

# AUDIT REPORT



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF FINANCIAL AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on the Compliance of Sweet Concessions with Its Department Of Parks and Recreation Contract**

*FK08-097A*

**February 26, 2009**



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of Sweet Concessions with its Department of Parks and Recreation contract.

Sweet Concessions' agreement with the City permits it to operate and maintain two snack bars near the model boat pond in Central Park. We audit concessions such as this to ensure that private concerns under contract with the City comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with officials from Sweet Concessions and the Department of Parks and Recreation, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at [audit@Comptroller.nyc.gov](mailto:audit@Comptroller.nyc.gov) or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in black ink, appearing to read "W.C. Thompson, Jr.", written over a horizontal line.

William C. Thompson, Jr.

WCT/fh

**Report: FK08-097A**  
**Filed: February 26, 2009**

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*The City of New York  
Office of the Comptroller  
Bureau of Financial Audit*

**Audit Report on the Compliance of  
Sweet Concessions with Its  
Department of Parks and Recreation Contract**

**FK08-097A**

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**AUDIT REPORT IN BRIEF**

Sweet Concessions manages, operates, and maintains two snack bars near the model boat pond in Central Park (off Fifth Avenue between 73<sup>rd</sup> and 74<sup>th</sup> Streets), under a contract with the Department of Parks and Recreation (Parks). The agreement covers the seven-year period March 31, 2001–March 31, 2008. Under the terms of the agreement, Sweet Concessions agreed to pay the higher of \$172,897 or 24 percent of gross receipts and \$180,912 or 25 percent of gross receipts for the years ending March 31, 2007, and March 31, 2008, respectively. Sweet Concessions must submit specified documentation to Parks to substantiate reported gross receipts. During operating years 2007 and 2008, Sweet Concessions paid the minimum permit fees of \$172,897 and \$180,912.

Additionally, the permit agreement requires Sweet Concessions to spend a minimum of \$75,000 on capital improvements, sell only authorized items at Parks approved prices, and maintain snack bars, restrooms, and the surrounding area. It must also post a security deposit of \$45,228 with the City, maintain certain types and amounts of insurance coverage, pay utility charges, and return equipment to Parks or replace it upon the expiration of its agreement.

**Audit Findings and Conclusions**

Sweet Concessions generally paid its minimum annual fees on time, performed capital improvements, maintained required security deposit and liability insurance, paid utility charges, and returned equipment to Parks upon the expiration of its agreement. However, Sweet Concessions had significant internal control weaknesses over the collecting, recording, and reporting of revenues. For example, Sweet Concessions: did not record all sales activities on cash registers or other income-recording devices, did not maintain an inventory of and could not provide access to cash registers used at the Sweet Café, did not maintain detailed cash register tapes, did not keep separate books and records for the Sweet Café, and did not formally reconcile its daily sales according to its cash register tapes and its credit card sales to daily sales based on its food and beverage inventory and moved inventory among the various Sweet Concessions

sites. As a result of these weaknesses, we could not ascertain whether all of the revenue earned at the Sweet Café was in fact recorded in Sweet Café's cash registers and books and records, and accurately and completely reported to Parks. Nor could we determine whether Sweet Concessions paid all fees due Parks. Furthermore, the internal control weaknesses and lack of records are red flags that were so extensive as to raise the question of potential fraud.

The audit also revealed that Sweet Concessions sold unauthorized items, charged customers more than amounts approved by Parks, and did not maintain the snack bars and restrooms in a sanitary manner. Sweet Concessions did not comply with and fulfill these contractual obligations, and Parks failed to adequately monitor Sweet Concessions' performance and enforce the terms and conditions of its agreement, as required by the New York City Charter, Chapter 14, §365.

### **Audit Recommendations**

Ordinarily we would address our recommendations to Sweet Concessions, but its permit has expired and was not awarded again. Therefore, we address our recommendations solely to Parks.

We make one recommendation with regard to Sweet Concessions, that Parks consider issuing an Advice of Caution in VENDEX regarding Sweet Concessions.

We make five recommendations with regard to future snack bar concessions, including that Parks should:

- Ensure that future snack bar concession agreements with fees based on gross receipts clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records as well as books of account and data, including daily sales and receipt records, which show in detail the total business transacted by the concessionaire and the gross receipts derived therefrom.
- Monitor concessionaires' performance and enforce the terms and conditions of their agreements, as required by the New York City Charter, Chapter 14, §365.
- Consider issuing Advices of Caution in the City's VENDEX regarding concessionaires that do not comply with or fulfill agreement provisions.

## INTRODUCTION

### Background

Sweet Concessions manages, operates, and maintains two snack bars near the model boat pond in Central Park (off Fifth Avenue between 73<sup>rd</sup> and 74<sup>th</sup> Streets), under a contract with the Department of Parks and Recreation (Parks). The snack bars are collectively known as the Sweet Café. The primary snack bar is in the Kerbs Memorial Boathouse, east of the pond. The smaller snack bar is south of the pond. The agreement covers the seven-year period March 31, 2001–March 31, 2008. Under the terms of the agreement, Sweet Concessions agreed to pay the higher of \$172,897 or 24 percent of gross receipts and \$180,912 or 25 percent of gross receipts for the years ending March 31, 2007 and March 31, 2008, respectively. Sweet Concessions must submit specified documentation to Parks to substantiate reported gross receipts.

