



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Operating and
Financial Practices of the Mayor's
Office of Film, Theatre and
Broadcasting

FM14-054A

January 5, 2015

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
COMPTROLLER

January 5, 2015

To the Residents of the City of New York:

My office has audited the Mayor's Office of Film, Theatre and Broadcasting (MOFTB) to determine the extent to which the fees charged for permits by MOFTB enable the City to recoup costs incurred for filming activities. We audit City agencies such as MOFTB as a means of ensuring they operate efficiently and are accountable for resources and revenues in their charge.

MOFTB facilitates the process of filming in New York City by providing location services throughout the five boroughs and working with businesses to expand New York's media industry. MOFTB simplifies film production in the City by providing one office where film production companies can obtain all of the necessary permits to film at locations throughout the City. A permit is required when vehicles and equipment are being used for filming activity that requires exclusive use of City property and thus necessitates closing streets or pedestrian walkways.

In Fiscal Year 2013, the direct costs incurred by the City to provide services to film production companies were at least \$3.9 million. However, MOFTB only collected \$1 million from the \$300 permit application fee charged per film project, resulting in a deficit of \$2.9 million which was absorbed by the City. Had MOFTB charged a fee of \$593, as recommended in a cost analysis conducted by MOFTB, it would have generated another \$1 million in revenue to the City. In addition, MOFTB did not bill \$1.9 million to the film production companies for police assistance costs incurred during filming.

Our audit also noted that in addition to providing lower application fees to the film companies and absorbing a significant portion of the film services cost, the City provided over \$3 million in free advertising, but only required the production companies to donate approximately \$98,000 to cultural institutions.

The results of the audit have been discussed with MOFTB 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 "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Operating and Financial Practices of the Mayor's Office of Film, Theatre and Broadcasting

FM14-054A

EXECUTIVE SUMMARY

The Mayor's Office of Film, Theatre and Broadcasting (MOFTB) was created to make film production easier in the City by providing one office where film production companies can obtain all of the necessary permits to film at locations throughout the City. Through these permits, production companies obtain, among other benefits, parking for their trucks, street and sidewalk closures, and police assistance. MOFTB also coordinates with various City agencies to provide free exterior locations and the assistance of the New York City Police Department (NYPD) Movie/TV Unit for film production. This audit focuses on the extent to which the fees charged for permits by MOFTB enable the City to recoup costs incurred for filming activities.

Audit Findings and Conclusion

In Fiscal Year 2013, the direct costs incurred by the City to provide services to film production companies were at least \$3.9 million.¹ However, MOFTB only collected \$1 million from the \$300 per project fee charged,² resulting in a deficit of \$2.9 million which was absorbed by the City. Had MOFTB charged a fee of \$593, the cost associated with each project that was identified in a cost analysis conducted by MOFTB and approved by OMB, it would have generated another \$1 million in revenue to the City. In addition, MOFTB did not bill \$1.9 million to the film production companies in police assistance costs incurred during filming.

Our audit also noted that in addition to providing lower permit fees to the film companies and absorbing a significant portion of the film services cost, the City provided over \$3 million in free advertising, but only required the production companies to donate approximately \$98,000 to cultural institutions.

¹ The \$3.9 million includes \$2 million in costs identified in MOFTB's analysis plus the \$1.9 million in salary costs of NYPD's Movie/TV Unit.

² The \$300 fee charged is identified by MOFTB as a "New Project Account application fee."

Audit Recommendations

MOFTB should:

1. Consider structuring permit fees on a sliding scale taking into consideration the size and duration of the projects.
2. Consider increasing the permit fees so that application and police assistance costs incurred by the City are recovered.
3. Determine the best method for recouping costs associated with the NYPD Movie/TV Unit.
4. Reevaluate its program offering free advertising; if the program goes forward, consider tying advertising discounts to a comparable donation to charitable institutions.

