



City of New York

OFFICE OF THE COMPTROLLER

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FINANCIAL AUDIT

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Deputy Comptroller for Audit

Audit Report on the New York City
Department of Transportation's
Administration of the Light Pole
Banner Permit Program

FN12-066A

August 24, 2012

<http://comptroller.nyc.gov>



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

John C. Liu
COMPTROLLER

August 24, 2012

To the Residents of the City of New York:

My office has audited the Department of Transportation's (DOT) Administration of the Light Pole Banner Permit Program. We audit City agencies such as DOT as a means of ensuring that they effectively manage City assets entrusted them and do so in accordance with applicable rules and regulations.

DOT is responsible for administering the Banner Program which is intended to foster tourism and enhance the overall image of the City by allowing not-for-profit entities to display banners that promote cultural and historical events. DOT may only issue banner permits to Business Improvement Districts, Local Development Corporations, or other entities that receive Commercial Revitalization Program funds from the City. According to DOT's records, there were a total of 344,165 banners installed throughout the five boroughs in Fiscal Year 2011.

The audit revealed that DOT did not effectively administer the Banner Program because it did not: maintain accurate records to document the number of permits requested and issued; have adequate procedures to ensure that initial and renewal permit requests were properly submitted and approved; and ensure that banners were inspected, insurance coverage was maintained, and notices-of-violation were issued in accordance with relevant rules and regulations.

Additionally, our review found that DOT does not charge banner permit fees as it does for similar activities. Based on the City permit fee structure already established for similar activities, we estimate that the DOT program could generate between \$1 million and \$14 million in revenue annually. Moreover, the City does not directly share in banner sponsorship advertising revenue. Given that the City is providing its light pole infrastructure asset to be used by third party companies and not-for profit entities as an income-generating vehicle, we believe that it would be reasonable if the City would share a portion of the banner program advertising revenue as well. If the City were to do so, we estimate that it could generate a significant source of additional funding by collecting millions in annual revenue from the banner program and still provide a significant source of revenue and program support to not-for-profit entities' public events.

The results of our audit have been discussed with DOT officials and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'JCL' with a stylized flourish.

John C. Liu

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the New York City Department of Transportation's Administration of the Light Pole Banner Permit Program

FN12-066A

AUDIT REPORT IN BRIEF

The New York City Department of Transportation (DOT) is responsible for administering the New York City Light Pole Banner Program. As defined in Chapter 2 of Title 34 § 2-14 (b) of the Rules of the City of New York (Highway Rules), the purpose of the banner program is to foster tourism and enhance the overall image of the City by allowing not-for-profit entities to display banners that promote cultural and historical events. According to the Rules, DOT may only issue banner permits to Business Improvement Districts, Local Development Corporations, or other entities that receive Commercial Revitalization Program funds from the New York City Department of Small Business Services. Although banner permits are subject to the same general requirements of other City infrastructure assets such as street furniture, decorative planters, etc., banners are not subject to a permit fee under § 2.3 of the Highway Rules fee structure. DOT is required to inspect banners to ensure compliance with the Highway Rules.

Based on DOT Highway Rules, banner advertising is not allowed. However, the Highway Rules do permit sponsor names and logos to appear on the lower portion of banners if they do not occupy more than 10 percent of banner space. DOT generally allows up to 200 banners per entity. DOT can also allow in excess of 200 banners for any one marketing campaign in the five boroughs. In addition to promoting their public events, participants of the banner program use their events to generate revenue through sponsorship agreements. For example, when banners are assigned to a not-for-profit entity, the entity can enter into an agreement with a third-party contractor to secure sponsorship advertising in connection with the entity's event.¹

A sponsorship agreement allows the contractor to collect sponsor advertising revenue and split the revenue with the not-for-profit entity. Banner sponsorship advertisement has become a revenue-generating vehicle for certain not-for-profit entities in the City. However, because DOT runs this program free of charge, there is no revenue benefit to the City. According to DOT's internal weekly banner report, there were a total of 344,165 banners installed throughout the five boroughs in Fiscal Year 2011.

¹ As previously noted, the type of advertising must be limited in scope in accordance with the DOT Highway Rules.

Audit Findings and Conclusions

DOT did not adequately administer the banner program in accordance with applicable rules and regulations. Specifically, DOT did not maintain accurate records to document the number of permits requested and permits issued and did not have adequate procedures to ensure that initial and renewal permit requests were submitted and approved. As a result, DOT could not properly track the unauthorized use of expired permits or ensure that it inspected all banners for which permits were issued.

Furthermore, DOT did not ensure that its banner inspections were properly conducted, that insurance policies were up-to-date, and that permit holders were issued notices-of-violation for all banner violations. Consequently, DOT could not ensure the collection of up to \$287,550 in fines for banner violations—funds which could be used to recoup some of the City’s personnel expenses incurred for administering the program.

Regarding a related issue, we believe the City should establish a reasonable fee structure that would allow DOT to charge a banner permit application fee and ensure banner program administrative costs are fully recovered. As revealed in our analysis of similar banner programs in 22 major cities, permit holders are charged permit fees that range from \$10 to \$300. Because the City already has a permit fee structure established for similar activities ranging from \$10 to \$135, on the basis of such a structure, we estimate that the DOT program could generate between \$1 million and \$14 million in revenue annually.

Moreover, the City does not receive any direct revenue benefit from sponsorship advertising through the banner program. Given that the City is providing its light pole infrastructure asset to be used by third party companies and not-for profit entities as an income- generating vehicle, we believe that it would be reasonable if the City would share a portion of the banner program advertising revenue as well. If the City were to do so, we estimate that it could generate a significant source of additional funding by collecting millions in annual revenue from the banner program and still provide a significant source of revenue and program support to not-for-profit entities’ public events.

