



**Office of the Auditor General: Audit of ByWard
and Parkdale Markets, Tabled at Audit
Committee – December 1, 2016**

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Acknowledgments

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Original signed by:

Auditor General

Executive Summary

Purpose

The Audit of the ByWard and Parkdale Markets examined the management practices and processes within and supporting the Markets Management Section (Markets Management or the Section) which provide the City of Ottawa (City) with reasonable assurance that: the City's assets are safeguarded and controlled, the Markets Management's operations are carried out effectively and efficiently, and are adequate to support the ByWard and Parkdale Markets (Markets) in achieving their objectives.

Rationale

Markets Management operates one of Canada's oldest and largest public markets – the ByWard Market – visited by approximately 50,000 people each summer week-end and represents one of the top tourist attractions in Ottawa. Sound management practices are crucial to ensure that the Markets Management is safeguarding the City's assets and that the activities are aligned with the vision established for the Markets. This audit will also serve as a basis for input to proposed changes to the governance structure of the Markets.

Audit Objectives

The overall objective of this audit was to determine whether the key systems, practices and procedures selected for examination, which support the Markets, are providing the City with reasonable assurance that its assets are safeguarded and controlled, its operations are carried out effectively and efficiently, and that they are adequate to support these markets in achieving their objectives.

The following systems, practices and procedures were prioritized based on an assessment of risks:

- Corporate governance and oversight;
- Strategic and business planning, risk management, and performance measurement and reporting;
- Human resource management;
- Marketing and promotional activities;
- Internal controls and the safeguarding of assets;
- Stakeholder grants, agreements and relations; and

- Leasing and contract management.

Findings

As noted above, the audit focused on seven key areas of Markets Management. The key findings associated with each area are as follows:

1. Corporate governance and oversight:

- Markets Management is led by a Lead Officer and supported by two Markets Management Officers and one Coordinator, Markets Stakeholder Relations and Communications (collectively referred to as Officers). The Program Manager, Licensing, Markets and Events Central Unit was responsible for oversight of the activities of Markets Management during the course of the audit.
- Decisions related to the day-to-day operations of Markets Management are left to the Lead Officer and his team with limited oversight by the Program Manager. The Lead Officer and his team, with limited support, oversight and supervision of their activities, are performing their duties in an environment that has ineffective systems and processes with limited internal controls. The highly operational nature and limited resource capacity of Markets Management fosters an environment that is reactive as opposed to proactive in the management of the Markets.
- In recent years, Markets Management has been realigned multiple times to different portfolios to find the most appropriate fit. Prior to 2004, Markets Management was aligned under Economic Development. From 2004 to 2009, the Markets Management Program Manager reported directly to Property Management within Real Property and Asset Management (RPAM). During this time, there were also changes in the leadership of Property Management and RPAM. From 2009 to 2015, Markets Management reported directly to the Chief of By-Law and Regulatory Services within Emergency and Protective Services. During this time, there were also changes in the leadership of By-Law and Regulatory Services as well as Emergency and Protective Services. Further, in 2015, Markets Management was realigned to Security and Emergency Management and more recently, in July 2016, Markets Management was realigned to Economic Development under the Planning, Infrastructure and Economic Development department. The continuous change in ownership of Markets Management over time, its relative size to other sections within the Program Manager's portfolio and City Council's approval to pursue an option to

transition the governance of Markets Management to a Municipal Services Corporation (MSC) has resulted in limited management oversight and attention paid to the day-to-day activities of the Markets Management Section.

2. Strategic and business planning, risk management, and performance measurement and reporting:

A) Strategic Direction of Markets Management

- Since 2009, when initially drafted, no revised business plans have been established for Markets Management. Further, based on the review of available documentation, no evidence was available to demonstrate that the actions committed to in the Parkdale and ByWard Markets 2009 Business Plans were ever undertaken, monitored or reported on.
- Markets Management is striving to maintain and make prosperous the Markets, but limited activities have been undertaken and insufficient resources have been allocated to formally achieve the strategic direction established in the 2009 Business Plans. Overall, no accountability has been assigned for a corporate champion to establish and monitor the 2009 strategic vision of the Markets.
- Over time, a lack of priority has been given to Markets Management as it has been transferred multiple times to different portfolios to find the most appropriate fit. Markets Management has not received the requisite leadership/senior management oversight to enable the Section to establish appropriate priorities and ensure that they receive the necessary support to achieve the objectives established.

B) Proposed Direction of Markets Management

- The original direction provided by City Council in 2013 to explore options for the future of the ByWard Market met at least one of the criteria for requiring a formal business case – as per the City’s Project Management Framework. However, the recommendation presented to City Council to pursue an MSC governance model was not based on the results of a completed business case with a formal options analysis.
- While not completing a City of Ottawa business case template, the City did undertake activities to support the recommendation to move towards an MSC for the management of the ByWard and Parkdale Markets. The Project for Public Spaces (PPS), a third party with expertise in public markets, issued a report in April 2016 which outlines that various options were

explored with the City's legal department but that establishing an MSC would be the most effective option to ensure the long-term success for the Market.

- Appendix B to PPS' report provided a detailed analysis of existing market governance structures that were analyzed as case studies and used as input for the recommendation to proceed towards an MSC. Eight markets in Canada and the United States were analyzed which all had or were in transition towards a similar governance structure; a not-for-profit corporation. At the end of the analysis, a listing was provided on other forms of public market ownership structures in Canada (e.g. St. Lawrence Market, which is City-owned); however, no similar detailed analysis was provided. Without a fulsome options analysis, the City cannot be assured that it is proceeding towards an option that is the most effective and economical to meet the City's long-term vision for the Markets.

3. Human resource management:

- The operational requirement for the Market to be open 7-days a week from 6 a.m. to 6 p.m. and the limited resources within Markets Management results in overtime incurred by the Officers. Although required by the City's Overtime Policy, no pre-approval is obtained for the overtime incurred by the Officers.
- Limited monitoring is being conducted by the Program Manager on the overtime accruing and being used by the Officers.
- Overtime tracking for the Officers is not submitted to Payroll branch for tracking centrally in SAP, which does not allow information to be available to ensure compliance with the terms and conditions of the Civic Institute of Professional Personnel (CIPP) collective agreement – which the Officers are members of. Examples of non-compliance with the collective agreement were identified.
- It was identified that the Occupational Health and Safety Awareness Training had been completed for all Officers with the exception of two Administration Clerks and five Markets Operations Support employees.

4. Marketing and promotional activities:

- No promotional plan has been established that sets out the particular advertising and promotional activities and/or events for the upcoming year to establish spending targets and ensure that forecasted spending for promotional activities and events are aligned to Markets Management's objectives.

- There is no written agreement between Markets Management and the ByWard Business Improvement Areas (BIA) that stipulates the agreed upon activities/events and associated costs that will be shared to avoid misaligned expectations when incurring costs.

5. Internal controls and the safeguarding of assets:

- While the Markets Management Section has established a standard process to collect and record revenues, the current processes and systems in place for handling cash are insufficient to mitigate the risk of error and potential misappropriation of cash and to ensure compliance with applicable City cash management policies and procedures. Practices observed included:
 - Cash handling, recording and reconciliation may be performed by one person;
 - Access to cash is not sufficiently limited;
 - A lack of documentation for the transfer of custody of cash; and
- Insufficient controls embedded within the system used to track/manage revenues, including the lack of traceability of transactions, open access and system challenges requiring manual overrides allows an individual to make changes to the revenue records without detection.

6. Stakeholders' grants, agreements and relations:

- Markets Management focuses its attention on stakeholders of the ByWard and Parkdale Markets and participates in stakeholder meetings to ensure their activities, to the extent possible, are aligned with those of their stakeholders.
- No key findings were noted over and above those included in finding #4 above.

7. Leasing and contract management:

- Markets Management manages the leases within the Parking Garage building at 70 Clarence.
- Per the terms of the lease with the Head Tenant for the ByWard Market building, base rent is payable in quarterly instalments and is calculated by applying an escalated percentage of "Annual Net Rent" received by the Head Tenant from its subtenants.
- Despite concerns identified in the 2000 Office of the City Auditor Audit Report and the decrease in rent paid to the City for the year 2012, ultimately questioning the Head Tenant's interpretation of the definition of Annual Net Rent, the City did not exercise its audit rights and a financial audit was not

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performed of the Head Tenant's books and records to validate the expenses included in the calculation of Annual Net Rent.