Agency Response

In its response, MOFTB notes that while none of the findings in the report reflect any financial or operational discrepancies or deficiencies, MOFTB “is always looking for ways to improve service and reduce costs and . . . will consider the audit recommendations as [it] continue[s] to review the services of the program with respect to the overall fee structure and intent.” Further, MOFTB notes that “[i]t’s been a long standing policy of the City to streamline processes and not impose fees to the extent possible in order to encourage film and television production in New York City based on a commonly accepted understanding that such activity inures to the overall economic well-being of the City. Nevertheless the report did set forth several policy recommendations to allow the City to recoup costs for film and television production activities.”

We note that the report’s findings did identify several issues that inhibit the City from recouping associated costs for film and television production activities. We are glad that MOFTB responded that it will consider the audit recommendations as it continues to review the services of the program with respect to the overall fee structure and intent.

Finally MOFTB observed in its response that we had added language to our stated audit objective. This is consistent with §6.07 of generally accepted government auditing standards, which notes that “[p]lanning is a continuous process throughout the audit. Therefore, auditors may need to adjust the audit objectives...as work is being completed.”

AUDIT REPORT

Background

The Mayor's Office of Film, Theatre and Broadcasting (MOFTB) is part of the Mayor's Office of Media and Entertainment. MOFTB facilitates the process of filming in New York City by providing location services throughout the five boroughs and working with businesses to expand New York's media industry. MOFTB operates in accordance with Chapter 8 and Chapter 9 of Title 43 of the Rules of the City of New York (RCNY).³ Staffing and other assistance to MOFTB is provided by the Department of Information Technology and Telecommunications (DoITT) and the Department of Small Business Services in accordance with Executive Order 138, issued in July 2010.⁴ According to a 2012 study conducted by the Boston Consulting Group and commissioned by New York City, film production has gone through significant changes since 2002 and today accounts for \$7.1 billion in spending and employs 130,000 people in the City.

In March 2013, the City amended its rules to add Chapter 15 to Title 43 of RCNY, which established the Made in New York Marketing Credit Program (Made in NY Program). The Made in NY Program is an incentive program that offers free advertising on bus shelters, Metro Cards, and City-owned television stations for productions where at least 75 percent of the film is produced in New York City. In return for the free advertising, production companies are required to make a donation to a New York City cultural institution within 30 days of approval for the marketing credit.⁵ The Department of Cultural Affairs provides a list of cultural institutions to which such donations can be made.

The Made in NY Program also offers film production companies discount cards that can be used at many of the City's most popular businesses. In addition, New York State offers various tax incentives to encourage film production.

MOFTB simplifies film production in the City by providing one office where film production companies can obtain all of the necessary permits to film at locations throughout the City. A permit is required when vehicles and equipment are being used for filming activity that requires exclusive use of City property and thus necessitates closing streets or pedestrian walkways. Through these permits, production companies obtain, among other benefits, parking for their trucks, street and sidewalk closures, and police assistance. MOFTB also coordinates with various City agencies to provide free exterior locations and the assistance of the New York City Police Department (NYPD) Movie/TV Unit for film production. The NYPD Movie TV Unit monitors film sets, ensures pedestrian safety, and works to reroute traffic at film locations.

In 2009, MOFTB in conjunction with the Office of Management and Budget (OMB) conducted a cost analysis to formulate a fee structure. Based on this analysis, MOFTB began charging a \$300 permit processing application fee for each project that requires street and sidewalk closures or police assistance. In addition to the regular film permits, MOFTB issues special permits for filming in City-owned buildings and for red carpet premiere events. MOFTB reported

³Chapter 8 outlines requirements for premiere permits relating to certain entertainment events, and Chapter 9 outlines requirements for permits involving production activities.

⁴In an effort to ensure the City's media services are well coordinated to maximize opportunities in the most efficient and cost-effective manner, Executive Order 138 mandates that the functions of New York City Media Group (NYC Media), MOFTB, and certain digital and new media functions are operated jointly.

