

10. **REVITALIZATION OF THE BYWARD AND PARKDALE MARKETS – NEW MANAGEMENT MODEL AND GOVERNANCE STRUCTURE**
- REVITALISATION DES MARCHÉS BY ET PARKDALE – NOUVEAU MODÈLE DE GESTION ET NOUVELLE STRUCTURE DE GOUVERNANCE**

COMMITTEE RECOMMENDATIONS

That Council:

- 1. Adopt the Business Case entitled “The Future Management of the ByWard and Parkdale Markets” found at Document 1 to this report;**
- 2. Approve the establishment of a Municipal Services Corporation for the ByWard and Parkdale Markets as described in this report and direct staff to bring back an interim progress report detailing the transition schedule in Q3 of 2017;**
- 3. Approve the process for recruiting and selecting Board members, as described in this report; and delegate authority to the Mayor, Councillor Fleury and Councillor Leiper to appoint the initial three Board Members; and**
- 4. Delegate authority to the General Manager, Planning, Infrastructure and Economic Development, to incorporate the ByWard and Parkdale Markets Municipal Services Corporation and enter into ancillary legal agreements, including service and asset management agreements and lease assignments, to the satisfaction of the City Clerk and Solicitor.**

RECOMMANDATIONS DU COMITÉ

Que le Conseil :

1. **Adopte le dossier d'analyse intitulé « The Future Management of the ByWard and Parkdale Markets », figurant au document 1 du présent rapport;**
2. **Approuve la création d'une société de services municipaux des marchés By et Parkdale, comme le décrit le présent rapport, et charger le personnel de remettre, au troisième trimestre de 2017, un rapport d'étape provisoire dans lequel sera exposé en détail le calendrier de transition;**
3. **Approuve le processus de recrutement et de sélection des administrateurs de la société, comme le décrit le présent rapport et déléguer au maire Jim Watson et aux conseillers Mathieu Fleury et Jeff Leiper l'autorité de nommer les trois premiers membres;**
4. **Délègue au directeur général de la Direction générale de la planification, de l'infrastructure et du développement économique le pouvoir de constituer en personne morale la Société de services municipaux des marchés By et Parkdale et de conclure les accords juridiques accessoires, notamment des accords de service et de gestion des biens et des cessions de bail, à la satisfaction du greffier municipal et avocat général.**

DOCUMENTATION/DOCUMENTATION

1. Manager's report, Right of Way, Heritage and Urban Design Services, Planning, Infrastructure and Economic Development Department, dated 28 March 2017 (ACS2017-PIE-ED-0006)

Rapport du Gestionnaire, Services des emprises, du patrimoine et du design urbain, Direction générale de la planification, de l'infrastructure et du développement économique daté 28 March 2017 (ACS2017-PIE-ED-0006)

2. Extract of draft Minutes, Finance and Economic Development Committee, 4 April 2017.

Extrait de l'ébauche du procès-verbal, Comité des finances et du développement économique, le 4 avril 2017.

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique
4 April 2017 / 4 avril 2017**

**and Council
et au Conseil
12 April 2017 / 12 avril 2017**

**Submitted on March 28, 2017
Soumis le 28 mars 2017**

**Submitted by
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**Ward: RIDEAU-VANIER (12)
KITCHISSIPPI (15)**

File Number: ACS2017-PIE-ED-0006

**SUBJECT: Revitalization of the ByWard and Parkdale Markets – New
Management Model and Governance Structure**

**OBJET: Revitalisation des marchés By et Parkdale – Nouveau modèle de
gestion et nouvelle structure de gouvernance**

REPORT RECOMMENDATIONS

That Council:

1. **Adopt the Business Case entitled “The Future Management of the ByWard and Parkdale Markets” found at Document 1 to this report;**
2. **Approve the establishment of a Municipal Services Corporation for the ByWard and Parkdale Markets as described in this report and direct staff to bring back an interim progress report detailing the transition schedule in Q3 of 2017;**
3. **Approve the process for recruiting and selecting Board members, as described in this report; and delegate authority to the Mayor, Councillor Fleury and Councillor Leiper to appoint the initial three Board Members; and**
4. **Delegate authority to the General Manager, Planning, Infrastructure and Economic Development, to incorporate the ByWard and Parkdale Markets Municipal Services Corporation and enter into ancillary legal agreements, including service and asset management agreements and lease assignments, to the satisfaction of the City Clerk and Solicitor.**

RECOMMANDATIONS DU RAPPORT

Que le Conseil :

1. **Adopte le dossier d’analyse intitulé « The Future Management of the ByWard and Parkdale Markets », figurant au document 1 du présent rapport;**
2. **Approuve la création d’une société de services municipaux des marchés By et Parkdale, comme le décrit le présent rapport, et charger le personnel de remettre, au troisième trimestre de 2017, un rapport d’étape provisoire dans lequel sera exposé en détail le calendrier de transition;**
3. **Approuve le processus de recrutement et de sélection des administrateurs de la société, comme le décrit le présent rapport et déléguer au maire Jim Watson et aux conseillers Mathieu Fleury et Jeff Leiper l’autorité de nommer les trois premiers membres;**

- 4. Délègue au directeur général de la Direction générale de la planification, de l'infrastructure et du développement économique le pouvoir de constituer en personne morale la Société de services municipaux des marchés By et Parkdale et de conclure les accords juridiques accessoires, notamment des accords de service et de gestion des biens et des cessions de bail, à la satisfaction du greffier municipal et avocat général.**

EXECUTIVE SUMMARY

Assumption and Analysis

This report seeks Council's approval to establish a Municipal Services Corporation (MSC) for the purposes of revitalizing the ByWard and Parkdale Markets, to be incorporated under the *Canada Not-for-Profit Corporations Act*, and to assume management of the two markets on January 1, 2018.

The recommendations of this report are further to Council's approval of the "Revitalization of ByWard and Parkdale Markets – Proposed New Governance Model and Amendments to By-law No. 2008-449 Related to George Street Plaza Renewal Project" report (May 2016) and reflects Management's responses to the December 2016 Audit by the Auditor General (Annual Report and Detailed Audit Reports), also approved by Council.

The Economic Development branch currently manages outdoor vending at both ByWard and Parkdale Markets, as well as indoor realty operations within the Clarence Street Parking Garage (ByWard Market). The management of 55 ByWard Market (the Market Building), has been within the control of a private public partnership (P3) since 1998.

An on-going decline in Markets revenues, decreased numbers of vendors and customers, lagging sales, community concerns and a lack of strategic vision and management have contributed to the need to reconsider the current Markets Management model. Although Markets Management has been striving to maintain and generate revenue through the Markets, the team's success has been compromised by five rapidly successive organizational re-alignments. In the absence of strategic leadership, Markets Management has been unable to establish appropriate strategic

objectives and a strategic vision. The long-term result has been a gradual shift towards an environment that is both reactive and largely operational.

Since 2012, as the need for a markets' revitalization became apparent, staff has been actively engaged in exploring alternate governance options. Working closely with Project for Public Spaces (PPS), and most recently with MNP LLP (MNP), staff has been committed to the vision of an enhanced and dedicated strategic entity positioned to usher the ByWard and Parkdale Markets into a new era of entrepreneurship and innovation.

Based on its expertise around North American markets, PPS identified a variety potential governance options for the ByWard and Parkdale Markets. Following a comprehensive process of consultation and analysis with internal department representatives and the community, PPS and City staff concluded that the creation of an independent not-for-profit Municipal Services Corporation would best align with the City's long-term vision for the markets.

More recently, MNP validated these findings through a risk assessment and financial analysis related to each of the proposed governance options as well as high-level transition planning related to the recommended MSC option. Based on the comparative analysis of the three feasible governance options evaluated, the establishment of a Municipal Service Corporation scored the best overall score (lowest in terms of residual risk) assuming implementation of management controls and risk mitigation measures.

Finance staff, working with MNP, has estimated the potential financial results of an MSC-managed and operated model. The results, as detailed in the Business Case, as per Document 1, are based on conservative estimates, and project a deficit in the first and second years and potential positive returns in the following years.

Through this report, staff seeks Council's approval to establish a Municipal Services Corporation, as well to adopt the proposed mandate, objectives and guiding principles. The MSC's duties and responsibilities and governance structure are also included herein.

This report also recommends to Council a high-level transition strategy, which defines key milestones and outlines the necessary measures to mitigate inherent risk. It is

recommended staff bring back an interim progress report in Q3 detailing the finalized transition schedule.

It is also recommended that Council approve the process for recruiting and selecting Board members, which are the Directors appointed by the Board, as described in this report.

Finally, staff is recommending that Council delegate authority to incorporate the MSC and enter into necessary agreements to both define roles and responsibilities between the City and the MSC, and protect municipal assets.

Financial Implications

The Business Case (Document 1) provides an analysis of the potential incremental annual operating revenues and costs if the Markets were managed and operated by a Municipal Services Corporation . These are estimates based on the assumption that the MSC will be fully operational by 2018. The current estimates show a deficit in the first year and second year of operation. Funds are available, subject to Council approval, to cover any deficits the MSC may incur in the initial year(s) of operation through the Markets Management deferred revenue account.

City resources will be required to support the MSC during transition and perhaps in the initial months, but these would not be dedicated full-time resources and therefore would be funded from departmental envelopes. If there is a requirement for dedicated staff from the City, the full cost of these FTEs will be recovered from MSC revenues.