Audit Recommendations

To address these issues, we make seven recommendations, including that DOT:

- Maintain accurate and complete inventory reports identifying the correct number of banners displayed in the five boroughs, including issuance and expiration dates.
- Monitor program compliance to ensure that permits are properly approved before the banner installation date.
- Ensure that permit applications include the required insurance.
- Ensure banners are inspected and violations are issued and properly tracked.
- Consider measures that would authorize DOT to:
 - a) Require a banner permit application fee;
 - b) Design a fee structure for banner permits and renewals by borough location and length of permit; and
 - c) Ensure banner program administrative costs are fully recovered.
- Ensure that banner sponsorship agreements are approved by the City.

- Design and establish a structure to enable DOT to collect or share a portion of banner sponsorship revenue.

Department Response

In DOT's response received on August 3, 2012, DOT officials acknowledged that "the Banner Program's recordkeeping and its inspection procedures could be enhanced" and indicated that its "Banner Program staff had been working with DOT's IT&T division to upgrade and redesign its current database." However, DOT took "exception to the unbalanced reporting of the audit findings and recommendations. The audit failed to acknowledge the Banner Program's necessary prioritization of inspections. Because there are approximately 8,600 banners installed during a NYC Department 30-day cycle, it is not feasible for the Banner Program's three inspectors to inspect every installed banner. Thus, inspections are complaint driven and the inspections are conducted based on . . . priorities."

DOT's claims are unfounded and only reinforce our audit findings and recommendations. As noted, DOT tracks neither the number of banners issued nor the number of inspections conducted. Without this critical information, DOT cannot determine the number of inspections to be performed and, as a result, the number of inspectors needed. Further, DOT provided no evidence of either routine or prioritized inspection schedules.

Regarding our recommendation that DOT implement a fee structure to ensure that Banner Program administrative costs are fully recovered, DOT responded that "the goal of the Banner Program is to promote cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. This goal supports the City's economic development initiatives and the efforts of small businesses community based groups, not for profits and BIDs."

Contrary to DOT's position, charging a permit fee is not at odds with the goal of the banner program. As DOT is aware, after obtaining banner permits from DOT, not-for-profit entities then negotiate agreements with for-profit advertising companies to market the banners. These agreements among other things grant these companies exclusive rights to control and coordinate the banner program and to ensure the not-for-profit entities receive revenue from the sale of advertising space on the banners. Specifically, New York City & Company (NYC&Co.)—one of the non-profits participating in the program and its for profit partner—receive millions of dollars in advertising revenue from the banner program, a program it claims New York City is not entitled to share in. Meanwhile, the City expends significant resources to run the banner program and receives nothing in return—not even a permit fee. When substantial advertising revenue is generated from banners (such as the \$1.5 million annually that NYC & Co receives), DOT should charge nominal permit fees—from \$10 to \$135—to recover at least the Banner Program administrative costs. The recommended fees are not onerous and would not preclude NYC&Co. from participating in the program or prevent the City from reaching its economic development goals.

INTRODUCTION

Background

The New York City Department of Transportation (DOT) is responsible for administering the New York City Light Pole Banner Program. As defined in Chapter 2 of Title 34 of the Rules of the City of New York (Highway Rules), the purpose of the banner program is to foster tourism and enhance the overall image of the City by allowing not-for-profit entities to display banners that promote cultural and historical events. According to the Rules, DOT may only issue banner permits to Business Improvement Districts, Local Development Corporations, or other entities that receive Commercial Revitalization Program funds from the New York City Department of Small Business Services.

Banner permits are subject to the same general application requirements of other DOT permit activities such as street furniture, canopies, decorative planters, holiday lights, etc. However, banners are not subject to a permit fee under the fee structure established for other DOT-permitted activities. Therefore, there is no fee for banner permit applications. DOT is responsible for approving the design, installation, location, and number of banners to be issued, and for issuing permits that indicate the timeframe for which banners may be displayed. Additionally, DOT must inspect banners to ensure compliance with DOT rules and regulations and identify banners that are torn, defaced, or in general disrepair. According to Highway Rules, “Banners and any installation apparatus shall be removed immediately upon the expiration of the term of the permit, except where a permit extension has been granted by the DOT Commissioner or his/her designee.” Permittees are required to bear all costs associated with the installing, maintaining, and removing of banners and may be fined for violating DOT rules and regulations.

According to DOT, if after a 24-hour banner warning, a banner has not been removed or a violation corrected, DOT will issue the summons. The Environmental Control Board (ECB) will then process the summonses. Therefore, the collection of the fees becomes the responsibility of the ECB court. ECB will determine any escalation or dismissal of the fine.

Based on DOT Highway Rules, banner advertising is not allowed. However, the Highway Rules do permit sponsor names and logos to appear on the lower portion of banners if they do not occupy more than 10 percent of banner space. DOT generally allows up to 200 banners per entity. DOT can also allow in excess of 200 banners for any one marketing campaign in the five boroughs. Not-for-profit entities use their events to generate revenue through sponsorship agreements. For example, when banners are assigned to a not-for-profit entity, the entity can enter an agreement with a third-party company which, among other things, grants the company exclusive rights to control and coordinate the banner program and ensures the company receives revenue from the sale of advertising space on the banners.² The company then collects sponsor advertising revenue and pays a percentage of the net profit to the not-for-profit entity.

Banner sponsorship advertisement has become a revenue-generating vehicle for certain not-for-profit entities in the City. However, because DOT runs this program free of charge, there is no direct revenue benefit to the City. According to DOT’s internal weekly banner report, there were a total of 344,165 banners installed throughout the five boroughs in Fiscal Year 2011.

² As previously noted, the type of advertising must be limited in scope in accordance with the DOT Highway Rules.

Objectives

The objectives of the audit were to determine whether DOT:

- Administered the banner program in accordance with applicable rules and regulations, and
- Ensured that it conducted all required inspections, monitored permit violations, and collected applicable fees.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered Fiscal Year 2011 (July 1, 2010, to June 30, 2011). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOT officials during and at the conclusion of this audit. A preliminary draft report was sent to DOT officials on June 14, 2012, and discussed at an exit conference held on June 28, 2012. On July 16, we submitted a draft report to DOT officials with a request for comments. We received written response from DOT on August 3, 2012. In their response, DOT officials acknowledged that “the Banner Program’s recordkeeping and its inspection procedures could be enhanced” and indicated that its “Banner Program staff had been working with DOT’s IT&T division to upgrade and redesign its current database.” However, DOT took “exception to the unbalanced reporting of the audit findings and recommendations.” DOT also responded that “the goal of the Banner Program is to promote cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. This goal supports the City’s economic development initiatives and the efforts of small businesses community based groups, not for profits and BIDs.”

