

**Performance Audit:
Municipal Market**

February 2023

**City Auditor's Office
City of Atlanta**

File #23.05



Performance Audit:

Municipal Market

What We Found

The lease agreement between the Municipal Market Company and the City of Atlanta includes four main responsibilities for the market; however, we could only confirm that the company complies with one of these four responsibilities. We found no evidence that the company ever made a payment nor that the city received one for the \$4,980,000 federal loan used for improvements to the market, or any lease payments.

The city has inconsistent records of the market submitting audited financial statements, unaudited quarterly reports, and the market's budget for each fiscal year. Our review found no evidence of the city receiving audited financial statements from the market for 10 out of the 29 years, that for the first 18 years under the current lease agreement, there was no evidence of the city receiving unaudited quarterly reports, and there is no documented evidence that the market provided copies of its annual budgets prior to 2011. The market has been paying to maintain the facility, as required by the lease, and we found no evidence of disrepair to the building.

The Municipal Market lacks a comprehensive strategic approach for managing the market's mission and goals. We could not assess whether the board has considered strategic priorities due to lack of uniformity in recorded board meeting minutes; therefore, it is unclear whether the public is receiving a benefit equal to the value of the estimated \$4 million annual public subsidy to the tenant businesses. The board has yet to establish direction for the Municipal Market, and thus, cannot properly assess its performance.

The market has not enforced the terms of its tenant lease agreements, including annual rent increases, month-to-month tenant rent increases, and shared utility costs. Although board members and market staff told us they believed the market's mission is to operate as a small business incubator, some tenants have operated at the market for over 20 years. The market has not established selection criteria or a standard application for potential tenants.

Why We Did This Audit

We undertook this audit because the Department of Enterprise Asset Management expressed concerns about not receiving rental payments or loan repayments from the Municipal Market Company per the current lease agreement with the city.

What We Recommended

To improve compliance, the Department of Enterprise Asset Management Commissioner should:

- work with Law to terminate the current lease with the Municipal Market Company and renegotiate terms and provisions of the lease
- conduct annual inspections of the market facility to ensure it is adequately maintained
- enforce the submission of audited financial statements, unaudited quarterly reports, and budgets for each fiscal year from the Municipal Market

To strengthen oversight, the Mayor's Office, or its designee, should:

- work with the Department of Enterprise Asset Management to include a statement of purpose in a renegotiated lease with the Municipal Market Company
- request a strategic plan from the Municipal Market Company that details how it will fulfill its lease obligations to ensure the public subsidy benefits the community
- make appointments to fill board vacancies and ensure members are serving on current terms

For more information regarding this report, please use the "contact" link on our website at www.atlaudit.org

Management Responses to Audit Recommendations

| Summary of Management Responses | | |
|--|---------------------------------------|--|
| <p>Recommendation #1: We recommend that the Department of Enterprise Asset Management work with the Law Department to terminate the current lease agreement with the Municipal Market and renegotiate the terms and provisions of the lease agreement.</p> | | |
| <p>Response: Agree</p> | <p>Status: Not Started</p> | <p>Estimated Completion Date (M/Y): February 2023</p> |
| <p>Recommendation #2: We recommend that the Department of Enterprise Asset Management enforce the submission of accurate and timely audited financial statements, unaudited quarterly reports, and budgets for each fiscal year from the Municipal Market.</p> | | |
| <p>Response: Agree</p> | <p>Status: Implemented</p> | <p>Estimated Completion Date (M/Y): January 2023</p> |
| <p>Recommendation #3: We recommend that the Department of Enterprise Asset Management conduct annual inspections of the market facility to ensure it is adequately maintained.</p> | | |
| <p>Response: Agree</p> | <p>Status: Implemented</p> | <p>Estimated Completion Date (M/Y): January 2023</p> |
| <p>Recommendation #4: We recommend that the Mayor's Office work with the Department of Enterprise Asset Management to include an updated and clear statement of purpose in a renegotiated lease with the Municipal Market Company.</p> | | |
| <p>Response: Agree</p> | <p>Status: Not Started</p> | <p>Estimated Completion Date (M/Y): February 2023</p> |
| <p>Recommendation #5: We recommend that the Mayor's Office request a strategic plan from the Municipal Market Board of Directors that details how it will fulfill its lease obligations to the city and that includes performance measures to ensure the public subsidy benefits the community.</p> | | |
| <p>Response: Agree</p> | <p>Status: Not Started</p> | <p>Estimated Completion Date (M/Y): April 2023</p> |
| <p>Recommendation #6: We recommend that the Mayor's Office make appointments to fill vacancies and ensure that all board members are serving on current terms.</p> | | |
| <p>Response: Agree</p> | <p>Status: Started</p> | <p>Estimated Completion Date (M/Y): March 2023</p> |



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AUDIT COMMITTEE
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February 2, 2023

Honorable Mayor and Members of the City Council:

We undertook this audit because the Department of Enterprise Asset Management expressed concerns about not receiving rental payments from the Municipal Market Company under the current lease agreement with the city, as well as concerns about the repayment of a federal loan obtained to renovate the market.

