

AUDIT REPORT

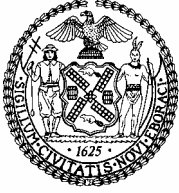


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Licensing and Oversight of Sidewalk Cafés by the Department of Consumer Affairs

MJ05-074A

June 6, 2005



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 Department of Consumer Affairs (DCA) to determine whether it has adequate controls in place to ensure that sidewalk cafés are properly licensed. In accordance with Local Law 8 of 2003 (the City Sidewalk Café Law), DCA encourages the establishment of sidewalk cafés in places where they are appropriate; discourages cafés in places where they are inappropriate; and promotes and protects public health, safety, general welfare, and amenity.

Our audit resulted in the findings and recommendations that are presented in this report. The findings and recommendations were discussed with City officials; their comments were considered in the preparation of this report.

Audits such as this provide a means of ensuring that City resources are used effectively, efficiently, and in the best interest of the public.

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 or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

Report: MJ05-074A
Filed: June 6, 2005

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City of New York
Office of the Comptroller
Bureau of Management Audit

**Audit Report on the
Licensing and Oversight of
Sidewalk Cafés by the
Department of Consumer Affairs**

MJ05-074A

AUDIT REPORT IN BRIEF

This audit determined whether the Department of Consumer Affairs (DCA) has adequate controls in place to ensure that sidewalk cafés are properly licensed. In accordance with Local Law 8 of 2003 (the City Sidewalk Café Law), DCA encourages the establishment of sidewalk cafés in places where they are appropriate; discourages cafés in places where they are inappropriate; and promotes and protects public health, safety, general welfare, and amenity.

Audit Findings and Conclusions

We determined that DCA has adequate controls in place to identify sidewalk cafés in operation throughout the City. DCA Inspectors perform inspections of sidewalk cafés, issue citations and violations when they identify violators of the Sidewalk Café Law, and perform targeted inspections of cafés during weekends, when cafés are likely to be operating.

However, DCA needs to strengthen its controls over enforcement regarding establishments that it finds do not comply with the City Sidewalk Café Law. DCA does not have adequate procedures in place for following up after it issues citations or violations to sidewalk cafés (both enclosed and unenclosed). As a result, there is an increased risk that establishments will not comply with the Sidewalk Café Law. We visited 183 establishments with sidewalk cafés and found that 159 (87%) were licensed or had pending licenses, and 24 (13%) were operating without a license. Of the 159 establishments with a license or a pending license, 47 had more than the maximum number of tables and chairs allowed in their licenses. In total, 71 (39%) of the 183 cafés we observed were not in compliance with the Sidewalk Café Law.

Audit Recommendations

We made two recommendations to DCA. DCA should:

- Develop written procedures for follow-up inspections of food establishments that were issued citations or violations to help ensure that these establishments take corrective action.
- Ensure that borough offices adhere to the agency's written procedures for follow-up inspections of establishments that are issued a posting order for operating an unlicensed sidewalk café.

In its response, DCA agreed with the audit's recommendations.

INTRODUCTION

Background

The mission of the Department of Consumer Affairs (DCA) is to provide consumer protection and education and to prevent fraud and deception in the marketplace by administering licensing statutes for different types of businesses and activities and enforcing compliance with those statutes.

Local Law 8 of 2003 (the Sidewalk Café Law), was established to govern sidewalk cafés in the City. Its overall purpose is to encourage the establishment of sidewalk cafés in places where they are appropriate; to discourage cafés in places where they are inappropriate; and to promote and protect public health, safety, general welfare, and amenity. Some of the specific purposes of the law are to (1) ensure adequate space for pedestrians on the sidewalk adjacent to sidewalk cafés and (2) simplify administrative procedures and to strengthen enforcement procedures so that they are effective and efficient.

There are three types of sidewalk cafés: enclosed, unenclosed and small unenclosed¹. (For the purposes of this audit, unenclosed will include both unenclosed and small unenclosed.) An enclosed café is defined as a space adjacent to an eating or drinking establishment with a tangible structure requiring heating and air conditioning. An unenclosed café is defined as an open space with only tables and chairs, as well as railings, fences, or planters, and perhaps an awning.