During operating years 2007 and 2008, Sweet Concessions paid the minimum permit fees of \$172,897 and \$180,912. Table I shows Sweet Concessions' reported gross receipts and permit fees paid.

**Table I**

Reported Gross Receipts and Permit Fees Paid  
For Operating Years 2007 and 2008

<b>Operating Year</b>	<b>Reported Gross Receipts</b>	<b>(A) % of Gross Receipts</b>	<b>(B) Minimum Payment</b>	<b>Permit Fees Due and Paid (Higher of A or B)</b>
<b>2007</b>	\$549,171	\$131,801	\$172,897	\$172,897
<b>2008</b>	\$539,184	\$134,796	\$180,912	\$180,912

Additionally, the permit agreement requires Sweet Concessions to spend a minimum of \$75,000 on capital improvements, sell only authorized items at Parks approved prices, and maintain snack bars, restrooms, and surrounding area. It must also post a security deposit of \$45,228 with the City, maintain certain types and amounts of insurance coverage, pay utility charges, and return equipment to Parks or replace it upon the expiration of its agreement.

In addition to the Sweet Café, Sweet Concessions operates concessions in other locations, such as Broadway theatres, and provides catering and event planning services. This audit pertains only to Sweet Concessions financial and operating practices for the Sweet Café.

### Objectives

The objectives of this audit are to determine whether:

- Sweet Concessions accurately reported gross receipts, properly calculated permit fees due the City, and paid permit fees on time,

- Sweet Concessions complied with certain other non-revenue related requirements of its permit agreement, and
- Parks adequately monitored Sweet Concessions' performance and enforced the terms and conditions of its agreement with Sweet Concessions, as required by the New York City Charter, Chapter 14, §365.

### **Scope and Methodology**

The audit covered the period April 1, 2006, to March 31, 2008. To gain an understanding of the policies, procedures, and regulations governing the operation of the Sweet Café, we reviewed the permit agreement between Sweet Concessions and Parks and interviewed Sweet Concessions and Parks officials. We interviewed the Sweet Concessions Chief Financial Officer and Manager to obtain an understanding of and to evaluate procedures for recording and reporting gross receipts for the Sweet Cafe.

To determine whether Sweet Concessions accurately reported gross receipts and properly calculated permit fees due the City:

We conducted unannounced observations of the Sweet Café to evaluate the controls over the receiving and recording of cash. We purchased items at the Sweet Café and intended to determine whether these sales were accurately and completely recorded and reported to Parks. However, Sweet Concessions did not record sales activities for the small snack bar on a cash register or other income-recording device. Instead, we observed that cash received for sales at the small snack bar was placed in a till. Nevertheless, we requested copies of detailed cash register tapes for the Sweet Café for sales that were recorded on cash registers. However, Sweet Concessions did not maintain detailed cash register tapes because they were reportedly "too large, long, and cumbersome."

We requested an inventory of and access to cash registers used at the Sweet Café. We intended to inspect the cash registers at the Sweet Café, record their cumulative totals, and verify gross receipts reported to Parks. However, Sweet Concessions officials did not maintain an inventory of cash registers used at the Sweet Café indicating model and serial numbers. Further, Sweet Concessions officials indicated that cash registers were transferred from one Sweet Concession to another, and that they no longer had the registers because they broke and had been discarded.

We compared credit card sales reported to Parks to credit card settlement report totals for the three-month period July through September 2006. We intended to determine whether all Sweet Café credit card sales were accurately recorded and reported to Parks. However, Sweet Concessions officials informed us that the Sweet Café credit card terminal was used to process transactions generated at other Sweet Concessions sites. As a result, we could not verify that credit card receipts reported to Parks were accurate and complete.

We requested daily sales reconciliations. However, Sweet Concessions did not formally reconcile its daily sales according to its cash register tapes and credit card sales to its daily sales as based on its food and beverage inventory. As an alternative procedure, we requested a list of vendors used by Sweet Café and obtained invoices for purchases made from them. We intended to contact vendors independently to determine the quantities of food and beverage items sold at the Sweet Café. However, we could not perform this test because inventory was moved among the various Sweet Concessions sites.

Although we could not determine whether Sweet Concessions accurately reported gross receipts and properly calculated permit fees due the City, we determined whether fees were paid on time. We reviewed Sweet Concessions reported gross receipts and determined whether an annual percentage fee or minimum payment was applicable. Since Sweet Concessions had not paid Parks an annual percentage fee in any prior operating years, the minimum payment was applicable and fees were due on or before the first of the month. We reviewed the Parks Revenue Division concessionaire ledgers and determined whether Sweet Concessions paid Parks one-twelfth of the minimum fee on or before the first of each month, as required. If Sweet Concessions did not do so, we determined whether Parks assessed and collected late fees.

We reviewed Sweet Concessions agreement provisions related to capital improvements, authorized products and merchandise, price lists, sanitation, security deposit, insurance, utility costs, and fixed equipment. And we conducted the following tests to determine whether Sweet Concessions complied with and fulfilled these provisions.

### **Capital improvements**

We determined whether Sweet Concessions performed required capital improvements at the Sweet Café by reviewing copies of invoices and checks submitted to Parks and by interviewing the Parks Revenue Division Chief Architect and reviewing his approved list of capital expenditures.

### **Authorized Products and Merchandise and Price Lists**

We observed items for sale, obtained a menu, purchased items from the Sweet Café, and obtained Sweet Café menus and price lists on file at Parks. Based on Sweet Café's current menu and our observations, we compared items and pricing to those on file with Parks and identified discrepancies.

