

## Draft of the Eastern Market Task Force Report on Market Governance

### Preamble

The Eastern Market Task Force (EMTF) was created by Councilmember Tommy Wells to examine the Eastern Market governance and geography and to make recommendations for its future governance.<sup>1</sup> The recommendations were to address not only governance for the historic Eastern Market itself, but for vending operations on public property within the vicinity of the market. Specifically, the EMTF was charged by Councilmember Wells to “meet the goal of ensuring a sustainable future of the Eastern Market and preserve its character as a public fresh food farmers’ market while ensuring a role for community arts.”

The principal reason for creating the task force was to clarify the lines of authority in the governance of the Eastern Market in order to ensure that the Market retains its historic character, be successfully managed and well maintained.

The Market is owned by the District of Columbia and operated by the Department of Real Estate Services (DRES). The current Eastern Market legislation enacted in 1999 brought improved stability and growth to the Market. Prior to the fire of April 2007, the market was managed by Eastern Market Ventures under contract with the District of Columbia. The Eastern Market Community Advisory Committee (EMCAC), created by statute as an advisory group to the Market management and to the District government, represents a variety of Capitol Hill constituencies. This body, however, is merely advisory. With a bifurcated management structure and an advisory group functioning with no power or authority, the Market struggled through the last decade even as it showed considerable promise as a powerful economic engine for the Capitol Hill community.

After the devastating fire of April 2007, and the subsequent commitment by the District of Columbia government of \$22 million to restore the Market to its historical prominence, it became clear that the management and governance of the Market needed a fresh approach. Since the fire, DRES has managed the Market and the vending operations adjacent to the property supported by the advice of EMCAC. However, DRES, with a portfolio of more than 21 million square feet and a history of frequent changes of departmental leadership, has too often lost its focus on the Market.

In creating the EMTF, Councilmember Wells sought recommendations for a new governance structure that would ensure that the Market and its operations would never again deteriorate as it had under its previous contracted and government management. Before the fire, the Market limped along with a minimalist management presence and

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<sup>1</sup> Sharon Ambrose and Peter Waldron are co-chairs of the Task Force. Other members are Susan Clampitt, Wally Mlyniec, Gary Peterson, and Bonny Wolf. All are Capitol Hill residents. Acting Market Manager Barry Margeson serves as an advisor to the Task Force.

little attention or oversight by the District. Despite EMCAC's doggedness in alerting the community to festering problems, the Market building continued to be poorly maintained.

The EMTF took various actions to respond to Councilmember Wells' charge. Its processes were rigorous and broad in scope. The EMTF studied the enabling legislation and by-laws of public markets across the country and spoke to their market managers. Its inquiries covered governance, operations, and the financial structure of the various markets to determine whether the Eastern Market might survive and thrive. A list of these markets can be found below.<sup>2</sup> The EMTF reviewed the report on the Eastern Market prepared after the fire by David O'Neill from the Project for Public Space (PPS), an organization nationally known for its public market expertise. The EMTF carefully reviewed the current Eastern Market legislation and reviewed the enabling legislation of several quasi-governmental agencies that are currently operating or had operated in the District of Columbia in the past. These entities are the D.C. Revitalization Corporation, the D.C. Housing Authority, Washington Convention Center Authority, and the Old Naval Hospital Disposition. To further understand the operations of these entities, the EMTF held meetings with Linda Greenan, Washington Convention Center Board Member and former aide to Councilman Evans, and with Greg Odell, Executive Director of the Convention Center, and Marlene Johnson, its legal counsel.

The EMTF also met with and solicited input from a wide array of stakeholders and residents in the surrounding Capitol Hill community. It met with members of EMCAC, representatives from ANC6B, CHAMPS, Barracks Row Merchants Association, Eastern Market Row Merchants Association, the Eastern Market Metro Community Association (EMMCA), Capitol Hill Restoration Society (CHRS), and the Eastern Market's Tenant's Council. A community meeting, led by Councilman Wells, was held on Nov. 29, 2010.