Management agreed with our recommendations, which focus on strengthening the lease agreement and city oversight to ensure the public subsidy benefits the community.

The Audit Committee has reviewed this report and is releasing it in accordance with Article 2, Chapter 6 of the City Charter. We sent a draft report to management on December 28, 2022, and received their response on January 24, 2023. We appreciate the courtesy and cooperation of Municipal Market and city staff throughout the audit. The team for this project was Myra Hagley and Anijarae Dade.

Amanda Noble
City Auditor

Danielle Hampton
Chair, Audit Committee

Municipal Market

Table of Contents

| | |
|--|----|
| Introduction | 1 |
| Background | 1 |
| City Leases the Municipal Market to the Municipal Market Company | 3 |
| Board of Directors is Responsible for Oversight of Market Operations | 4 |
| Audit Objectives | 5 |
| Scope and Methodology | 5 |
| Findings and Analysis | 7 |
| Compliance with City Lease Agreement Provisions Could Be Improved | 7 |
| Municipal Market Has Made No Lease or Loan Payments to the City | 8 |
| Municipal Market Not Consistently Providing Reports to the City..... | 8 |
| Municipal Market Company Is Maintaining the Facility | 9 |
| Municipal Market Lacks Effective Oversight | 10 |
| Market Tenants Receive Public Subsidy but Public Benefit is Unclear | 10 |
| Board of Directors Should Provide Strategic Direction and Oversight | 11 |
| Some Tenants Have Been at the Market for Decades | 14 |
| Recommendations | 17 |
| Appendices | 19 |
| Appendix A: Management Review and Response to Audit Recommendations..... | 21 |

List of Exhibits

| | |
|--|----|
| Exhibit 1: 1924 Drawing of the Municipal Market | 1 |
| Exhibit 2: Historical Market | 2 |
| Exhibit 3: Present-Day Market | 2 |
| Exhibit 4: Municipal Market Vendor Directory..... | 3 |
| Exhibit 5: Municipal Market Tenants Operate at the Market for Decades..... | 15 |

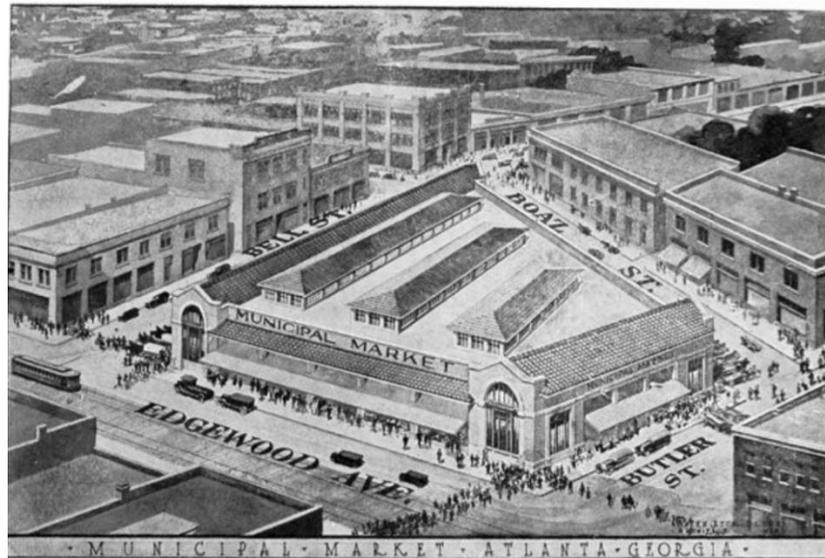
Introduction

The Department of Enterprise Asset Management expressed concerns about not receiving rental payments from the Municipal Market Company per the current lease agreement with the city, as well as concerns about the repayment of a Section 108 loan obtained to renovate the market. In this audit of the Municipal Market, we reviewed the financial condition of the market and assessed management of the market.

Background

The Municipal Market is a public market located in the historic Sweet Auburn district. Originally the market provided access to fresh farm products to city residents. According to the Atlanta History Center, the land that the Municipal Market stands on was cleared by the great Atlanta fire of 1917. It was originally founded in 1918 as an open-air market. The current structure was built in 1924 (see Exhibit 1).

Exhibit 1: 1924 Drawing of the Municipal Market



Source: 1924 edition of the City Builder, Atlanta History Center website

The Municipal Market's website states that it serves multiple purposes including as a business incubator, a tourist attraction, a job creator, and a venue for fresh food. The market is open Monday through

Saturday 8AM-6PM and closed on federal holidays. See Exhibits 2 and 3 for historic and present-day views of the market.