Although Sweet Concessions is not permitted to sell liquor under terms of its agreement, we reviewed Sweet Café's New York State Liquor Authority license to ensure that it permitted the sale of liquor and was valid.

### **Sanitation**

We reviewed New York City Department of Health and Mental Hygiene (DOHMH) inspection reports and related correspondence as well as Sweet Café management reports and determined whether Sweet Concessions maintained Sweet Café snack bars in sanitary manner.



## **Security Deposit**

We obtained a copy of Form JN-6 from the Comptroller's Office Bureau of Accountancy, which shows the dollar amount Sweet Concessions deposited with J.P. Morgan Chase and Company. We compared the amount shown on Form JN-6 to the security deposit required by Sweet Concessions agreement.

## **Insurance**

We reviewed the Sweet Concessions insurance policies, Statement of Values, Common Declarations, and Insurance Summary, and determined whether Sweet Concessions maintained required amounts and types of insurance for the Sweet Café. We also reviewed the Certificate of Liability Insurance to determine whether the City of New York was named as an additional insured.

## **Utility Costs**

We reviewed provider bills and Sweet Concessions general ledger, checks, and bank statements. We checked whether checks were made payable to providers and billed amounts were paid. For water and sewer charges, we also viewed Sweet Concessions history of charges and payments in the Department of Environmental Protection's Customer Information System.

## **Fixed Equipment**

Since the Sweet Concessions agreement with the City expired on March 31, 2008, we determined whether it returned or replaced all equipment that was provided. We compared equipment detailed in the agreement to the Parks final inspection memorandum and identified items that were not indicated as returned or replaced. When we noted discrepancies, we reviewed equipment lease terms and lease buy-out payments, and conducted site inspections to verify that equipment was returned to Parks.

When Sweet Concessions did not comply with and fulfill provisions of its agreement, we determined whether Parks monitored Sweet Concessions' performance and identified agreement violations. When Parks identified agreement violations, we determined whether Parks took enforcement and follow-up action to ensure the compliance of Sweet Concessions in the future. Specifically, we reviewed Parks audit and inspection reports, Notices to Cure, and related correspondence and documentation.

## **Scope Limitation**

As mentioned earlier, we intended to determine whether cash receipts were accurately and completely recorded and reported to Parks. However, Sweet Concessions had significant internal control weaknesses over the collecting, recording, and reporting of revenues. For example, Sweet Concessions: did not record all sales activities on cash registers or other income-recording devices, did not maintain an inventory of and could not provide access to cash registers used at the Sweet

Café, did not maintain detailed cash register tapes, did not keep separate books and records for the Sweet Café, and did not formally reconcile its daily sales according to its cash register tapes and its credit card sales to daily sales based on its food and beverage inventory and moved inventory among the various Sweet Concessions sites. As a result of these weaknesses, we could not ascertain whether all of the revenue earned at the Sweet Café was in fact recorded in Sweet Café's cash registers and books and records and accurately and completely reported to Parks. Likewise we could not determine whether Sweet Concessions paid all fees due Parks.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

### **Discussion of Audit Results**

The matters covered in this report were discussed with Sweet Concessions and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to Sweet Concessions and Parks officials and discussed at an exit conference held on November 13, 2008. On December 5, 2008, we submitted a draft report to Sweet Concessions and Parks officials with a request for comments. We received written responses from Sweet Concessions and Parks on December 17, 2008, and December 19, 2008, respectively.

In its response, Sweet Concessions stated:

Our concession stand at the model boat lake adjoined to the Kerbs Memorial Building managed, over a seven year period, to provide the NYC Parks Department with approximately \$1.8 million in revenues, basically by selling hot dogs and beer. . . .

We are responding to this draft in order to correct misrepresentations regarding our firm, and to protest the inclusion in the final report of potentially misleading, unjustified, inflammatory language, specifically the two references to "internal control weaknesses . . . so extensive as to raise the question of fraud. . . .

It is our position that Sweet Concessions performed its obligations to Parks in the manner and fashion we agreed to, often through great adversity, including infrequent flooding of the concession space, occasional damage to the building fixtures by transients, and the rare appearance of coyote. We appreciate the opportunity that Parks gave us, allowing us to provide park patrons with snacks and more, and to provide Parks with a substantial cash flow to support and improve its much needed services to the public. We protest, with great vehemence, the potentially libelous statements of the auditors, incorrectly implying that we were inappropriate in any of our interactions with Parks and the City of New York.

Specific Sweet Concession comments and our rebuttals are contained in the relevant sections of this report. However, it should be noted that Sweet Concessions overstated its permit fees paid by nearly 64 percent. Sweet Concessions paid the minimum fees for each year of its

agreement. These fees totaled approximately \$1.1 million for the seven-year agreement period and not \$1.8 million as Sweet Concessions claimed in its response.

In its response, Parks agreed with five and partially agreed with one of our six recommendations.

The full text of the responses received from Sweet Concessions and Parks are included as addenda to this report.

## FINDINGS

Sweet Concessions generally paid its minimum annual fees on time, performed capital improvements, maintained required security deposit and liability insurance, paid utility charges, and returned equipment to Parks upon the expiration of its agreement. However, Sweet Concessions had significant internal control weaknesses over the collecting, recording, and reporting of revenues, as noted above. As a result of these weaknesses, we could not ascertain whether all of the revenue earned at the Sweet Café was in fact recorded in Sweet Café's cash registers and books and records, and accurately and completely reported to Parks. Nor could we determine whether Sweet Concessions paid all fees due Parks. Furthermore, the internal control weaknesses and lack of records are red flags that were so extensive as to raise the question of potential fraud.