⁵The donation is based on a minimum of \$10,000 for films with qualified production costs equal to \$10 million or more and 0.1 percent of the qualified production costs for films with less than \$10 million of qualified production costs.

a total of \$1,574,634 in revenue from the 3,427 permits it issued in Fiscal Year 2013. The table below shows a breakdown by type of revenue received by MOFTB.

Total Revenue by Source for
MOFTB for Fiscal Year 2013

Revenue Description	Amount
Regular Permit Fee Collection	\$1,015,784
Film Permits for Use of City Property	\$284,800
Red Carpet Premiere Events	\$274,050
Total Revenue	\$1,574,634

Objective

The objective of this audit was to determine the extent to which the fees charged for permits by MOFTB enable the City to recoup costs incurred for filming activities.

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 MOFTB's operating and financial practices during Fiscal Year 2013. 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 with MOFTB

The matters covered in this report were discussed with officials of MOFTB during and at the conclusion of this audit. A preliminary draft report was sent to MOFTB officials and discussed at an exit conference held on May 30, 2014. On September 23, 2014, we submitted a draft report to MOFTB officials with a request for comments. We received a written response from MOFTB officials on October 3, 2014.

In its response, MOFTB notes that while none of the findings in the report reflect any financial or operational discrepancies or deficiencies, MOFTB "is always looking for ways to improve service and reduce costs and . . . will consider the audit recommendations as [it] continue[s] to review the services of the program with respect to the overall fee structure and intent." Further, MOFTB notes that "[i]t's been a long standing policy of the City to streamline processes and not impose fees to the extent possible in order to encourage film and television production in New York City based on a commonly accepted understanding that such activity inures to the overall

economic well-being of the City. Nevertheless the report did set forth several policy recommendations to allow the City to recoup costs for film and television production activities.”

We note that the report’s findings did identify several issues that inhibit the City from recouping associated costs for film and television production activities. We are glad that MOFTB responded that it will consider the audit recommendations as it continues to review the services of the program with respect to the overall fee structure and intent.

Finally MOFTB observed in its response that we had added language to our stated audit objective. This is consistent with §6.07 of generally accepted government auditing standards, which notes that “[p]lanning is a continuous process throughout the audit. Therefore, auditors may need to adjust the audit objectives...as work is being completed.”

The full text of MOFTB’s response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

\$2.9 Million in Costs Were Not Covered by Revenue

\$1 Million Revenue Shortfall Resulted from MOFTB's Disregarding Its Cost Analysis

Our audit determined that under the current fee structure, MOFTB does not recoup the direct costs to the City from productions filming on location in New York City. In 2009, MOFTB performed a cost analysis approved by OMB that determined MOFTB's cost for processing production companies' permit applications. The analysis showed that MOFTB would have to charge \$593 for its permit application fee to recover the costs identified. However, rather than implement the full \$593 fee, MOFTB instituted a \$300 fee per film project. For Fiscal Year 2013, MOFTB generated approximately \$1 million in revenue by charging a \$300 permit application fee to film production companies. Our analysis determined that if a \$593 permit fee had been implemented, MOFTB would have generated an additional \$1 million in revenue.

MOFTB officials assert that a higher fee would discourage filming in New York. In addition, MOFTB officials claim that the permit fee was based on a survey of other municipalities. However, they were unable to provide any documentation of this survey. As part of our review, we surveyed various municipalities that charged permit fees to film production companies. Our survey found that Los Angeles' permit fee was \$625 for two weeks of filming and up to 10 locations, and that San Francisco charged \$300 per film day, rather than per project. Washington, DC, charged anywhere from \$180 up to \$600 depending on the size of the film crew and the number of days filming took place. As evidenced by our survey, production companies are willing to pay more than \$300 to film in these other locations. Accordingly, our survey indicated that filmmakers might be willing to pay more to film in New York City. Not only is the City a prime location for film production, but under the Made in NY Program, New York offers free advertising for certain productions, thereby increasing the incentives to shoot films and TV shows in the City.