Exhibit 2: Historical Market



Source: Municipal Market website courtesy of the Archives of the Atlanta Journal Constitution

Exhibit 3: Present-Day Market



Source: Eater Atlanta website

As shown in Exhibit 4, the Municipal Market has space for 29 vendors. They also have a vendor managing the parking lot and offer space for pop-up table vendors.

Exhibit 4: Municipal Market Vendor Directory



Source: Provided by Municipal Market Company

City Leases the Municipal Market to the Municipal Market Company

The city owns the property and leases it to the Municipal Market Company, a non-profit charitable corporation. According to the company's bylaws, "the object of the corporation is to provide a market for the benefit of the citizens of the City of Atlanta." The company's restated articles of incorporation, dated July 30, 1974, further define its purpose to:

- operate on behalf of the City of Atlanta for the public benefit of its citizens and visitors
- benefit citizens, farmers, and producers of farm products by providing an accessible market for a variety of foodstuffs and other goods
- further educational, historical, civic, social, and cultural functions by being a community center and public attraction
- benefit low-income persons in its community and prevent deterioration of said community

The Department of Enterprise Asset Management administers the city's owned and leased real estate properties. The company has leased and overseen the market since 1924. The term of the current lease

agreement is 50 years, from July 1, 1993, through June 30, 2043. Original terms of the lease required the company to pay the city rent equivalent to 25% of its annual net operating income. The terms of the lease were amended when the city obtained a Section 108 loan to renovate the market. In lieu of rent payments, the company agreed to repay the loan plus interest from their annual net operating income. Once the loan is repaid, the company should begin providing rent payments to the city. The Municipal Market Company is responsible for operating the market, managing the food stall and parking lot vendors, and planning programs to ensure the market continues to be an attraction and serve the community.

The lease requires that the company provide the city with its annual audited financial statement, unaudited quarterly reports, and an annual budget. The lease describes the company's allowable expenses, which include building maintenance, building repairs, and capital expenditures. The lease does contain exception cases in which the city is responsible for repairs, for example, if the property or the building is damaged by fire. Either the city or the Municipal Market Company can terminate the lease with 30 days written notice.

The city facilitated improvements to the Municipal Market with federal funding. In 1992, City Council adopted legislation to apply for a Section 108 loan in the amount of \$4,980,000 for improvements to the Municipal Market. The Section 108 program provides communities with low-cost, long-term financing for economic and community development projects. The Municipal Market improvement project was eligible for this funding because of its location and benefit to the community as a public market. Finance staff told us that the city repaid the loan; however, we were unable to determine the date of when full repayment was completed. The Municipal Market has not repaid the city.

Board of Directors is Responsible for Oversight of Market Operations

According to the Municipal Market Company's bylaws, a nine-member Board of Directors is responsible for oversight of market operations. According to authorizing legislation, board members are appointed by the Mayor and approved by Atlanta City Council. Members serve a term of two years but may remain on the board until a successor is appointed. The market has four full-time employees: a general manager/controller, an operations manager, an administrative assistant, and a security guard. The Board of Directors relies on the general manager to handle the market's daily operations. They hired the current general manager in 2005. She processes financial transactions, distributes quarterly and annual reports, administers the tenant leases, and coordinates facility maintenance.

Audit Objectives

This report addresses the following objectives:

- Are the Municipal Market and the City of Atlanta complying with the terms of the lease?
- Does the Municipal Market Board of Directors provide effective oversight of market operations?
- Is the Municipal Market operating as an effective small business incubator?

Scope and Methodology

We conducted this audit in accordance with generally accepted government auditing standards. We reviewed audited financial statements and tenant lease history since 2010 and revenue data for fiscal years 2020, 2021, and 2022.

Our audit methods included:

- reviewing the market's financial statements to determine the market's current financial condition
- reviewing tenant lease agreements to identify contract terms
- reviewing board meeting minutes to determine board member participation and decision-making
- analyzing rent rolls and sales journals to determine the value of the public subsidy to tenant businesses
- reviewing tenant history and analyzing tenant turnover to identify the market's performance as a business incubator
- analyzing tenant revenue to determine tenants' potential to pay market rate rental prices
- researching best practices for business incubators and board of directors
- researching and comparing average market rental rates for retail spaces in the Sweet Auburn neighborhood to current Municipal Market rental rates
- researching public markets to understand operations and management methods

Findings and Analysis

Compliance with City Lease Agreement Provisions Could Be Improved

The lease agreement between the Municipal Market Company and the City of Atlanta includes four main responsibilities for the market: repaying the city for a Section 108 federal loan; providing rental payments to the city; submitting audited financial statements, unaudited quarterly reports, and annual budgets; and maintaining the market building. We can only confirm that the company complies with one of these four responsibilities.

The company has not been repaying the city for the loan secured for improvements to the facility. The total amount of \$4,980,000 plus interest is due to the city according to the lease but we found no evidence that the company ever made a payment nor that the city received one. Additionally, after repaying the loan the company should begin paying the city rent as 25 percent of its annual net operating income; however, we found no evidence that the market has made any payments to the city even though the market made a small profit in fiscal years 2018 and 2020.