The full text of the written comments from DOT is included as an addendum to this report.

FINDINGS

DOT did not adequately administer the banner program in accordance with applicable rules and regulations. Specifically, DOT did not maintain accurate records to document the number of permits requested and permits issued and did not have adequate procedures to ensure that initial and renewal permit requests were submitted and approved. As a result, DOT could not properly track the unauthorized use of expired permits or ensure that it inspected all banners for which permits were issued.

Furthermore, DOT did not ensure that its banner inspections were properly conducted, that insurance policies were up-to-date, and that permit holders were issued notices-of-violation for all banner violations. Consequently, DOT could not ensure the collection of up to \$287,550 in fines for banner violations—funds which could be used to recoup some of the City’s personnel expenses incurred for administering the program.

Regarding a related issue, we believe the City should establish a reasonable fee structure that would allow DOT to charge a banner permit application fee and ensure banner program administrative costs are fully recovered. As revealed in our analysis of similar banner programs in 22 major cities, permit holders are charged permit fees that range from \$10 to \$300. Because the City already has a permit fee structure established for similar activities ranging from \$10 to \$135, on the basis of such a structure, we estimate that the DOT program could generate between \$1 million and \$14 million in revenue annually.

Moreover, the City does not receive any direct revenue benefit from its advertising agreement through the banner program. Given that the City is providing its light pole infrastructure asset to be used by third-party companies and not-for profit entities as an income-generating vehicle, we believe that it would be reasonable if the City would share a portion of the banner program advertising revenue as well. If the City were to do so, we estimate that it could generate a significant source of additional funding by collecting millions in annual revenue from the banner program and still provide a significant source of revenue and program support to not-for-profit entities’ public events.

These matters are discussed in detail in the following sections of this report

Did Not Maintain Accurate Records of Permits Issued or Banners Installed

DOT lacked accurate records to document the number of permits issued and the number of banners each permit allows. Our review found that the Excel spreadsheet DOT uses to record the number of banners installed did not include permit information such as permit number and issuance date that would allow DOT to track and identify how many banners were assigned to a particular entity.

Further, the number of banners reported in DOT’s Excel spreadsheet was also inaccurate. Specifically, DOT tracked the number of banners installed through an Excel spreadsheet that was manually modified and contained errors. Our review also found that the formulas used in the spreadsheet to calculate the numbers of banners installed was incorrect, thereby resulting in a total number of banners that was understated by at least 50,212 in DOT’s internal report. For example, while DOT reported that it had 344,165 banners installed, our re-calculation of the same data determined that the total was 394,377 (see Table 1).

Table I
DOT Banners Installed
Re-calculated vs. DOT-Reported Number

	Period	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Total
Recalculated	6/30/2010 - 7/5/2011	31,986	77,837	190,373	80,393	13,788	394,377
Reported	6/30/2010 - 7/5/2011	33,269	73,524	147,352	77,513	12,507	344,165
Differences		1,283	(4,313)	(43,021)	(2,880)	(1,281)	(50,212)

As a result of the inadequacies of the records, we were not able to ascertain the accuracy of the number of DOT banners installed. Maintaining accurate and complete inventory reports is critical for tracking the actual numbers and status of banner permits, identifying expired banner permits, and scheduling banner inspections.

Did Not Monitor Compliance with Permit Application Requirements

DOT did not follow the guidelines set forth by the Highway Rules, DOT's written "Standard Operating Procedures," and terms of the permits. As a result, DOT did not ensure that the permit holders complied with the terms of the permits. Our review of 94 new and renewed permit applications submitted in Fiscal Year 2011 found that DOT did not follow the proper guidelines as follows:

- Did not document the actual permit approval date.
- 25 (27 percent) of the 94 applications represent instances where the applications/renewals had improper insurance submissions yet were still approved (25 submitted expired or expiring certificates.)
- 24 (26 percent) of the 94 applications represent instances with incomplete submission requests, such as missing signatures and dates and/or the actual request.
- 24 (53 percent) of the 45 new applications identified were not submitted 45 days before permit date.
- 30 (61 percent) of the 49 renewal applications identified were not submitted in the allotted timeframe prior to expiration of existing permits.

According to §2.02 of the Highway Rules, "The permittee shall maintain insurance throughout the Guarantee Period, as defined in subparagraph . . . providing coverage to protect the City, the Department and the applicant from all claims for property damage and/or bodily injury, including death, which may arise from any defects discovered during such Guarantee Period." As our review indicated, DOT did not properly assess whether certain permit holders had obtained the required insurance coverage before approving or renewing permits—a practice that could expose the City to potential liability.

Lack of Proper Inspection

DOT did not comply with its Standard Operating Procedures to ensure that required banner inspections were conducted. As previously discussed, DOT's lack of accurate and complete banner inventory records limit its ability to ensure that all required inspections are performed and violations tracked. Even when DOT conducts inspections, there is no log to track the number of inspections performed. According to DOT records, the only evidence that an

inspection was performed is when the violation is noted. DOT's Standard Operating Procedures states that "Banners permitted for more than 30 days must be inspected every 30 days." However, DOT did not follow the requirements for the inspection of its banners. Three DOT staff members perform Citywide inspections of nearly 100,000 light poles. Because banners are generally displayed in public places, the lack of formal inspections can expose the City and its property to certain risks. Based on our review of DOT's records, banners remain displayed without the proper permits or a related notice of violation. Because this is a mandated requirement, DOT should create an inspection schedule and log inspections to ensure compliance with this 30-day standard.