To obtain a license to operate a sidewalk café, applicants are required to submit a number of documents, including but not limited to a Department of Health food service permit, scale drawings of the proposed café by a licensed architect or engineer, personal and property liability insurance, and an owner's affidavit of consent to operate a sidewalk café. Applicants are also required to complete a compliance checklist, which identifies, among other things: (1) the type of café (enclosed or unenclosed), (2) the maximum number of tables and chairs, and (3) an assertion that no more than 25 percent of unenclosed area is designated for smoking. (Smoking is not allowed in enclosed cafés.)

As of August 2004, there were 722 licensed sidewalk cafés in the City: 123 were enclosed and 599 were unenclosed. The distribution of the cafés throughout the City is shown in Table I, below.

¹ A small unenclosed café is defined as a single, unenclosed row of tables and chairs within a space extended no more than 4 ½ feet from the front of the restaurant proper.

Table I

Breakdown of Sidewalk Cafés
As of August 2004

| Borough | Enclosed Sidewalk Cafés | Unenclosed Sidewalk Cafés | Total |
|----------------|--|--|--------------|
| Manhattan | 93 | 517 | 610 |
| Brooklyn | 10 | 50 | 60 |
| Queens | 17 | 27 | 44 |
| Bronx | 3 | 5 | 8 |
| Staten Island | 0 | 0 | 0 |
| Totals | 123 | 599 | 722 |

The DCA Licensing Division (Licensing) operates the City License Center, which issues licenses to more than 60,000 businesses, including sidewalk cafés, in 55 categories. The DCA Enforcement Division (Enforcement) is responsible for regulating retail establishments' compliance with consumer-protection laws and the license laws, including the provisions of sidewalk café licenses. To accomplish its mission, Enforcement relies heavily on field inspections. As of June 2004, the division had 62 field inspectors.

During the period of March 3, 2003 (when Local Law 8 went into effect) through August 14, 2004, DCA performed more than 45,000 inspections. Table II, below, lists the top ten types of inspections performed based on volume.

Table II

Ten Categories with the Largest Number of Inspections Performed
March 3, 2003 through August 14, 2004

| Types of Inspections Performed by DCA | Number of Inspections Performed | % of Overall Inspections Performed |
|--|--|---|
| Retail Cigarette Dealer | 28,522 | 62.7% |
| Tow Truck Company | 2,548 | 5.6% |
| Electronics Store | 2,222 | 4.9% |
| Sidewalk Café | 1,820 | 4.0% |
| Fruit and Vegetable Stand | 1,780 | 3.9% |
| Home Improvement Contractor | 1,210 | 2.7% |
| Garage | 1,151 | 2.5% |
| Cabaret | 977 | 2.1% |
| Parking Lot | 920 | 2.0% |
| Second Hand Dealers | 819 | 1.8% |
| All others | 3,506 | 7.7% |
| Total | 45,475 | 100% |

As shown in Table II, cigarette dealerships accounted for the overwhelming majority of inspections, with more than 28,500 inspections performed. (In addition to its regular inspectors, DCA employs a special unit of inspectors who only perform inspections to determine whether cigarettes are being sold to minors.) Sidewalk cafés accounted for the fourth highest number of inspections: 1,820.

In Fiscal Year 2004 (July 1, 2003 through June 30, 2004), DCA received \$6.219 million in license and consent fees for sidewalk cafés. During the year, it performed 1,342 sidewalk café inspections and issued 154 violations and 284 citations for sidewalk cafés, according to the City Agencies Management Information System (CAMIS). A violation is issued against a licensed establishment while a citation is issued against an unlicensed establishment. Revenues from fines for the year totaled \$147,275.

Objective

The objective of this audit was to determine whether DCA has adequate controls in place to ensure that sidewalk cafés are properly licensed. We reviewed the adequacy of DCA controls for (1) identifying sidewalk cafés in operation and (2) enforcing compliance with the Sidewalk Café Law. This audit focused primarily on unenclosed sidewalk cafés.