The city has inconsistent records of the market submitting audited financial statements, unaudited quarterly reports, and the market's budget for each fiscal year. Although it is possible some documents are unavailable due to the city's cyberattack in 2018, upon reviewing available documents, we were able to confirm the market had submitted audited financial statements in 19 out of 29 years under the current lease. The market was able to provide us with missing audited financial statements upon request. We are unable to determine whether the missing records were not provided to the city or were provided and subsequently lost. Furthermore, we found no evidence that all four quarterly reports were submitted each year from 1993 to 2011.

The market staff told us that they are maintaining the facility. The audit team made a site visit and did not notice any obvious indicators that the market needed repairs. The Department of Enterprise Asset Management conducted a recent assessment of the market but has not provided us with the results.

Municipal Market Has Made No Lease or Loan Payments to the City

The current lease agreement between the Municipal Market Company and the City of Atlanta requires the market to repay the city for a \$4,980,000 Section 108 loan (plus interest at a rate of nine percent) which was used for improvements to the market. The lease states the market should make payments as a percentage of its annual net operating income. We found no evidence that the market has made any loan repayments to the city. Market staff told us that one payment to the city for approximately \$5,000 was attempted in the early 2010s; however, there was no process in place for remitting payment and the transaction was never completed. DEAM staff told us that all city leased properties should have a customer ID number listed in Oracle to receive payments; however, according to DEAM staff, a customer ID number has never been created for the Municipal Market.

According to the lease, once the loan has been repaid, the company is required to begin paying the city rent as required by the lease agreement. The terms state that the market should make quarterly payments of 25 percent of its annual net operating income; however, we found no evidence of any lease payments being made. We reviewed the market's audited financial statements since 2010 and found that the audited financial statement for fiscal year 2020 showed total net loss when it should have shown net profit. Net operating income for fiscal year 2018 was \$2,288 and in 2020 it was \$2,233; therefore, the market should have made payments to the city but did not.

The market is only required to make loan repayments or rental payments as a portion of its net operating income, but there are no terms in the lease that describe what happens when the market operates at a loss. Additionally, because the existing lease agreement was drafted in 1993, the terms do not reflect the city's current practices when executing leases or the city's current vision for the Municipal Market. We recommend that the Department of Enterprise Asset Management work with the Law Department to terminate the current lease agreement with the Municipal Market and renegotiate the terms and provisions of the lease agreement.

Municipal Market Not Consistently Providing Reports to the City

The lease agreement states that the market should provide copies of its annual audited financial statements, four unaudited quarterly reports, and its budget each fiscal year. We reviewed documentation provided by DEAM staff and found no evidence of the city receiving audited financial statements from the Municipal Market Company for 10 out of the 29 years (the term the lease agreement has been active). DEAM

staff told us that some documentation may not be available due to the city's cyberattack in 2018; the market was able to provide us with some missing audited financial statements upon request (we did not request all ten missing statements). We are unable to determine whether the missing records were not provided to the city or were provided and subsequently lost. We were also unable to determine which CPA firm conducted the audited financial statement provided for fiscal year 1998.

We found that for the first 18 years under the current lease agreement, there was no evidence of the city receiving unaudited quarterly reports from the market. In the most recent 11 years of the lease, the market did not consistently submit unaudited quarterly reports. For example, some were sent as one full report at the end of the fiscal year, instead of on a quarterly basis. We also found no documented evidence that the market provided copies of its annual budgets prior to 2011. We recommend that the Department of Enterprise Asset Management enforce the submission of accurate and timely audited financial statements, unaudited quarterly reports, and budgets for each fiscal year from the Municipal Market.

Municipal Market Company Is Maintaining the Facility

The Municipal Market has been paying for repairs and maintenance to the market building. Some staff and board members told us that the city should be sharing these responsibilities; however, based on the lease agreement, the city is only responsible for repairs under specific circumstances, for example, in the event of a fire. We spoke with Law staff who confirmed that the maintenance of the facility is the responsibility of the Municipal Market Company.

The lease allows the market to list repairs and maintenance as well as capital expenditures as operational expenses. Market staff told us that cash reserves are maintained to cover potential repairs to the facility. The city has records that the market paid for roof repairs in the early 2010s. Market staff told us that there is old equipment in the market in need of replacement that is costly to replace and has yet to be purchased. Since the market consistently reports operating at a loss, there is a risk that some repairs and maintenance could be deferred.

DEAM staff told us that they had recently assessed the market facility, though they have not provided us with the results. We recommend that the Department of Enterprise Asset Management conduct annual inspections of the market facility to ensure it is adequately maintained.