DOT Response: DOT officials partially disagree. "While the Banner Program's recordkeeping and its inspection procedures could be enhanced, DOT takes exception to the unbalanced reporting of the audit findings and recommendations. The audit failed to acknowledge the Banner Program's necessary prioritization of inspections. Because there are approximately 8,600 banners installed during a NYC Department 30-day cycle, it is not feasible for the Banner Program's three inspectors to inspect every installed banner. Thus, inspections are complaint driven and the inspections are conducted based on the following priorities: (1) 311 complaints; (2) locations where banner permits have been issued in relation to special events; (3) locations where banners are being installed or removed; and (4) borough and community board locations. In addition, the audit's conclusion was based on a very limited sample, which we believe does not reflect the Banner Program in its entirety."

Auditor Comment: DOT's claims are unfounded and only reinforce our audit findings and recommendations. As noted, DOT tracks neither the number of banners issued nor the number of inspections conducted. Without this critical information, DOT cannot determine the number of inspections to be performed and thus, the number of inspectors needed. Further, DOT provided no evidence of either routine or prioritized inspection schedules.

Further, contrary to DOT's understanding, our test included the total population of 697 banners with expired permits as reported in DOT's Excel spreadsheet for FY 2011, of which, based on the ECB violation forms on file with DOT, only 58 notices-of-violation were issued by DOT for the entire Fiscal Year 2011.

Did Not Enforce Permit Violation Rules

DOT is lax in issuing notices-of-violation to permit holders with expired permits. According to Highway Rules, "Banners and any installation apparatus shall be removed immediately upon the expiration of the term of the permit, except where a permit extension has been granted by the DOT Commissioner or his/her designee." However, our review found that for the period May 25, 2011, to May 31, 2011, DOT's Excel spreadsheet for banners installed contained a total of 697 banners whose permits had expired. Nevertheless, based on the ECB violation forms on file with DOT, there were only 58 notices-of-violation issued by DOT for the entire Fiscal Year 2011.

The fee for violations ranges from \$150 to \$450 if a banner is in default. Therefore, after analyzing the total outstanding expired permits, we determined that DOT could have issued fines ranging from \$95,850 to \$287,550, as detailed in Table II. Enhancing the efforts to issue banner violations can allow DOT to offset some of the administrative expenses of running this program. DOT utilizes at least five employees to administer the banner program and should operate the banner program in a cost-effective manner.

Table II
Permit Violation Summary

Expired Banners for the week ending 5/31/11		697
Total Violations issued during the year - FY 2011		58
Total Sampled Violations not enforced during FY 2011		639
Total Sampled Violations not enforced during FY 2011	639	639
Min/Max Violation Fee	\$ 150	\$ 450
Total Sampled Estimated Revenue for FY 2011	\$ 95,850	\$ 287,550

The above estimated revenue relates only to the one-week sample period ending May 31, 2011. Based on this review, DOT could generate considerable additional annual revenue if it issues notice of violations for expired permits as required.

Other Issues

Up to \$14 Million in Potential Revenue From Permit Fees

Despite the significant growth and demand for the banner program, the City does not receive any direct revenue from the use of its light pole banner infrastructure. Specifically, there is no fee for a light pole banner permit application. As a City infrastructure asset, banners are subject to the same general application requirements as other DOT-permitted activities such as the installation of street furniture under the existing § 2.3 of the Highway Rules fee structure. In addition, DOT's fee structure for similar permit activities establishes fees ranging from \$10 to \$135. Based on DOT's records for Fiscal Year 2011, DOT issued permits for the display of 344,165 banners installed in the City's five boroughs.

In analyzing the potential revenue banners can generate for the City, we conducted a research of the banner program in 22 major American cities (see Appendix A). Our review found that, unlike the City, those municipalities generate revenue by charging different fees in connection with the banner program. Some type of fees include a banner permit fee, banner installation and removal fee, application processing fee, and banner program fee. Based on our analysis, we found a wide range of charges in selected cities associated with the banner program. Specifically, in addition to other fees, permit holders in those cities are required to pay banner permit fees ranging from \$10 to \$300 (see Appendix A). As our review noted, the City already has a fee structure in place for similar activities ranging from \$10 to \$135 for short-term permits (30 days). Therefore, if the City were to establish a banner permit fee for short-term and long-term banners on the basis of similar fees established, we estimate that DOT could generate between \$1 million and \$14 million in annual permit fee revenue for the City (see Table III).

Table III
Estimated Annual Permit Fee Revenue
(As Detailed in Appendix B)

	Average # of Banners Hanging	# of Times Fee Collected Per Year	Average Banners to be Charged	Short Term Permit Fee				
				\$10	\$25	\$50	\$75	\$135
Short Term Banner (1 MONTH)	3,414	12	40,968	\$ 409,680	\$1,024,200	\$2,048,400	\$3,072,600	\$ 5,530,680
	Average # of Banners Hanging	# of Times Fee Collected Per Year	Average Banners to be Charged	Long Term Permit Fee *				
				\$30	\$75	\$150	\$225	\$405
Long Term Banner * (3 MONTHS)	5,217	4	20,868	626,040	1,565,100	3,130,200	4,695,300	8,451,540
Grand Total	8,631		61,836	\$ 1,035,720	\$2,589,300	\$5,178,600	\$7,767,900	\$ 13,982,220

** The Long Term Banner fee is based on a three-month period; therefore, the suggested short-term permit fee is multiplied by 3.*

Additionally, if the City were to require other fees such as program, installation and removal, application processing fees, deposits, and late fees, it would be able to generate additional revenue to offset the cost of those activities. Currently, the City absorbs all the administrative expenses of the banner program. However, by implementing a fee structure, the City would be able to cover its administrative costs.

DOT Response: DOT officials disagree. “With respect to the findings and recommendations regarding potential revenue from permit application fees and/or share of sponsorship revenue, the goal of the Banner Program is to promote cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. This goal supports the City’s economic development initiatives and the efforts of small businesses, community based groups, not for profits and BIDs.”