MOFTB Response: "First and foremost, the fee charged by MOFTB is not a permit fee; it is a New Project Account application fee. Every production that applies for a permit must first submit an application, and it is the processing of this application for which fees are charged. . . .

"It was not until 2010 that initial project application fees were introduced. At that time, MOFTB faced several budget cuts that threatened to undermine the agency's ability to meet the demands of increased production activity in the City. The original impetus behind the fee was to continue to provide services, not recoup costs. . .

"While the Comptroller's report notes that fees are higher in areas like Los Angeles, the report fails to note that production in Los Angeles declined, prompting the recent passage of legislation increasing the California state tax credit by nearly 300% to encourage production in the area. The other cities noted in the report, San Francisco and Washington, DC, have nowhere near the volume of production to justify a comparison to NYC."

Auditor Comment: We disagree with MOFTB's position. Whether the fee is called a permit application fee or a New Project Account application fee, it does not change the fact that the \$300 fee charged was insufficient to cover the costs of processing the application.

As stated in MOFTB's response, at the time the fee structure was developed, there was increased demand in production activity in the City. Therefore, we question MOFTB's decision to charge significantly less for a permit than its own cost analysis suggested at the time it was facing its own budget cuts.

MOFTB's claim that the recent film production decline in Los Angeles was due to the high cost of permit fees was not supported by any analysis or data that establishes there is a correlation between the permit fee and the tax credit.

MOFTB/OMB Cost Analysis Did Not Consider \$1.9 Million in NYPD Movie/TV Unit Costs

Our review of the cost analysis found that not all the costs incurred by the City for filming activities were included in the MOFTB/OMB cost analysis. Specifically, the cost analysis did not include \$1.9 million in regular time salary costs incurred by NYPD's Movie/TV Unit. The Movie/TV Unit consists of 24 officers and 12 vehicles that are permanently assigned to assist film production companies on a full-time basis. Those costs are not recovered through the permit fees charged or any other mechanism. Officers assigned to the Unit maintain pedestrian safety and ensure that vehicular traffic moves safely through and around a film set.

We selected a random sample of 20 permits from the total permits issued in Fiscal Year 2013. Of the 20 permits reviewed, we found eight filming permits (40 percent) involving productions that used the services of the Movie/TV Unit. Although MOFTB said that in addition to the \$300 fee, the production companies were charged for overtime costs attributed to the Unit, we confirmed that they were not charged for base salaries of the police officers. According to the City of New York's City Human Resource Management System (CHRMS), the base salaries of the police officers assigned to the Movie/TV Unit came in total to \$1.9 million in Fiscal Year 2013. The \$1.9 million reflects base salaries only and does not include the value of the NYPD equipment that may have been used, size or duration of the project, the range of other services the City provided, and the magnitude of disruptions that film productions caused, all of which could represent additional costs to the City.

The MOFTB/OMB cost analysis did not take into account the range of services the City provides. Because the \$300 fee is charged when a film project is initiated, all other permits related to the project and the police assistance provided are free of charge. These are additional costs to the City that are not made up by the \$300 fee per production currently charged. Because many productions shoot over multiple days, these costs to the City can add up to a significant amount. For example, our review found MOFTB issued 267 permits for street closures and parking for production vehicles in connection with filming a \$100 million television series from June 29, 2012, to May 31, 2013. During the project's duration, this production company only paid the single \$300 permit fee charged by MOFTB. Although the purpose of MOFTB's single permit initiative is to simplify the process for obtaining all the necessary permits, MOFTB should consider a fee structure that takes into account the size and complexity of the film shoot.

At our May 30, 2014, exit conference, MOFTB and OMB officials stated that the costs associated with police officers assigned to the Movie/TV Unit are not considered part of permit application processing. Based on our audit findings, we recommend that MOFTB and OMB consider charging production companies for the salaries paid to NYPD Movie/TV Unit officers for the time they are assisting those production companies, rather than have the City absorb the cost.