- Due to limited monitoring of the lease by Markets Management since its execution in 1997, matters related to the interpretation and calculation of Annual Net Rent were not identified in a timely manner; potentially resulting in the loss of rental income for the City. In 2013, Real Estate Partnership and Development Office (REPDO) began monitoring the lease closely at the request of Markets Management.

Conclusion

Markets Management staff focus their efforts to ensure stakeholders' needs are being met on a daily basis and that the requirements outlined in the applicable by-laws are being upheld. However, management practices and measures within Markets Management are insufficient to safeguard the City's assets and to ensure the effectiveness and efficiency of activities in support of the City's objectives for the Markets. Action should be taken to improve the internal controls in these operational areas immediately as oversight transitions to the responsibility of the MSC.

Opportunities exist, as the City establishes the recommended powers and duties of the MSC to implement City Council's vision to revitalize the ByWard and Parkdale Markets, to establish the expectations and accountabilities for sound management and efficient, effective operations.

Potential savings

The following are potential saving opportunities for the City relative to Markets Management:

- Reassessing the resources required to manage the Markets operations during peak season may reduce the amount of overtime and vacation payouts incurred by Markets Management.
- Completing a cost-benefit analysis of the advertising and promotional activities to ensure value-for-money.

Recommendations and Responses

The audit resulted in a number of recommendations, as listed below. Please refer to the attached audit report for additional details.

Recommendation #1

That the City embed, as part of the powers and duties established for the proposed MSC, the requirement for the MSC to develop strategic/operational objectives, with corresponding performance indicators, aligned to City Council's approved vision for the MSC. Measurement against the indicators should be performed and reported regularly to the MSC Board and to City Council.

Management response:

Management agrees with this recommendation.

The Byward and Parkdale Market Revitalization Project was initiated following a report to Council in May 2016 wherein staff were directed to pursue the Municipal Service Corporation (MSC) model for the Byward and Parkdale markets. Considerable analysis and consultation took place in advance of that report and recommendation. A formal business case will be presented to the Finance and Economic Development Committee (FEDCO) and Council along with a proposed governance structure in February 2017.

As a part of the proposed governance structure and supporting business case, accountabilities of the City, the new MSC, its board of directors and staff will be clearly articulated and will align with the approved vision for the Byward and Parkdale Markets.

City Council will be responsible for strategic policy direction and oversight of performance, plans and policy. The City will require the MSC to submit a corporate plan to Council annually. The plan will encompass all of the business and activities of the corporation, its objectives for the period (one to five years) to which the plan relates, and its expected performance for the year.

Recommendation #2

That the City develop a process which ensures that full documentation of business cases and options analysis therein to support the recommendations, are developed, approved, and retained prior to Committee or Council presentation. As the City is establishing the powers and duties of the proposed MSC, consideration should be given to how the City will maintain oversight to

fulfil its fiduciary responsibility over the operations of the MSC, including the right to conduct periodic audits on the operations of the MSC.

Management response:

Management agrees with this recommendation.

A formal Business Case process has been developed and documented in the Corporate Business Case Development Guidelines. The detailed guidelines were approved by City Council on April 9, 2014. The guidelines were communicated to staff through management bulletins and other internal communications channels. The creation of a business case is also a requirement under the City's Project Management Policy. In addition to the guidelines, a formal, two-day Business Case Development training course has been implemented by the Learning Centre, and is offered several times annually. It should be noted that these guidelines are intended for all business cases, whether or not they are considered by City Council. Staff are expected to properly document a business case before seeking approval, and this is clearly communicated in the guidelines, policy and training related to business case development.

In accordance with Section 203 of the *Municipal Act, 2001* and Section 6 of Regulation 599/06, a formal business case for the proposed Municipal Services Corporation will be completed and will include information such as: options analysis, risk analysis, recommendations, and an implementation plan. This business case will be presented to FEDCO and Council along with a proposed governance structure in February 2017.

Recommendation #3

That the City ensure that when establishing the MSC, consideration be made for the appointment of an independent Board of Directors, who have the collective requisite skills and expertise to oversee the activities of the MSC and the implementation of an appropriate governance framework to allow the City sufficient oversight of the activities and results of the MSC. Strong consideration should be given to the following elements:

- **The right of the City, as sole shareholder, to conduct periodic audits on the operations of the MSC.**
- **Periodic reporting of activities to City Council including budget to actual information with explanations for significant variances, results against key**

performance indicators and information on the status of management's oversight controls.

Management response:

Management agrees with this recommendation.

A governance recommendation will be put forward to FEDCO and Council in February 2017. This will include the role of the City (as sole shareholder), board composition, board skill sets, and committee structure. City staff will include high-level performance targets that will align with the approved vision for the Byward and Parkdale Revitalization initiative.

The Board will have a recommended committee structure that must include an audit committee. Results of audits will be reported back to Council as required.

The City will require the MSC to submit a corporate plan to Council annually. The plan will encompass all of the business and activities of the corporation, its objectives for the period (one to five years) to which the plan relates, and its expected performance for the year.

Recommendation #4

That the City ensure that lease clauses are clearly articulated and understood, prior to finalization, to avoid misinterpretation between the parties. Additionally, once a lease is executed, contract management monitoring responsibility should be formally assigned to a party with the appropriate skills and support to ensure adherence to the terms and conditions of the lease, including exercising the right to audit clause at appropriate points during the lease term.

Management response:

Management agrees with this recommendation.

Each unit has a role to play in the leasing process. REPDO acts as the leasing agent (advertising space and negotiating with Tenants) and interprets the lease documents when requested. REPDO works hand-in-hand with Legal Services (who reviews the lease document, provides legal advice, etc.) as well as the client group (in this case Markets Management) responsible for the facility containing the rental space. Markets Management maintains a day-to-day relationship with the tenant and engages both REPDO and Legal Services when required.

Management will review the current contract management monitoring process as part of the work being undertaken to establish the MSC and will include the results of this

review in the governance report being brought forward to Committee and Council in February 2017.

Recommendation #5

That the City implement more robust internal controls for the handling of cash by Markets Management to ensure compliance with the City's Cash Handling Policy and Procedures and the Change Float Policy and Procedures, considering the following:

- **Maintenance of a signed copy of the Cash Handling Indemnity Form for each employee, including Ambassadors, who is or may be involved in the handling of cash;**
- **Requiring that cash be counted, totaled, and signed off by the cash handler when cash is being transferred from one person to another;**
- **While the implementation of a Point of Sales (POS) for a short period of time might be uneconomical, consideration should be given if the period is extended;**
- **Preparing a cash deposit and reconciling the Markets Management System (MMS) on a daily basis;**
- **Segregating duties between the person responsible for processing the summary report in MMS, preparing the related cash deposit, and the person who cancels receipts;**
- **Limiting, to the extent possible, the number of individuals who have access to the safe;**
- **Requiring that the cash box in the safe be locked and that a chain of custody log be maintained when the cash box is accessed or removed from the safe; and,**
- **Use and safeguarding of City of Ottawa Receipt Books for manual processing as per the Cash Handling Policy and Procedures.**

Management response:

Management agrees with this recommendation.

Markets Management have commenced the review of specific cash handling procedures to address the proposed OAG considerations in this report to ensure compliance with the City's Cash Handling Policy and Procedures and the Change Float Policy and Procedures. As of October 2016, three of the eight considerations have been fully implemented. Review of the remaining considerations will be completed by the end of Q1 2017.

Recommendation #6

That the City ensure that all operational departments handling cash are compliant with the corporate cash management policies and procedures to prevent mishandling of funds and to safeguard against losses.

Management response:

Management agrees with this recommendation.

City departments are responsible to ensure staff comply with the Cash Handling Policy and Procedures. These requirements are outlined in the policy and any updates to the policy are communicated to staff through management bulletins and other internal communications channels.

Specific to this audit, Markets Management will ensure staff in the unit handling cash are compliant with the corporate cash handling policies and procedures. Process improvements have been made to ensure ongoing compliance with the Cash Handling Policy and Procedures, and compliance requirements have been communicated to staff. As noted in the management response to Recommendation 5, three of the eight considerations have been fully implemented. Review of the remaining considerations will be completed by the end of Q1 2017.