Scope and Methodology

The scope of this audit was March 2003 through October 2004.

To gain an understanding of DCA's oversight of sidewalk cafés, we obtained and reviewed the following materials:

- The New York City Local Law 8, of 2003
- The "Sidewalk Café License Application," which contains the policies and procedures in the application process for sidewalk cafés
- The Organization chart for Licensing and Enforcement divisions
- The list of inspections performed by DCA during the period March 3, 2003—when Local Law 8 went into effect—through August 14, 2004
- The list of all licensed cafés—both enclosed and unenclosed—as of August 14, 2004
- Complaints received by DCA regarding sidewalk cafés during the period March 2003 through August 2004
- Revenues, in the form of license fees, consent fees, and violation fees, for sidewalk café licenses for Fiscal Years 2003 and 2004

We also conducted interviews with the following persons:

- The Assistant Commissioner of Licensing and Collections
- The Assistant Commissioner of Administration
- The Assistant Commissioner for Communication, Policy, and Technology
- The Assistant Commissioner of Litigation and Mediation
- The Assistant Commissioner-Director of Enforcement
- The Director of Training and Special Projects
- The Assistant General Counsel
- The Special Investigator
- The Deputy Directors of Special Applications, Complaints, and Information Management

To gain an understanding of how sidewalk café inspections are performed and what attributes are tested, we accompanied an inspector as he performed inspections.

To develop a methodology for identifying sidewalk cafés, both licensed and unlicensed, and to determine test attributes, we surveyed the areas in Manhattan bounded by (1) East 30th and East 96th Streets and York and Lexington Avenues and (2) Broadway between West 60th and West 70th Streets.

To obtain a test population of sidewalk cafés, we reviewed the list of licensed cafés and the list of inspections performed by DCA during the period March 2003 through August 2004. For Manhattan, Brooklyn, Queens, and the Bronx, we selected the two zip codes in each borough with the largest number of licensed cafés. For Staten Island, which has no licensed cafés, we selected the two zip codes with the largest number of DCA inspections for having unlicensed

cafés (although the borough had no licensed cafés, sidewalk café inspections could still be conducted, for example, as part of a routine survey or in response to an allegation that an establishment is operating an unlicensed café). For each zip code, we surveyed the area and identified unenclosed sidewalk cafés in operation and noted the number of tables and chairs. We compared our survey results against current and pending lists of licensed cafés to determine whether the cafés we observed were licensed and, if so, whether they exceeded the maximum number of tables and chairs allowed by their license.

The results of our surveys of the noted geographical areas, while not projectable to the entire population of sidewalk cafés, provided a reasonable basis for us to determine whether DCA's controls for identifying sidewalk cafés that should be licensed were adequate.

To determine the steps DCA took against establishments for which it issued citations and/or violations, we reviewed the list of inspections performed during our test period and identified all establishments that received one or more citations or violations. For these establishments, we reviewed their inspection history as reported on CAMIS to determine whether DCA made follow-up inspections to ensure that those establishments stopped operating unlicensed cafés or stopped violating the terms of their licenses.

We interviewed the DCA Assistant Commissioner-Director of Enforcement and the agency's Special Investigator to determine whether DCA has adequate controls in place to detect and prevent fraudulent activity regarding the sidewalk café inspection process, and whether DCA (1) communicates its views on ethical behavior to its employees; (2) understands the risk of fraud specific to sidewalk café inspections; (3) has policies and procedures designed to prevent, deter, and detect fraud; and (4) takes necessary actions when a fraudulent activity is uncovered.

* * * * *

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 New York City Comptroller's audit responsibilities 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 DCA officials during and at the conclusion of this audit. A preliminary draft report was sent to those officials and was discussed at an exit conference on April 28, 2005. On May 2, 2005, we submitted a draft report to DCA officials with a request for comments. We received a written response from DCA officials on May 13, 2005. In its response, DCA agreed with the audit's two recommendations. DCA stated:

“The audit was helpful to our operations because it highlights areas where we can improve.”

