is not satisfactory. There was an apparent conflict of interest as the tenants were the management agent of Market A.

16. *Audit has recommended that the Director of Food and Environmental Hygiene should critically assess the need for the continued operation of the Market (particularly the stalls at the basement) and, if there is still such a need, take appropriate actions to improve the current arrangements and step up controls over the management of the Market.*

#### **Planning of new public markets**

17. *Need to conduct comprehensive viability studies.* Since 1987, it had been the then UC's policy that viability should be a major factor in market construction and operation, and public markets should be justified by establishing a distinct demand and role for them in a District Plan. Audit found that in the planning of the Tai Kok Tsui Market and the Aldrich Bay Market, the FEHD had not conducted comprehensive viability studies to ascertain whether there would be adequate demand for the two markets, taking into account such factors as demographic mix and local residents' shopping habit/travelling pattern. The viability of the Tai Kok Tsui Market in the long term is also questionable as it had a high stall vacancy rate. *Audit has recommended that the Director of Food and Environmental Hygiene should: (a) ensure that the construction of any new market will only be considered after the conduct of a comprehensive viability study; and (b) monitor closely the usage of newly commissioned markets and take measures to improve their viability and usage.*

18. *Need to respond to retail trend.* Careful planning of a new market is very important to ensuring its long-term viability. Since it takes many years to plan and build a public market, there may be significant changes in the retail trend which may affect the viability of a new market under planning. *Audit has recommended that the Director of Food and Environmental Hygiene should regularly review the retail trend and, if required, conduct further viability studies on new markets under planning.*

#### **Response from the Administration**

19. The Secretary for Food and Health and the Director of Food and Environmental Hygiene have agreed with the audit recommendations.

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