The audit also revealed that Sweet Concessions sold unauthorized items, charged customers more than amounts approved by Parks, and did not maintain the snack bars and restrooms in a sanitary manner. Sweet Concessions did not comply with and fulfill these contractual obligations, and Parks failed to adequately monitor Sweet Concessions' performance and enforce the terms and conditions of its agreement, as required by the New York City Charter, Chapter 14, §365.

These findings are discussed in detail in the following sections of this report.

### **Sweet Concessions Lacks Internal Controls over Its Operations**

Our review of the Sweet Concessions operations revealed a lack of internal controls over Sweet Café operations. Internal controls help ensure the reliability of financial information. While Sweet Concessions employed some internal controls, there were not adequate controls in place to ensure that all Sweet Café revenues were properly recorded and reported to Parks. In fact, the deficiencies were so severe that we could not perform detailed testing on Sweet Café's revenues to determine whether all gross receipts were reported. For example, Sweet Concessions:

- Did not record all sales activities on cash registers or other income-recording devices. Sweet Concessions did not always record sales activities for the small snack bar on a cash register or other income-recording device. Instead, we observed that cash received for sales at the small snack bar was placed in a till. Sweet Concessions officials maintained that cash registers used at the small snack bar either broke or were transferred to other Sweet Concession sites. Although Sweet Concessions reported cash receipts for the small snack bar, we cannot be assured that all cash received was reported because sales were not properly recorded.
- Did not maintain an inventory of and could not provide access to cash registers used at the Sweet Café. Sweet Concessions officials did not maintain an inventory of cash registers used at the Sweet Café that indicated register models and serial numbers. We intended to inspect the cash registers at the Sweet Café and record their cumulative totals. However, Sweet Concessions officials indicated that they no longer had the

registers because they broke and were discarded. Sweet Concessions officials also indicated that cash registers were moved among Sweet Concessions sites. As a result, we could not verify that gross receipts reported to Parks were accurate and complete.

- Did not maintain detailed cash register tapes. Although Sweet Concessions kept “Z” tapes summarizing daily sales, it did not maintain detailed cash register tapes. Sweet Concessions officials stated that it did not keep detailed tapes because they were “too large, long, and cumbersome.” We made purchases at the Sweet Café and intended to verify that these sales were properly recorded and reported to Parks. However, without tapes detailing each transaction, we could not perform this test and cannot be assured that gross receipts reported on summary “Z” tapes are complete and accurate.
- Did not keep separate books and records for the Sweet Café. We compared credit card sales reported to Parks to credit card settlement report totals to determine whether all Sweet Café credit card sales were accurately recorded and reported to Parks. However, Sweet Concessions officials informed us that the Sweet Café credit card terminal was used to process transactions generated at other Sweet Concessions sites. As a result, we could not verify that credit card receipts reported to Parks were accurate and complete.
- Did not formally reconcile its daily sales according to its cash register tapes and its credit card sales to daily sales based on its food and beverage inventory and moved inventory among Sweet Concessions sites. We intended to contact vendors independently and obtain invoices for Sweet Concessions’ purchases to determine the quantities of food and beverage items sold at the Sweet Cafe. However, we could not perform this test because inventory was moved among Sweet Concessions sites.

***Sweet Concessions Response:*** “Sales from all concession counter stations were recorded daily in excel spreadsheets and totals transferred weekly into a well recognized accounting software package. Monthly inventory counts were taken on the last day of each month; changes in inventory were recorded in our accounting system. Monthly financial statements were generated according to Generally Accepted Accounting Principles (GAAP) and expense accounts were judged against historical records and industry benchmarks to ensure a level of stability and success.

“The auditors state that Sweet Concessions lacks internal controls, basing their opinion on several incorrect assumptions.

- Sweet Concessions, as noted, did not record all sales activities on cash registers. The auditors ASSUMPTION that sales were required to be recorded on a cash register is irrelevant and unsupported. The agreement between Sweet Concessions and The Parks Department makes no requirement as to HOW sales are recorded, only that sales should be recorded ‘daily in a formal set of books and records.’ . . .

- Sweet Concessions could not provide an inventory of cash registers used at the concession stands. Again, the auditors ASSUME that we were required to have cash registers, which is not accurate. . . .
- Sweet Concessions did not maintain detailed cash registers tapes, and was not required to do so by any interpretation of the agreement between Sweet Concessions and The Parks Department. . . .
- Sweet Concessions did not formally reconcile its daily sales with any detailed cash register tapes against a daily food and beverage inventory. While Sweet Concessions did reconcile its sales with industry benchmarks on a regular basis, accounting for monthly inventory changes, we did not take a daily count of the hot dogs on hand. Mea culpa. Again, it is our position that we were not required by any part of our agreement to maintain individual, detailed sales data. In addition, the auditors’ statement that they could not track inventory moved between locations is not correct. Sweet Concessions did move inventory between locations . . . and when inventory was transferred it was documented on a ‘Transfer Sheet’ showing the date, items, quantities, sending location and receiving location.”