Recommendation #7

That the City develop appropriate processes to ensure compliance with the City of Ottawa Overtime Policy and the CIPP collective agreement and to embed the appropriate internal controls related to managing overtime. This would include approval of all overtime in advance, appropriate calculation of overtime in line with the CIPP collective agreement, submission of overtime worked to Payroll branch for tracking in SAP, and ensuring ongoing oversight of overtime incurred and time-off-in-lieu (TOIL) taken by Markets Management.

Management response:

Management agrees with this recommendation and it has been implemented.

Management has recently implemented new procedures to address the appropriate tracking of overtime.

Overtime worked may be required due to operational requirements on any given shift or may be planned for events, covering for other staff, etc. The small complement of full-time staff (four) and the hours of operation (6 a.m. to 6 p.m.) leave very little room for flexible scheduling to reduce overtime.

The Program Manager, Markets Management with the assistance of Payroll, has implemented the following new procedures with staff for the approval, recording and, the monitoring and oversight of overtime:

- The Program Manager signs off on the schedule monthly, which may include overtime shifts for planned events;
- Staff inform the Program Manager of any planned overtime not recorded on the schedule;
- All overtime worked is now recorded in SAP through Employee Self Serve, where appropriate controls are in place to ensure there are documented approvals of overtime worked and overtime banks are limited to 100 hours as per the CIPP collective agreement; and,
- The Program Manager has taken the necessary steps to ensure that the payment of overtime is being completed fully in accordance with the CIPP Collective Agreement.

Recommendation #8

That the City establish a marketing and promotional plan at the outset of the next fiscal year. Based on this plan, the City should establish a formal cost-sharing agreement with the ByWard BIA that includes expectations related to the level of support required for reimbursement of costs incurred. As the City transitions towards a proposed MSC to oversee the operations of the Markets, considerations should be made as to the formality of the cost sharing activities with external parties.

Management response:

Management agrees with this recommendation.

In early 2016, Markets Management staff initiated an events calendar and discussed cost sharing plans with the BIA's Executive Director. The outcome of those

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discussions has led to verbal agreements and documentation outlining proposed and actual costs.

Markets Management and the BIA Executive Director are working towards a formal cost sharing plan for promotions and advertising for 2017. This will be completed by December 31, 2016.

Recommendation #9

That the City implement measures to review and confirm supporting documentation for all BIA invoices, to demonstrate receipt of goods and services relative to the City, prior to approval for reimbursement.

Management response:

Management agrees with this recommendation and it has been implemented.

A monthly summary report of shared expenditures with supporting invoices is being provided to the Program Manager for review and approval prior to financial processing.

Recommendation #10

That the City take action to post the Health and Safety Policy for employees and ensure that all Markets Management staff complete the Occupational Health and Safety Awareness required training in a timely manner.

Management response:

Management agrees with this recommendation and it has been implemented.

On October 27, 2016 Management posted the Health and Safety Policy for employees. As of November 10, 2016, all Markets Management staff have completed the Occupational Health and Safety Awareness Training.

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The detailed section of this report is available in English only and may be translated in whole or in part upon request. For more information, please contact Ines Santoro at 613-580-2424, extension 26052.

La section détaillée de ce rapport n'existe qu'en anglais et pourrait être traduite en partie ou en totalité sur demande. Renseignements : Ines Santoro, 613-580-2424, poste 26052.

Detailed Audit Report

Audit of ByWard and Parkdale Markets

Introduction

The Audit of the ByWard and Parkdale Markets was included in the 2015 Audit Plan of the Office of the Auditor General (OAG), approved by City Council in March 2015.

Background and Context

The City of Ottawa operates two historical markets: ByWard and Parkdale. Created in 1826, the ByWard Market is Canada's oldest continuously operating farmers' market. It operates all year-round. The ByWard Market is regulated under By-law No. 2008-449 and is managed by the City's Markets Management Section, which also manages the smaller Parkdale Market.

Within the ByWard Market, the Market Building, 55 ByWard Market Square, is open year round offering crafts, foods, etc. In addition, open-air stalls are operated year-round and, in the warmer months, offer fresh produce and flowers. In 2015, City revenue from ByWard Market vendors was approximately \$513,000 (2014 - \$570,000).

The Parkdale Market was created in 1924 and is regulated under By-law No. 2008-448. It is open seven days a week from May to November and vendors sell everything from hanging baskets and fresh herbs to fruits and vegetables. The Parkdale Market is also open during the holiday season with vendors offering Christmas trees and decorations made of natural products. In 2015, City revenue from Parkdale Market vendors was approximately \$132,000 (2014 - \$133,000).

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The following table summarizes revenues between 2010 and 2015 for both the ByWard and Parkdale Markets¹:

Table 1 – Summary of Revenues between 2010 and 2015 for both the ByWard and Parkdale Markets

Market	2010 \$	2011 \$	2012 \$	2013 \$	2014 \$	2015 \$
ByWard Market						
Total – ByWard	619,000	577,000	558,000	545,000	570,000	513,000
Parkdale Market						
Total - Parkdale	186,000	177,000	190,000	156,000	133,000	132,000
Grand Total	805,000	754,000	748,000	701,000	703,000	645,000

In collaboration with Finance and the Real Estate Partnerships and Development Office (REPDO), the Markets Management Section acts as the landlord for the public market properties (70 Clarence and 55 ByWard Market Square) leased to external clients. Specifically, it administers seven leases (for retail space) in the Parking Garage building at 70 Clarence. In 2015, rent revenues for the Parking Garage were approximately \$314,000 (2014 - \$293,000). Markets Management also recovers from its tenants the municipal realty taxes and utility charges the City pay on rental properties (i.e., Common Area Maintenance (CAM) charges).

In 1997, the Market Building at 55 ByWard Market Square was leased for a period of 20 years to 670662 Ontario Ltd. (the “Head Tenant”). With the support of Finance, Legal Services and REPDO, the Markets Management Section manages this lease agreement. The lease agreement expires on December 31, 2017 and is referred to as the “Head Lease”. The Head Tenant has 26 agreements with subtenants with various end dates extending to 2025. In 2015, the City received approximately \$212,000 (2014

¹ The figures presented are based on Markets Management revenues recorded in the City’s accounting system (SAP) for market activities and are unaudited. Revenues from standholders were tested based on information contained in MMS.

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- \$183,000) in rent revenue from the Head Tenant; however, over the course of the agreement (1997 to 2015) the City has received on average \$86,725 per year (ranging from a low of \$1,480 in 2012 to a high of \$211,898 in 2015) from the Head Tenant based on the calculation of “base rent” outlined in the lease agreement.

Markets Management is led by a Lead Officer and supported by two Markets Management Officers and one Coordinator, Markets Stakeholder Relations and Communications. Overall, there are 11.6 full-time employees (FTE) in the Markets Management Section, of which 4 are regular, full-time positions. The remainder of the FTE positions are represented by casual and part-time employees. All employees work for both Markets.

Oversight of Markets Management has been the responsibility of the Program Manager, Licensing, Markets and Events Central Unit within the Security and Emergency Management Branch; however, during the course of the audit, as a result of a City reorganization on July 13, 2016, Markets Management was aligned with Economic Development as part of the Planning, Infrastructure and Economic Development Department, led by the Acting General Manager.

On March 13, 2012, a Planning Committee motion (PLC 31/5) directed the Planning and Growth Management (P&GM) Department to undertake a visioning exercise for the ByWard Market. To achieve this, the P&GM Department retained PPS, a non-profit planning and design organization, to determine the most appropriate action for restoring and maintaining the ByWard Market as a “vital and authentic asset for vendors, citizens and visitors”². In 2013, PPS issued a report with general directives to strengthen the future of the ByWard Market. This vision and the next steps recommended in the PPS report were approved by City Council on June 26, 2013.

In 2014, PPS was retained again to establish a “business case and governance structure to implement the ByWard Market vision approved by the City of Ottawa in 2013”³. The scope of the study was limited to the ByWard Market and did not include the Parkdale Market. The results of this study were summarized in a report issued by PPS in April 2016 with a recommendation to “set up a not-for-profit governance

² Strengthening the Future of the ByWard Market, Project for Public Spaces; May 2013.

³ ByWard Market Revitalization Scope of Work and Budget, Project for Public Spaces; February 5, 2014.

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structure and develop a financially self-sustaining Market”⁴. The report suggested that in order for the ByWard Market to be sustainable, the governance structure should be transitioned to a new entity, an MSC, to be empowered to manage and revitalize the ByWard Market.