Municipal Market Lacks Effective Oversight

The lease agreement with the city and the Municipal Market's articles of incorporation state that the market should operate to provide a public benefit, attraction, and center for community; however, it is unclear whether the public is receiving a benefit commensurate with the value of the public subsidy to the tenant businesses. The company charges rents to its tenants that are substantially below market rate, effectively providing a public subsidy of at least an estimated \$4 million a year to its tenant businesses. The company does not charge enough in rent to cover its current expenses.

The Municipal Market lacks a comprehensive strategic approach for managing the market's mission and goals. Board members and market staff believe the mission of the market is to operate as a small business incubator; however, members are unsure of their responsibilities to the market and do not utilize any guidance or standard operating procedures to ensure the organization is adequately overseen. The board has yet to establish direction for the Municipal Market, and thus, cannot properly assess its performance. Most board members are serving on expired terms and have not been reappointed by the city although some have been serving for more than a decade.

Without documented and up-to-date policies and procedures, there is a risk that the market could be operating under inconsistent daily business practices. The market does not always follow its written financial procedures and does not enforce its lease agreements with tenants.

We found that some current tenants have been operating at the market for more than 20 years although best practices suggest a term of five years for small business incubation. The market does not properly manage its waitlisted businesses and allows current tenants to sell their businesses or operate month-to-month instead of requiring the business to leave the market and allowing a new business the opportunity to incubate.

Market Tenants Receive Public Subsidy but Public Benefit is Unclear

It is unclear whether the public is receiving a benefit commensurate with the value of the public subsidy to market tenant businesses. The last statement of the purpose of the Municipal Market was in the 1993 lease agreement with the city, leaving the current mission of the Municipal Market vague. Board members and staff told us that they

believe the mission of the market is to operate as a small business incubator; however, we did not find this mission documented anywhere.

The current rent for market tenants is a maximum of approximately \$3 per square foot, which is substantially lower than market rental prices for similar retail spaces in the area, leading to a public subsidy to the market tenant businesses which we estimate to be at least \$4 million a year. There is not a clearly stated and current purpose for the substantial public subsidy to private businesses.

The current public purpose of the Municipal Market is unclear. There are various statements of purpose, including in the lease agreement with the city, the Municipal Market Company's articles of incorporation, and the company's bylaws. Since the execution of the current lease in 1993, there has been no updated statement of purpose (and the articles of incorporation and bylaws date to the 70s). Members of the Municipal Market Board of Directors and staff told us that they believe the mission of the market is to operate as a small business incubator; however, we found no evidence of this mission documented in its articles of incorporation, its bylaws, or the lease. We recommend that the Mayor's Office work with the Department of Enterprise Asset Management to include an updated and clear statement of purpose in a renegotiated lease with the Municipal Market Company.

The city is providing a substantial public subsidy to market tenants. According to tenant leases, the company charges its tenants between \$1 to \$3.21 per square foot for each rental space in the market. We found that similar retail spaces in the Sweet Auburn neighborhood charge a minimum rental rate of \$22 per square foot. Using this rate, we estimate the total value of the public subsidy to the tenant businesses to be at least \$4 million a year. The company, however, consistently reports the inability to cover its expenses.

Board of Directors Should Provide Strategic Direction and Oversight

Without clear goals, the Board of Directors may not be able to effectively provide strategic direction to the Municipal Market Corporation. A strategic plan that includes stated goals and performance measures could help ensure that the market continues to benefit the community.

Without documented and up-to-date policies and procedures to guide operations, market staff may be unable to effectively manage tenants and their respective lease terms when issues arise. For example, market staff told us that check filing procedures are not followed.

Additionally, the market has instituted requirements for its tenants but has not documented these activities in an operating procedure manual.

The market is also not enforcing the terms of its lease agreements with tenants. There are no written policies for providing rental adjustments when tenants are unable to pay their rent. According to the lease provisions, the market should observe 3 percent increase in rental income per year for each tenant; however, the market does not enforce this rule. We found some tenants have paid the same rental price for their full lease terms. Additionally, month-to-month tenants are required to pay a 10 percent increase in rent once their current lease expires. Staff, however, told us that the market does not enforce this rule and instead provides recurring discounts on rent and covers costs that should be split among market tenants.

The Board of Directors should develop a strategic plan for the market. According to the National Council of Nonprofits, successful boards establish their identity and direction, ensure the organization has the necessary resources, provide oversight, and assess performance. Best practices state that board members should be actively engaged in the work of the board and meeting agendas should focus the board's attention on issues of strategic importance. The board should have a clear understanding of the mission and public purpose of the market and should draft a strategic plan to guide decision-making. Such a plan might include a statement of goals, performance measures for staff, budgetary priorities, fundraising efforts, risk management policies, community engagement, or metrics to allow for monitoring of progress towards the market's stated goals.

Best practices state that boards of directors are responsible for governance to ensure the organization is sustainable. The Municipal Market Company consistently operates at a loss. Best practices also state that board members should adopt policies about pursuing or accepting funds to support the organization's mission and be active participants in fundraising efforts. The company consistently reports in the audited financial statements that the market plans to seek grant funding, although we found no evidence that the board has made documented plans or specific actions to do so.