There will be some additional one-time costs required to establish the MSC and to manage the overall transition from City staff to the MSC. In May of 2016 Council approved (ACS2016-PAI-DCM-0001) funding to be spent in 2017 for the transition of the MSC. The amount carried forward in 2017 is \$476K. This amount will transition requirements, such as:

- Cost of incorporation
- Legal fees
- Recruitment of MSC Board and Executive Director

Public Consultation / Input

Staff in the Planning, Infrastructure and Economic Development Department have been undertaking public consultation related to Market-related governance issues since 2012, including on the occasion of previous reports to Planning Committee (March 13, 2012, August 23, 2012, and June 11, 2013) and to Finance and Economic Development Committee (May 11, 2016, March 7, 2017 and April 4, 2017).

Key contributors to the outcome of this project include ByWard Market Stakeholders Association, Lowertown Community Association, Hintonburg Community Association, 55 ByWard Tenants' Association, ByWard Market Business Improvement Area, Wellington West Business Improvement Association and Councillor Fleury's and Councillor Leiper's offices.

Over the course of the project period, consultation and feedback was also solicited from other stakeholders having an interest in the ByWard Market area, including the National Capital Commission, Ottawa Tourism, Just Food/Savour Ottawa, the National Gallery, the Aga Khan Foundation and Ottawa Farmer's Market.

Hypothèse et analyse

Le présent rapport vise à solliciter l'approbation du Conseil en vue de créer une société de services municipaux (SSM), constituée en personne morale aux termes de la *Loi canadienne sur les organisations à but non lucratif*, qui aura pour fonction de revitaliser les marchés By et Parkdale et d'administrer ces deux marchés à compter du 1^{er} janvier 2018.

Les recommandations énoncées dans le présent rapport font suite à l'approbation par le Conseil du rapport intitulé « Revitalisation des marchés By et Parkdale – nouveau modèle de gouvernance proposé et modifications au Règlement n° 2008-449 relativement au Projet de réfection de l'esplanade de la rue George » (mai 2016). Elles tiennent compte des réactions de la direction face à la vérification menée en décembre 2016 par le vérificateur général (rapport annuel et rapports de vérification détaillés), également approuvée par le Conseil.

La Direction du développement économique administre actuellement la vente extérieure aux marchés By et Parkdale, ainsi que les opérations immobilières à l'intérieur du garage de stationnement de la rue Clarence (marché By). La gestion du 55, marché By

(l'édifice central du marché) est sous le contrôle d'un partenariat public-privé (PPP) depuis 1998.

La chute continue des recettes, la diminution du nombre de vendeurs et de clients, le ralentissement des ventes, les préoccupations de la population et l'absence de vision et de gestion stratégiques ont accentué la nécessité de réexaminer le modèle de gestion des marchés. Bien que le personnel de Gestion des marchés se soit efforcé de maintenir le niveau de recettes et d'en générer de nouvelles, ces efforts ont été compromis par cinq réorientations organisationnelles en succession rapide. En l'absence de leadership stratégique, Gestion des marchés a été incapable de fixer des objectifs stratégiques adéquats et une vision stratégique. À long terme, cette situation a entraîné une transition progressive vers un environnement à la fois réactif et essentiellement opérationnel.

Depuis 2012, à mesure que la nécessité de revitaliser les marchés est devenue évidente, le personnel s'est lancé dans une recherche active de nouvelles options de gouvernance. En étroite collaboration avec Project for Public Spaces (PPS) et plus récemment avec MNP S.R.L. (MNP), le personnel s'est investi à réaliser la vision d'une entité stratégique améliorée et spécifique, capable de faire entrer les marchés By et Parkdale dans une nouvelle ère d'entrepreneuriat et d'innovation.

En se fondant sur son expertise des marchés de partout en Amérique du Nord, PPS a cerné diverses options de gouvernance pour les marchés By et Parkdale. Au terme d'un processus complet de consultation et d'analyse mené avec des représentants internes et de la collectivité, PPS et le personnel de la Ville en sont venus à la conclusion que la création d'une société de services municipaux sans but lucratif correspondrait au mieux à la vision à long terme de la Ville pour les marchés.

Plus récemment, MNP a validé ces conclusions par une évaluation des risques et une analyse financière portant sur chacune des options de gouvernance proposées, et une planification de transition de haut niveau liée à l'option de SSM recommandée. À la suite de l'analyse comparative des trois options viables de gouvernance évaluées, la création d'une société de services municipaux a obtenu le meilleur résultat général (risque résiduel le plus faible), pourvu que des contrôles de gestion et des mesures de réduction des risques soient mis en place.

Le personnel des Services des finances, en collaboration avec MNP, a estimé les résultats financiers éventuels d'un modèle administré et exploité par une SSM. Les résultats, détaillés dans le dossier d'analyse (document 1), sont fondés sur des estimations prudentes. Ils prévoient un déficit au cours de la première et de la deuxième années, et des rendements éventuellement positifs les années suivantes.

Par le présent rapport, le personnel sollicite l'approbation du Conseil en vue de créer une société de services municipaux et d'adopter le mandat, les objectifs et les principes directeurs proposés. Les tâches et responsabilités, ainsi que la structure de gouvernance de cette SSM, sont également décrites dans le présent document.

Le présent rapport recommande également que le Conseil prenne connaissance de la stratégie de transition globale, qui définit des étapes clés et qui décrit les mesures devant être adoptées pour limiter le risque inhérent. Il recommande que le personnel remette, au cours du troisième trimestre, un rapport d'étape provisoire dans lequel sera exposé en détail le calendrier de transition définitif.

Il recommande de plus que le Conseil approuve le processus de recrutement et de sélection des premiers administrateurs, comme le décrit le présent rapport.

Finalement, le personnel recommande au Conseil de déléguer le pouvoir de constituer en personne morale la SSM et de conclure les accords nécessaires afin de définir les rôles et responsabilités de la Ville et de la SSM, et de protéger les actifs municipaux.

Répercussions financières

Le dossier d'analyse (document 1) étudie les recettes et les coûts annuels supplémentaires possibles si les marchés étaient administrés et exploités par une société de services municipaux. Ces estimations sont fondées sur l'hypothèse que la SSM serait entièrement opérationnelle en 2018. Les estimations actuelles prévoient un déficit au cours de la première et de la deuxième année de fonctionnement. Des fonds sont disponibles, sous réserve de l'approbation du Conseil, pour couvrir tout déficit que la SSM pourrait présenter au cours de sa première ou de ses premières années de fonctionnement, grâce au compte de revenus reportés de Gestion des marchés.

Des ressources de la Ville seront nécessaires pour soutenir la SSM au cours de la période de transition et peut-être lors des premiers mois, mais il ne s'agirait pas de ressources qui se consacraient à plein temps à cette transition, et, par conséquent,

elles seraient financées à même le budget des directions générales. Si des ressources en personnel municipal sont nécessaires, le coût de ces ETP sera intégralement couvert par les recettes de la SSM.

Des fonds ponctuels supplémentaires seront requis pour établir la SSM et pour gérer globalement la transition entre le personnel de la Ville et la SSM. En mai 2016, le Conseil a approuvé (ACS2016-PAI-DCM-0001) le financement nécessaire en 2017 à la transition vers la SSM. Le montant reporté en 2017 s'élève à 476 000 \$. Cette somme permettra de faire face aux besoins de transition suivants :

- coût de constitution en personne morale,
- frais juridiques,
- recrutement du directeur exécutif et du conseil d'administration de la SSM.

Consultation publique et commentaires

Le personnel de la Direction générale de la planification, de l'infrastructure et du développement économique a procédé à une consultation publique au sujet des questions entourant la gouvernance des marchés depuis 2012, notamment dans le cadre de rapports remis précédemment au Comité de l'urbanisme (13 mars 2012, 23 août 2012 et 11 juin 2013) et au Comité des finances et du développement économique (11 mai 2016, 7 mars 2017 et 4 avril 2017).

Parmi les principaux intervenants ayant contribué au résultat de ce projet, mentionnons l'Association des détenteurs d'étal du marché By, l'Association communautaire de la Basse-Ville, la Hintonburg Community Association, la 55 ByWard Market Tenants Association, la zone d'amélioration commerciale du marché By, la zone d'amélioration commerciale de la rue Wellington Ouest ainsi que les bureaux des conseillers Fleury et Leiper.

Pendant la durée du projet, d'autres intervenants ayant des intérêts dans le secteur du marché By ont été consultés et ont pu faire part de leurs commentaires, notamment la Commission de la capitale nationale, Tourisme Ottawa, Alimentation juste / Savourez Ottawa, le Musée des beaux-arts du Canada, la Fondation Aga Khan Canada et le Marché des producteurs agricoles d'Ottawa.

BACKGROUND

Established in 1826, the ByWard Market has experienced a gradual loss of vitality and retail density in recent years. Once-bustling food stalls, retail food vendors and neighborhood businesses have slowly given way to restaurants and bars. Without the necessary strategic leadership in place, the City has been challenged to proactively respond to these changes. As a result, the ByWard Market is no longer able to attract the caliber and diversity of unique, local products that is needed to sustain its customer base.

The Parkdale Market, west of the downtown core, was created in 1924. Unlike the ByWard Market, it functions as a smaller scale street-side market. Located in the up-and-coming community of Hintonburg, the Parkdale Market continues to attract shoppers from a range of areas. Nevertheless, it too struggles to attract and retain new vendors, generate revenue and maintain its diversity.