Based on the final PPS report, the Deputy City Manager’s Office (Planning and Infrastructure) presented a report to the Finance and Economic Development Committee on May 3, 2016 related to the future of the Markets Management Section. The report sought approval to initiate the revitalization of the ByWard and Parkdale Markets. This included a requirement to bring back a report to Committee by Q4 2016 for a proposed new governance model through an MSC pursuant to the Municipal Act, 2001, and applicable Regulations, and necessary By-Law amendments.

Audit objectives and criteria

The overall objective of this audit was to determine whether the key systems, practices and procedures selected for examination, which support the Markets, are providing the City with reasonable assurance that its assets are safeguarded and controlled, its operations are carried out effectively and efficiently, and that they are adequate to support these markets in achieving their objectives.

The following systems, practices and procedures were prioritized based on an assessment of risks:

- Corporate governance and oversight;
- Strategic and business planning, risk management, and performance measurement and reporting;
- Human resource management;
- Marketing and promotional activities;
- Internal controls and the safeguarding of assets;
- Stakeholder grants, agreements and relations; and,
- Leasing and contract management.

⁴ ByWard Market Governance, Design and Business Plan, Project for Public Spaces; February 24, 2015.

Based on the prioritized areas of focus listed above, audit criteria were developed and applied during the audit to assess the Markets Management Section performance as follows:

Table 2 – Audit Criteria

Audit Criteria	
Corporate Governance and Oversight	
1.1	Management oversight processes, including interpretation of vision and objectives, strategic direction, risk management, fraud prevention, and information for decision making are adequate and effective to support the achievement of Markets Management’s goals and objectives.
1.2	The functioning of management oversight, including clear definition of roles and responsibilities, governance/organizational reporting structure, and evaluation of performance is designed and operating effectively.
1.3	Management’s oversight and communication practices in reporting to City Council and Committees are accurate, timely, and effective.
Strategic and business planning, risk management, and performance measurement and reporting	
2.1	Markets Management has clearly defined strategic direction and specific and measurable goals and objectives to achieve its regulatory, commercial, and public service mandate.
2.2	The Section’s strategic direction and goals are aligned with Council priorities and take into account identified risks, and the need to control and protect its assets and manage its resources economically and efficiently.
2.3	The Section has identified performance indicators to measure the achievement of its Council approved vision and objectives.
2.4	The performance measurement and reporting processes to senior management and Council and Committees are accurate, timely, and effective.
Human resource management	

3.1	Human resources are managed in a manner that provides the Unit with the human resource capacity and the work environment it needs to achieve its goals and objectives including; adequate HR planning processes, performance management, staffing and recruiting processes, succession planning and Occupational Health & Safety (OSH).
Marketing and promotional activities	
4.1	There are effective systems and practices in place for the Unit’s marketing and promotional activities that define and are aligned with operational objectives and targets; and plan, design, implement, and monitor marketing and promotions in a manner that safeguards and controls assets, enables economical and efficient use of resources, and operates effectively to achieve its mandate.
Internal controls and the safeguarding of assets	
5.1	The Section has effectively designed and is operating internal controls to mitigate risks and ensure complete and accurate recording of transactions, appropriate authorization, approvals and segregation of duties, and compliance with the City’s Change Float Policy/Procedures, Cash Handling Policy/Procedures and requisite by-laws.
Stakeholder grants, agreements and relations	
6.1	The City has effectively implemented a collaborative approach involving regular consultations with all stakeholders involved in ensuring the viability and success of the Markets, and the public, including but not exclusive to plans, systems, and processes to identify, analyze, and respond to stakeholder needs in an effective and efficient manner.
6.2	The Section has adequate controls and documentation to support cost sharing, grants or other arrangements or agreements with stakeholders.
Leasing and contract management	
7.1	There are effective systems and practices in place for the accurate and timely accounting, reporting, monitoring and collection of commercial lease agreements relevant to the Markets in compliance with relevant City policies, procedures and practices.

Scope

The scope of our audit included all operational and governance activities of the ByWard and Parkdale Markets including all operational activities of Markets Management Section as well as other branches and units that perform direct or indirect activities supporting the Markets' operations (i.e. Finance, REPDO).

All lease agreements and contract management activities pertaining to the retail space at 70 Clarence (parking garage) and the 55 ByWard (head lease) were in scope.

While the Ambassador Program is managed by the ByWard BIA and was out of scope for this audit, any work performed by Ambassadors as it pertains to revenue collection and other direct operational systems and practices was considered in scope.

The activities and analysis supporting the recommendations to Committee and City Council to establish an MSC was included in the scope of the audit.

The period in scope included 2010 to date; however, revenue detailed testing was performed for the period from 2013 to 2015 and expense detailed testing was performed for 2014 and 2015.

Scope Limitations

As described in our Audit Approach and Methodology section below, our audit included the conduct of interviews with City staff members, and reviewing and examining financial and non-financial information, to the extent it was available. However, there were limitations with the audit process due to the following factors:

- Certain key staff resignations occurred during the audit and, as such, we did not have access to former employees to conduct follow up interviews or make enquiries of individuals who were present at the time of certain activities and/or transactions.
- MMS (an MS Access database), which is used to record Markets Management licensing, permit and stand rental revenues, does not have embedded the necessary restrictions to prevent manual overrides and manipulation of the database without detection; despite expectations that such inappropriate actions are not undertaken. This application is not supported by the City's IT department. Accordingly, we were unable to assess the reliability of the information contained therein and whether all revenues collected from standholders were accurately and completely recorded.

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- Copies of manual receipts issued by Markets Management are not retained. Accordingly, we were unable to validate the accuracy of amounts recorded in MMS when a manual receipt was issued.
- We did not receive responses to our external confirmations that were issued to a sample of market standholders. Accordingly, we were unable to confirm the completeness of revenues recorded.

Audit Approach and Methodology

The audit methodology included the following activities:

- Interviews with staff members within Markets Management and other directly related City departments (e.g., Finance, REPDO);
- Review of relevant documentation, e.g., organizational charts, training material, by-laws, policies and procedures, contracts, lease agreements, etc.;
- Testing a sample of revenue transactions collected from standholders and recorded in MMS; and
- A variety of audit testing techniques including the testing of sample transactions in the City's accounting system related to Markets Management activities and the examination of supporting documentation for each of the selected areas.
- The audit plan was finalized in May 2016 and the audit fieldwork was substantially completed by July 15, 2016.

Audit Observations and Recommendations

A) Strategic Direction, Governance and Oversight of the ByWard and Parkdale Markets

Strategic Direction/Performance Monitoring of Markets Management

In 2008, the by-laws for the Markets were revised – establishing one for the Parkdale Market (No. 2008-448) and one for the ByWard Market (No. 2008-449). Based on these revisions, in 2009, draft Parkdale and ByWard Market business plan documents were developed and presented to City Council⁵. These documents outlined the following for each of the Markets:

⁵ Presented to City Council on November 26, 2008; #ACS2008-COSBYL-0055 (Document #1 – ByWard Market; Document #3 – Parkdale Market).

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- Overall mission of Markets Management;
- Vision for the individual market;
- Values;
- Identification of key result areas (branding and communication, relationship development, governance development and implementation, business planning and resources, operational management) with specific objectives and goals established; and
- An operational plan for each result area including goals for action, ownership, timelines and indicators.

Since 2009, the business plans that were developed for Markets Management have not been updated or revised. Further, based on the review of available documentation, no evidence was available to demonstrate that the actions committed to in the Parkdale and ByWard Markets 2009 Business Plans (Business Plans) were ever undertaken, monitored or reported on.

As per discussions with representatives from Markets Management, to the extent possible, the team is striving to maintain and make the Markets successful, but limited activities have been undertaken and insufficient resources have been allocated to formally achieve the strategic direction established in the Business Plans. Overall, no accountability has been assigned for a corporate champion to establish and monitor the 2009 strategic vision of the Markets.

As part of the 2009 Business Plans for the Markets, performance metrics were established for the operational activities of each market. Evidence was not provided during the audit to demonstrate any monitoring or reporting against these metrics. Further, additional performance indicators have not been established for the Markets for monitoring and assessment purposes.

Overall, limited monitoring and reporting on the activities and results of Markets Management is in place. Annual overview documents were prepared for the ByWard Market in 2010 and 2014; however, neither were presented to City Council. With the exception of these documents, no other formal reporting on the results of the Markets has been developed for senior management and/or City Council.