Auditor Comment: Contrary to DOT’s position, charging a permit fee is not at odds with the goal of the banner program. As DOT is aware, after obtaining banner permits from DOT, not-for-profit entities then negotiate agreements with for-profit advertising companies to market the banners. These agreements among other things grant these companies exclusive rights to control and coordinate the banner program and to ensure the not-for-profit entities receive revenue from the sale of advertising space on the banners. Specifically, New York City & Company (NYC&Co.)—one of the non-profits participating in the program and its for-profit partner—receive millions of dollars in advertising revenue from the banner program, a program it claims New York City is not entitled to share in. Meanwhile, the City expends significant resources to run the banner program and receives nothing in return—not even a permit fee. When substantial advertising revenue is generated from banners (such as the \$1.5 million annually that NYC & Co receives), DOT should charge nominal permit fees—from \$10 to \$135—to recover at least the Banner Program administrative costs. The recommended fees are not onerous and would not preclude NYC&Co. from participating in the program or prevent the City from reaching its economic development goals.

Potential Sponsorship Advertising Revenue

While the banner program was established to assist not-for-profit entities in promoting their public events, banners have also become a significant means of generating revenue through sponsorship agreements. As a new advertising vehicle, banner sponsorship has become very popular, specifically in prime areas of the City. After obtaining a specific number of banners from the program, not-for-profit entities then enter into agreements with third-party companies to market the banners. Among other things, these agreements grant these companies exclusive rights to control and coordinate the banner program and to ensure the not-for-profit entities receive revenue from the sale of advertising space on the banners. (The DOT Highway Rules, which generally do not allow banner advertising, do permit a limited amount and type of advertising as previously noted). Because the not-for-profit entities control the sponsorship advertising agreements, the City does not receive any of the sponsorship revenue. As noted, sponsorship agreements derive substantial revenue benefit to the advertiser and the third-party contractor. However, none of the revenue is reported or shared with the City.

For example, our observation of some banners and their related campaigns found that the banners' designs depict the sponsor's universal background colors and theme displayed over 10 percent of the banner. Specifically, this type of marketing campaign allows not-for-profits to use their banners in exchange for sponsorship advertising revenue. Based on our review, third-party contractors' agreements require the contractors to market the banners, collect revenue from the sponsor, and remit a percentage of the net revenue to the not-for-profit entity. Specifically, our independent review of 13 not-for-profit entities' annual report filings found that four of them collectively received approximately \$2 million in banner revenue, ranging from \$84,000 to \$1.5 million per entity. The amounts received by the not-for-profit entities represent 50 percent of the net revenue generated by the third-party contractors.

Based on DOT's records of long-term and short-term banners displayed throughout the City, there are at least four major not-for-profits engaged in the business of selling banner sponsorship advertising in prime City locations through third-party contractors. Given that the City is providing its light pole infrastructure asset to be used as an income-generating vehicle, we believe that it would be reasonable for the City to share a portion of the sponsorship revenue. If the City were to do so, we estimate that it could generate a significant source of additional funding by collecting millions of dollars in annual revenue from the banner program and still provide a significant source of revenue and program support to not-for-profit entities' public events.

DOT Response: DOT officials disagree. "With respect to the findings and recommendations regarding potential revenue from permit application fees and/or share of sponsorship revenue, the goal of the Banner Program is to promote cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. This goal supports the City's economic development initiatives and the efforts of small businesses, community based groups, not for profits and BIDs."

Auditor Comment: DOT is correct in stating that the goal of the Banner Program is to promote cultural, public, or historical events which foster tourism and enhance the image of the City. However, DOT is erroneous in its assertion that the Banner Program is an economic development initiative or funding vehicle. If the program is to be used as such, the City should establish accountability and transparency for the significant additional revenues granted to not-for-profits. As not-for-profits are subcontracting the use of City-owned assets—banners—the City should require not-for-profits to register third-party banner advertising contracts and report associated

banner advertising revenues. In turn, the City should publicly disclose these revenues.

Again, banners generate substantial advertising revenues, ranging from \$84,000 to \$1.5 million annually. These revenues should not exclusively benefit third-party contractors and not-for-profits. The City—as the asset owner—should receive an equitable share.

RECOMMENDATIONS

We recommend that DOT:

1. Maintain accurate and complete inventory reports identifying the correct number of banners displayed in the five boroughs including issue and expiration dates.

DOT Response: “Prior to the start of this audit, the Banner Program staff had been working with DOT’s IT&T division to upgrade and redesign its current database to provide for enhanced accuracy and reliability of information and to provide for more flexible reports. The database will include, among other information, the application date, permit number, issuance and expiration dates, the permittee (permit holder) name, the number of banners allowed for each permittee, approval date, banner installation date, and the insurance coverage period. This enhanced database will be implemented shortly.”

2. Monitor program compliance to ensure that permits are properly approved before the banners’ installation date.

DOT Response: “A key point that the Comptroller’s auditors may have missed in making this recommendation is that many approvals are obtained timely but verbally and thus in compliance with the Banner Program’s standard operating procedures. Verbal approvals and verbal confirmation of details were not necessarily captured in the Banner Program’s current database, but will be more easily ascertainable with the enhanced database.”

Auditor Comment: We did not overlook DOT’s assertion that it verbally approved permits. Rather, we take issue with it. According to Comptroller’s Directive #1, it is critical to ensure that permits are appropriately issued and, to that end, agencies should perform post-issuance checks on samples of approved permits to verify that all approval requirements have been met. Although DOT indicated on its 2011 Comptroller’s Directive #1 signed Internal Control Certification response that it performed such checks, DOT could not have done so for the Banner Program. By nature, verbal approvals are not documented and thus, cannot be tracked and monitored to ensure compliance with Banner Program rules and regulations. Therefore, DOT should employ written or electronic approvals that document the approval process as well as the approval date. This will enable DOT to effectively monitor program compliance to ensure that permits are properly approved before the banners’ installation date.