The full text of DCA's response is included as an addendum to this report.

FINDINGS

DCA has adequate controls in place to identify sidewalk cafés in operation throughout the City. DCA Inspectors perform inspections of sidewalk cafés, issue citations and violations when they identify violators of the Sidewalk Café Law, and perform targeted inspections of cafés during weekends, when cafés are likely to be operating.

However, DCA needs to strengthen its controls over enforcement regarding establishments that it finds do not comply with the City Sidewalk Café Law. DCA does not have adequate procedures in place for following up when it issues citations or violations to sidewalk cafés (both enclosed and unenclosed). As a result, there is an increased risk that establishments will not comply with the Sidewalk Café Law. We visited 183 establishments with sidewalk cafés and found that 159 (87%) were licensed or had pending licenses, and 24 were operating without a license. Of the 159 establishments with a license or a pending license, 47 had more than the maximum number of tables and chairs allowed in their licenses. In total, 71 (39%) of the 183 cafés we observed were not in compliance with the Sidewalk Café Law.

DCA Has Adequate Procedures to Identify Sidewalk Cafés

Through walking surveys and weekend initiatives, and by investigating complaints, DCA has adequate procedures to identify sidewalk cafés throughout the City.

DCA relies mainly on inspections to ascertain whether cafés are in operation and whether they are in compliance with regulations pertaining to cafés. The primary types of sidewalk café inspections performed by DCA are identified below:

- **Qualifying**—performed before a sidewalk café license is issued to determine whether the premises qualify for operation of a sidewalk café. This is not conducted for every license; generally, DCA strives to perform qualifying inspections of 20 percent of all new applicants. The establishments are selected randomly.
- **Compliance**—performed to determine whether the business is in compliance with its sidewalk café license.
- **Survey**—unscheduled inspection performed during a patrol through an area.
- **Special**—performed in response to a complaint or a special request.
- **Posting Order**—performed while delivering a judge’s decision for a hearing regarding the operation of an unlicensed café. This order informs the establishment that DCA has the option of padlocking (sealing) the establishment for a specified number of days for operating an unlicensed café. According to DCA officials, the sealing of an establishment occurs after the establishment is cited for a second citation or after the third time the establishment receives a violation within a two-year period.

A breakdown by type of the sidewalk café inspections performed by DCA during the review period is shown in Table III, below:

Table III

Breakdown of Sidewalk Café Inspections Performed
March 3, 2003 through August 14, 2004

| Inspection Type | Number of inspections performed | % of all inspections |
|------------------------|--|-----------------------------|
| Special | 747 | 41.0% |
| Survey | 515 | 28.3% |
| Compliance | 319 | 17.5% |
| Qualifying | 148 | 8.1% |
| Posting Order | 86 | 4.7% |
| Other | 5 | 0.3% |
| Total | 1,820 | 100.0% |

Generally, DCA performs inspections Monday through Friday during the hours of 10:00 a.m. to 4:00 p.m. (DCA also performs inspections during evening hours as needed.) In early spring and summer, however, it undertakes a special initiative to identify both enclosed and unenclosed sidewalk cafés that may not be operating in compliance with regulations. Inspectors inspect sidewalk cafés on weekends, when cafés are more likely to be in operation than during DCA’s regular inspection hours. Of the 1,820 inspections performed by DCA during the review period, approximately 25 percent were performed on Saturday or Sunday. The breakdown of inspections performed per day is shown in Table IV, below.