In recent years, Markets Management has been realigned multiple times to different portfolios to find the most appropriate fit. Prior to 2004, Markets Management was aligned under Economic Development. From 2004 to 2009, the Markets Management Program Manager reported directly to Property Management within Real Property and Asset Management (RPAM). During this time, there were also changes in the

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leadership of Property Management and RPAM. From 2009 to 2015, Markets Management reported directly to the Chief of By-Law and Regulatory Services within Emergency and Protective Services. During this time, there were also changes in the leadership of By-Law and Regulatory Services as well as Emergency and Protective Services. Further, in 2015, Markets Management was realigned to Security and Emergency Management and more recently, in July 2016, Markets Management was realigned to Economic Development under the Planning, Infrastructure and Economic Development Department. While restructuring is not uncommon in many operating environments, the frequent realignment of Markets Management and change in direct supervisors and leadership of the various branches and departments has led to Markets Management operating as a stand-alone unit with little to no oversight and governance.

Given the relative size of the Section and recent approvals from City Council to pursue an MSC governance model for operating the Markets, Markets Management has not received the requisite leadership/senior management oversight to enable the Section to establish appropriate priorities and ensure that they receive the necessary support to achieve the objectives established.

Without the appropriate accountability for oversight and monitoring of the Markets Management Section, there is a risk that the activities are not aligned with City objectives and the achievement of City Council's vision for the Markets.

Recommendation #1

That the City embed, as part of the powers and duties established for the proposed MSC, the requirement for the MSC to develop strategic/operational objectives, with corresponding performance indicators, aligned to City Council's approved vision for the MSC. Measurement against the indicators should be performed and reported regularly to the MSC Board and to City Council.

Management Response:

Management agrees with this recommendation.

The Byward and Parkdale Market Revitalization Project was initiated following a report to Council in May 2016 wherein staff were directed to pursue the Municipal Service Corporation (MSC) model for the Byward and Parkdale markets.

Considerable analysis and consultation took place in advance of that report and recommendation. A formal business case will be presented to the Finance and Economic Development Committee (FEDCO) and Council along with a proposed governance structure in February 2017.

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As a part of the proposed governance structure and supporting business case, accountabilities of the City, the new MSC, its board of directors and staff will be clearly articulated and will align with the approved vision for the Byward and Parkdale Markets.

City Council will be responsible for strategic policy direction and oversight of performance, plans and policy. The City will require the MSC to submit a corporate plan to Council annually. The plan will encompass all of the business and activities of the corporation, its objectives for the period (one to five years) to which the plan relates, and its expected performance for the year.

Proposed Direction of Markets Management to a Municipal Services Corporation

In December 2013 a new Project Management Policy was approved by the City's Executive Committee to ensure a common and consistent application of project management principles and practices, and to support the achievement of results while mitigating the risks associated with projects to stakeholders and taxpayers. The policy applies to all City projects and contractual arrangements for project work identified and delivered by City staff, or on behalf of the City.

This policy is supplemented by a Project Management Framework, which further defines the City's project management approach to establish, manage and deliver projects at the City of Ottawa and states that, at a minimum, every project must have six mandatory elements including a business case⁶. In order to determine whether a formal business case is required, a "Business Case Applicability Summary" checklist was developed, which outlines the conditions under which a formal business case and associated approvals would be required. The City also developed a business case template as part of its project management methodology to allow for a consistent and comprehensive "method of exploring options to address a particular issue or opportunity"⁷.

In 2013, City Council provided direction to P&GM Department to explore options for the future of the ByWard Market. As per the City's Project Management Framework, a formal business case was required. On May 3, 2016, the Deputy City Manager's Office submitted a report to the Finance and Economic Development Committee with a

⁶ City of Ottawa Project Management Methodology

⁷ Business Case Corporate Template; City of Ottawa: Version 2.0 – September 2014.

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recommendation to pursue an MSC governance model. However, this was not based on a completed business case with a formal options analysis. This report was presented to City Council and on May 11, 2016. City Council directed staff to “bring back a report for the establishment of a Municipal Services Corporation in accordance with the Municipal Act, 2001, and applicable Regulations, to oversee operations of the ByWard and Parkdale markets...”⁸.

While not completing a City of Ottawa business case template, the City did undertake activities to support the recommendation to move towards an MSC for the management of the ByWard and Parkdale Markets. As noted earlier in this report, based on City Council direction, the P&GM Department retained PPS to conduct an analysis of the current state relative to existing public market structures in other cities and to provide recommendations to strengthen the future of the ByWard Market. In its first report, issued in March 2013, PPS recommended that the City reconsider how the ByWard Market is structured, allowing it to be managed by a separate authority or other organization “having management and operational control with a clear mandate to build back local fresh food uses”⁹. The second PPS report, issued in April 2016, outlines that various options were explored with the City’s legal department but that establishing an MSC would be the most effective option to ensure the long-term success for the Market. As part of the report, a detailed transition strategy and a multi-year pro-forma financial statement was provided to demonstrate financial self-sustainability. Appendix B to the report provided a detailed analysis of existing market governance structures that were analyzed as case studies and used as input for the recommendation to proceed towards an MSC. Eight markets in Canada and the United States were analyzed which all had or were in transition towards a similar governance structure; a not-for-profit corporation. At the end of the analysis, a listing was provided on other forms of public market ownership structures in Canada (e.g. St. Lawrence Market, which is City-owned); however, no detailed analysis was provided.

Based on the recommendations of the PPS report, a ByWard Market Working Group (“Working Group”) was established in January 2016 to develop the report to Committee and City Council and, if approved, to implement the transition to the MSC. The Working

⁸ Minutes of City Council; May 11, 2016.

⁹ Strengthening the Future of the ByWard Market, Project for Public Spaces; March 2013.

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Group refined the pro forma financial statements developed by PPS for presentation to Committee and City Council. This proforma was reviewed by the City Treasurer and the Working Group. Additionally, minutes of one Working Group meeting suggests that other governance models would be evaluated; however, to date, no details of this options analysis has been provided. An options analysis is a key activity within the City's project management framework and is a valuable tool to improve decision-making accountability and transparency. Without a fulsome options analysis, the City cannot be assured that it is proceeding towards an option that is the most effective and economical to meet the City's long-term vision for the Markets.

Recommendation #2

That the City develop a process which ensures that full documentation of business cases and options analysis therein to support the recommendations, are developed, approved, and retained prior to Committee or Council presentation. As the City is establishing the powers and duties of the proposed MSC, consideration should be given to how the City will maintain oversight to fulfil its fiduciary responsibility over the operations of the MSC, including the right to conduct periodic audits on the operations of the MSC.

Management Response:

Management agrees with this recommendation.

A formal Business Case process has been developed and documented in the Corporate Business Case Development Guidelines. The detailed guidelines were approved by City Council on April 9, 2014. The guidelines were communicated to staff through management bulletins and other internal communications channels. The creation of a business case is also a requirement under the City's Project Management Policy. In addition to the guidelines, a formal, two-day Business Case Development training course has been implemented by the Learning Centre, and is offered several times annually. It should be noted that these guidelines are intended for all business cases, whether or not they are considered by City Council. Staff are expected to properly document a business case before seeking approval, and this is clearly communicated in the guidelines, policy and training related to business case development.

In accordance with Section 203 of the *Municipal Act, 2001* and Section 6 of Regulation 599/06, a formal business case for the proposed Municipal Services Corporation will be completed and will include information such as: options analysis, risk analysis, recommendations, and an implementation plan. This business case will

be presented to FEDCO and Council along with a proposed governance structure in February 2017.

Ongoing Oversight of Markets Management

From a governance perspective, the two Markets Management Officers formally report to the Lead Officer and the Coordinator, Markets Stakeholder Relations and Communications and Markets Management Lead Officer (“Lead Officer”) report to the Program Manager, Licensing, Markets and Events Central Unit.

Based on interviews with the Program Manager and Markets Management representatives, decisions related to the day-to-day operations of Markets Management are left to the Lead Officer and his team. The Program Manager provided limited oversight over the daily operations of Markets Management. The Lead Officer and his team, with limited support, oversight and supervision of their activities, are performing their duties in an environment that has ineffective systems and processes with limited internal controls. The highly operational nature and limited resource capacity of Markets Management fosters an environment that is reactive as opposed to proactive in the management of the Markets.