We reviewed board meeting minutes since 2008 to determine if the Municipal Market Board of Directors is complying with its bylaws. The bylaws state that the board should meet at least semi-annually, and that no board member can miss more than three consecutive meetings. We found that the board has only 10 years of documented meeting minutes—none before 2005 or since 2019. We found that the board met at least twice in only six of those ten years. Due to the lack of

uniformity or detail in the recorded meeting minutes, we were unable to determine whether any board members missed more than three consecutive meetings. Without consistently recorded meeting minutes, we could not assess whether the board has considered strategic priorities.

One board member of the Municipal Market expressed concerns with the training members receive. Some board members were unaware or unsure of their responsibilities per the bylaws. For example, the bylaws state that it is the responsibility of the Secretary-Treasurer to establish the date, time, and place for all board meetings; however, the Secretary-Treasurer was unaware of this responsibility. The bylaws have not been updated since 1976.

We recommend that the Mayor's Office request a strategic plan from the Municipal Market Board of Directors that details how it will fulfill its lease obligations to the city and that includes performance measures to ensure the public subsidy benefits the community.

Policies and procedures for managing the daily operations of the market are incomplete and out-of-date. Market staff and board members told us that tenants are required to submit annual revenue statements; however, there is no documented policy or procedure for this activity. Staff told us that tenants submit revenue statements in a variety of ways and therefore lack standardization. The market was unable to provide us with documented statements that were submitted to the market by the tenants and had only incomplete records of tenant revenue for 2020, 2021, and 2022.

Municipal Market staff provided us with their written financial procedures; however, we found that staff does not follow all the guidelines in these procedures. The financial procedures address how staff should process the market's financial transactions and we attempted to assess whether the market processed checks in accordance with its procedures. According to the procedures, all checks should be signed by the General Manager or designated members of the Board of Directors, and a copy of each check should be retained in a folder for filing purposes. Market staff told us that copies of checks are not kept; therefore, we were unable to determine if all checks were appropriately signed based on the financial procedures. Due to the lack of documented and current standard operating procedures, there is a risk that the market could be operating under inconsistent daily business practices.

The market does not enforce its lease agreements with tenants.

The Municipal Market Company executes lease agreements with terms of up to five years for its tenants that subject all tenants to a 3 percent increase in rent each year; however, when we compared current tenant lease agreements, which began as early as 2014, to the rent roll for September 2022 we found that most tenants were paying the same amount in rent from year to year with no increases. Market staff told us that it is a common practice to provide discounts on rent to tenants who are unable to pay the full rent amount. There are no written policies for when to provide rental adjustments when tenants are unable to pay their rent, or for how long.

Staff also told us that the market is covering some utility costs that should be split among the tenants. Additionally, lease agreements with tenants state that businesses that continue to operate on a month-to-month basis after the current lease expires are subject to a 10 percent increase in rent; however, market staff told us that they do not enforce this rule.

Currently, four out of six board members are serving on expired terms and three additional board seats are unfilled. Some board members have served on the Municipal Market Board of Directors for eight or more years even though their terms have expired. The bylaws allow board members to continue to serve until new appointments have been made; however, according to city code it is the responsibility of the board to seek new appointments when terms expire. Staff in the Municipal Clerk's Office told us that they have not received any correspondence regarding the reappointments for the Municipal Market Board of Directors, although Mayor's Office staff told us that board members have reached out as of early December 2022 to request renewing their terms. We recommend that the Mayor's Office make appointments to fill vacancies and ensure that all board members are serving on current terms.

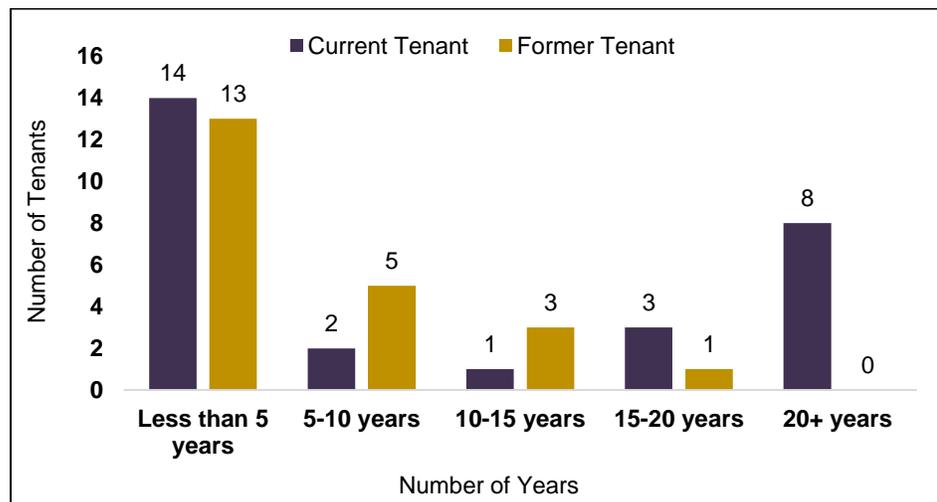
Some Tenants Have Been at the Market for Decades

The Municipal Market Board of Directors and market staff believe the mission of the market is to operate as a small business incubator. The market, however, lacks criteria that ensures it can effectively select small businesses that would perform well in the incubator program. Currently, the market has not established a standard application for potential tenants. We requested copies of the original applications for all current tenants; however, market staff was unable to provide this documentation.