MOFTB Response: “The report asserts that MOFTB's cost analysis did not include NYPD Movie/TV Unit costs incurred by the City for production activities.

As noted above, the only costs that may be considered in determining the fee for processing a New Project Account application are the actual costs incurred to process the application. The NYPD Movie/TV Unit is not involved in this processing, and therefore those costs may not be considered in determining the fee.”

Auditor Comment: We disagree with MOFTB's position. Although the NYPD Movie/TV Unit is not involved in the processing of the permit, this Unit materially participates in assisting production companies in crowd control, street closure and overall security. Since the cost of the Unit is funded by the City, there should be a mechanism to recover the costs.

Additional Issue of Note

Cost Effectiveness of Free Advertising

In Fiscal Year 2013, the City provided 32 film production companies with \$3,137,487 in free advertising under the Made in NY Marketing Credit Program. To qualify for the advertising in accordance with the Rules of the City of New York (Chapter 15, Title 43), the film companies donated \$97,592 to charitable organizations. We believe that the current level of donations—representing only 3 percent of the value of the free advertising that film companies receive—raises serious concerns about the value of the Made in NY Program.

For example, one participant received \$109,927 in free advertising, but donated just \$15 to a cultural institution. In another example, a participant received \$75,300 in free advertising and donated \$5,000. In addition, the Made in NY program paid for the production and delivery of materials used in the latter participant's advertising campaign even though this participant made a donation worth only 7 percent of the free advertising it received.

The rationale tendered by MOFTB for its offer of free advertising under the Marketing Credit Program is that it will increase film production in New York City. However, MOFTB officials did not provide any information to support its contention that free advertising would increase production in the City.

Film companies currently receive several significant tax benefits from the State of New York as an enticement to film anywhere in the state. Qualifying film and television productions may be eligible for a 30 percent refundable tax credit for qualified production expenditures or a post-production 30 percent refundable tax credit for productions that film outside of the state, but do their post-production in New York State. Property used in a qualified film production facility and the cost of creating master tapes stored in New York can also qualify for an investment tax credit. Film companies can also receive a sales tax exemption for tangible personal property used or consumed directly and predominantly in the production of a film for sale.

Given these existing incentives intended to entice film companies to the City and the lack of data to necessary to evaluate the marginal contribution of free advertising, the City should reconsider its decision to offer free advertising.

MOFTB Response: “The ‘Made in NY’ Marketing Credit program is designed to promote projects that are filmed in New York City and highlight the City as a center for production. The credit is structured to provide the most meaningful benefit to small, independent productions. . . Qualified productions are required to provide a ‘cultural benefit’ in the form of a monetary contribution to a New York City Cultural Institution identified by the New York City Department of Cultural Affairs.

The Comptroller's report fails to note that many of the smaller, independent productions that participate in the City's 'Made in NY' Marketing Credit Program do not qualify for the New York State Film Production tax credit and do not have the marketing and promotional resources of a large studio. The Marketing Credit Program is often the only opportunity for smaller productions to promote their projects and attract an audience in the city in which they were made. . .

Additionally, the cultural benefit was never intended to be a means to cover the cost of the program, as suggested in the report....”

Auditor Comment: MOFTB’s response does not address the fact that the "Made in NY" Marketing Credit Program includes both small and large productions companies. However, as a group these production companies only contribute 3 percent of the value of the free advertising they receive to City designated charitable organizations.

Recommendations

MOFTB should:

1. Consider structuring permit fees on a sliding scale taking into consideration the size and duration of the projects.
2. Consider increasing the permit fees so that application and police assistance costs incurred by the City are recovered.
3. Determine the best method for recouping costs associated with the NYPD Movie/TV Unit.
4. Reevaluate its program offering free advertising; if the program goes forward; consider tying advertising discounts to a comparable donation to charitable institutions.

MOFTB Response: “MOFTB is always looking for ways to improve services and reduce costs, and we will consider the audit recommendations as we continue to review the services of the program with respect to the overall fee structure and intent.”