From a risk management perspective, no formal risk identification, assessment or mitigation effort is being performed within Markets Management. As issues arise on a day-to-day basis, the Lead Officer and his team address it and escalate, if necessary, to the Program Manager. Documentation reviewed did identify that, while not established as part of a formal risk management program, challenges in recruiting and retaining vendors is a risk to Markets Management and an action plan was developed to entice new/existing vendors.

As noted earlier in this report, the continuous change in ownership of Markets Management over time, its relative size to other sections within the Program Manager’s portfolio and City Council’s approval to pursue an option to transition the governance of Markets Management to an MSC has resulted in limited management oversight and attention paid to the day-to-day activities of the Markets Management Section. Without this necessary oversight, processes and activities being undertaken by Markets Management do not have the necessary measures in place to ensure safeguarding of City assets and the provision of overall value for money.

Recommendation #3

That the City ensure that when establishing the MSC, consideration be made for the appointment of an independent Board of Directors, who have the collective requisite skills and expertise to oversee the activities of the MSC and the implementation of an appropriate governance framework to allow the City sufficient oversight of the activities and results of the MSC. Strong consideration should be given to the following elements:

- **The right of the City, as sole shareholder, to conduct periodic audits on the operations of the MSC.**
- **Periodic reporting of activities to City Council including budget to actual information with explanations for significant variances, results against key performance indicators and information on the status of management's oversight controls.**

Management Response:

Management agrees with this recommendation.

A governance recommendation will be put forward to FEDCO and Council in February 2017. This will include the role of the City (as sole shareholder), board composition, board skill sets, and committee structure. City staff will include high-level performance targets that will align with the approved vision for the Byward and Parkdale Revitalization initiative.

The Board will have a recommended committee structure that must include an audit committee. Results of audits will be reported back to Council as required.

The City will require the MSC to submit a corporate plan to Council annually. The plan will encompass all of the business and activities of the corporation, its objectives for the period (one to five years) to which the plan relates, and its expected performance for the year.

Oversight of the Head Lease

As noted above, the ByWard Market building is leased by a Head Tenant (670662 Ontario Inc.) as part of a 20 year lease which will expire on December 31, 2017. Per the terms of the lease, base rent is payable in quarterly instalments and is calculated by applying an escalated percentage of "Annual Net Rent" received by the Head Tenant from its subtenants.

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Annual Net Rent is defined in the lease agreement as “the total of the minimum annual rent received by the Tenant from its subtenants or license fees from licensees in the Building (based on the rate per square foot of rentable space subject to a sublease or license) plus any percentage rent or other fees received by the Tenant from its subtenants or licensees but excluding any amounts received from subtenants or licensees on account of taxes, insurance premiums or operating costs of the Building, all without deduction of any kind”. The calculation of Annual Net Rent, as prepared by the Head Tenant, is externally audited annually on behalf of the Head Tenant, which is the basis of the amounts paid to the City.

Embedded in the lease agreement (section 3.1(e)) is a right for the City to audit the books and records of the Head Tenant for the determination of the calculation of annual net rent; however, this right was never exercised during the term of the lease, despite ongoing concerns over the Head Tenant’s calculation of Annual Net Rent. Specifically, in 2000, an Audit of Public Markets by the Office of the City Auditor (October 2000) recommended the City “obtain the City Solicitor’s counsel regarding the legality of the deduction of operating costs and taxes by the Market Building’s tenant in the calculation of rent payable to the City and the tenant’s claim of a recoverable for those costs from the City” and “pursue its intention to have an audit conducted in the near future of the books and records of the tenant for a determination of the annual net rent received by the tenant that forms the basis of the rent to be paid by the tenant to the City”.

Management agreed with the recommendations. The Acting Chief Administrative Officer and the Acting City Treasurer were to implement the recommendations upon Council’s approval. The City Auditor’s recommendations, as presented, were carried by Council.¹⁰ There is no evidence that the City Solicitor’s counsel was consulted on the legality of the deduction of operating costs and taxes by the Head Tenant. In addition, there is no evidence that management implemented the recommendation to pursue an audit of the Head Tenant’s books and records. Markets Management did not effectively monitor the lease and payments by the Head Tenant until 2013 which was prompted by a significant decrease in rent payable by the Head Tenant.

¹⁰ (Ottawa) City Council Record of Proceedings No. 21 – November 8, 2000 (ACS2000-AU-AUD-0011)

The table below illustrates the rent paid by the Head Tenant from 2010 to 2015:

Table 3: Rent Paid by the Head Tenant from 2010 to 2015

Year	Rent Paid by Head Tenant \$
2010	108,000
2011	45,000
2012	1,480
2013	164,000
2014	183,000
2015	212,000

In light of the significant decrease in rent paid in 2012, Markets Management made enquiries with the Head Tenant to obtain further information, which included obtaining some invoices for work that was done on the leased premises. Markets Management was advised that the decrease in rent was attributed to repairs on the leased premises which were deducted from the Head Tenant’s calculation of base rent. This practice was consistent with prior years whereby the Head Tenant’s base rent included deductions for operating expenses.

On January 9, 2013, REPDO had received from the Head Tenant a copy of a letter from Gowlings (a national law firm) providing an opinion with respect to the payment of the Base Rent by the Head Tenant to the City for the period of 1999 to 2013 and the impact of the *Limitations Act* on the payment of such rent. The opinion limited the recovery to the same limitation period that applies to the Head Tenant’s collection of rent from the subtenants.

In early 2013, Markets Management contacted REPDO to discuss the invoices that had been provided by the Head Tenant for some of the work done in 2012. This led to more detailed internal discussions about the significant amount of repairs and maintenance expenses deducted from the Head Tenant’s calculation of base rent. This prompted additional enquiries and a tour of the premises by REPDO. At that time, the Head Tenant pointed out repairs that had been done to the premises, including plumbing repairs. The City requested all supporting documentation in relation to the work done in 2012 and recommended that a building condition audit be completed. The building condition audit was performed and reported on by a third party in 2013.

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At the same time, REPDO undertook their own calculation based on their interpretation of the lease terms which resulted in a significant understatement of rent received by the City. This resulted in REPDO's decision to expand the scope of review and request invoices and corresponding supporting documentation from the Head Tenant for all repairs and maintenance expenses for the period from 2007 to 2012. Based on our discussions with REPDO and the City's Solicitor, it is our understanding that the Head Tenant initially did not provide all requested documents. However, after several letters, the Head Tenant did agree to provide access to all invoices and copies of all sub-leases.

Based on current case law and the acceptance of the rent by the City for the previous 15 years without any challenge, it is our understanding that the opinion of Legal Services was that any potential recovery from the Head Tenant would be unlikely. Further, the associated legal costs to pursue the matter would outweigh the potential award in favour of the City. Based on this advice, staff decided not to continue with further work to pursue a claim against the Head Tenant.

Overall, despite concerns identified in the 2000 Office of the City Auditor Audit Report and the decrease in rent paid to the City for the year 2012, a financial audit was not performed of the Head Tenant's books and records to validate the expenses included in the calculation of Annual Net Rent.

Due to limited monitoring of the lease by Markets Management since its execution in 1997, matters related to the interpretation and calculation of Annual Net Rent were not identified in a timely manner; potentially resulting in the loss of rental income for the City. In 2013, REPDO began monitoring the lease closely at the request of Markets Management.

Recommendation #4

That the City ensure that lease clauses are clearly articulated and understood, prior to finalization, to avoid misinterpretation between the parties. Additionally, once a lease is executed, contract management monitoring responsibility should be formally assigned to a party with the appropriate skills and support to ensure adherence to the terms and conditions of the lease, including exercising the right to audit clause at appropriate points during the lease term.

Management Response:

Management agrees with this recommendation.

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Each unit has a role to play in the leasing process. REPDO acts as the leasing agent (advertising space and negotiating with Tenants) and interprets the lease documents when requested. REPDO works hand-in-hand with Legal Services (who reviews the lease document, provides legal advice, etc.) as well as the client group (in this case Markets Management) responsible for the facility containing the rental space. Markets Management maintains a day-to-day relationship with the tenant and engages both REPDO and Legal Services when required.

Management will review the current contract management monitoring process as part of the work being undertaken to establish the MSC and will include the results of this review in the governance report being brought forward to Committee and Council in February 2017.