Many of the current and former tenants of the Municipal Market have operated for more than five years; some tenants have been at the market for over 20 years. The market does not have written guidance on the length of incubation for businesses and some businesses continue to operate on a month-to-month basis after their lease expires. Rather than seeking new small businesses to operate within the market, market staff allow tenants to sell their businesses and the market is currently allowing a franchise to lease space in the market.

The market does not follow small business incubator best practices. Members of the Municipal Market Board of Directors and staff told us that they believe the mission of the market is to operate as a small business incubator. Best practices for business incubators suggest an incubation period of no more than five years for tenants (although the length of incubation may vary by industry). We analyzed tenant turnover at the market since 1993 to determine whether the Municipal Market follows this best practice. We found that only 14 of 28 current tenants have been operating less than five years, while the other 14 current tenants have been in operation at the market from eight to 29 years (see Exhibit 5).

Exhibit 5: Municipal Market Tenants Operate at the Market for Decades



Source: Developed by Auditor based on Municipal Market tenant tenure data provided by General Manager of the Municipal Market on 11/08/2022

Exhibit 5 shows that nine former tenants and 14 current tenants operated at the market for more than 5 years and up to 29 years. Mayor’s Office staff told us that the market should have the ability to alter timelines for incubation but should also identify and document parameters to determine whether businesses operating at the market are meeting specific criteria.

Best practices for small business incubators also suggest what selection criteria and performance metrics are characteristic of successful incubators. For example, successful incubators establish a standard application for businesses seeking to operate within the incubator, determine the businesses' financial viability, ensure that businesses do not compete with other existing businesses in the incubator, and assess businesses' potential impact on the surrounding community. The Municipal Market does not currently have documented criteria for selecting potential tenants. Market staff and board members told us that applicants are screened for financial viability and non-competitiveness with other businesses at the market but were unable to provide a copy of a standard application or documented criteria for tenants.

Additionally, the Municipal Market Board of Directors and staff is allowing a franchise business to operate at the market, which does not align with the mission to operate as a small business incubator. Staff told us that allowing the franchise in the market is an exception and the decision was made to increase customer traffic at the market; however, the market is charging the franchise the same price in rent it would a small business tenant and could not provide documented reasons for the decision. Moreover, market staff told us that a waitlist of potential businesses interested in operating at the market is maintained; however, current tenants can sell their businesses with the market's approval, and when lease terms expire, businesses can continue to operate month-to-month.

Recommendations

To improve compliance with the lease agreement, the Commissioner of the Department of Enterprise Asset Management should:

1. work with the Law Department to terminate the current lease with the Municipal Market Company and renegotiate terms and provisions of the lease.
2. conduct annual inspections of the market facility to ensure it is adequately maintained.
3. enforce the submission of accurate and timely audited financial statements, unaudited quarterly reports, and budgets for each fiscal year from the Municipal Market.

To strengthen oversight of the Municipal Market, the Mayor's Office, or its designee, should:

4. work with the Department of Enterprise Asset Management to include an updated and clear statement of purpose in a renegotiated lease with the Municipal Market Company.
5. request a strategic plan from the Municipal Market Company that details how it will fulfill its lease obligations to the city and that includes performance measures to ensure the public subsidy benefits the community.
6. make appointments to fill vacancies and ensure that all board members are serving on current terms.