**Auditor Comment:** Although Sweet Concessions is correct in saying that the agreement does not state how sales are to be recorded, it is disingenuous in stating that it is *only* required to record sales daily in a formal set of books and records. Sweet Concessions omitted the agreement’s most fundamental and paramount record-keeping requirement—that it record sales activities. Sweet Concessions asserts that it must merely post daily sales figures in its books or records without maintaining or retaining any records upon which those sales figures were based. And although Sweet Concessions acknowledged that it was required to reconcile its daily sales with its food and beverage inventory, it chose to not do so. Moreover, Sweet Concessions trivialized this requirement and justified doing so by downplaying the nature and magnitude of Sweet Café’s operations.

Sweet Concessions agreement plainly states that it

“must maintain records of the following information in a form suitable for audit by Parks or the City Comptroller’s Office:

(a) Sales activities from each cart or stand recorded separately....

(d) The daily cash collections must be reconciled with the amounts shown in the record of the physical inventory.”

The agreement further states that records should be retained for at least six years.

Sweet Concessions President signed each page of the agreement indicating she agreed with its provisions. Further, if Sweet Concessions officials were not aware of these

requirements at the inception of the agreement, a Parks audit report issued in 2005 would have made them abundantly clear. The Parks audit cited Sweet Concessions for failing to provide critical records—such as detailed cash register tapes and daily sales reconciliation—and characterized Sweet Concessions’ lack of records as a “serious violation” of its agreement.

Lastly, since Sweet Concessions failed to perform daily sales reconciliations, we intended to determine independently the quantities of food and beverage items sold at the Sweet Café. Again, we could not perform this test because inventory was moved among the various Sweet Concessions sites, and we can place no audit reliance on internally-generated “Transfer Sheets.”

### **Sweet Concessions Did Not Comply with Other Permit Provisions**

Sweet Concessions did not comply with other permit provisions regarding sanitation, authorized products and merchandise, and price lists as follows:

#### **Authorized Products and Merchandise**

Although Sweet Concessions agreement states only that beer and wine may be sold at the Sweet Café, Sweet Concessions sold liquor. Parks authorized the sale of liquor on a provisional basis in March 2003. However, Parks did not subsequently amend its agreement with Sweet Concessions to permanently permit the sale of liquor. Our observations, a 2005 Parks audit, and Parks inspection reports indicated that Sweet Concessions sold liquor in violation of its agreement.

#### **Price Lists**

Sweet Concessions charged customers more than approved amounts for products and merchandise. In March 2001, Sweet Concessions entered into an agreement with and submitted its initial price list to Parks. Sweet Concessions did not submit revised price lists to Parks for approval for the duration of its agreement. A 2005 Parks audit cited Sweet Concessions for charging more than approved amounts for most items sold at the Sweet Café. We purchased items at the Sweet Café, reviewed its menu, and also found that Sweet Concessions charged more than approved amounts for most items.

#### **Sanitation**

Sweet Concessions did not maintain the snack bars and restrooms in a sanitary manner. In 2007, the Sweet Café failed initial and follow-up compliance inspections conducted by DOHMH on September 29<sup>th</sup> and October 23<sup>rd</sup>, respectively. As a result, a Notice and Order was issued on October 29, 2007, warning that “failure on your next inspection . . . will result in the immediate closing of your establishment.” Further, DOHMH Inspection Reports as well as Sweet Café management reports evidenced a persistent rodent problem.

Parks received several complaints about the restrooms, and numerous Parks inspection reports have cited Sweet Concessions for failing to maintain restrooms. Parks inspection reports note structural problems, clogged sinks, broken urinals, and dirty conditions in the restrooms.

***Sweet Concessions Response:*** “Sweet Concessions operation was regularly inspected by the New York Dept of Health, and, as noted, there were occasional issues which were remedied as quickly and completely as possible. Take note that the violations received were often unavoidable due to the nature of the location inside Central Park, and no violations were vast enough to warrant the closure of the concession stand. Sweet Concessions responded appropriately to any and all violations noted by the DOHMH and Parks, including those relating to damage in the restrooms due to the incursion of homeless persons. Our operation called for meticulous regular inspections of the restrooms throughout the day, and we maintained the restrooms in the best condition possible, given the deluge of clientele that took advantage of the facility.”

### **Parks Did Not Adequately Monitor Sweet Concessions’ Performance and Enforce Significant Agreement Terms and Conditions**

Parks failed to adequately monitor Sweet Concessions’ performance and enforce the terms and conditions of the agreement as required by the New York City Charter. NYC Charter, Chapter 14, §365 states that agencies responsible for concessions shall “monitor the performance of the grantee and enforce the terms and conditions of any franchise, revocable consent or concession under its jurisdiction.” Although Parks conducted an audit and numerous inspections of the Sweet Café, it either failed to identify or follow-up on significant agreement violations regarding records of sales, sanitation, authorized products and merchandise, and price lists, as follows:

#### **Records of Sales**

As with this audit, a 2005 Parks audit cited Sweet Concessions for failing to provide critical records such as detailed cash register tapes and daily sales reconciliations. And as a result, Parks concluded it was “not reasonably assured that the gross receipts were properly reported and fees correctly computed during the period.” Although the Parks audit characterized Sweet Concessions’ lack of records as a “serious violation” of its agreement, Parks failed to recommend that Sweet Concessions retain detailed cash register tapes, daily sales reconciliation, and other documentation required by its agreement. Further, Parks failed to issue a Notice to Cure or take any other follow-up action to ensure that sufficient records were kept in the future to allow it to verify that gross receipts were properly reported and fees correctly computed.