Table IV

Breakdown of the Number of Sidewalk Café Inspections Performed per Day
March 3, 2003 through August 14, 2004

| Day of the week | Number of Inspections Performed | % of all inspections |
|------------------------|--|-----------------------------|
| Monday | 250 | 13.7% |
| Tuesday | 251 | 13.8% |
| Wednesday | 254 | 14.0% |
| Thursday | 258 | 14.2% |
| Friday | 358 | 19.7% |
| Saturday | 254 | 14.0% |
| Sunday | 193 | 10.6% |
| Not indicated | 2 | 0.1% |
| Total | 1,820 | 100.0% |

We visited 10 areas throughout the City to determine whether sidewalk cafés are licensed in accordance with regulations. For Manhattan, Brooklyn, Queens, and the Bronx, we selected the two zip codes in each borough that had the highest number of licensed cafés. For Staten Island, which has no licensed cafés, we selected the two zip codes with the largest number of sidewalk café inspections. In each of the 10 zip codes, we canvassed the streets, noted all unenclosed sidewalk cafés, and counted the tables and chairs. At each one, to determine whether the café was licensed, we compared our observations with the lists provided by DCA of cafés with current and pending licenses. For those with current and pending licenses, we checked the licenses to determine whether they had the allowable number of tables and chairs during our observations.

During our survey, we identified 183 sidewalk cafés. Based on our review of the list of licensed cafés, we determined that the vast majority of these cafés were either licensed or had pending licenses. Of the 183 cafés, 152 were licensed and seven had pending licenses.

DCA Needs to Improve Its Follow-up of Inspections Regarding Sidewalk Café Law Violations

DCA does not have adequate procedures to ensure that sidewalk cafés (both enclosed and unenclosed) violating the sidewalk café regulations take corrective action. When DCA identifies an establishment as operating an unlicensed sidewalk café or of violating the terms of its café license, the agency does not have established procedures for following up to ensure that the condition is corrected.

For establishments that are issued two or more citations within a two-year period for operating an unlicensed café, a hearing is held at DCA in which an administrative judge may permit DCA to padlock (seal) the establishment for up to five days if the establishment continues to operate an unlicensed café. DCA officials stated that prior to a scheduled hearing, a DCA settlement officer explains the options available to the respondent. If an Administrative Law Judge (ALJ) finds the respondent guilty of the charges, the ALJ can order significant fines as well as the sealing of the establishment for as many as 30 days. If the respondent chooses to settle the matter, the party will pay reduced penalties and may avoid having the restaurant sealed or may receive a reduction in the number of days it is sealed. If the respondent stops the unlicensed activity, DCA generally will not seal the restaurant. Respondents who choose to settle are informed that continued unlicensed activity can subject them to a future sealing.

If a respondent chooses to forgo a settlement opportunity and is found guilty at a hearing, DCA mails the respondent the decision, including information regarding the amount of the fine and the length of time that the establishment has been ordered sealed. DCA Enforcement staff will also personally deliver a copy of the decision (known as a Posting Order, or PO) to the respondent and remind the respondent of the consequences of continued unlicensed activity. If, DCA finds during the posting inspection that an establishment is *not* operating an unlicensed café, it may decide to take no further action against the establishment.

According to DCA officials, regardless of whether the respondent settles or is found guilty at a hearing and served a PO, DCA Enforcement staff will continue monitoring the establishment. If unlicensed activity is again observed, DCA will issue another citation and then contact the respondent, as a courtesy, to coordinate the scheduling of the sealing.

During the period of March 3, 2003 through May 14, 2004, DCA conducted 1,151 sidewalk café inspections at 737 establishments (includes both enclosed and unenclosed sidewalk cafés). The inspections resulted in 273 citations at 242 establishments and 69 violations at 63 establishments. To determine whether DCA followed up with those establishments, we reviewed the list of all inspections performed by DCA during the period March 3, 2003 through August 14, 2004. A summary of our analysis, segregated by citation and violation, is shown in Table V, below.