3. Ensure that permit applications include the required insurance.

DOT Response: “See above DOT Response #1. The enhanced database will include the insurance coverage period. Additionally, the permit expiration date will correspond with the last day of the insurance coverage.”

4. Ensure banners are inspected and violations are issued and properly tracked.

DOT Response: “See above DOT Response #1. The enhanced database will also include information on violations issued to facilitate tracking. The Banner Program’s inspections are complaint driven and the inspections are conducted based on the following priorities: (1) 311 complaints; (2) locations where banner permits have been issued in relation to special events; (3) locations where banners are being installed or removed; and (4) borough and community board locations.

“Additionally, it has not been the Banner Program’s goal to aggressively issue violations to small businesses, community based groups, not-for-profits and BIDs since the program’s overarching goal is to enhance the landscape of the City’s streets and neighborhoods.”

5. Consider measures to authorize DOT to:
 - a) Require a banner permit application fee;
 - b) Design a fee structure for banners application and renewal by borough, location, and length of permit; and
 - c) Ensure banner program administrative cost is fully recovered.
6. Ensure that banner sponsorship agreements are approved by the City.
7. Design and establish a structure to enable DOT to collect or share a portion of banner sponsorship revenue.

DOT Response: “DOT Response 5, 6 and 7: The goal of the Banner Program is to promote cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. This goal supports the City’s economic development initiatives and the efforts of small businesses, community based groups, not for profits and BIDs.”

Auditor Comment: Charging a permit fee is not inconsistent with the goal of the banner program. DOT should charge nominal permit fees—from \$10 to \$135—to recover Banner Program administrative costs. As the Banner Program generates substantial advertising revenues—up to \$1.5 million annually—the recommended fees are not onerous and would in no way preclude these groups from participating in the program or prevent the City from achieving its economic development initiatives.

Further, while DOT is correct in stating that the goal of the Banner Program is to promote cultural, public, or historical events which foster tourism and enhance the image of the City, DOT is erroneous in its assertion that the Banner Program is an economic development initiative or funding vehicle. If the program is to be used as such, the City should establish accountability and transparency for the significant additional revenues granted to not-for-profits. As not-for-profits are sub-contracting the use of City-owned assets—banners—the City should require not-for-profits to register third-party banner advertising contracts and report associated banner advertising revenues. In turn, the City should publicly disclose these revenues.

Again, banners generate substantial advertising revenues. These revenues should not exclusively benefit third-party contractors and not-for-profits. The City—as the asset owner—should receive an equitable share.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was Fiscal Year 2011 (July 1, 2010, through June 30, 2011). To obtain an understanding of the rules and regulations related to DOT's Banner Permit Program, we reviewed § 2-14 of the DOT Highway Rules and DOT's written Standard Operating Procedures related to banner permits. In addition, we reviewed DOT's internal periodic Banner Permit summaries for the year ending June 30, 2011, and supporting Citywide Long-Term and Short-Term banner permit schedules used by DOT to administer the program. Finally, we conducted walk-through meetings with key DOT officials and personnel regarding DOT's operations and internal control procedures related to the banner program. We documented our understanding of DOT's operations and internal processes through written narratives and flowcharts.

To determine the accuracy of the total number of banners issued during Fiscal Year 2011, we reviewed DOT's 45 weekly banner summaries. To assess the reliability of the information reported in these summaries, we reviewed supporting Citywide detailed schedules and vouched to the banner permit applications submitted during the period. Additionally, we re-calculated the number of banners recorded in DOT's Detailed Banners Installed for long-term and short-term banners throughout the City. We then compared the total amount to the DOT's weekly summary report for accuracy and completeness.

To determine whether DOT properly reviewed and approved applications for banner permits, we obtained and reviewed a total of 237 entities' application folders for the week ending May 31, 2011. We then judgmentally selected a sample of 20 folders which contained a total of 94 applications permits issued during our audit scope. For our test, we examined the documents submitted by the applicants, including the completed application, request for renewals, insurance certificates naming DOT as additional insured, timeliness of the submissions, design of the banner, and the eligibility of the applicant for accuracy and completeness.

To determine whether DOT properly monitored the applicant's compliance with DOT Highway Rules and DOT's Standard Operating Procedures, we analyzed the records maintained for the same 94 application permits. Specifically, to determine whether DOT inspected banners every 30 days as required, we examined inspection reports and related correspondence. We also examined the files maintained to determine if DOT was properly issuing notices-of-violation for those entities which were in violation. To determine the timeliness and appropriateness of the notices of violation issued, we reviewed DOT's list of 697 banners whose permits had expired from the week ending May 31, 2011.

Additionally, to determine if the designs on the actual banners match the approved designs submitted to DOT with banner applications, we observed the banners at three locations: Union Square Park, Rockefeller Center, and Bryant Park in Manhattan. In addition, we judgmentally visited various locations in Brooklyn and Queens to observe if the banners are safely installed and if the banners were located and displayed according to the installation rules and procedures established by DOT. We documented our observations in memos and took pictures of the banners observed.

The result of the above tests, in conjunction with our other audit procedures, while not projected to the respective population from which the samples were drawn, provided a reasonable basis to satisfy our audit objectives.

Finally, we compared the City's banner program with similar light pole banner programs administered by other municipalities. We researched 50 major municipalities in the United States on the internet to determine any application fees, permit fees, terms of the permits, and other general uses of the program. Based on the results of this research, we selected 22 major Cities and reviewed all permit related information such as the various fees and entities involved, duration, program requirement, etc. We then calculated the estimated revenue the City could generate from charging similar fees for participation in DOT's program.