#### **Authorized Products and Merchandise**

Although Parks was aware that Sweet Concessions sold liquor in violation of its agreement, Parks failed to issue a Notice to Cure or take any other action directing Sweet Concessions to comply with its agreement and sell only authorized products and merchandise. The agreement states that beer and wine may be sold at the Sweet Café but it does not permit the sale of liquor. As noted above, Parks authorized the sale of liquor on a provisional basis in March 2003. However, Parks did not subsequently amend its agreement with Sweet Concessions



to permanently permit the sale of liquor. A 2005 Parks audit noted several times that Sweet Concessions sold liquor and Parks inspection report pictures clearly show liquor bottles. However, Parks audit and inspection reports did not cite Sweet Concessions for violating its agreement and Parks did not issue a Notice to Cure. Further, although Sweet Concessions agreement stipulates that Parks may assess liquidated damages for selling unauthorized items, Parks did not do so.

### **Price Lists**

Parks failed to ensure that Sweet Concessions did not charge more than approved amounts for products and merchandise. In March 2001, Sweet Concessions entered into an agreement with and submitted its initial price list to Parks. Sweet Concessions did not submit revised price lists to Parks for approval for the duration of its agreement. A 2005 Parks audit cited Sweet Concessions for charging more than approved amounts for most items sold at the Sweet Café and recommended that it display a “price list identical to the one that has been approved by Parks.” However, Parks failed to issue a Notice to Cure or take any other follow-up action to ensure that Sweet Concessions did not charge more than approved amounts for products and merchandise. Parks Inspectors ensured that price lists were displayed, but they did not ensure that Sweet Concessions charged customers amounts approved by Parks. Further, although Sweet Concessions agreement stipulates that Parks may assess liquidated damages for overcharging, Parks did not do so.

### **Sanitation**

Parks inspections failed to note unsanitary conditions in Sweet Café snack bars, most notably the presence of rodents. Parks instead focused primarily on conditions of the restrooms and area surrounding the snack bars. As mentioned, the Sweet Café failed initial and follow-up compliance inspections conducted by DOHMH on September 29, and October 23, 2007, respectively. As a result, a Notice and Order was issued on October 29, 2007, warning that “failure on your next inspection . . . will result in the immediate closing of your establishment.” Further, DOHMH Inspection Reports as well as Sweet Café management reports evidenced a persistent rodent problem. As Parks terminated the prior concessionaire’s contract due in part to rodent problems, Parks should have been aware that these conditions could persist.

While the Sweet Concessions agreement was in force, Parks should have been more vigilant in monitoring Sweet Concessions and taking enforcement and follow-up action such as issuing Notices to Cure, assessing liquidated damages, and issuing Advices of Caution in the City’s Vendor Information Exchange System (VENDEX).

## RECOMMENDATIONS

Ordinarily we would address our recommendations to Sweet Concessions, but its permit has expired and was not awarded again. Therefore, we address our recommendations solely to Parks.

With regard to Sweet Concessions, Parks should:

1. Consider issuing an Advice of Caution in VENDEX regarding Sweet Concessions.

**Parks Response:** “Agree. Parks will consider issuing an Advice of Caution regarding Sweet Concessions.”

With regard to future snack bar concessionaires, Parks should:

2. Ensure that future snack bar concession agreements with fees based on gross receipts clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records as well as books of account and data, including daily sales and receipt records, which show in detail the total business transacted by the concessionaire and the gross receipts derived therefrom.

**Parks Response:** “Partially agree. Parks believes that our snack bar concession agreements with fees based on gross receipts clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records. However, Parks will examine ways to further clarify language in our snack bar concession agreements as they pertain to the internal controls, including data on daily sales and receipt records, of our snack bar operators.”

**Auditor Comment:** The Parks snack bar concession agreements do not clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records as well as books of account and data. In fact, these agreements make no reference to systems of internal control and only vague reference as to how records are to be maintained, i.e., “in a form suitable for audit.”

Again, we urge Parks to ensure that future snack bar concession agreements with fees based on gross receipts clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records as well as books of account and data, including daily sales and receipt records, which show in detail the total business transacted by the concessionaire and the gross receipts derived therefrom.

3. Monitor concessionaires’ performance and enforce the terms and conditions of their agreements, as required by the New York City Charter, Chapter 14, §365.

**Parks Response:** “Agree. Parks will continue to monitor the performance of our concessionaires and enforce the terms and conditions of their agreements.

Furthermore, Parks recently sent out letters to approximately 100 concessions reminding the operators of the importance of following the provisions of their agreements, especially those provisions relating to internal controls, proper permitting and operational compliance. Parks has also followed up on these letters by meeting with selected operators to review the provisions of their agreements in order to ensure that they have a clear understanding of their responsibilities.”

4. Routinely obtain and review DOHMH inspection reports to ensure that concessionaires maintain facilities in a sanitary manner.

***Parks Response:*** “Agree. Parks sent DOHMH information on our concessions with food establishments, and requested a copy of any failed inspection reports in regards to these concessions. Parks has also contacted DOHMH about additional ways to improve interagency coordination.”

5. Issue Notices to Cure, assess liquidated damages when permissible, and follow up on concessionaires that do not comply with and fulfill agreement provisions.

***Parks Response:*** “Agree. Parks will continue to issue Notices to Cure when concessionaires do not comply with and fulfill agreement provisions.”

***Auditor Comment:*** We are pleased that Parks will issue Notices to Cure. However, Parks should also assess liquidated damages when permissible and follow up on concessionaires that do not comply with and fulfill agreement provisions.