B) Ongoing Operations of the Markets Management Section

Permit/License Revenue Management

Revenue from Markets' related activities are primarily received from the licensing of vendors/buskers, daily/monthly permits for vendors/buskers, rental of stand structures, liability insurance and from the sale of miscellaneous goods. Revenues can be collected by Markets Management in cash, cheque, debit or credit cards as well as pre-authorized payments. Official receipts are generated by MMS.

Vendors, including food producers and resellers ("agrifood" or "AF"), arts and crafts ("AC") vendors, street performers and other (refreshment vendors and tourist service providers) must be licensed to operate in the Markets. License applications for AF and AC are evaluated by two different selection committees (i.e., Agrifood Selection Committee and Arts and Crafts Selection Committee), each composed of independent members with knowledge in the AF and AC field. The selection committee scores each application against set criteria (e.g., type of products to be sold, years the applicant has operated on the market, etc.). Scored applications that are accepted/approved are issued a license by Markets Management. Rejected applicants are advised in writing. Based on our examination of documentation for a sample of licences, we noted there are adequate systems and processes in place to ensure that license applications are reviewed, assessed and authorized to ensure that only approved vendors operate stands.

Cash transactions typically arise by processing daily permits; however, it may happen that monthly permits are paid using cash at the beginning of the month by vendors. Cash receipts per MMS (2015 – \$130,000; 2014 – \$93,000) represent an inherent risk because cash, by its nature of a lack of traceability, is more susceptible to mishandling

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limited documentation maintained of the cash counts and signature of the individual who completed the count to hold accountable an individual for that cash at that count.

- Insufficient controls have been embedded within the MMS to support accurate and complete reporting of revenues - the lack of traceability of transactions, open access and system challenges requiring manual overrides allows an individual to make changes to the revenue records without detection. For example:
 - MMS is installed on six terminals and while City staff are required to log in to the network using a City of Ottawa login, MMS is not password-protected. That means that while open on a terminal, any individual can update the system.
 - There is no audit trail when changes are made to the records in MMS and therefore, there is no traceability on who initiated, modified, or deleted specific transactions.
 - Since the MMS is not password protected, no access rights have been established, to restrict users to specific transactions and data, based on their role and authority.
 - When accessing MMS, users are faced with an end user screen to proceed to process a transaction. However, access the source data directly is fully available without restriction, which would allow manipulation of all information without detection.
 - System issues have been identified associated with processing transactions at the same time as closing off a period. This has resulted in the need for manual modifications of the CRS report; limiting the reliability of the sales reconciliation process.
- Pre-numbered receipt books were not being used for either the Parkdale or ByWard Markets – manual receipts are issued in all cases at the Parkdale Market for daily stand permits (as there is no access to the MMS on site) and are issued at the ByWard Market when the MMS is down and cannot be used to issue system-generated receipts); however, the City-issued, pre-numbered receipt books are not being used in these cases. Based on the manual receipts issued, an MMS-generated receipt is prepared subsequently at the Markets Management office.

Overall, Markets Management processes are not in compliance with the City's Cash Handling Policy and Procedures and the Change Float Policy and Procedures. The absence of robust controls does not allow the City to be reasonably assured that

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revenues are completely and accurately recorded, increasing the risk of potential mishandling or misappropriation of cash.

Recommendation #5

That the City implement more robust internal controls for the handling of cash by Markets Management to ensure compliance with the City's Cash Handling Policy and Procedures and the Change Float Policy and Procedures, considering the following:

- **Maintenance of a signed copy of the Cash Handling Indemnity Form for each employee, including Ambassadors, who is or may be involved in the handling of cash;**
- **Requiring that cash be counted, totaled, and signed off by the cash handler when cash is being transferred from one person to another;**
- **While the implementation of a Point of Sales (POS) for a short period of time might be uneconomical, consideration should be given if the period is extended;**
- **Preparing a cash deposit and reconciling the Markets Management System (MMS) on a daily basis;**
- **Segregating duties between the person responsible for processing the summary report in MMS, preparing the related cash deposit, and the person who cancels receipts;**
- **Limiting, to the extent possible, the number of individuals who have access to the safe;**
- **Requiring that the cash box in the safe be locked and that a chain of custody log be maintained when the cash box is accessed or removed from the safe; and**
- **Use and safeguarding of City of Ottawa Receipt Books for manual processing as per the Cash Handling Policy and Procedures.**

Management Response:

Management agrees with this recommendation.

Markets Management have commenced the review of specific cash handling procedures to address the proposed OAG considerations in this report to ensure compliance with the City's Cash Handling Policy and Procedures and the Change Float Policy and Procedures. As of October 2016, three of the eight considerations

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have been fully implemented. Review of the remaining considerations will be completed by the end of Q1 2017.

Recommendation #6

That the City ensure that all operational departments handling cash are compliant with the corporate cash management policies and procedures to prevent mishandling of funds and to safeguard against losses.

Management Response:

Management agrees with this recommendation.

City departments are responsible to ensure staff comply with the Cash Handling Policy and Procedures. These requirements are outlined in the policy and any updates to the policy are communicated to staff through management bulletins and other internal communications channels.

Specific to this audit, Markets Management will ensure staff in the unit handling cash are compliant with the corporate cash handling policies and procedures. Process improvements have been made to ensure ongoing compliance with the Cash Handling Policy and Procedures, and compliance requirements have been communicated to staff. As noted in the management response to Recommendation 5, three of the eight considerations have been fully implemented. Review of the remaining considerations will be completed by the end of Q1 2017.

Overtime Management within Markets Management

The City of Ottawa Overtime Policy requires that all overtime must be approved in advance by an individual at the Program Manager level or above. The Policy further stipulates that a manager may delegate essential overtime approval authority to a Supervisor.

Although the Overtime Policy does not specifically prohibit a supervisor who has been delegated this authority to approve their own overtime, the appropriate level of control should be that no City employee should be approving their own overtime to prevent abuse.

As per the Overtime Policy, it is the responsibility of the Markets Management section to manage overtime to ensure that overtime is kept to a minimum and is cost justified.

Markets Management employees work a 35 hour work week but are subject to different scheduling practices due to the service requirements and may be scheduled to work seven hours per day between the hours of 6 a.m. to 6 p.m. and between 6 p.m. and 6

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a.m. The operational requirement for the Market to be opened 7-days a week from 6 a.m. to 6 p.m. and the limited resources results in overtime incurred by the Officers.

The current process for managing overtime by the Officers and staff is to establish a schedule for the upcoming four months – this schedule is completed by the Markets Management Lead Officer. For the Officers, shifts are worked that lead to overtime; however, no pre-approval is obtained. During discussion with the Program Manager, Licensing, Markets and Events Central Unit, it was confirmed that she does not approve overtime in advance, but receives tracking sheets (i.e., the Time Off in Lieu (TOIL) report – a Markets Management developed tracking log for overtime) for the MM Lead Officer and the Coordinator, Stakeholder Relations and Communications (her direct reports) that summarize the overtime accrued. When received, the Program Manager signs the summaries but does not conduct any reconciliation or review of the accrued time against the established schedule. For the other two Markets Management Officers, their TOIL is approved by the Lead Officer periodically. By virtue of the lack of pre-approval of overtime and the limited review of overtime incurred by the Program Manager, the Markets Management Lead Officer and the Coordinator, Stakeholder Relations and Communications have been delegated approval authority for their own overtime. Further, the Markets Management Lead Officer has been delegated approval authority for the Officers; however, no evidence of this delegation was provided.

Based on the review of the tracking of overtime maintained by the Officers, it was noted that this information is not submitted to Payroll branch for tracking centrally in SAP, which does not facilitate compliance with the terms and conditions of the CIPP collective agreement – which the Officers are members of. Examples are noted below:

- Section 7.02(b) Basis of Computation states that “a thirty-five (35) hour workweek employee will be compensated at straight time for the first four (4) hours of overtime. The employee will be compensated at time and one-half (1 ½) for all hours worked in excess of thirty-nine (39) hours per week.” In reviewing the TOILs of the Officers, it was noted that all overtime accrued over 35 hours was calculated at 1 ½ time.
- Section 7.05 Election of Leave or Cash, stipulates that “the employee must make an election on each occasion when applying for overtime credit between compensation in cash or leave”. The individual maintenance of a tracking sheet (TOIL) does not allow for these elections to be made and time in lieu is coordinated only among the Officers.
- The same section of the collective agreement (Section 7.05 Election of Leave or Cash) indicates that “the accumulated compensatory leave credits shall not

exceed 100 hours at any time. Any credits over the 100 hour maximum leave balance will be paid out in cash”. Overtime balances that are maintained within SAP are automatically controlled so that overtime cannot be accrued over 100 hours. For Markets Management, review of the manual TOILs demonstrated that balances during the summer seasons exceeded the 100 hour maximum. Additionally, overtime balances in winter seasons could go into negative numbers as overtime banks were “borrowed against” in anticipation of accruing overtime later in the summer months.