Table V

Analysis of Inspections and Subsequent Follow-up Inspections

| Result of inspection | No. of inspections | No. with subsequent inspections as of August 14, 2004 | | Average No. of days between inspections | No. of inspections 180 days or more after initial inspection | | No. of subsequent Inspections resulting in citation or violation | |
|----------------------|--------------------|---|------------|---|--|------------|--|------------|
| | | B | C (B÷A) | | E | F (E÷B) | G | H (G÷B) |
| | A | | | D | | | | |
| Citation | 273 | 160 | 59% | 126.9 | 45 | 28% | 35 | 22% |
| Violation | 69 | 43 | 62% | 145.6 | 16 | 37% | 8 | 19% |
| Total | 342 | 203 | 59% | 136.3 | 61 | 30% | 43 | 21% |

As shown in Table V, inspectors conducted subsequent inspections for more than half of the citations and violations issued. However, of the 203 that were followed up, the average amount of time between inspections was more than 136 days; 30 percent of the inspections were conducted 180 days or more after the initial inspection even though, based on other inspections performed during the period, inspectors were in the vicinity of a number of those establishments.

We spoke with a DCA official to ascertain the procedures regarding following up on citations and violations. The official stated that DCA assigns sidewalk café inspections primarily based on special requests or complaints; however, if inspectors see a sidewalk café while performing assigned inspections, they will perform an inspection on the spot. The official said that DCA's procedures for follow-up concern establishments that are issued posting orders. The official stated that DCA maintains a list of establishments in each borough that were issued posting orders for all types of inspections, including those of sidewalk cafes. The borough offices are supposed to periodically inspect those establishments to ensure that they do not reengage in the unlicensed activity.

However, we found that borough offices are not consistent in following up on these establishments. During the period March 3, 2003 through May 14, 2004, DCA recorded 77 PO inspections and Posting Order Follow-up inspections. Of those, three were duplicate entries. Of the remaining 74 inspections, DCA followed up on 37 (50%) as of August 14, 2004; the average length of time between inspections was 79 days. For the remaining 37 inspections, as of August 14, 2004, it had been an average of 314 days since the establishments had last been inspected.

Not following up on establishments that it has identified as not complying with the sidewalk café regulations increases the risk that establishments will continue to violate the law. Of the 183 sidewalk cafés that we visited, 71 (39%) either were operating without a license or had more than the allowable number of tables and chairs allowed by their licenses. The results of our analysis are shown in Table VI, below.

Table VI

Results of Auditors' Observations

| Category | Number of Sidewalk Cafés | Percentage |
|--|--------------------------|-------------|
| Sidewalk Cafés visited | 183 | 100% |
| Unlicensed | 24 | 13% |
| Licensed and pending licenses: | 159 | 87% |
| With allowable number of tables and chairs | 112 | 61% |
| Exceeded the allowable number of tables and chairs | 47 | 26% |

Inspections are a key monitoring tool for determining whether establishments are complying with the Sidewalk Café Law. For those establishments found by DCA to have violated the law, DCA should institute some type of follow-up procedures, and based on the agency's available resources, more fully implement its current procedures regarding establishments that were issued posting orders, thereby encouraging corrective action.

RECOMMENDATIONS

The Department of Consumer Affairs should:

1. Develop written procedures for follow-up inspections of food establishments that were issued citations or violations to help ensure that these establishments take corrective action.

DCA Response: “DCA agrees with your recommendation. Enforcement management has already prepared written procedures for the follow-up inspection of food establishments in the areas of ‘*Notice of Hearing Follow-up Procedures for Unlicensed Sidewalk Café Activity*’ and ‘*Notice of Hearing Follow-up Procedures for Sidewalk Café Licensees*.’”

2. Ensure that borough offices adhere to the agency’s written procedures for follow-up inspections of establishments that are issued a posting order for operating an unlicensed sidewalk café.

DCA Response: “DCA agrees with this recommendation and written procedures for follow-up inspections of establishment have been given to the borough offices. Enforcement management will ensure that the borough offices are following these procedures.”



The New York City
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10004-1716

212 487-4401
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Jonathan Mintz
Acting Commissioner

May 13, 2005

Mr. Greg Brooks, Deputy Comptroller
Policy, Audits, Accountancy & Contracts
Office of the Comptroller
One Centre Street
New York, NY 10007-2341

**RE: Audit Report on the Licensing and Oversight of Sidewalk
Cafes by the Department of Consumer Affairs MJ05-074A**

Dear Mr. Brooks:

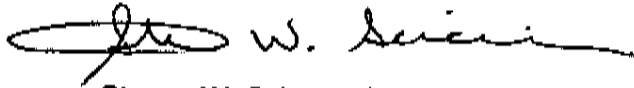
The Department of Consumer Affairs ("DCA") has completed its review of the above referenced audit report. Thank you for your audit recommendations. The audit was helpful to our operations because it highlights areas where we can improve. The audit report suggests that DCA implement two recommendations.