Schedule of Permit Fees Charged by Other Municipalities Throughout the Country

No.	City	Duration	Permit and Related Activities	Fees
1	Austin, TX	2 Weeks	Permit Review	\$20
			Permit Fees	\$80
			New Banner Site Evaluation	\$75
			Installation and removal of banner	\$460
2	Baltimore, MD	6 Months	Installation/removal – Single Banner	\$85
			Installation/removal – Double Banner	\$100
			Extended display	\$25
3	Chicago, Ill.	Annual	Annual permit fees/each banner	\$75
4	Cleveland, OH	6 Months to 1 Year	Installation for single banner/pole	\$240
			Installation for two banners	\$350
5	Columbus, OH	Minimum - 2 Weeks Maximum - 60 Days	Installation and Removal per banner	\$100
			Extended display/per pole/month	\$10
6	Dallas, TX	60 Days	Deposit fee	\$500
			Processing fee	\$30
			For Profit organization/per pole	\$20
			Not for profit organization per pole	\$10
7	Fort Worth, TX	Upto 90 Days.	Program fee	\$100
			Not for profit trademark/logos per pole	\$20
			For profit logos comprising < than 5% banner size = \$25 per pole or \$1,000, whichever is greater	\$25
8	Indianapolis, IN	30-45 Days	Installation - per pole.	\$70
			Removal - per pole.	\$70
			Per pole surcharge for display over 30 days	\$25
9	Jacksonville, FL	Per Occurrence	Banner signs	\$40
10	Long Beach, CA	No more than 65 days	Refundable deposit:	\$500
			Permit fees are:	
			For City Streets (commercial use)	\$50
			For City Streets (Neighbourhood Organizations)	\$25
			For Commercial Use.	\$250
11	Louisville-Jefferson County,	Not found.	Permit fee: for all banners displayed.	\$20
12	Memphis, TN	Maximum - 3 Months.	Banner Placement fee	\$50
13	Miami, FL	Per Occurrence	Per banner	\$80
14	Nashville- Davidson, TN	Not found	Per pole. Each pole holds (2) banners.	\$12
15	Philadelphia, PA	No more than 60 Days.	Per Banner - Installation/Removal	\$90
16	Phoenix, AZ	Per Occurrence	Permit Fee	\$75
17	Sacramento, CA	30 Days	Deposit fee due to the City, it is refundable less any applicable fee.	\$1,000
18	San Antonio, TX	Per Occurrence	Banner Inspection	\$50
19	San Diego, CA	30 Days or 14 Days	Sign Permit Fees:	
			Banner Signs Plan Check	\$121
			Inspection	\$98
			Display fees	\$300 - \$10,500
20	San Jose, CA	Banners must be temporary (less than 30 days)	Installation/removal per banner	\$43

Schedule of Permit Fees Charged by Other Municipalities Throughout the Country

No.	City	Duration	Permit and Related Activities	Fees
21	Seattle, WA	Event Banner : May be installed 30 days prior to event and taken down 5 days after	Event Banner : Per permit	\$146
			An additional final inspection fee	\$86
			Total Cost	\$232
		Identification Banner : Permitted for one year at a time and may be renewed annually.	Identification Banner : Per permit	\$146
			Permit Renewal	\$140
22	Washington, DC	Not found	Installation and Removal	\$100

Source: Internet Research of the above Municipalities

Analysis of Weekly Banners Reported by DOT

July 1, 2010 - June 30, 2011

Weeks		Long Term Banners	Short Term Banners	Total Banners
06/30/10	- 07/06/10	5,364	3,938	9,302
07/07/10	- 07/14/10	5,256	4,038	9,294
07/15/10	- 07/21/10	5,364	3,938	9,302
07/22/10	- 07/27/10	5,392	4,093	9,485
07/28/10	- 08/04/10	5,392	4,020	9,412
08/05/10	- 08/10/10	5,421	4,011	9,432
08/11/10	- 08/17/10	5,278	3,598	8,876
08/18/10	- 08/24/10	5,303	3,725	9,028
08/25/10	- 08/31/10	5,333	3,466	8,799
09/01/10	- 09/05/10	5,333	3,466	8,799
09/06/10	- 09/14/10	5,333	3,477	8,810
09/15/10	- 09/21/10	5,299	3,481	8,780
09/22/10	- 09/28/10	5,299	4,599	9,898
09/29/10	- 10/05/10	5,299	4,720	10,019
10/06/10	- 10/12/10	5,363	4,825	10,188
10/13/10	- 10/19/10	5,375	4,756	10,131
10/20/10	- 10/26/10	5,319	4,868	10,187
10/26/10	- 11/03/10	5,331	4,740	10,071
11/04/10	- 11/09/10	5,331	4,759	10,090
11/10/10	- 11/16/10	5,327	3,316	8,643
11/11/10	- 11/23/10	5,327	3,316	8,643
11/23/10	- 11/30/10	5,121	3,451	8,572
12/01/10	- 12/07/10	5,322	3,381	8,703
12/08/10	- 12/14/10	5,281	4,823	10,104
12/15/10	- 01/04/11	5,327	3,228	8,555
01/05/11	- 01/19/11	5,310	2,871	8,181
01/20/11	- 01/25/11	3,811	673	4,484
01/26/11	- 02/01/11	3,871	673	4,544
02/02/11	- 02/08/11	3,871	673	4,544
02/09/11	- 02/15/11	5,030	612	5,642
02/16/11	- 02/22/11	5,152	657	5,809
02/23/11	- 03/01/11	5,155	711	5,866
03/02/11	- 03/08/11	5,155	711	5,866
03/09/11	- 03/15/11	5,155	711	5,866
03/16/11	- 03/22/11	5,376	3,649	9,025
03/23/11	- 03/29/11	5,389	4,225	9,614
03/30/11	- 04/04/11	5,320	3,944	9,264

Weeks	Long Term Banners	Short Term Banners	Total Banners
04/05/11 - 04/12/11	5,332	3,991	9,323
04/12/11 - 04/19/11	5,332	3,991	9,323
04/20/11 - 04/26/11	5,294	4,034	9,328
04/27/11 - 05/03/11	5,312	4,047	9,359
05/04/11 - 05/10/11	5,352	4,178	9,530
05/11/11 - 05/17/11	5,329	4,160	9,489
05/18/11 - 05/24/11	5,281	4,202	9,483
05/25/11 - 05/31/11	4,963	3,707	8,670
06/01/11 - 06/07/11	5,485	4,471	9,956
06/08/11 - 06/14/11	5,485	4,037	9,522
06/15/11 - 06/21/11	5,505	4,465	9,970
06/22/11 - 06/28/11	5,023	1,437	6,460
06/29/11 - 07/05/11	5,468	3,843	9,311
Total	260,846	170,706	431,552
Number of Weeks	50	50	
Average # of Banners Displayed Per Week	5,217	3,414	8,631
# of Times Fees Collected Per Year	4	12	
Average Banners Available For Charge	20,868	40,968	61,836

Note: The highlighted sections represent missing periods for which we estimated the number of banners based on the previous periods provided by DOT.