- Section 7.06 Year-End Election of the CIPP collective agreement stipulates that “an employee who has accumulated compensatory leave credits during the course of the year must make an election before the end of the last pay period in December for the disposition of those accumulated credits, utilizing one of the following options: i) compensation in the form of cash; ii) leave; iii) carryover of credits. When an employee fails to exercise one of the options, the compensatory leave credits shall automatically be paid in the form of cash”. The use of the TOIL by the Officers roll forward overtime credits across a year-end, no election is made at year-end and no cash is paid out in the absence of an election.

As a result of accruing and using a significant amount of overtime by the Officers, these employees typically do not utilize their annual leave balances. Since the City does not allow for carryover of more than one year’s worth of annual leave entitlement, annual leave in excess of the annual entitlement is paid out to the employees.

Overall, the lack of visibility of the recording and tracking of overtime by the Officers has resulted in non-compliance with the City’s Overtime Policy, the CIPP collective agreement and poor management practices/controls. In addition, the lack of visibility does not allow management to have a fulsome view of the impact of the overtime on the overall compensation costs of managing the Markets and whether other options would be more cost effective.

Recommendation #7

That the City develop appropriate processes to ensure compliance with the City of Ottawa Overtime Policy and the CIPP collective agreement and to embed the appropriate internal controls related to managing overtime. This would include approval of all overtime in advance, appropriate calculation of overtime in line with the CIPP collective agreement, submission of overtime worked to Payroll branch for tracking in SAP, and ensuring ongoing oversight of overtime incurred and time-off-in-lieu (TOIL) taken by Markets Management.

Management response:

Management agrees with this recommendation and it has been implemented.

Management has recently implemented new procedures to address the appropriate tracking of overtime.

Overtime worked may be required due to operational requirements on any given shift or may be planned for events, covering for other staff, etc. The small complement of full-time staff (four) and the hours of operation (6 a.m. to 6 p.m.) leave very little room for flexible scheduling to reduce overtime.

The Program Manager, Markets Management with the assistance of Payroll, has implemented the following new procedures with staff for the approval, recording and, the monitoring and oversight of overtime:

- The Program Manager signs off on the schedule monthly, which may include overtime shifts for planned events;
- Staff inform the Program Manager of any planned overtime not recorded on the schedule;
- All overtime worked is now recorded in SAP through Employee Self Serve, where appropriate controls are in place to ensure there are documented approvals of overtime worked and overtime banks are limited to 100 hours as per the CIPP collective agreement; and
- The Program Manager has taken the necessary steps to ensure that the payment of overtime is being completed fully in accordance with the CIPP Collective Agreement.

Advertising and Promotional Activities

Advertising and promotional spending in 2015 was \$52,100 (3% of total expenditures excluding compensation) (2014 - \$63,900; 4% of total expenditures excluding compensation) was incurred to promote the Markets and to attract tourists and residents to the Markets. Such activities included advertising in local newspapers, activities undertaken at the demo corner in the ByWard Market and local events such Winterlude and Nuit Blanche. Some initiatives were shared with the ByWard BIA which resulted in reimbursements to the ByWard BIA of \$21,100 in 2015 (\$52,200 in 2014).

It was confirmed that no promotional plan is established that sets out the particular advertising and promotional activities and/or events for the upcoming year. Establishing a promotional plan would enable Markets Management to establish spending targets

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and ensure that forecasted spending for promotional activities and events are aligned to its objectives.

Specific promotional costs are paid solely by Markets Management while other costs are shared with the ByWard BIA. A reconciliation is performed at year-end by Markets Management and the ByWard BIA to itemize each expense that was incurred by each party to determine the net amount owing. There is no written agreement between Markets Management and the ByWard BIA that stipulates the agreed upon activities/events and associated costs that will be shared to avoid misaligned expectations when incurring costs.

From the review of the costs incurred by Markets Management for advertising and promotion and those shared with the BIA, documentation was available to support 81% (2014 - 79%) of amounts incurred. No documentation to support the costs incurred for the remainder of amounts spent was provided. While we were able to obtain supporting documentation for approximately 80% of the sample tested, a significant portion of this documentation was obtained by the BIA. The lack of supporting documentation retained by Markets Management does not provide reasonable assurance that Markets Management is conducting adequate validation prior to requesting the payment of invoices.

Recommendation #8

That the City establish a marketing and promotional plan at the outset of the next fiscal year. Based on this plan, the City should establish a formal cost-sharing agreement with the ByWard BIA that includes expectations related to the level of support required for reimbursement of costs incurred. As the City transitions towards a proposed MSC to oversee the operations of the Markets, considerations should be made as to the formality of the cost sharing activities with external parties.

Management Response:

Management agrees with this recommendation.

In early 2016, Markets Management staff initiated an events calendar and discussed cost sharing plans with the BIA's Executive Director. The outcome of those discussions has led to verbal agreements and documentation outlining proposed and actual costs.

Markets Management and the BIA Executive Director are working towards a formal cost sharing plan for promotions and advertising for 2017. This will be completed by December 31, 2016.

Recommendation #9

That the City implement measures to review and confirm supporting documentation for all BIA invoices, to demonstrate receipt of goods and services relative to the City, prior to approval for reimbursement.

Management Response:

Management agrees with this recommendation and it has been implemented.

A monthly summary report of shared expenditures with supporting invoices is being provided to the Program Manager for review and approval prior to financial processing.

Occupational Health and Safety Compliance

The City's Health and Safety Policy states that: "The City of Ottawa is committed to create and maintain a physically and psychologically safe and healthy workplace environment for all employees, contractors and visitors while complying with all applicable Occupational Health and Safety (OH and S) legislation". Further, "managers and supervisors are accountable for the health and safety of staff under their supervision, and are responsible for ensuring that all employees receive adequate training in their specific job duties, while working in compliance with OHS legislation and established safe work practices".

It was observed that the Health and Safety Policy is not posted at the Markets Management office. Markets Management hires approximately nine new employees each summer. A posted policy may be more accessible for staff who do not necessarily have access to a computer at all times. Further, it was noted that there was not a Health and Safety Board in the Markets Management office.

Effective November 2013, new O. Reg 297/13 came into effect. It required that supervisors complete the Occupational Health and Safety Awareness Training by July 1, 2014, and that employees complete it as soon as practical by December 31, 2014. The Occupational Health and Safety Awareness Training records for all current Markets Management employees were reviewed and it was noted that most had completed the training. However, two Administration Clerks and five Markets Operations Support employees had not completed the training.

Recommendation #10

That the City take action to post the Health and Safety Policy for employees and ensure that all Markets Management staff complete the Occupational Health and Safety Awareness required training in a timely manner.

Management Response:

Management agrees with this recommendation and it has been implemented.

On October 27, 2016 Management posted the Health and Safety Policy for employees. As of November 10, 2016, all Markets Management staff have completed the Occupational Health and Safety Awareness Training.

Conclusion

Markets Management staff focus their efforts to ensure stakeholders' needs are being met on a daily basis and that the requirements outlined in the applicable by-laws are being upheld. However, management practices and measures within Markets Management are insufficient to safeguard the City's assets and to ensure the effectiveness and efficiency of activities in support of the City's objectives for the Markets. Action should be taken to improve the internal controls in these operational areas immediately as oversight transitions to the responsibility of the MSC.

Opportunities exist, as the City establishes the recommended powers and duties of the MSC to implement City Council's vision to revitalize the ByWard and Parkdale Markets, to establish the expectations and accountabilities for sound management and efficient, effective operations.

Potential savings

The following are potential saving opportunities for the City relative to Markets Management:

- Reassessing the resources required to manage the Markets operations during peak season may reduce the amount of overtime and vacation payouts incurred by Markets Management.
- Completing a cost-benefit analysis of the advertising and promotional activities to ensure value-for-money.