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 covers the period from July 1, 2012, through June 30, 2013. To achieve our audit objectives, we reviewed Chapters 8, 9, and 15 of Title 43 of the Official Compilation of RCNY and Mayoral Executive Order 138.

To obtain an understanding of MOFTB's rules and regulations in issuing film permits, we interviewed key personnel from MOFTB's insurance processing, permit issuing, and field representatives units as well as the marketing unit that oversees the Made in New York Marketing Credit Program. We conducted four (two announced and two unannounced) field visits to film sets to observe the role of MOFTB and other City agencies in the film process. We documented our understanding of the processes by means of flowcharts that were reviewed and confirmed by MOFTB officials we interviewed.

We obtained a breakdown of revenue received by MOFTB from DoITT. We reviewed and analyzed MOFTB's revenue for Fiscal Year 2013 derived from the initial online permit application fees, red carpet premiere fees, and Department of Citywide Administrative Services (DCAS) fees. We also reviewed information in the Citywide Event Coordination and Management's (CECM) online system. To determine whether the revenue reported by DoITT and the information in the New York City Financial Management System (FMS) was complete and accurate, we traced the deposit slips of red carpet premiere checks into MOFTB's bank account to information contained in the FMS.

MOFTB approved 3,427 project applications and issued 12,480 permits for production companies during Fiscal Year 2013. We randomly selected 20 film permits from the issued permits to determine whether MOFTB followed its permit-issuing procedures. We obtained information from CECM for each of the 20 sampled participants to ensure that the proper procedures were followed in the permit-issuing process. We obtained from CECM a list of permits for Fiscal Year 2013 for each of the sampled production companies and traced them back to the list of 12,480 permits to ensure the list MOFTB provided us was complete. We obtained the field representative's log for Fiscal Year 2013 and compared the field representative's notes to the permits of the 20 sampled productions to determine if they had encountered any issues during the field visit and if they were resolved.

We reviewed all 107 red carpet permits that were included in the list of total permits issued during Fiscal Year 2013. To verify that DoITT provided us with the total revenue collected from these premiere events, we requested the checks and deposit slips to compare their total to assessment invoices of the 107 red carpet permits provided by MOFTB.

We reviewed the cost analysis prepared by MOFTB and reviewed by OMB to determine whether the analysis was reasonable and included all applicable costs. We contacted MOFTB and OMB to confirm that NYPD was not one of the agencies included in the amount allocated as costs from other agency services.

To further determine whether the cost analysis was reasonable, we surveyed permit fee charges in other major cities. These cities included Los Angeles, San Francisco, and Washington DC. We also used our survey as an indicator of whether it would be feasible to raise fees in New York.

To determine the number of film production companies that received free advertising, we reviewed the Made in NY Program participants list for Fiscal Year 2013. We obtained all the applications requesting free advertising to ascertain the amount of free advertising received and the amount of charitable donations made in return.

The results of the above tests, while not statistically projected to the respective populations from which the samples were selected, provide a reasonable basis for our conclusions.



The City Of New York
Mayor's Office Of Media And Entertainment

ADDENDUM
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October 3, 2014

The Honorable Marjorie Landa
Deputy Comptroller, Bureau of Audit
Office of the Comptroller
One Centre Street, Room 1100N
New York, NY 10007-2341

RE: Draft Audit Report on the Operating and Financial Practices of the Mayor's Office of the Mayor's Office of Film, Theatre and Broadcasting FM-14-054A dated September 23, 2014

Dear Ms. Landa:

In Calendar Year 2013, the Office of the City Comptroller announced an audit of the operating and financial practices of the Mayor's Office of Film, Theatre and Broadcasting (MOFTB) during fiscal year 2013.