During and after these consultations, the EMTF examined a number of governance models: private-public partnership; city owned and operated; for profit, and non-profit. The EMTF determined that the events of the past showed that continued government operation of the Market could not protect its character or its capital and human investment. It determined that neither the for-profit nor the private-public partnership models could ensure the preservation of the historic character, role, and legacy of the Market. None of these models provided assurance that the concerns of the Capitol Hill neighborhood would be protected and respected. Its deliberations led the EMTF to the conclusion that the market should be run as a non-profit and should be run by a board of directors. Rather than surrender the Eastern Market and the Special Use District to an independent non-profit, EMTF determined that a quasi-governmental authority, similar to that of the Washington Convention Center Authority, would best achieve the goals Councilmember Wells sought for the Eastern Market, its Special Use District, the Capitol Hill neighborhood, and the District of Columbia.

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<sup>2</sup> The public markets contacted were : Lexington Market, Baltimore, MD; French Market, New Orleans, LA; Eastern Market, Detroit, MI; City Market, Kansas City, KA; Soulard Market, St Louis, MO; Pike's Place, Seattle, WA; Cleveland West Side Market, Cleveland, OH; Los Angeles City Market, Los Angeles, CA; Indianapolis City Market, Indianapolis, IN; Lancaster Market, Lancaster, PA; Charlotte Regional Public Market, Charlotte, NC; North Market, Columbus, OH; Reading Market, Philadelphia, PA.

With these considerations in mind, the EMTF forwards the following recommendations to the Councilmember. This report also includes an addendum listing the issues, concerns and comments that were raised during the stakeholder meetings that were significant but were outside the charge of the EMTF regarding governance. These issues were raised during the discussions the EMTF had with various neighborhood groups and stakeholders. As a result of those conversations, the EMTF agreed to add the Addendum I to its report. The report also includes, as Addendum II, other issues that will have an impact on or be affected by changes in the governing structure.

### **Creation of Eastern Market Preservation and Development Authority**

The Eastern Market Task Force proposes the creation of the Eastern Market Preservation and Development Authority (EMPDA) headed by a board of directors to maintain, operate, and promote the Eastern Market, and to protect its primary focus as a historic food market. The EMPDA would be a not-for-profit quasi-public entity<sup>3</sup> with jurisdiction over the Eastern Market Square<sup>4</sup> and Eastern Market Historic Special Use District's<sup>5</sup> indoor urban fresh food market; outdoor farmers market; antiques and artisan crafts market; flea market, and prepared foods purveyors.

The D.C. government would retain ownership of the market and continue to be responsible for major capital improvements, but the market would have a separate legal and financial status.

The EMTF recommends the Authority direct the market management to develop the North Hall of Eastern Market as a center for arts and community events, and to set among its highest priorities efforts to realize the North Hall's revenue-producing potential.

### **Market Geography**

The EMTF task force recommends that the geography of the Eastern Market Square and Eastern Market Historic Special Use District be defined as follows:

1. The current Eastern Market Square including the North Hall Plaza;
2. Capitol Hill Natatorium Plaza;
3. The playground and parking lot of Hine Junior High School from December 2011, the date of the expiration of the current weekend flea market leases, until construction begins for the new development on the Hine site;

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<sup>3</sup> The structure is similar to but not identical to the Authority operating the Washington Convention Center.

<sup>4</sup> The Eastern Market Square is currently defined by statute as the area between the south curb of North Carolina Avenue, S.E. and the north curb of C Street, S.E. and between the west curb of 7<sup>th</sup> Street S.E. and the building line with the Capitol Hill Natatorium. D.C. Code 37-101 (13).

<sup>5</sup> The Eastern Market special use area is currently defined by statute as public land near Eastern Market Square, including but not limited to the playground and parking lot of Hine Junior High School and the Capitol Hill Natatorium Plaza. D.C. Code 37-101 (12). The Task Force recommends that the Eastern Market Historical Special Use District be expanded beyond its current definition.

4. After the Hine School site is redeveloped, C Street S.E. and the adjacent sidewalks on C Street between 7<sup>th</sup> and 8<sup>th</sup> Streets S.E., and the new Plaza on 7<sup>th</sup> and C Streets SE;
5. 7<sup>th</sup> Street between North Carolina Avenue S.E and Pennsylvania Avenue S.E. including both the east and west sidewalks of 7<sup>th</sup> Street but excluding those areas subject to outdoor leases held by brick and mortar businesses.

