

TO: THE COMMON COUNCIL  
FROM: THE DEPARTMENT OF  
AUDIT & CONTROL

DATE: November 5, 2008

SUBJECT: City Assets Upon Termination of  
Broadway Market Management  
Corporation Agreement  
Item No. 71, C.C.P., 10/28/2008

As you are aware, the Broadway Market Management Corporation (BMMC) notified the City of its intention to dissolve as a corporation and to immediately cease operating the Broadway Market as of October 31, 2008. Part of its dissolution plan was an auction of various assets utilized in the operation of the Broadway Market, a City-owned facility. The Council has raised concerns that certain assets within the building are in fact owned by the City and cannot be auctioned off. Further, some of the items are necessary for the continued operation of the Market by a new manager.

On October 21, 2008, the City Auditor reviewed the inventory at the Broadway Market and found that the items proposed to be auctioned off were present in the facility. Subsequently, in an action brought by the Law Department to enjoin the auction, which was to be held on October 30, 2008, it was determined that there should be a hearing to determine ownership as a finding of fact. The hearing is scheduled for November 6, 2008.

An audit team went back to the Market on October 30, 2008 to review records and the inventory of assets. Though the BMMC staff was relatively cooperative, access to older records was not made available. Reviewing the invoices and other information that was available, it could be established that some items were purchased by the BMMC, but proving ownership as a matter of record could not be verified. There is anecdotal information on certain items that suggests that they pre-date the existence of the BMMC, thus should be considered City property. Other items were leased from other companies, and would either revert back or be purchased by a potential new operator.

It seems improbable that a Not-for-Profit management company can lay claim to ownership of City assets. Property rights do not expire simply because the lease agreement between the parties has expired. This is not a case of adverse possession, so all assets within the facility should be considered property of the City of Buffalo. Everything purchased by the BMMC was through funds acquired by tenant rents, donations and grants given to aid the BMMC in its quasi-public purpose of operating the City's Broadway Market. The BMMC brought no assets into the Market when they were established in 1984; they should take none out when they dissolve.

In this instance, an audit cannot establish ownership. That is a question of law, which is being negotiated by the Corporation Counsel. My recommendation as Comptroller, for the sake of the Broadway Market and the surrounding neighborhood, is to find a way to resolve any outstanding differences. That would allow a peaceful transition and begin a new era for the Broadway Market.

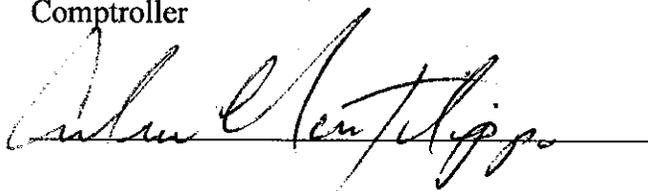
If you have any further questions on this matter, please feel free to contact the Department of Audit and Control.

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DEPARTMENT HEAD: Andrew A. SanFilippo

TITLE: Comptroller

SIGNATURE:

A handwritten signature in cursive script, appearing to read "Andrew A. SanFilippo", is written over a horizontal line.

RESOLUTION

Sponsor: Mr. Francozyk

Subject: Request for Audit of the Recapture of City Assets on the Termination of the Broadway Market Management Agreement

Whereas: The Broadway Market Management Corporation (BMMC) has notified the City of its desire to terminate on October 31, 2008, its current operating agreement with the City of Buffalo which expired on June 30, 2008 and has since been extended on a month to month basis; and

Whereas: The City of Buffalo is the owner of the facility more commonly known as the Broadway Market and certain assets and real property improvements therein as well as day-to-day responsibility for the supervision and management of the facility, will revert to the City or its operator designee on October 31, 2008; and

Whereas: This transaction may affect certain City Departments and Agencies and will require of them that they undertake an immediate review of the impact that the departure of the BMMC will have on their operations; and

Whereas: All elected and appointed officials and employees of the City of Buffalo are responsible for protecting the interests of the taxpayers in such matters as well as ensuring a smooth transition for market tenants and the continued viability of market operations for customers and visitors to this landmark.

**Now Therefore Be It Resolved:**

That this Common Council hereby requests the Comptroller of the City of Buffalo in concert with any and all affected City Departments and Agencies, to immediately undertake an audit of the recapture of City assets as well as the transfer of utilities and facility supervision to the City or its successor operator designee, to protect the interests of City taxpayers and to ensure the seamless transition of business affairs in anticipation of October 31, 2008; and

**Be It Further Resolved:**

That the Comptroller report to this Common Council as soon as possible thereafter, on the outcome of efforts by his Department and other affected City Departments and Agencies to effectuate an orderly transition as stated herein.

DAVID A. FRANCOZYK  
Common Council Member, Fillmore District

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