While each market is distinct in form and context, both have functioned as important historical food hubs within their respective communities. They have featured many of the same food and horticultural vendors, shared similar by-laws and benefited from the experience of a common staff. In recent years, the two markets have simultaneously experienced the challenges of attracting local producers, losing retiring vendors, and competing with the City's flourishing farmers market movement.

In March of 2012, Planning Committee directed the Planning and Growth Management Department to undertake with the community a visioning exercise for the ByWard Market area ([PLC motion 31/5](#)). The direction came as a result of concerns from the Lowertown community about the loss of retail food sellers and other residential-oriented businesses, as well as the rise in the number of area restaurants and bars.

Subsequently, staff presented an information report entitled "A Future Strategy for the ByWard Market" to Planning Committee in August of 2012 ([ACS2012-PAI-PGM-0184](#)). The report led to the engagement of Project for Public Spaces (PPS), a U.S.-based non-profit organization, known for its expertise in public markets and place-making. PPS was hired to carry out a review of the current state of the ByWard Market and to make recommendations for its future. The ByWard Market Business Improvement Area and the City shared the cost of undertaking this initiative.

PPS' findings and stakeholder feedback were put forth in a report to Planning Committee and Council in June of 2013 (ByWard Market – Strengthening the Future of the ByWard Market - [ACS2013-PAI-PGM-0126](#)). At that time, Council approved the report's strategies and recommendations for new governance of the ByWard Market, including changes in management, operations, policy, and regulation. The report also emphasized the need for public space design in the short and long term, and addressed night life impacts.

Following the June 2013 report, PPS was further retained to explore governance options, propose opportunities for the Market's public realm, establish a business plan and develop a transition strategy. PPS was also mandated to re-engage with ByWard Market stakeholders, as well as City staff, and submit a final report for the City's consideration.

In its 2015 City Strategic Plan, Council approved the ByWard and Parkdale Market / Sparks Street Revitalization as a Strategic Initiative in support of Objective 2 (Support Growth of Local Economy). This Strategic Initiative was allocated \$500,000 in funding for the transition to a new governance model for both City markets and to undertake a proactive zoning compliance initiative. Another \$500,000 was provided in short-term capital funding to undertake the renewal of the George Street Plaza.

In May of 2016, staff presented a report to Finance and Economic Development Committee and Council recommending that the City proceed with the revitalization of the ByWard and Parkdale Markets (Revitalization of ByWard and Parkdale Markets – Proposed New Governance Model and Amendments to By-law No. 2008-449 Related to George Street Plaza Renewal Project - [ACS2016-PAI-DCM-0001](#)). At that time, staff was directed to return to Council with a report for the establishment of a Municipal Services Corporation to oversee the operations of both public markets. This report was to propose a structure, set of duties and governance for the MSC, as well as a transition strategy to achieve its implementation. Staff was also given direction to review Parkdale Program By-Law No. 2008-448 and ByWard Market Program By-Law 2008-449 in consultation with the Core Team and Ward Councillors. From a physical realm perspective, staff was directed to review the 2017-2018 off-season vending opportunities in the George Street Plaza, and proceed with two Signature (“bookend”) Stands along the east and west sides of the ByWard Market building.

In December of 2016, Markets Management was the subject of an audit by the Office of the Auditor General (OAG) – Annual Report and Detailed Audit Reports - [ACS2016-OAG-BVG-0004](#)). In response to audit recommendations, staff committed to address leadership and operational issues and, in keeping with the requirements of the *Municipal Act, 2001*, to present a fulsome business case including a thorough options and risk analysis. A commitment was also made by staff to establish a strong governance structure, and develop strategic/operational objectives, with corresponding performance indicators aligned to Council's approved vision for the proposed MSC.

Staff provided Finance and Economic Development Committee and Council with an update on the Markets' revitalization project in March of 2017 (Update – Revitalization of the ByWard and Parkdale Markets Project and Amendments to Parkdale Market Program By-law 2008-448 and ByWard Market Program By-law 2008-449 - [ACS2017-PAI-ED-0004](#)) specifically, the ongoing work toward a detailed business case and solicitation of governance advice, with a report expected to come to Committee and Council in April of 2017. Council received the update and approved a number of amendments to the Markets' by-laws to accommodate stand relocations related to 2017 festivities, the George Street Plaza renewal and Signature Stands; encourage stand diversity and densification; and facilitate administrative processes.

DISCUSSION

Following on continued efforts to revitalize the ByWard and Parkdale Markets, and in recognition of the Council-approved recommendations set forth in the May 2016 staff report ([ACS2016-PAI-DCM-0001](#)) and the December 2016 Auditor's report ([ACS2016-OAG-BVG-0004](#)), this report seeks Council's approval to establish a Municipal Services Corporation, which would be incorporated under the *Canada Not-for-Profit Corporations Act* and assume management of the ByWard and Parkdale Markets on January 1, 2018.

Consideration of Governance Options

Three feasible options were evaluated by City staff with the consultancy services of MNP LLP (MNP):

- Continue with City-Operated Markets Management "Status Quo";

- Enter into a New Public Private Partnership, and
- Create a new Municipal Services Corporation.

The first option, to continue with City-Operated Markets Management (status quo), would see the City operate the markets within the context of the current management model, as a division of Economic Development.

Continuing with the current operating and management model would be the most straightforward option from a transition perspective, requiring the least amount of City investment and change. Management of the markets would remain within the City's direct control, and would ensure that all processes and decisions align with the municipality's operational and strategic objectives.

Markets' Management would continue to manage the outdoor markets and parking garage tenants and absorb the management of 55 ByWard upon the expiry of the P3 on December 31, 2017.

Although this option is the most straightforward, the Markets would likely continue to experience revenue declines and potentially higher City funded operating deficits without the necessary strategic direction and resources. Municipally-operated Markets could limit the Market's ability to leverage opportunities for growth that exist within other public markets. At a fundamental level, maintaining the status quo also contradicts the recent City Auditor's report, which highlights the need to enhance and strengthen a number of core strategic management and operational processes.

Retaining the Markets as City operated will also require Council consideration of supplementary resources and additional employees. As well, a senior management champion would be identified in order to achieve strategic-level objectives. This option would be restricted in its flexibility, innovation and entrepreneurial spirit, as well as limited in leveraging external funding opportunities.

In the second option, to enter into a new Public Private Partnership (P3), a private sector entity would be engaged through a competitive process and would manage both the City market building assets, and the associated indoor and outdoor operations of both markets. An annual financial remittance would be paid by the P3 Markets operator for use of City owned assets.

This option would require a limited degree of City resources and involvement. The P3 would be responsible for the overall strategic management of the Markets in keeping with Council's vision. A Service Agreement would be developed and negotiated between the P3 and the City which would include clear direction related to the City's financial support of the Markets.

As evidenced by the current public private partnership, this model lacks both an accountability framework and incentives for long-term investment and renewal of the Markets. This model is susceptible to private sector expectations regarding financial return on investment as well as other restraints and market limitations. Furthermore, the City's ability to intervene within this governance option is limited.

The third option, to create a new Municipal Services Corporation, would see the establishment of an independent, incorporated entity governed by a non-partisan Board of Directors and strategically managed by a Board appointed Executive Director. MSC staff would fall under the direction of the Executive Director. As per standard practice, duties and responsibilities would be outlined in a comprehensive Service Agreement between the City and MSC.

While the City would retain ownership of its real property Market assets and maintain an ongoing lifecycle program, the MSC would be delegated significant duties and responsibilities related to their management and operation. The MSC would prepare and present to Council, a strategic plan and annual operating plan based on achieving Council's vision for ByWard and Parkdale Markets. Accountabilities would include the submission of an annual report and audited financial statements to Council.

The MSC model has become the preferred option in the field of public markets. This option provides an effective governance structure for supporting the transition from operations-based model to one of strategic leadership and management while retaining sufficient mechanisms for municipal oversight and control.

In granting this level of autonomy, however, the City would need to relinquish its day-to-day oversight of the markets and empower an independent body to assume this responsibility.

At present, the City lacks any previous experience in the creation of a Municipal Services Corporation of this scope and complexity (ie: asset transfer, staffing, daily

operations, etc.). The City’s current MSCs, including the Manotick Mill and the Ottawa Community Land Development Corporation are much simpler entities, and therefore unable to completely inform the market revitalization process through experience and knowledge transfer.

A considerable degree of support from several City partners, including Legal Services, Human Resources, Finance, Economic Development, the Corporate Real Estate Office, Asset Management, Public Works and Information Technology would be required to support this transition. On-going staff resources from each of the sections would be required throughout the various project phases, including consultation and research, evaluation, information sharing, service-level determination and transition. This collaboration would impart the MSC with the necessary level of expertise and position it to succeed.

Risk Assessment of Markets Management Governance Options

MNP completed a risk assessment of the three governance options with the results summarized in the following Table 1 along with a more detailed breakdown in the Business Case (Document 1).

Table 1: Summary of Markets Governance Options Risk Assessment Scoring

Options	Total Inherent Risk Score	Total Residual Risk Score
Municipal Services Corporation (MSC)	283	142
City Operated Markets Mgmt.	236	152
Private/Public Sector Markets Mgmt.	275	162

In conducting the risk assessment for each option, MNP applied a standard approach and evaluated/scored 52 separate Markets risk factors based on two types of risk namely:

- **Inherent Risk** - The initial risk that is present in the City of Ottawa - Markets governance options **prior to** the implementation of any risk mitigation measures and/or management controls.
- **Residual Risk** – The risk that is present in the City of Ottawa - Markets governance options stemming from related activities **after** the risk has been controlled (e.g. successful implementation of ByWard and Parkdale Markets comprehensive transition plan).