6. Consider issuing Advices of Caution in the City’s VENDEX regarding concessionaires that do not comply with or fulfill agreement provisions.

***Parks Response:*** “Agree. Parks will consider issuing Advices of Caution in the City’s VENDEX regarding concessionaires that do not fulfill agreement provisions.”



**Sweet Concessions**

December 17, 2008

John Graham, Deputy Comptroller  
NYC Comptroller's Office  
1 Center Street  
New York, NY 10007-2341

**Re: Sweet Concessions' response to the audit report on the compliance of Sweet Concessions Inc with its Department of Parks and Recreation contract – FK08-097A**

Dear Mr. Graham:

Please find attached our response to the final draft of the abovementioned audit of our operations.

While we appreciate the review of our operations and understand the importance of such audit for the better control of revenues paid to New York City agencies, we question the 12 month time frame that was required to arrive at this point. Our concession stand at the model boat lake adjoined to the Kerbs Memorial Building managed, over a seven year period, to provide the NYC Parks Department with approximately \$1.8 million in revenues, basically by selling hot dogs and beer. From early January 2008 into March 2008 we provided the auditors with any and all documentation requested and in existence, and 12 months later we still await final resolution and the return of our \$46,000.00 deposit.

As noted by the auditors, Sweet Concessions no longer operates the concession stand at the Kerbs Memorial Building, or the associated smaller stand on the south side of the model boat lake.

We are responding to this draft in order to correct misrepresentations regarding our firm, and to protest the inclusion in the final report of potentially misleading, unjustified, inflammatory language, specifically the two references to "internal control weaknesses...so extensive as to raise the question of fraud". The auditors have based these particular statements on several incorrect assumptions, as detailed below; and even though this topic was discussed during our exit meeting, the statements are still included in the final draft, despite relevant rational arguments against the validity of said statements. We note that the auditors make only one recommendation to Parks regarding Sweet Concessions, strengthening our position that the inclusion of this seditious language serves no justifiable purpose.

## **Sweet Concessions' response to Audit Draft Findings and Recommendations**

### **Sweet Concessions Lacks Internal Controls over its Operations**

Sweet Concessions operated two concession counters inside Central Park under Permit number M10 (15) SB. One was located adjacent to the Kerbs Memorial Boathouse near 75<sup>th</sup> Street and 5<sup>th</sup> Avenue, the other in a small stand-alone building at the south end of the model boat lake. Sweet Concessions sold a variety of pre-packaged snacks, baked goods, hot and cold foods (hot dogs, pizza and sandwiches), hot and cold beverages (coffee, tea and soda), beer, wine and liquor based beverages. Sales from all concession counter stations were recorded daily in excel spreadsheets and totals transferred weekly into a well recognized accounting software package. Monthly inventory counts were taken on the last day of each month; changes in inventory were recorded in our accounting system. Monthly financial statements were generated according to Generally Accepted Accounting Principals (GAAP) and expense accounts were judged against historical records and industry benchmarks to ensure a level of stability and success.

The auditors state that Sweet Concessions lacks internal controls, basing their opinion on several incorrect assumptions.

- Sweet Concessions, as noted, did not record all sales activities on cash registers. The auditors ASSUMPTION that sales were required to be recorded on a cash register is irrelevant and unsupported. The agreement between Sweet Concessions and The Parks Department makes no requirement as to HOW sales are recorded, only that sales should be recorded "daily in a formal set of books and records" (Paragraph 22 (c)). Any opinions of the auditors based on their disappointment that all sales were not recorded in great detail, thereby making the audit process a bit more difficult on the auditors, should, in our opinion, be disregarded.
- Sweet Concessions could not provide an inventory of cash registers used at the concession stands. Again, the auditors ASSUME that we were required to have cash registers, which is not accurate. Sweet Concessions can not find any requirement in its agreement with The Parks Department that required us to hold onto broken, defunct cash registers; nor can we understand the auditor's expectation that such irreparable, useless equipment be retained for an unspecified period of time.
- Sweet Concessions did not maintain detailed cash register tapes, and was not required to do so by any interpretation of the agreement between Sweet Concessions and The Parks Department. It is an incorrect assumption by the auditors that such a requirement was in place, and any postulation of the auditors based on this erroneous assumption should, in our opinion, be disregarded.



- Sweet Concessions did not formally reconcile its daily sales with any detailed cash register tapes against a daily food and beverage inventory. While Sweet Concessions did reconcile its sales with industry benchmarks on a regular basis, accounting for monthly inventory changes, we did not take a daily count of the hot dogs on hand. Mea culpa. Again, it is our position that we were not required by any part of our agreement to maintain individual, detailed sales data. In addition, the auditors' statement that they could not track inventory moved between locations is not correct. Sweet Concessions did move inventory between locations, but not location specific products such as hot dogs, sandwiches, pizza and many varieties of beer which were not offered for sale at any of our other venues; and when inventory was transferred it was documented on a "Transfer Sheet" showing the date, items, quantities, sending location and receiving location. This was brought up for discussion at our exit meeting, but discounted by the auditors and not referenced in the final draft.