According to the engagement letter dated on July 9, 2013 from Deputy Comptroller Tina Kim to Katherine Oliver, the MOFTB Commissioner at the time, "The audit will examine MOFTB's financial and operating practices and will include a review of books and records supporting revenue and expense activities and the related rules and regulations governing those activities." This objective differs considerably from the objective cited in the draft report issued by the City Comptroller's Office on September 23, 2014: "The objective of this audit was to determine the extent to which the fees charged for permits by MOFTB enable the City to recoup costs incurred for filming activities."

Ultimately, the City Comptroller's audit did not report any financial or operational discrepancies or deficiencies at MOFTB. Nevertheless, the report cited findings as follows:

1. \$2.9 million in costs were not covered by revenue
 - a. \$1 million revenue shortfall resulted from MOTFB's disregarding its cost analysis
 - b. MOFTB/OMB cost analysis did not consider \$1.9 million in NYPD movie/TV unit costs
2. Cost effectiveness of free advertising

We respond to each of these findings and the audit recommendations in turn below.

1. \$2.9 million in costs were not covered by revenue

The Comptroller's report asserts that MOFTB's permit fee structure does not recoup the direct costs to the City from film production.

First and foremost, the fee charged by MOFTB is not a permit fee; it is a New Project Account application fee.¹ Every production that applies for a permit must first submit an application, and it is the processing of this application for which fees are charged.

As the first film commission in the country, MOFTB was formed by Mayor John V. Lindsay in 1966 "to stimulate activity by the motion picture and television industries" and counter "the policies and practices of city government" that "tended to discourage activity by the motion picture and television industries with consequent injury to our economy and direct loss of revenue to the City of New York."² Mayor Lindsay recognized that "the motion picture and television industries can make a substantial contribution to the economic well-being of New York City."

To this end, for more than 40 years, it was City policy not to charge any fees to productions. It was not until 2010 that initial project application fees were introduced. At that time, MOFTB faced several budget cuts that threatened to undermine the agency's ability to meet the demands of increased production activity in the City. The original impetus behind the fee was to continue to provide services, not recoup costs.

Today, film and television production in New York City generates \$7.1 billion in direct spend to the local economy, employs thousands of local New Yorkers, and contributes more than \$400 million in tax revenues annually.

a. \$1 million revenue shortfall resulted from MOTFB's disregarding its cost analysis

The Comptroller's report asserts that MOFTB worked with OMB to conduct a cost analysis and that MOFTB ignored the results of its own analysis.

This is factually incorrect. OMB had no involvement in the analysis, other than to verify the accuracy of the figures used. There was never any recommendation by OMB or any other agency with respect to the fee level or structure.

Each City agency is required to perform a cost analysis to ensure that any fee charged by the agency does not exceed the actual cost it takes to perform the action. MOFTB's analysis found the cost for processing a New Project Account was equal to \$593. MOFTB set the fee at \$300 in order to balance the need to offset the impact of budget cuts on the agency while maintaining the City's reputation as film-friendly and encourage

¹ Rules of the City of New York, Title 43 Section 9-02: Processing of Permit Applications.

² Memo dated May 31, 1966 from Mayor Lindsay to All City Departments and Agencies re: Motion Picture and Television Production Industries.

production. In the year prior to the introduction of the New Project Account application fee, 18 primetime episodic television series were based in New York City, up from just seven series in 2002. It was important to maintain that momentum and send the signal that the City would remain film-friendly.

While the Comptroller's report notes that fees are higher in areas like Los Angeles, the report fails to note that production in Los Angeles declined, prompting the recent passage of legislation increasing the California state tax credit by nearly 300% to encourage production in the area. The other cities noted in the report, San Francisco and Washington, DC, have nowhere near the volume of production to justify a comparison to NYC. (It is worth noting that there are currently four primetime television and digital series set in Washington, DC that are actually shot in New York City, due to the City's film permit and production policies.)

b. MOFTB/OMB cost analysis did not consider \$1.9 million in NYPD movie/TV unit costs

The report asserts that MOFTB's cost analysis did not include NYPD Movie/TV Unit costs incurred by the City for production activities.