Based on the detailed risk assessment completed by MNP, and taking into consideration the successful implementation of management controls and specific risk mitigation measures identified for each respective governance option, the Municipal Services Corporation scored as the option with the least Residual Risk to the City of Ottawa. Fundamental to successfully achieving this overall risk assessment outcome is the implementation of a comprehensive MSC transition plan.

As noted above, the City Operated Markets Management (Status Quo) option scored the lowest Inherent Risk meaning that in the absence of any risk mitigation measures and management controls, the Status Quo represents the option with the least initial risk. However, based on the implementation of specific management controls and measures, much of the risk associated with the MSC can be effectively mitigated through both the transition period and start-up of operations of the MSC.

As outlined in further detail in the Business Case (Document 1), in comparison to the Status Quo and P3 governance options, the MSC scored well from a risk perspective in the categories of enhanced MSC Board Accountability and Authority and future Markets Partnerships and Innovation. Subject to completion and approval by Council of a new MSC strategic plan and annual business plan, strategic management is another area where the MSC attains a lower residual risk score compared to the P3 and City-run option.

Given the MSC, will be established as a new entity responsible for the strategic management and operations of the Markets, this option does encompass a higher change management risk to the City. For that reason, a comprehensive transition plan has been developed, and a phased approach to the transition will be adopted.

Comparative Financial Analysis of Governance Options

City Finance staff worked with Markets Management and MNP to complete a comparative financial analysis of the three governance options for the Markets Management. Table 2 below provides a three-year summary of the ByWard and Parkdale actual financial results. As indicated below, the Markets in recent years have essentially operated at a “break-even” level with a minor deficit in each year of less than 1 per cent of total expenditures. While total revenues have declined over the three years by approximately \$92,000 or 6.1%, City Markets Management has been able to adjust expenditure levels (Marketing and Promotions, and Maintenance for Outdoor Markets) accordingly to minimize the year-end deficit. This trend of continually reducing expenditures is not sustainable and revenue growth overall under the new governance model needs to be pursued as a key strategic priority to ensure the long-term financial viability of the markets. In addition, ongoing cost containment and control will no doubt be required to ensure that the operation of the Markets result in a positive net year end surplus.

Table 2: Summary of 2014 – 2016 Markets Financial Results

Markets Mgmt Financial Results (\$000)			
	<u>2014 Actual</u>	<u>2015 Actual</u>	<u>2016 Actual</u>
Revenues	1,515	1,458	1,423
Expenditures			
Compensation	737	701	773
Operating & Other Non Compensation	790	763	656
Total Expenditures	1,526	1,464	1,429
Net Surplus / (Deficit)	(11)	(6)	(6)

Estimates of operating revenues and expenses were developed for each of the three governance options. The estimates were based on some key operating assumptions that differentiate the revenue generating potential of each option and the cost implications of operating under three very different corporate structures.

- 1. Continue with City Operated Markets Management (Status Quo)** – This option assumes the continuation of the City operated Markets Management group, and that they take over the management of the Byward Market building when the P3 contract expires at the end of 2017. The revenues generated by the retail and office space in the Byward Market building and the Clarence Street garage, as well as the Parkdale Market are assumed to continue to be at current capacity. However, the revenues for the outdoor portion of the Byward Market are expected to continue on the current declining trend. The only change to the current staff complement is the addition of a program manager to provide strategic oversight and a building manager. Operating expenses would continue at the same levels as today plus additional costs associated with the management of the Byward Market building, but with all revenues from the building being realized by the City rather than the current P3. The result is a forecasted operating deficit which increases in each of the three years.
- 2. Enter into a New Public Private Partnership (P3)** – Under this option, the City would no longer fund the operation of the Markets or receive any revenue directly. The P3 contractor would earn all revenues from the Markets, Building and garage tenancies and incur all operating costs. The City would continue to own the market assets and would receive a contractual share of the annual profits from the P3 partner. The details of any future P3 arrangement would need to be negotiated with a contractor and are not known at this time. Therefore, for the purposes of this analysis, the profit sharing formula of the current P3 agreement for the Market Building was used and applied to the profit that could be generated from a private sector approach to revenue generation based on existing capacity. Depending on how the P3 agreement is structured and how much risk the P3 assumes, this option would lessen the overall financial risk to the City.
- 3. Create a new Municipal Services Corporation** – This option assumes that January 1st, 2018 be considered as the date for the start-up of MSC operations, subject to input and confirmation in early fall 2017 by the new MSC Board and Executive Director.

Under the MSC option, the revenues generated by the ByWard Market building, garage and Parkdale Market are assumed to continue at current capacity as they

are under the City-run option. Byward Market revenues are expected to increase from its current capacity of 60 per cent to 70 per cent in 2019 and 80 per cent capacity by 2020 due to a more entrepreneurial approach, strategic focus and dedicated efforts of the MSC, led by the new Board and Executive Director. The fees for the outdoor markets are also assumed to increase by 3 per cent per year.

Ongoing operating costs for this option are similar to the City Run (status quo) option. The cost of insurance is higher, and it is expected that the MSC will increase the amount spent on promotions and advertising to increase revenue. Overhead costs are expected to increase as a result of higher general and administrative expenses as well as functional support costs. These increased costs are offset by the MSC's ability to reduce costs due to operational efficiencies.

Additional expenditures are also included for security and maintenance. However, the majority of these costs are recoverable from the tenants through the Common Area Maintenance fee so there is assumed to be minimal impact. The degree to which the MSC can increase expenditures in these areas will be influenced by tenants' willingness to pay these increased fees.

The net result would be deficits of \$140K in 2018 and \$66K in 2019, and a minor surplus of \$15K in 2020 which is expected to increase going forward. Any forecasted future surplus can be retained by the MSC and reinvested directly into the markets, which will help to promote long term financial sustainability.

There will be some one-time costs required to set up the MSC and to transition to the new model, but these are not included in the comparison of the three models.

In all three options, the City would maintain ownership of the asset and any major asset lifecycle repair costs have not been included in this analysis either, for comparison purposes.

All of the assumptions described above for each option were the basis for developing a three-year estimate of operating revenues and expenses covering the period 2018 to 2020, as detailed in the following Table 3:

Table 3: Summary of Forecasted Financial Results 2018 - 2020

	City Run (\$000)			P3 (\$000)			MSC (\$000)		
	2018	2019	2020	2018	2019	2020	2018	2019	2020
Revenues	1,686	1,673	1,662	96	96	96	1,686	1,792	1,904
Operating Costs									
Compensation	1,056	1,077	1,099				975	994	1,014
Promotions & Advertising	82	83	85				100	100	100
Security	14	14	15				100	100	100
Repairs & Maintenance	677	690	704				802	818	834
Materials & Equipment	74	76	77				74	76	77
Insurance	1	1	1				17	17	17
Cost Recovery*	(471)	(481)	(492)				(626)	(638)	(651)
Total Operating Costs	1,433	1,460	1,489	-	-	-	1,442	1,467	1,491
Operating Profit	253	213	173	96	96	96	244	325	413
Overhead	279	283	283				384	391	398
Surplus / (Deficit)	(26)	(70)	(110)	96	96	96	(140)	(66)	15

The P3 option only shows the estimated amount of the profit returning to the City from the P3 contractor, it does not reflect the private sector contractor's share of the profit.

In summary, Option 1 shows increasing deficits over time, Option 2 has a positive net return to the City but it is simply a private sector contract to share returns with the City and Option 3 estimates positive returns over time that could then be reinvested into the ByWard and Parkdale Markets operations.

Recommendation 1 - Adopt the Business Case entitled “The Future Management of the ByWard and Parkdale Markets” found at Document 1 to this report; and

Under the provisions of Regulation 599/2016 of the *Municipal Act, 2001*, a municipality may exercise its right to establish a Municipal Services Corporation following the adoption of a business case study which is found in Document 1 to this report, as well as the adoption and maintenance of policies on asset transfers to corporations, and consultation with the public about the proposal to establish the corporation.

The following table outlines staff's fulfillment of these requirements:

Table 5: Fulfillment of *Municipal Act* Requirements

Requirement, per the <i>Municipal Act, 2001</i>	Brief description of the City's fulfillment of the requirement
Adoption of a business case	<p>City staff and a consultant developed a fulsome business case, including options and financial analysis, and risk assessment, for Council's consideration and adoption (by way of this report).</p> <p>See Document 1.</p>
The adoption and maintenance of policies on asset transfers to corporations	<p>Assets will remain under City ownership and be managed by the MSC. An Asset Transfer Policy is therefore not required. This arrangement will be captured in an Asset Management Agreement.</p>
Consultation with the public about the proposal to establish the corporation	<p>Stakeholder consultation:</p> <ul style="list-style-type: none"> • ByWard Market Standholders Association • Parkdale Market Standholders • Lowertown Community Association • Hintonburg Community Association • 55 ByWard Tenants' Association • ByWard Market Business Improvement Area • Wellington West Business Improvement Area • Councillors for Wards 12 (Rideau-Vanier) and 15 (Kitchissippi) <p>See Consultation section of this report.</p>

The MSC governance/management model supports the 2016 audit recommendations to strengthen governance practices and accountability and adopt an enhanced and dedicated strategic perspective. As an arms-length body, the MSC would be well positioned to:

- Be entrepreneurial and nimble in repositioning and operating the market;
- Assess, and, if appropriate, recommend changes to the Markets' current regulatory framework;
- Be inclusive, collaborative and able to represent key market stakeholders;
- Make procurement quickly and efficiently;
- Balance business and community objectives;
- Be financially self-sustaining, with the ability to use budget surpluses for markets-related projects and programming;
- Be apolitical and operate independently from City agencies and political bodies;
- Leverage a varied network of strategic partnerships; and
- Seek funding and grants from a variety of sources.

