



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 13, 2022

Ydanis Rodriguez
Commissioner
New York City Department of Transportation
55 Water Street
New York, NY 10041

Re: Controls Over Revocable Consents
Report 2021-F-28

Dear Commissioner Rodriguez:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III, Section 33 of the General Municipal Law, we have followed up on the actions taken by officials of the New York City Department of Transportation to implement the recommendations contained in our audit report, *Controls Over Revocable Consents* (Report [2018-N-1](#)).

Background, Scope, and Objective

A revocable consent is the grant of a right to an individual or organization to construct and maintain certain structures on, over, or under the inalienable property (streets and sidewalks) of the City. To obtain a revocable consent, a petition must be filed with the New York City Department of Transportation's (DOT) Office of Cityscape and Franchises (Office). The permission is granted in exchange for compensation to the City. Revocable consents are granted for a term of ten years, and at the end of that period they may be renewed. DOT charges an annual rate for eligible revocable consents, based on either a formula or a flat rate for 37 improvements that are specified, in accordance with the Rules.

The property owners petition the Office for the revocable consents, which are generally for the sole use and benefit of the applicant. As part of the review process, the Office forwards petitions for consents to relevant City agencies for review and holds public hearings regarding the consent. The Office also obtains required security deposits and certificates of liability insurance from the petitioner. Consents must also be signed by the Mayor's Office of Contract Services and registered with the City Comptroller.

According to the Office, as of December 2, 2021, there were 1,112 active revocable consents. Revocable consent revenues were \$19.3 million for City Fiscal Year (CFY) ended June 30, 2020 and \$18.5 million for CFY ended June 30, 2021.

We issued our initial audit report on September 23, 2020. The audit objective was to determine whether DOT billed and collected the correct fees for revocable consents; ensured that all structures meet the standards required by the City of New York; and monitored to ensure all structures requiring revocable consents have one in place. We found that DOT did not bill

and collect the correct amounts, did not comply with all procedures, and did not ensure that structures requiring revocable consents had one in place.

The objective of our follow-up was to assess the extent of implementation, as of February 22, 2022, of the five recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

DOT officials made progress in addressing the problems we identified in the initial audit report. Of the initial report's five audit recommendations, two were implemented, one was partially implemented, and two were not implemented.

Follow-Up Observations

Recommendation 1

Comply with the Revocable Consent Rules, the City Charter, and the Office's procedures and maintain documentation to support all calculations and amounts charged to property owners.

Status – Partially Implemented

Agency Action – DOT's Division of Legal Affairs is working to amend the Revocable Consent Rules to clarify the calculation of annual fees and renewal agreements. Our review of nine revocable consents from the DOT listings provided on November 18, 2021 and December 2, 2021 found that seven lacked required information. For example, only two of the nine had other agency approvals, as required. We also recalculated annual rates for nine sampled revocable consents to verify accuracy. We found discrepancies in five of these calculations. These discrepancies were due to DOT using the wrong Consumer Price Index in the calculations.

Recommendation 2

Implement independent managerial review of the calculations.

Status – Implemented

Agency Action – Our review on December 20, 2021 showed that a manager had initialed the calculation for the revocable consent fee.

Recommendation 3

Bill revocable consent grantees for undercharges, as appropriate.

Status – Not Implemented

Agency Action – In its 30-day response to the initial draft report, DOT, with the exception of one consent, disagreed that the fees charged were incorrect. Our review of revocable consents that were undercharged found that DOT didn't recalculate and bill any of the revocable consent grantees for the undercharges.

Recommendation 4

Prepare a checklist of requirements, such as needed documents, security deposit, insurance requirements, and agency approvals for each consent.

Status – Implemented

Agency Action – On November 22, 2021, DOT provided a copy of the checklist of requirements, which included the required agency review and required supporting documents, used for new revocable consents. We reviewed this list and compared it to the requirements listed on the DOT website for new revocable consents and found it included the necessary items.

Recommendation 5

Expand Office operations to include an examination of all structures to determine whether they require a consent, and notify the owner, where appropriate.

Status – Not Implemented

Agency Action – DOT disagreed with this recommendation in its 30-day response to the initial report, stating that it didn't have the resources. To determine whether the condition observed during the initial audit continued, we observed 39 structures in Brooklyn, Manhattan, and Queens that qualify for a revocable consent and traced them to the DOT's revocable consent file. We found only four of the 39 structures observed were listed in the DOT database. At the closing conference, DOT officials indicated that, under their current budget, resources are still not available.

Major contributors to this report were Abe Fish, Christine Chu, Peter Blanchett, and Jaspal Gill.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of DOT for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: R. Livermon, Director, Internal Audit, DOT
D. Giuliano, Mayor's Office of Operations
F. Ardolli, Mayor's Office of Operations