### **Sweet Concessions did not comply with other permit provisions**

#### **Sanitation**

Sweet Concessions operation was regularly inspected by the New York Dept of Health, and, as noted, there were occasional issues which were remedied as quickly and completely as possible. Take note that the violations received were often unavoidable due to the nature of the location inside Central Park, and no violations were vast enough to warrant the closure of the concession stand. Sweet Concessions responded appropriately to any and all violations noted by the DOHMH and Parks, including those relating to damage in the restrooms due to the incursion of homeless persons. Our operation called for meticulous regular inspections of the restrooms throughout the day, and we maintained the restrooms in the best condition possible, given the deluge of clientele that took advantage of the facility.

#### **Recommendations**

As noted earlier, the auditor's sole recommendation regarding Sweet Concessions is that Parks should issue an "Advice of Caution" in the VENDEX system.

It is our position that Sweet Concessions performed its obligations to Parks in the manner and fashion we agreed to, often through great adversity, including infrequent flooding of the concession space, occasional damage to the building fixtures by transients, and the rare appearance of coyote. We appreciate the opportunity that Parks gave us, allowing us to provide park patrons with snacks and more, and to provide Parks with a substantial cash flow to support and improve its much needed services to the public. We protest, with great vehemence, the potentially libelous statements of the auditors, incorrectly implying that we were inappropriate in any of our interactions with Parks and the City of New York.

In addition to the individual responses above, Sweet Concessions concurs with the finding of the auditors in that we complied with the agreement as far as: Gross Receipts were reported and payments

were submitted to Parks in a timely manner; that all Capital Improvements were completed as required; that all fixed equipment noted in the original agreement was returned, replaced or suitably exchanged; that we maintained appropriate licensing from The NYC Department of Health, the NYS Liquor Authority and other City and State Agencies as required; continually maintained appropriate insurance naming the appropriate City agencies as additional insured; deposited \$46,000.00 as security with the City and paid all utility bills, including water and sewer charges, in a timely manner.

Sweet Concessions reserves the right to amend, correct, supplement or modify our response as we deem necessary in order to provide an honest understanding of our firm and our firm's interactions with The NYC Parks Department and The City of New York.

Respectfully,



Bill Votava, CFO



City of New York  
Parks & Recreation

Adrian Benepe  
Commissioner

The Arsenal  
Central Park  
New York, New York 10065

Elizabeth W. Smith  
Assistant Commissioner  
Revenue and Marketing

(212) 360-1366  
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December 19, 2008

Mr. John Graham  
Deputy Comptroller  
The City of New York Office of the Comptroller  
1 Centre Street  
New York, NY 10007

**Re: Draft Audit Report on Sweet Concessions**  
**April 1, 2006 to March 31, 2008, FM08-097A, Dated December 5, 2008**

Dear Mr. Graham:

This letter represents the Parks Department's ("Parks") response to the recommendations contained in the audit report ("report") on Sweet Concessions. The report found that Sweet Concessions generally paid its minimum fees on time, performed capital improvements, maintained their required security deposit and insurance, paid utility charges and returned equipment to Parks after the expiration of its permit. However, the report also found that Sweet Concessions had significant internal control weaknesses.

As a result of Sweet Concessions' expired permit, the report's recommendations were directed to Parks. Specifically, the report recommended that Parks:

**Recommendation 1** – Consider issuing an Advice of Caution in VENDEX regarding Sweet Concessions.

Agree. Parks will consider issuing an Advice of Caution regarding Sweet Concessions.

**Recommendation 2** – Ensure that future snack bar concession agreements with fees based on gross receipts clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records as well as books of account and data, including daily sales and receipt records, which show in detail the total business transacted by the concessionaire and the gross receipts derived therefrom.

Partially agree. Parks believes that our snack bar concession agreements with fees based on gross receipts clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records. However, Parks will examine ways to further clarify language in our snack bar concession agreements as they pertain to





the internal controls, including data on daily sales and receipt records, of our snack bar operators.

**Recommendation 3** – Monitor concessionaries’ performance and enforce the terms and conditions of their agreements, as required by the New York City Charter, Chapter 14, section 365.

Agree. Parks will continue to monitor the performance of our concessionaires and enforce the terms and conditions of their agreements. Furthermore, Parks recently sent out letters to approximately 100 concessions reminding the operators of the importance of following the provisions of their agreements, especially those provisions relating to internal controls, proper permitting and operational compliance. Parks has also followed up on these letters by meeting with selected operators to review the provisions of their agreements in order to ensure that they have a clear understanding of their responsibilities.

**Recommendation 4** – Routinely obtain and review DOHMH inspection reports to ensure that concessionaires maintain facilities in a sanitary manner.

Agree. Parks sent DOHMH information on our concessions with food establishments, and requested a copy of any failed inspection reports in regards to these concessions. Parks has also contacted DOHMH about additional ways to improve interagency coordination.

**Recommendation 5** – Issue Notices to Cure, assess liquidated damages when permissible, and follow up on concessionaires that do not comply with and fulfill agreement provisions.

Agree. Parks will continue to issue Notices to Cure when concessionaires do not comply with and fulfill agreement provisions.

**Recommendation 6** – Consider issuing Advices of Caution in the City’s VENDEX regarding concessionaires that do not comply with or fulfill agreement provisions.

Agree. Parks will consider issuing Advices of Caution in the City’s VENDEX regarding concessionaires that do not fulfill agreement provisions.

We wish to thank the Comptroller’s audit staff for their efforts in performing this review.

Sincerely,



Elizabeth W. Smith

cc: Comm. Adrian Benepe

Robert Garafola  
David Stark  
Walter Roberts  
Jeffrey Kay, Mayor's Office of Operations  
George Davis