From a financial standpoint, the MSC's capacity to operate successfully within a cost-recoverable framework was demonstrated in the Business Case, as per Document 1, which ultimately confirmed the MSC's ability to achieve a balanced annual budget within three years. It should be noted that the Municipal Services Corporation also has the potential for generating supplementary revenues exists through grants and sponsorship.

It is anticipated that the MSC's five-year strategic plan would include provisions for increasing revenues through the diversification and densification of outdoor stands, as well through the introduction of new initiatives (ie: Night Markets, Christmas Markets).

Municipal Services Corporation – Mission, Objectives, Mandate and Guiding Principles

While the MSC model would offer many advantages, the City would need to both ensure that the MSC was operating within the City's vision for the Markets and protect

its assets. To this end, City staff proposed the following Mission Statement, which was approved by Council in May 2016:

The Municipal Service Corporation will maximize the ByWard and Parkdale Markets' potential to be unique year-round gathering places and destinations to purchase local produce and goods as well as other services and products that meet the needs of local and city-wide residents and tourists alike.

The Corporation will build upon the rich heritage of the public markets communities and promote the importance of local food sustainability.

In an entrepreneurial manner, the Corporation will strive to build a creative and innovative retail and outdoor vending mix and work with partners to ensure that all public space is inviting and enhanced as opportunities are made available.

In its December 2016 report, the Office of the Auditor General determined that Markets' Management had not received the requisite leadership/senior management oversight to enable the group to establish appropriate priorities and ensure that they receive the necessary support to achieve the objectives established. To mitigate this occurrence in the future, the Auditor General recommended that the MSC be required to develop strategic/operational objectives, aligned to Council's approved vision. Staff has responded to this recommendation by supplementing the Mission Statement with the following Objectives, a Mandate, and Guiding Principles:

Objectives:

1. Create value for the community by strengthening the Markets' role within the city as a whole and the local community and as a tourist destination.
2. Use the flexibility of the MSC structure to enhance operational excellence and create an entrepreneurial environment through a reduction in regulatory requirements.
3. Encourage synergies with various levels of government and community partners to increase revenues and identify opportunities for investment.

Mandate:

1. Secure a diverse and innovative mixture of outdoor vending and indoor retail tenants.
2. Position the markets as desirable destinations that offer programming and shopping opportunities for both tourists and local residents.
3. Promote local foods and goods, while at the same time offering a variety of complementary products and services that reflect customer needs.
4. Celebrate and continue to build on the rich heritage of each market within its community.
5. Establish a growth-based model that is both viable and financially and operationally sustainable, and which respects community needs.

Guiding Principles:

1. Growth – Increase levels of measurable participation and investment from vendors, tenants and residents.
2. Collaboration – Bring together overlapping community interests (City Council, Business Improvement Areas, community innovators, tourism industry, residents, local businesses, growers/producers, and artists).
3. Diversity – Favour vendors and retail operations whose food and goods reflect the diversity of Ottawa’s evolving landscape.
4. Sustainability - Focus on providing a diversity of local food products that reduce the impact of our food system on the environment by reducing the distance food travels from farm to table.
5. Innovation – Seek new business opportunities and take advantage of current market trends.
6. Transparency – Adhere to clearly articulated reporting and approval requirements.

Municipal Services Corporation – Duties

The MSC would be responsible for the overall management and operation of the two markets. Any City services (ie. accounting) rendered by the City beyond January 1st, 2018 would be negotiated as recoverable expense from the Municipal Services Corporation.

The MSC would assume responsibility for the outdoor vending operations at both ByWard and Parkdale Markets, as well as for the 25 indoor tenancies at 55 ByWard and the seven tenancies located in the parking garage at 70 Clarence. Current leases will be transferred to the MSC through Lease Assignment, and the MSC would be tasked with all realty-related activity, including the collection of rents and Common Area Maintenance fees, recruitment of new tenants and future lease negotiations. The MSC will also be responsible for determining its preferred tenant mix, although any zoning changes would require appropriate City consultation and approval.

While the City would retain ownership of municipal real property assets, asset management would become a shared responsibility. The MSC itself would undertake day-to-day janitorial services and maintenance of the facilities, as well as perform certain repairs and replacements whose estimated costs fall within a prescribed threshold (\$10,000). The City would be responsible for repairs and replacements beyond this base amount, including major lifecycle expenditures (e.g. roof replacement). A recent building audit of 55 ByWard, performed in December 2016, and whose recommendations have been validated by Asset Management staff, would form the basis of lifecycle initiatives over the next three-years. A building audit is also scheduled for the tenant spaces at the Clarence Street garage, whose results will inform a similar three-year lifecycle plan.

In terms of capital improvement projects, the MSC would work with the City to identify and establish priorities, as well as to determine appropriate funding arrangements. While the MSC would be encouraged to seek funding from external sources, such as grants, the City would control any borrowing, issuance of debentures, and investments, and the MSC would be subject to the same prescribed investments as the City.

With respect to outdoor vending, the MSC would assume authority to administer the Parkdale Program By-Law 2008-448 and ByWard Program By-Law 2008-449, including the management of all vending operations, allocation of the stands, issuing of licenses

and permits and collection of fees. In the longer term, the MSC would have the option of proposing a deregulation strategy, which would be replaced by operating policies and procedures, for Council's approval.

From a broader and more strategic perspective, the MSC would carry out all marketing, programming and event coordination at the two markets.

The MSC would also be expected to broaden the Markets' connections with leaders in the tourism, food and arts/cultural sector to encourage cross-organizational opportunities for innovation, promotion and growth.

The scope of the MSC's responsibilities would be captured within well-defined and comprehensive Service and Asset Management Agreements. Elements of the agreements, which are currently under review, include (but are not limited to):

- MSC responsibilities
- City responsibilities
- Asset management
- Purchases of service
- Reporting requirements
- Applicable By-Laws
- Boundaries
- Access to rights-of-way
- Insurance
- Tax requirements

All necessary agreements would be developed by City staff (including Legal Services staff) and negotiated and finalized with the MSC's Board.

Recommendation 2: Approve the establishment of a Municipal Services Corporation for the ByWard and Parkdale Markets and direct staff to bring back an interim progress report detailing the transition schedule in Q3 2017.

Municipal Services Corporation – Governance Structure

As per Council's direction on November 9, 2016 ([Motion 41/6](#)), a Governance Advisory Group, composed of governance professionals, was recruited to advise City staff on governance best practices, including Board composition, roles, responsibilities and terms of appointment. This group was composed of Pierre De Blois, Gilles Paquet, Louise Panneton, Eva Kmiecic and Peter Daniel.

Based on the recommendations of the Governance Advisory Board, as well as consultation with the City's internal and external legal advisors, City staff are proposing the following governance framework.

For the purposes of incorporation, the Mayor and the Councillors of the City of Ottawa would become the *ex-officio* members of the Municipal Services Corporation. Through the Mayor and Council, the City will have certain oversight rights, including the right to carry out periodic audits on the operations of the MSC and its Board.

The Executive Director and his/her staff would be directly employed and remunerated by the MSC. Pursuant to Recommendation #3 in the recent audit, City staff has moved forward with an intention to appoint an independent Board of Directors, who will possess the collective requisite skills and experience to oversee the activities of the MSC.

The proposed structure of the new Municipal Services Corporation is as follows and is described in additional detail in the paragraphs below:

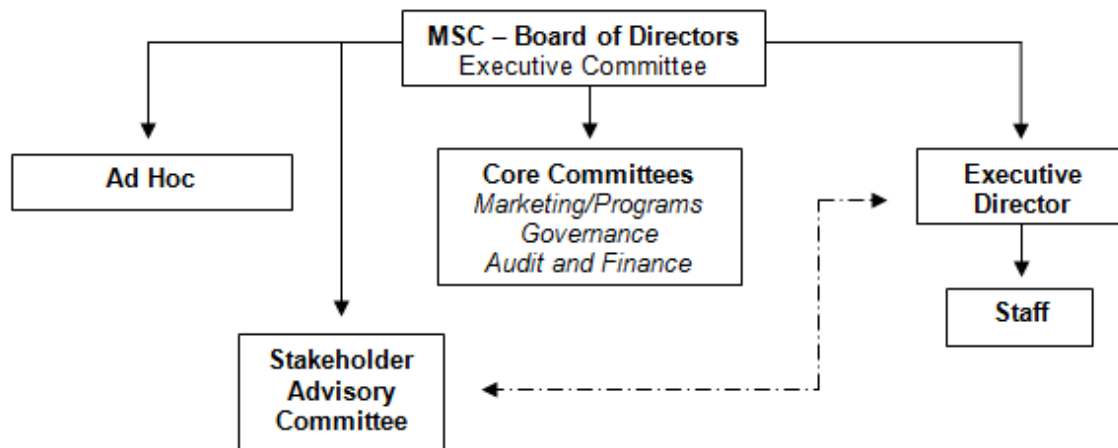


Figure1: MSC Proposed Structure

Board Membership

In keeping with best practices identified by the Governance Advisory Board, members of the MSC Board would be selected on the basis of their skills, experience and competencies with the goal of creating an aggregate competent board. The Board should not include elected officials or individuals that have a vested interest in the business or operational activities of the markets or surrounding areas.