## **Board of Directors**

The EMTF recommends a board of directors of 11 voting members. The inside merchants, outside food vendors, and the combined outside arts and craft vendors would each have one representative (total of three). The merchants and vendors would elect their representatives annually by a democratic process to be determined by them. The voting plan must be approved by the remaining members of the Board of Directors before the vote shall take place. The Mayor would appoint two members: a Mayoral representative and one appointee from the required skill sets listed below who must be a member of the Capitol Hill Historic District. The City Council chair would appoint one member citywide. Except for the merchants' representatives, all voting members must be residents of the District of Columbia. The Ward 6 Councilmember would appoint five board members from Ward 6.<sup>6</sup> Except for the Mayor's representative and the Council Chair's representative, all board members must have proven expertise in at least one of the following skill sets; food, finance, business, historic preservation, arts, legal, merchandizing, and marketing. The market manager would sit as a non-voting, ex-officio member.

Terms would be three years, renewable once. The terms would be staggered with the initial appointments being for one, two, or three years determined by lots. Board members would be subject to typical Board provisions for removal for cause, resignation, absence and for indemnification and insurance. Board members would serve without compensation.

The board would elect its own officers and meet at least quarterly. An annual meeting would be required.

Any board member with a personal or business interest in a contract or transaction presented to the board for authorization, approval or ratification should give prompt and full disclosure of his/her interest prior to board action. If the board determines that the disclosure shows a conflict of interest, that board member should not vote on the issue or be counted in determining a quorum. A quorum, the number of members required to conduct business, would consist of six non-conflicted voting board members.

## **Powers and Duties**

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<sup>6</sup> The Task Force believes that the Council Member should solicit nominations from the community for appointments to these positions.

The Board would have the authority to establish policy for the management, maintenance, and operations of Eastern Market Square and the Eastern Market Historic Special Use District; set budgets and authorize audits; approve contracts and leases; conduct, direct, and manage operations; appoint and terminate the Market Manager; retain consultants; control all monies in the Authority's Fund, and perform all actions ancillary to these functions.

The Board would adopt rules and bylaws for its own work.

The Board would approve budgets and submit them to the Council; set rents, stall fees and licenses, and select auditors. All vendors operating with the Eastern Market and the Eastern Market Historic Special Use area would be considered independent contractors. All vendors would have to be in compliance with the District's Clean Hands Law. The board should report annually on its operations to the mayor and city council.

The Board would be the body to sue and be sued. It also would apply for and accept public and private grants and donations and enter into contracts.

The Board should require each tenant and market vendor to maintain liability insurance and the Board should purchase liability insurance for its members. The Board, each tenant and each market vendor should indemnify and hold harmless the District of Columbia for their own acts of negligence.

The Board would establish a personnel system with terms for contracts, vacations, leaves, retirement and benefits. The body also would hire, fix compensations and terminate the market manager and other employees if necessary. The D.C. Merit Personnel system is inapplicable.

The Board would be authorized to create policies for the selling or dispensing alcohol where appropriate, pursuant to DC law.

### **Market Manager**

The market manager would be appointed and terminated by majority vote of the entire Board.

The market manager would assist in preparation of budgets and annual reports, and administer all policy, rules and regulations adopted by the Board.

The market manager would employ personnel.

The market manager would promote and secure bookings for the North Hall meeting arts and community use obligations

The market manager would approve all leases after approval by the Board and perform other duties as authorized by the Board.

### **Financial Arrangements**

An Eastern Market Enterprise Fund, an interest-bearing account maintained separately from the District's general account, would be controlled by the EMPDA which would deposit into the fund all moneys it receives on behalf of Eastern Market. The contents of the fund would be used only for management and maintenance of Eastern Market Square and where applicable the Eastern Market Historic Special Use District. Money from the fund would never be used for District of Columbia expenses.<sup>7</sup>

All revenues, proceeds and moneys from whatever source would go into an Eastern Market Preservation and Development Authority Fund. The proceeds in the Fund should never be transferred to the general revenues of the District nor should the proceeds be commingled with the general revenues of the District.