As noted above, the only costs that may be considered in determining the fee for processing a New Project Account application are the actual costs incurred to process the application. The NYPD Movie/TV Unit is not involved in this processing, and therefore those costs may not be considered in determining the fee.

The NYPD Movie/TV Unit was created in 1966, in conjunction with the establishment of MOFTB, as a special task force under the auspices of the NYPD that would "have full responsibility and authority to police the production units as they move from precinct to precinct about the city." To this end, the NYPD Movie/TV Unit is to ensure the safety of the general public when scenes involve stunts, prop weapons or actors in uniforms, and to enforce that the production is in compliance with their permit and the City's rules. When police assistance is required on set, the cost of the first officer is covered by the City. Any additional officers, traffic assistance, towing or other related costs associated with larger projects are paid for by the production.

It is worth noting that the majority of productions that submit project applications and receive permits do not require the services of the NYPD Movie/TV Unit.

2. Cost effectiveness of free advertising

The report comments regarding the value of MOFTB's "Made in NY" Marketing Credit Program.

The “Made in NY” Marketing Credit Program is designed to promote projects that are filmed in New York City and highlight the City as a center for production.³ The credit is structured to provide the most meaningful benefit to small, independent productions which represent a vibrant community that helps maintain the City’s infrastructure for production services. Qualified productions are required to provide a “cultural benefit” in the form of a monetary contribution to a New York City Cultural Institution identified by the New York City Department of Cultural Affairs.

The Comptroller’s report fails to note that many of the smaller, independent productions that participate in the City’s “Made in NY” Marketing Credit Program do not qualify for the New York State Film Production tax credit and do not have the marketing and promotional resources of a large studio. The Marketing Credit Program is often the only opportunity for smaller productions to promote their projects and attract an audience in the city in which they were made. Whether MOFTB covers the cost of printing is dependent on the production’s below-the-line budget; productions whose budgets are greater than \$10 million must cover the cost of printing subway cards and bus shelters.

Additionally, the cultural benefit was never intended to be a means to cover the cost of the program, as suggested in the report. The cultural benefit was intended to provide additional support to the City’s cultural institutions with funding they might not otherwise receive and to foster the development of the next generation of the creative community. The amount of the contribution is based on a project’s budget. Productions with below-the-line budgets of less than \$10 million must contribute an amount equal to .1% of their below-the-line spend. If a production’s below-the-line spend is over \$10 million, the donation is fixed at \$10,000.

Audit Recommendations

While none of the findings in the report reflect any financial or operational discrepancies or deficiencies at MOFTB, the report did set forth several policy recommendations to allow the City to recoup costs for film and television production activities.

As previously noted, it has been a longstanding policy of the City, reaffirmed by every mayor since the establishment of MOFTB in 1966, to streamline processes and not impose fees to the extent possible in order to encourage film and television production in New York City based on a commonly accepted understanding that such activity inures to the overall economic well-being of the City.⁴

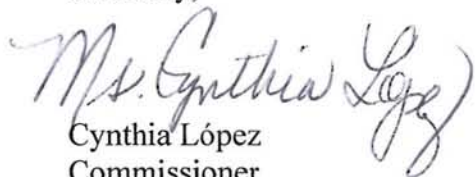
Nevertheless, MOFTB is always looking for ways to improve service and reduce costs, and we will consider the audit recommendations as we continue to review the services of the program with respect to the overall fee structure and intent.

³ Rules of the City of New York, Title 43 Section 15-01: Purpose and general description.

⁴ Mayoral Memos to All City Departments and Agencies re: Motion Picture and Television Production Industries dated 1966-2004.

We thank the Comptroller's Office for the opportunity to provide insight on the referenced audit.

Sincerely,

A handwritten signature in cursive script that reads "Ms. Cynthia Lopez". The signature is written in black ink and is positioned to the left of the printed name.

Cynthia López
Commissioner

Mayor's Office of Media and Entertainment