Board Composition

The Articles of Incorporation of the MSC will provide the following range in the number of directors on the Board: a minimum of three directors and a maximum of eleven directors. The recommended number is nine directors. Each director will have the right to vote.

For ease of convenience, the initial three directors appointed onto the Board, as described in Recommendation 3, may approve and ratify post-incorporation documents, including the MSC internal by-laws, and post-incorporation resolutions. The appointment of the remaining six Board members would be subject to Council approval in the standard course as recommended by the Mayor and the two Ward Councillors.

Following the appointment of the initial three Directors to the Board, a staggered appointment process may occur, one-third of the Directors shall be appointed for a three year term, one third of the Directors for a two year term and one-third of the Directors shall be appointed for a one year term. Thereafter, the members (Mayor and City Councillors) would appoint board directors for three year terms. A director who has served six consecutive years in office shall not be eligible for re-election to the Board until a period of at least one year has elapsed since the conclusion of the sixth consecutive year in office.

In addition, the following two individuals shall have the right to attend and, in a non-voting capacity, to participate in all meetings of the MSC Board and shall have the right to receive notice of all of the MSC's Board meetings, packages and other information and reports that the MSC delivers to the directors for the purposes of such meetings:

- The Executive Director (MSC) who is responsible for the operations of the MSC; and
- The Director of Economic Development (City of Ottawa), who would serve as the link with the City, overseeing the interests of City assets and providing information to the MSC Board on the strategic direction of the City.

The following list of skills, experience and competencies reflect the collective qualities that should be represented on the Board as a whole:

Leadership Skills

- A transformational mindset and entrepreneurial spirit
- Demonstrable ethical and responsible leadership skills
- Excellent interpersonal skills
- Experience developing partnerships within community, business, industry and government sectors

Business Experience

- Expertise in one or more of the following fields: property management, retail operations, running an independent small business, agriculture and food production, tourism and arts/culture, social services
- Recognized marketing savvy
- Excellent media and communications skills, especially with social media and innovative communications tools
- A record of attracting new sources of funding and development
- A high level of financial, legal, and management literacy

Community Awareness

- Highly-credible and proven civic leadership and acumen
- Experience as a member of important public, private, or non-profit boards
- Recognized community builder
- Possessing a strong network of community, industry and business connections

Board Officers and Committees

Officers of the MSC Board should include: a Chair, Vice Chair, and Treasurer. This group of officers would constitute its Executive Committee.

The MSC Board should function as a 'Board as a whole' in making decisions and recommendations regarding the strategic direction and functioning of the MSC. In other words, the Core and any Ad Hoc Committees could make recommendations to the MSC Board but only the whole MSC Board could approve these recommendations and effect their implementation.

To support its functions, the MSC Board would assemble three Core Committees and have the ability to establish Ad Hoc Committees at its discretion. Ad Hoc Committees can be created to address emerging issues, challenges and opportunities and to deal with changes in strategic direction. All committees will be advisory in nature: they will

report to the Board; they will not govern the affairs of the MSC; they will assist the Board; and they will make recommendations to the Board.

Staff has pre-defined the following three Core Committees:

- a) **Marketing/Programs Committee:** Chaired by the Chair of the MSC. Responsible for working with the Executive Director to promote the MSC mandate, create a five-year strategic plan, develop innovative marketing strategies and programming, and provide communications support.
- b) **Governance Committee:** Chaired by the Vice Chair. Responsible for maintaining the overall health and effective functioning of the MSC Board in accordance with governance best practices, as well as for executing the nomination process and promoting overall Board development.
- c) **Audit and Finance Committee:** Chaired by the Treasurer. Responsible for ensuring the financial viability of the MSC and its probity with regards to overall financial management. Recommends the appointment of independent external auditors for approval by the members (Mayor and City Council).

Individuals from the community may be appointed to a committee provided they do not form a majority on that committee, and are not elected officials.

It is also best practice for the Board to have its own legal representation that is independent of the organization.

It should be noted that the success of the MSC would, in part, depend on its ability to consider the interests of a broad range of stakeholders which includes, among others, the residents, the business and tourism industries, and its primary stakeholders.

To this end, a Stakeholder Advisory Committee would be established, which would report to the Board of Directors on a regular basis. This would provide a transparent mechanism for allowing business and community stakeholders in the market areas to have input into the direction, activities and priorities of the market areas. Although the Board would be responsible for establishing the terms of this Committee, it is recommended that the existing Core Team be adopted as an interim measure.

Roles and Responsibilities

Upon appointment, the Executive Committee will prioritize the recruitment and hiring of an Executive Director and identify an appropriate organizational structure.

Determinations will need to be made regarding remuneration, benefits and terms of employment. A system of annual performance evaluation will need to also be established.

During its first twelve months, the Board would be responsible for creating a five-year strategic plan that reflects the Council-approved mission statement, objectives, mandate and guiding principles.

Throughout this same period, the MSC Board will also need to review the existing Parkdale Program By-Law 2008-448 and ByWard Program By-Law 2008-449, and recommend a revised regulatory landscape. Pending the results of the evaluation, the Board will be required to develop appropriate policies and regulations to replace the current By-Laws and present such alternatives to Council by the end of 2018.

From a due diligence perspective, the Board would also establish policies and guidelines that would ensure sound governance, and effective management by the Executive Director and staff. Within the first six months, the Board would develop a Governance Operating Manual, which would include orientation, training and development material, policies for selecting board members, board evaluation criteria, code of conduct for Board Members and a conflict of interest policy.

The Executive Director would be responsible for implementing and monitoring the strategic plan on a day-to-day basis, including oversight of staff. He/she would also recommend plans and strategies to help facilitate the desired outcomes of the MSC and would assist the Board in carrying out the organization's mandate.

Municipal Services Corporation – Accountability

The Board of Directors would be mandated to submit a formal report to City Council on an annual basis. This report would include an annual operating plan and audited financial statement (to be undertaken at the MSC's expense), and would provide Council with a tool for overseeing the MSC's ongoing activities and performance.

As recommended in the recent audit, the MSC would be required to develop strategic/operational objectives, with corresponding performance indicators aligned to Council's approved vision.

By the end of its first year, the Board would be required to submit a comprehensive five-year strategic plan to Council, including:

- Strategic objectives, priorities and business objectives;
- Metrics for monitoring accomplishments and milestones;
- An operating budget for the next financial year and a capital spending budget;
- Projected annual revenues and net income for the following financial year; and
- Any significant variances from the strategic plan.

To ensure appropriate levels of oversight, and at the same time provide the MSC with a City champion, the Director of Economic Development shall participate in all meetings of the Board and shall have the right to receive notice of all Board meetings, packages and other information and reports that the Corporation delivers to the Directors for the purpose of such meetings, but shall not have the right to vote. Although the Director of Economic Development shall not be a director of the MSC, he/she would become an important liaison between the MSC and the City. It will be critical that the MSC have access to an effective conduit who will facilitate due diligence and provide assistance with City-related processes.

Municipal Services Corporation – Transition Strategy

Transferring the management of the ByWard and Parkdale Markets to the new Municipal Services Corporation on January 1, 2018 would require corporate-wide engagement throughout the transition period. Concentrated efforts from Legal, Finance, Human Resources and the Corporate Real Estate Office would be critical in ensuring due diligence and regulatory compliance. Staff in Asset Management, Economic Development, Surface Operations, Information Technology, Public Information and Media Relations and Parking Services would also be solicited for their guidance and expertise.

Staff is recommending a multi-phased transition plan approach, which would be divided into three phases:

Phase 1: Preparing for MSC

At a high level, Phase 1 would require an estimated 6 months' minimum to complete. This initial phase is considered the planning phase. The key components in this phase focus on strategy, analysis, and design.

Critical within this phase would be the establishment of a sustainable governance structure for the new MSC organization. The appointment and orientation of the inaugural Board members would be key to assist with building of a skills-based board, as well as the search process of a top candidate for the Executive Director position.

Other main activities that would be critical to establish the MSC including the development of a Service Agreement with the City, confirm the building transfer and lease transfers to the MSC, and begin preparations for de-regulation of the Markets including required by-law and other approvals by Council.

Phase 2: Transition and Stabilization – MSC / City of Ottawa Joint Project

Phase 2, which represents the transition phase of the plan, would require a minimum four to six months to complete. This phase can be viewed as the building and organizational stabilization phase where the action plans would begin to be implemented. Key activities within this phase include the development of a strategic plan and business plan put together by Executive Director and Board with strong support from the City of Ottawa. The Board and Executive Director, with assistance from the City would also need to establish a new effective organizational structure that reflects the business plan and best suits the needs of the organization's strategic direction. Once the structure has been determined, policies and procedures, as well as employee training plans, would need to be established and those roles filled by interested and motivated candidates. During this phase, the transfer of current assets including the markets management programming, IT systems, and financial programs would occur. While some major elements of this phase would be undertaken concurrently with Phase 1, several major activities and milestones will require full participation and engagement of the MSC Board and Executive Director.