Appendices

Appendix A: Management Review and Response to Audit Recommendations

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| Report # 23.05 | Report Title: Municipal Market | Date: February 2023 |
| <p>Recommendation 1: We recommend that the Department of Enterprise Asset Management work with the Law Department to terminate the current lease agreement with the Municipal Market and renegotiate the terms and provisions of the lease agreement.</p> | | |
| <p>Risk Category: Contract Management</p> | | <p>Response: Agree</p> |
| <p>Related Findings: The Municipal Market has made no lease payments to the city. A new lease agreement could better reflect the city's current practices when executing lease agreements.</p> | | |
| <p>Proposed Action: The Department of Enterprise Asset Management (DEAM) concurs with the recommendation for the termination of the existing lease with the Municipal Market and the renegotiation of a new lease which reflects a more progressive lease agreement model that will be of mutual benefit to both parties.</p> <p>DEAM is willing to initiate a conversation with the Municipal Market in this regard. However, given the board's current dysfunction and lack of direction, it is highly likely that the entity is ill-equipped to enter into such negotiations.</p> | | <p>Current Status: Not Started</p> |
| <p>Business Owner: Remy Saintil, Commissioner, Department of Enterprise Asset Management</p> | | <p>Estimated Implementation Date (M/Y): February 2023</p> |
| <p>Additional Comments:</p> | | |
| <p>Recommendation 2: We recommend that the Department of Enterprise Asset Management enforce the submission of accurate and timely audited financial statements, unaudited quarterly reports, and budgets for each fiscal year from the Municipal Market.</p> | | |
| <p>Risk Category: Monitoring and Reporting</p> | | <p>Response: Agree</p> |
| <p>Related Findings: The Municipal Market does not consistently provide reports to the city that are required in the lease agreement. Reports are not always submitted on a quarterly basis.</p> | | |
| <p>Proposed Action: DEAM concurs with the recommendation of the need for the enforcement of the contract provisions which require that the Municipal Market submit audited financial statements, unaudited quarterly reports, and operating budgets for each fiscal year as outlined in the current agreement.</p> | | <p>Current Status: Implemented</p> |

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| However, this has proven difficult as there is no penalty clause contained in the current agreement which addresses any action that can be taken if the entity does not provide these documents as required. | |
| Business Owner: Remy Saintil, Commissioner, Department of Enterprise Asset Management | Estimated Implementation Date (M/Y): January 2023 |
| Additional Comments: | |

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| Recommendation 3: We recommend that the Department of Enterprise Asset Management conduct annual inspections of the market facility to ensure it is adequately maintained. | Risk Category: Safeguard Assets | Response: Agree |
| Related Findings: The market is responsible for maintaining the facility per the lease agreement; however, the market consistently reports operating at a loss. Annual inspections could ensure that the market is not deferring maintenance. | | |
| Proposed Action: DEAM concurs with the recommendation to conduct annual inspections of the property to ensure that proper preventative maintenance and repairs are being conducted and to ensure that the property remains habitable, aesthetically appealing and that it is able to hold or increase its property value. DEAM has had a building assessment completed with a copy submitted to Municipal Market. | | Current Status: Implemented |
| Business Owner: Remy Saintil, Commissioner, Department of Enterprise Asset Management | | Estimated Implementation Date (M/Y): January 2023 |
| Additional Comments: | | |

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| Recommendation 4: We recommend that the Mayor's Office work with the Department of Enterprise Asset Management to include an updated and clear statement of purpose in a renegotiated lease with the Municipal Market Company. | Risk Category: Contract Management | Response: Agree |
| Related Findings: The Municipal Market company believes the purpose of the market is to operate as a small business incubator although there is no supporting documentation to confirm that the city agrees with this purpose. | | |
| Proposed Action: DEAM is amenable to working with the Mayor's Office to establish a clear and viable mission relative to the space occupied by the Municipal Market and how it should be used for the benefit of the community, its business partners and the City of Atlanta in alignment with the original intent. | Current Status: Not Started | |
| Business Owner: Remy Saintil, Commissioner, Department of Enterprise Asset Management Theo Pace, Deputy Chief of Staff, Executive Offices | Estimated Implementation Date (M/Y): February 2023 | |
| Additional Comments: | | |

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| Recommendation 5: We recommend that the Mayor's Office request a strategic plan from the Municipal Market Board of Directors that details how it will fulfill its lease obligations to the city and that includes performance measures to ensure the public subsidy benefits the community. | Risk Category: Contract Management | Response: Agree |
| Related Findings: The Municipal Market Board of Directors do not have documented and clear goals for the market, staff is following outdated policies and procedures, and the market does not enforce lease agreements with tenants. | | |
| Proposed Action: The Department of Enterprise Asset Management will work to ensure that the lease obligations of the agreement with the Municipal Market are being met. As potential individuals are being vetted for appointment to the Municipal Market Board of Directors, their professional qualifications are being reviewed to ensure oversight of performance metrics. | Current Status: Not Started | |
| Business Owner: Remy Saintil, Commissioner, Department of Enterprise of Asset Management | Estimated Implementation Date (M/Y): April 2023 | |
| Additional Comments: | | |

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| <p>Recommendation 6: We recommend that the Mayor's Office make appointments to fill vacancies and ensure that all board members are serving on current terms.</p> | <p>Risk Category: Legal/Regulatory Compliance</p> | <p>Response: Agree</p> |
| <p>Related Findings: Some Municipal Market Board of Directors are serving on expired terms and some board seats remain unfilled.</p> | | |
| <p>Proposed Action: The Executive Office is reviewing terms of the Board of Directors and will appoint new members as needed.</p> | <p>Current Status: Started</p> | |
| <p>Business Owner: Theo Pace, Deputy Chief of Staff, Executive Offices</p> | <p>Estimated Implementation Date (M/Y): March 2023</p> | |
| <p>Additional Comments:</p> | | |