Your first recommendation states that DCA should, ***"Develop written procedures for follow-up inspections of food establishments that were issued citations or violations to help ensure that these establishments take corrective action."*** DCA agrees with your recommendation. Enforcement management has already prepared written procedures for the follow-up inspection of food establishments in the areas of *"Notice of Hearing Follow-up Procedures for Unlicensed Sidewalk Café Activity"* and *"Notice of Hearing Follow-up Procedures for Sidewalk Café Licensees"*. Although DCA agrees with your first recommendation, we would like to note that for the first year, DCA's Enforcement Division focused its efforts on locating the unlicensed sidewalk cafes vs. license violations and qualification inspections since this was the first year of the new legislation. DCA will continue to monitor citations and violations that were issued and perform the necessary timely follow up inspections to ensure that the condition has been corrected.

The second recommendation indicates the following, ***"Ensure that borough offices adhere to the agency's written procedures for follow-up inspections of establishment that are issued a posting order for operating an unlicensed sidewalk café."*** DCA agrees with this recommendation and written procedures for follow-up inspections of establishment have been given to the borough offices. Enforcement management will ensure that the borough offices are following these procedures. It should be noted that this is not primarily a Citywide issue, because the majority of sidewalk cafés are in Manhattan and Brooklyn. DCA will shift its resources at the height of the sidewalk café season (Spring/Summer) to ensure that all areas are adequately covered.

We appreciate the opportunity to respond to the audit report. If there are any questions or comments concerning this response, or if you need any additional information, please call me at (212) 487-4240 or e-mail me at sscicere@dca.nyc.gov.

Sincerely,



Steven W. Scicere, CFSA
Director of Internal Audit
Department of Consumer Affairs

cc: Jonathan Mintz, Acting Commissioner, DCA
Pansy Mullings, General Counsel, DCA
Alba Pico Assistant Commissioner for Licensing & Collections, Administration & Finance, DCA
Pauline Toole, Assistant Commissioner for Communication, Policy & Technology, DCA
Joseph Kennelly, Director of Enforcement, DCA
Christina Smith, Policy Analyst, Mayor's Office of Operations

Department of Consumer Affairs
Audit on Licensing and Oversight of Sidewalk Cafes
MJ05-074A

Recommendation

"Develop written procedures for follow-up inspections of food establishments that were issued citations or violations to help ensure that these establishments take corrective action."

Response

DCA agrees with your recommendation.

Action Plan

Enforcement management has already prepared written procedures for the follow-up inspection of food establishments in the areas of "Notice of Hearing Follow-up Procedures for Unlicensed Sidewalk Café Activity" and "Notice of Hearing Follow-up Procedures for Sidewalk Café Licensees". Although DCA agrees with your first recommendation, we would like to note that for the first year, DCA's Enforcement Division focused its efforts on locating the unlicensed sidewalk cafés vs. license violations and qualification inspections since this was the first year of the new legislation. DCA will continue to monitor citations and violations that were issued and perform the necessary timely follow up inspections to ensure that the condition has been corrected.

Date Implemented

5/12/2005

"Ensure that borough offices adhere to the agency's written procedures for follow-up inspections of establishment that are issued a posting order for operating an unlicensed sidewalk café."

DCA agrees with this recommendation and written procedures for follow-up inspections of establishment have been given to the borough offices.

Enforcement management will ensure that the borough offices are following these procedures. It should be noted that this is not primarily a Citywide issue, because the majority of sidewalk cafés are in Manhattan and Brooklyn. DCA will shift its resources at the height of the sidewalk café season (Spring/Summer) to ensure that all areas are adequately covered.

5/12/2005