It is recommended that Council direct staff to present an interim progress report in Q3 of 2017 to evaluate progress and determine whether sufficient risks have been mitigated to ensure a successful transition on January 1, 2018 and going forward. Staff would consult with the Board of Directors and the Executive Director in September 2017 to determine the MSC's state of readiness. Should it be determined that a longer phasing in is required, staff would present an amended transition strategy to Council in October, 2017.

Phase 3: Full Strategic Management – Operation of ByWard and Parkdale Markets

The focus of Phase 3 would be the successful Year 1 operation of the MSC. The three key components of this phase are governance, strategic management and operational effectiveness and continual improvement. The MSC would be solely responsible for the overall operation and management of the ByWard and Parkdale Markets with executive liaison support provided by the City. As the organization becomes self-sufficient, the Executive Director and Board would continue to work on strategies to strengthen and revitalize the markets.

Status Update: Recommendations from December 2016 Audit

As described in the previous sections of this report, staff has addressed the issues raised in the Auditor General's report with respect to governance leadership issues and has prepared a fulsome Business Case. There also were operational recommendations raised in the Auditor General's report and responses are provided on the actions taken to address them. As can be seen from the following table, all the actions have been completed.

Table 4: Status Update on Recommendations of the Auditor General

Recommendation	Action Taken	Status
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.	Implemented internal controls that ensure compliance with Cash Handling Policy.	Complete

<p>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.</p>	<p>Implemented internal system controls to ensure compliance with CIPP Collective Agreement.</p>	<p>Complete</p>
<p>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.</p>	<p>Developed a 2017 promotional and marketing plan in collaboration with the ByWard Market BIA.</p>	<p>Complete</p>
<p>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.</p>	<p>Reconciled and signed off on 2016 cost- sharing initiatives.</p>	<p>Complete</p>

<p>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.</p>	<p>Policy has been posted and staff has completed training.</p>	<p>Complete</p>
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Recommendation 3: Approve the process for recruiting and selecting Board Members, as described in this report; and delegate authority to the Mayor, Councillor Fleury and Councillor Leiper to appoint the initial three Board Members

Board Recruitment and Selection Process.

In order to align with the conclusion of the current ByWard Market lease, staff recommend a public recruitment process would be launched in early Q2 2017. This City-wide approach would provide residents with an opportunity to submit their candidacy. All candidates would be considered on the basis of his/her conformity to the skill sets and competencies outlined in this report.

Staff recommends that the selection and appointment of Board members occur in two consecutive phases. The first phase would serve to select and appoint the three members of the Executive Committee (Chair, Vice-Chair and Treasurer). The second phase would see the selection and appointment of the remaining six members.

It is recommended that Council delegate authority to the Mayor, Councillor Fleury and Councillor Leiper to undertake the first phase of this process by considering, assessing and selecting the first three Members to be the Executive Committee. The appointment of the remaining six Board members would be subject to Council approval in the standard course as recommended by the Mayor and the two Ward Councillors.

Recommendation 4: Delegate authority to the General Manager, Planning, Infrastructure and Economic Development, to incorporate the ByWard and Parkdale Markets Municipal Services Corporation and enter into ancillary legal agreements, including service and asset management agreements and lease assignments, to the satisfaction of the City Clerk and Solicitor

Pending Council approval for the establishment of an MSC, City staff would embark on the necessary legal work to transition the management of the markets to the MSC. In order to facilitate an effective transition, it is recommended that Council delegate authority to General Manager, Planning, Infrastructure and Economic Development.

One of the first stages of transition would be to legally incorporate a not-for-profit federal corporation for the purposes of overseeing the management of the ByWard and Parkdale Markets. Consultation and support through this legal process would be provided by the City's Legal Services staff, and its legal advisors at Borden Ladner Gervais.

Following incorporation, a number of other legally binding agreements would be required through the transition period. These agreements include, but are not limited to:

- A Service Agreement to clearly define the responsibilities and expectations of the City and the MSC;
- An Asset Management Agreement to assign asset-related responsibilities; and
- Lease Assignments to transfer current leases to the MSC.

All necessary agreements would be developed by City staff (including Legal Services staff) and negotiated and finalized with the MSC's Board.

RURAL IMPLICATIONS

The recommendations in this report are intended to support the continued sustainability of the ByWard and Parkdale markets as vending places for Ottawa's rural agri-food industry.

CONSULTATION

Ongoing monthly meetings have held with the Core Team, whose membership is comprised of representatives of the ByWard Market Standholders Association, Lowertown Community Association, Hintonburg Community Association, 55 ByWard Tenants' Association, ByWard Market Business Improvement Area, Wellington West Business Improvement Area and Councillor Fleury's and Councillor Leiper's offices. These meetings provided ongoing opportunities for discussion and feedback related to governance matters presented in this report.

Over the course of the overall project period, consultation and feedback was also solicited on various occasions from stakeholders having an interest in the ByWard Market area, including the National Capital Commission, Ottawa Tourism, Just Food/Savour Ottawa, the National Gallery, and the Aga Khan Foundation.

Meetings were similarly held with the ByWard Market Business Improvement Area (BIA) Executive to discuss the proposed governance structure, and the transition strategy as it relates to shifting roles and responsibilities. A high-level presentation was also provided to the BIA membership at its Annual General Meeting.

Councillor Leiper and City staff also met with the Wellington West Business Improvement Area and Hintonburg Community Association to discuss ideas and opportunities for enhancing the Parkdale Market within the transition period.

A gathering, organized by the Head Tenant, was held with the 55 ByWard tenants to discuss the transition, and respond to questions. Conversations with the 55 ByWard Market Tenants' Association also have been initiated to explore timely and relevant opportunities for engagement throughout the transition process. A presentation of the overall recommendations also has been provided to the Head Tenant at 55 ByWard, who currently manages the building and its tenancies.

Per Council's direction on November 9, 2016 ([Motion 41/6](#)), staff have also consulted extensively with a Governance Advisory Board composed of Pierre De Blois, Gilles Paquet, Louise Panneton, Eva Kmiecic and Peter Daniel. This advisory group's findings on governance best practices were shared with Core Team members, whose feedback help shaped the final governance recommendations.

Meetings with union representatives have been held to discuss the impacts of this report's recommendations on current City employees.

In order to facilitate timely and accessible information sharing, a formal stakeholder outreach strategy and communication's plan have been developed, which will be implemented throughout the transition period.

COMMENTS BY THE WARD COUNCILLORS

Councillor Fleury provided the following comments:

“The ByWard and the Parkdale Markets are an integral part of our city. I am very fortunate to represent the ByWard Market, which, as you know, is located in the historic area of our city. It is the second most visited area in Ottawa, after Parliament Hill.

The ByWard Market is very important to Council, which is why we identified it as a Term of Council Priority. We also approved the broad vision for the area through the ByWard Market Revitalization Plan earlier this term. The key themes approved were: a reinvestment in the public realm, a new governance, a review of zoning compliance, and a review of parking needs. The reason we began the governance theme promptly was due to the upcoming expiry date (December 31, 2017) of the P3 lease agreement for the Market Building (55 ByWard). It was also due to major concerns relating to vacant commercial spaces within the Market Building, and continuous structural challenges with outdoor vending.

Currently, the ByWard Market is a city-operated outdoor vending areas managed through the markets' management team. It falls under the restrictive authority of a city bylaw for the area.

I am happy to see the progress that staff have made for the governance renewal of the ByWard and Parkdale Markets. Review of the governance theme is a key pillar of the plan. For too many years now we have been facing the challenge of declining numbers of outdoor vendors, more specifically local farmers within the ByWard Market. Another challenge we faced was innovation; the City's bylaw structure greatly reduces the ability for innovative thought in regard to market organization.”

Councillor Leiper provided the following comments:

“My thanks go, first, to the City staff who have worked diligently to present a comprehensive set of recommendations for Council's approval. These are based on extensive research and consultation to ascertain the best way forward for our Markets. The objectives, mandate and guiding principles reflect the overriding concerns I have heard from direct stakeholders and the larger public, and I am confident that the Municipal Services Corporation proposed in this document is the best way to achieve it.

The next two years will be critical to transforming our Markets to achieve the objectives set for them as outlined in this report. It will be important to constitute the first Board appropriately, and this report is the first step in achieving that. Close, continued cooperation between the City, the new Board and the new Executive Director has been anticipated during the launch phase. Residents can feel confident that commitment is there on the part both of Councillor Fleury and I, as well as senior City staff.

Recent years have seen a resurgence of understanding how food security, environmental sensitivity, and economic prosperity go hand in hand. This new MSC, empowered to achieve a broad mandate in the public interest, will have an opportunity to achieve outcomes very much in the public interest. Much of the credit is owed to the stakeholders who have been engaged in the discussion to date, and who will continue to be valued partners in future.

Establishing a Municipal Services Corporation will not only bring a new era of innovation, reinvestment, and sustainability, but it will also bring strategic leadership for Ottawa's gem: the ByWard Market.”

LEGAL IMPLICATIONS

There are no legal impediments to approving the recommendations in this report.

Section 203 of the *Municipal Act, 2001* and Ontario Regulation 599/06 respecting Municipal Services Corporations, as amended, enable municipalities "to establish corporations" to provide a service that the municipality itself may provide. Section 6 of the Regulation mandates that the City "shall adopt a business case study" before establishing a municipal services corporation. The business case study attached to this report in Document 1, meets this requirement of the Regulation.