The EMTF recommends that 10 percent of all sales taxes raised in the Capitol Hill Historic District be set aside and dedicated to capital improvements to the historic Eastern Market building. Funds so collected should be transferred by the District of Columbia to the Eastern Market Enterprise Fund.<sup>8</sup>

The District should retain its current financial responsibility for information technology (IT); trash and snow removal, and water, gas and electric expenses for Eastern Market Square for 10 years, after which time the EMPDA would be responsible for these costs.<sup>9</sup>

The District of Columbia will remain responsible for funding any major repairs, alterations, construction, or improvements to the Market. EMPDA will be responsible for routine maintenance and upkeep of the Eastern Market. In the event the Enterprise Fund has insufficient revenue to meet these expenses, the District would make up the shortfall.<sup>10</sup>

The EMTF recommends a number of revenue-generating activities be employed: that the North Hall be used for revenue growth and community and arts use; that there be more market activity throughout the week and that fund-raising opportunities be explored, that outside funding for the preservation of the Market be encouraged, that an endowment be established, and that contributions and grants be encouraged and accepted.

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<sup>7</sup> This fund is similar to the fund used by the Washington Convention Center.

<sup>8</sup> This tax sharing arrangement currently exists between the District of Columbia and the Washington Convention Center.

<sup>9</sup> Similar provisions exist in the agreements to operate several of the markets studied.

<sup>10</sup> Provisions of this nature exist in the agreement to operate the Detroit Market. [ Article VII: "The City shall be responsible for funding any material alteration or construction of improvements to the Market and/or the District approved by the Detroit City Council in excess of funds generated by the operation of the Market and funds obtained from sources other than the City by EMC for such purposes. Plans, specifications and funding for any such alterations and improvements shall be approved by both the Detroit City Council and the EMC."

## **Addendum I.**

As the EMTF reached out to the Capitol Hill community, it became obvious that there were many issues on the minds of the various constituencies that were outside the province of the EMTF's charge to examine and make recommendations on the governance of the Market. Consequently, the EMTF agreed by vote to report to Council member Tommy Wells issues and concerns that were raised as we met with the surrounding community. We agreed to forward these concerns to whatever governing body emerges from the legislative process.

### **Issues**

- That the historic structure and nature of the Eastern Market be preserved
- That the emphasis remain on a fresh food market that is protected from the vicissitudes of time and fashion
- That the Market be self sustaining
- That quality board members are chosen who are community based, Ward 6 residents and have skill sets
- That concerns remain about how to keep future growth strong
- That there be more clarity about the role of the District government in respect to its responsibilities at the Market
- That the parking issue for local residents be resolved in a positive way, especially so community shoppers can continue to use the Market for necessary and traditional purchases
- That the focus of the Market should not be on attracting tourists and that a balance be found between neighborhood and residential shopping and the Market as a regional destination
- That the mission of any new governing body be consistent with the Market's historic nature as a fresh food market
- That the North Hall's revenue growth as a linchpin to the Market's self sustainability be balanced with arts and community use

### **Concerns**

- How capital improvements will be funded

- The Market's future relationship to the Hine project
- Strong support for expanded Market outdoor presence and business on weekdays for both farmers and arts and crafts
- Desire for stronger local farming presence
- Widespread criticism for arts and crafts products that do not meet the standards laid out in the original legislation
- Need for a clear definition of the role of vendors on any governing body
- Desire that there be strong community control of the Market although suggestions varied in how this might be executed
- Concern about how the Market will be funded and how it will grow
- That new legislation not affect current leases and permits
- Strengthened protections concerning the Market's politicization
- That there be a functioning and responsible oversight of the Market
- Fundraising capability
- How to preserve the customer perspective
- That the governing board be willing to appoint community members for any subcommittees.
- Government subsidy for the Market to cover operating shortfalls

## **ADDENDUM II.**

The charge given the Eastern Market Task Force by Councilmember Wells was to provide recommendations for the governance and geography of the Eastern Market and not to make determinations on issues relating to its operations. However, creating a new governing body, as the EMTF recommends, will likely result in the partial repeal and amendment of the current Eastern Market legislation to correct any inconsistencies that are created or that are in conflict with the powers and responsibilities of any new governing body. With that in mind EMTF recommends that those drafting legislation

flowing from the adoption of the Task Force's report remain keenly aware of those key provisions of the current Eastern Market statues requiring amendment or repeal.