Department of Transportation

JANETTE SADIK-KHAN, Commissioner

August 3, 2012

Ms. Tina Kim
Deputy Comptroller for Audits
1 Centre Street Room 1100
New York, NY 10007-2341

Re: Draft Audit Report on the New York City Department of
Transportation's Administration of the Light Pole Banner Permit
Program ("Banner Program")

Dear Ms. Kim:

Thank you for the opportunity to respond to the Draft Audit Report on the New York City Department of Transportation's Administration of the Light Pole Banner Permit Program dated July 16, 2012 ("Draft Report"). We have reviewed the Draft Report and offer the following comments in response.

The New York City Department of Transportation ("DOT") issues permits for banners in accordance with Title 34, Chapter 2, Section 2-14 (b) of the Rules of the City of New York. The rules emphasize that such banners promote cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. Entities such as small businesses, community based groups, not for profits and Business Improvement Districts ("BIDs") participate in the Banner Program by highlighting activities that are central to their specific geographic areas. By performing this function and enabling these events to be presented to the public, tourism is enhanced and the overall image of the City is elevated.

There are approximately 100,000 street light poles in the City. On average there are over 8,600 banners installed on light poles at any given time. DOT has three full-time inspection staff members assigned to the Banner Program and two staff members who oversee the program in addition to their other duties. The inspection staff responds to 311 complaints and inspects event routes where banners will need to be removed or repositioned. These inspectors also perform inspections of banner locations to check that banners are installed safely, and are not remaining under expired permits or not installed without permission. The staff members who oversee the Banner Program review the banner content for compliance with DOT rules and approve the applications.

While the Banner Program's recordkeeping and its inspection procedures could be enhanced, DOT takes exception to the unbalanced reporting of the audit findings and recommendations. The audit failed to acknowledge the Banner Program's necessary prioritization of inspections. Because there are approximately 8,600 banners installed during a

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30-day cycle, it is not feasible for the Banner Program's three inspectors to inspect every installed banner. Thus, inspections are complaint driven and the inspections are conducted based on the following priorities: (1) 311 complaints; (2) locations where banner permits have been issued in relation to special events; (3) locations where banners are being installed or removed; and (4) borough and community board locations. In addition, the audit's conclusion was based on a very limited sample, which we believe does not reflect the Banner Program in its entirety. With respect to the findings and recommendations regarding potential revenue from permit application fees and/or share of sponsorship revenue, the goal of the Banner Program is to promote cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. This goal supports the City's economic development initiatives and the efforts of small businesses, community based groups, not for profits and BIDs.

We have reviewed the Draft Report's recommendations and below are DOT's comments:

Recommendation 1: Maintain accurate and complete inventory reports identifying the correct number of banners displayed in the five boroughs including issue and expiration dates.

DOT Response 1: Prior to the start of this audit, the Banner Program staff had been working with DOT's IT&T division to upgrade and redesign its current database to provide for enhanced accuracy and reliability of information and to provide for more flexible reports. The database will include, among other information, the application date, permit number, issuance and expiration dates, the permittee (permit holder) name, the number of banners allowed for each permittee, approval date, banner installation date, and the insurance coverage period. This enhanced database will be implemented shortly.

Recommendation 2: Monitor program compliance to ensure that permits are properly approved before the banners' installation date.

DOT Response 2: A key point that the Comptroller's auditors may have missed in making this recommendation is that many approvals are obtained timely but verbally and thus in compliance with the Banner Program's standard operating procedures. Verbal approvals and verbal confirmation of details were not necessarily captured in the Banner Program's current database, but will be more easily ascertainable with the enhanced database.

Recommendation 3: Ensure that permit applications include the required insurance.

DOT Response 3: See above DOT Response #1. The enhanced database will include the insurance coverage period. Additionally, the permit expiration date will correspond with the last day of the insurance coverage.

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Recommendation 4: Ensure banners are inspected and violations are issued and properly tracked.

DOT Response 4: See above DOT Response #1. The enhanced database will also include information on violations issued to facilitate tracking. The Banner Program's inspections are complaint driven and the inspections are conducted based on the following priorities: (1) 311 complaints; (2) locations where banner permits have been issued in relation to special events; (3) locations where banners are being installed or removed; and (3) borough and community board locations.

Additionally, it has not been the Banner Program's goal to aggressively issue violations to small businesses, community based groups, not-for-profits and BIDs since the program's overarching goal is to enhance the landscape of the City's streets and neighborhoods.

Recommendation 5: Consider measures to authorize DOT to:

- a) Require a banner permit application fee;
- b) Design a fee structure for banner application and renewal by borough, location, and length of permit; and
- c) Ensure banner program administrative cost is fully recovered.

Recommendation 6: Ensure that banner sponsorship agreements are approved by the City.

Recommendation 7: Design and establish a structure to enable DOT to collect or share a portion of banner sponsorship revenue.

DOT Response 5, 6 and 7: The goal of the Banner Program is to promote cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. This goal supports the City's economic development initiatives and the efforts of small businesses, community based groups, not for profits and BIDs.

We appreciate the independent assessment of the Banner Program and we thank you for this opportunity to respond to the Draft Report.

Sincerely yours,


Lucita C. Andres
Auditor General

cc: Comm. J. Sadik-Khan, FDC L. Ardito, DC L. Heyward, DGC S. Pondish, AC B. Rivera,
E. Thompson, L. Price, G. Davis