In accordance with Subsection 21(1) of the Regulation, a municipal services corporation "is not a local board for the purpose of any Act." Despite this general pronouncement, Subsections 21(2) and (3) of the Regulation then confirm that a municipal services "corporation shall be deemed to be a local board" for the following purposes:

- Subsection 270(2) of the *Municipal Act, 2001*, thereby requiring a corporation to adopt and maintain policies for: its sale and other disposition of land; its hiring of employees; and its procurement of goods and services;

- the *Municipal Conflict of Interest Act*;
- the *Development Charges Act, 1997*;
- the *Environmental Assessment Act*;
- the *Emergency Management and Civil Protection Act*; and
- Subsection 56.2(3) of the *Capital Investment Plan Act, 1993*.

In addition to the second bullet above, Section 19 of the Regulation goes on to specify that "the directors and officers of a corporation shall be deemed to be members for the purposes of the *Municipal Conflict of Interest Act*. In short, this means that any directors and officers of the proposed municipal services corporation would be subject to the same direct, indirect and deemed pecuniary/financial interests that members of council and most local boards are bound.

Further, Section 20 of the Regulation provides that a municipal services corporation which is "a wholly-owned corporation or a corporation whose business of activities include the provision of administrative services to any municipality, local board, public hospital, university, college or school board is deemed to be an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*". In this instance, as the Council of the City would be the members who control the proposed "not for profit" municipal services corporation which is providing services to the City, the corporation and its Board of Directors must follow the rules regarding access to information and protection of privacy as set out in the *MFIPPA*.

In the event that the municipality transfers any assets to the municipal services corporation, the municipality will be required to first adopt an asset transfer policy. In this regard, the City relies on the Disposal of Real Property Policy when municipal real property assets are conveyed to existing municipal services corporations. In the event that any additional asset transfer policies are required, the City Treasurer is delegated the authority pursuant to the Delegation of Authority By-law 2016-369 to approve all corporate financial administrative policies and may adopt such policy if required.

Finally, although Section 106 of the *Municipal Act, 2001*, provides a general prohibition against assisting "directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose", Section 15 of

the Regulation enables the granting of assistance to a municipal services corporation in limited circumstances. Such assistance may include: giving, lending or selling any property of a municipality including money; guaranteeing borrowing; and providing the services of employees of or persons under contract with the municipality."

While Ontario not-for-profit organizations can be incorporated provincially under *Part III of the Ontario Corporations Act (ONCA)*, they can also be incorporated federally under the *Canada Not-for-Profit Corporations Act* ("NFP"). The Federal NFP came into force on October 17, 2011, and offers rules that are modern, flexible and better suited to the needs of today's not-for-profit sector. Conversely, the ONCA remains in transition, as the most recent amending provisions which received Royal Assent on October 25, 2010, have not yet come into force and it is not known at this time when the Province will proclaim that the amendments are in effect. In effect, this means that there is less certainty for newly incorporated not-for-profits who opt to incorporate under the provincial legislation rather than the Federal NFP. Newly incorporated not-for-profit corporations that pursue incorporation through the Ontario regime rather than the Federal regime will, no doubt, be required to transition to the new ONCA once it comes into force. Therefore, such corporations will be required to replace their constating documents and may be required to amend their by-laws if they are not compliant with the new provisions of the ONCA. In light of these issues, external legal counsel has recommended incorporating under the Federal *Canada Not-for-Profit Corporations Act*.

Generally, upon Council's adoption of the business case study and approval of the establishment of the municipal services corporation, the incorporation process under the recommended *Canada Not-for-profit Corporations Act* involves the following steps:

- Perform a NUANS name search to determine whether the name of the Corporation is available for use.
- Fill out and file with Corporations Canada *Form 4001 - Articles of Incorporation*.
- Fill out and file with Corporations Canada *Form 4002- Initial Registered Office Address and First Board of Directors*.
- Receive Certificate of Incorporation from Corporations Canada.

- Pass directors' and members' post incorporation organizational resolutions.
- File with Ontario's *Ministry of Government Services* the *Initial Notice – Form 2* within 60 days of commencing business activity in Ontario.
- Submit the corporation's by-laws to Corporations Canada within twelve (12) months of approval by the member(s) of the Corporation.

Finally, in the event there are any labour relations or employee issues arising from this matter, the City will continue to comply with all of its obligations under both the relevant CUPE 503 and Civic Institute of Professional Personnel collective agreements as well as the relevant labour relations legislation.

RISK MANAGEMENT IMPLICATIONS

From a financial perspective, the transfer of municipal assets to an arms-length entity carries inherent risk. There is also certain level of risk associated with transferring long-standing public markets to a new entity. The MSC could fail to achieve desired levels of revitalization and/or create conditions that foster further economic decline and an additional loss of vendors.

These risks would be mitigated by clearly defining the MSC's roles and responsibilities through appropriate service and asset management agreements. Risks would also be managed through the appointment of an experienced Board of Directors, whose recruitment would be based on personal skills and competencies. This Board would include the Director, Economic Development as an ex-Officio member; thereby providing an ongoing mechanism for communication between the City and the MSC.

Monetarily speaking, the MSC's financial scenario has been conservatively forecast. And opportunity exists for the MSC to generate new revenues and further off-set its costs.

In terms of formal accountability, the Board of Directors would be mandated to submit a formal report to City Council on an annual basis. This report would include an audited financial statement, and would provide Council with a tool for overseeing the MSC's ongoing activities and performance. Should the MSC fail to achieve desired objectives, Council could undertake corrective action by way of formal direction.

ASSET MANAGEMENT IMPLICATIONS

The information documented in this report is consistent with the City's Comprehensive Asset Management (CAM) Program ([City of Ottawa Comprehensive Asset Management Program](#)) objectives. Implementation of a new management model and governance structure assists to fulfil the City's obligation to deliver quality services to the community. The legal agreements addressing asset maintenance and lease assignments will ensure the City's assets are operated and maintained in a manner that balances service levels, risk, and affordability.

FINANCIAL IMPLICATIONS

The Business Case (Document 1) provides an analysis of the potential incremental annual operating revenues and costs if the markets were managed and operated by a Municipal Services Corporation (MSC). These are estimates based on the assumption that the MSC will be fully operational by 2018. The current estimates show a deficit in the first and second years of operation. In a report to Council in November 26, 2008 (ACS2008-COS-BYL-0055), Council approved "that any new revenues generated within the Markets program be directed to support the requirements of the Markets, as identified in their annual business plans". Unused revenues have been tracked and accumulated in a deferred revenue account since that time. These funds are available, subject to Council approval, to cover any deficits the MSC may incur in the initial year(s) of operation.

City resources will be required to support the MSC during transition and perhaps in the initial months, but these would not be dedicated full-time resources and therefore would be funded from departmental envelopes. If there is a requirement for dedicated staff from the City, the full cost of these FTEs will be recovered from MSC revenues.

There will be some additional one-time costs required to establish the MSC and to manage the overall transition from City staff to the MSC, as described in this report. In May of 2016 Council approved (ACS2016-PAI-DCM-0001) funding to be spent in 2017 for the transition of the MSC. The amount carried forward in 2017 is \$476K.

The City will retain ownership of municipal real property assets; asset management will be a shared responsibility. The MSC will fund repairs and replacements that fall within

the prescribed \$10,000. Repairs and replacements greater than \$10,000 will fall within the City's lifecycle program.

The MSC will work with the City to identify and establish capital improvement projects, and determine appropriate funding arrangements. The MSC will be encouraged to seek funding from external sources, such as grants, the City would control any borrowing, issuance of debentures, and investments, and the MSC would be subject to the same prescribed investments as the City.

ACCESSIBILITY IMPACTS

The MSC will be subject to the *Accessibility for Ontarians with Disabilities Act* and will be obliged, among other requirements, to have an accessibility policy, provide accessible customer service, consider accessibility when purchasing self-service kiosks, have accessible employment practices, train its staff on accessibility requirements, and make new or redeveloped public spaces accessible.

In addition, the City will require that improvements to both public markets in the form of new or enhanced infrastructure would be undertaken in line with the City's Accessibility Design Standards.

As both public markets are intended to be gathering places for all Ottawa residents and visitors the MSC would be mandated to ensure that all decisions it makes incorporates accessibility and considers the perspective of people with disabilities.

ENVIRONMENTAL IMPLICATIONS

The recommendations in this report aim to promote local food security and environmental sustainability within the City of Ottawa. A revitalized marketscape would present opportunities to broaden the range local food products (ie. organic, biodynamic, heirloom) through an increased vendor base. Farmers who sell direct to consumers need not give priority to packing, shipping and shelf-life issues and can instead select, grow and harvest crops to ensure peak qualities of freshness, nutrition and taste.

Similar growth amongst artisans would further encourage both residents and tourists to 'buy local', which helps cut down on processing, packaging and transportation waste, leading to less pollution.

TERM OF COUNCIL PRIORITIES

This project addresses the following Term of Council Priority:

Economic Prosperity: EP2 – Support growth of local economy

SUPPORTING DOCUMENTATION

Document 1 Business Case, previously distributed and held on file with the City Clerk and Solicitor.

DISPOSITION

Planning, Infrastructure and Economic Development staff to incorporate the ByWard and Parkdale Markets Municipal Services Corporation, and enter into necessary legal agreements, including service and asset management agreements and lease assignments, in partnership with staff in Legal Services, Human Resources, Finance, Surface Operations, Real Estate Services, Markets' Management, Public Information and Media Relations and Asset Management.

Planning, Infrastructure and Economic Development staff to report back in Q3 of 2017 on progress and on the planned transition to a Municipal Services Corporation.