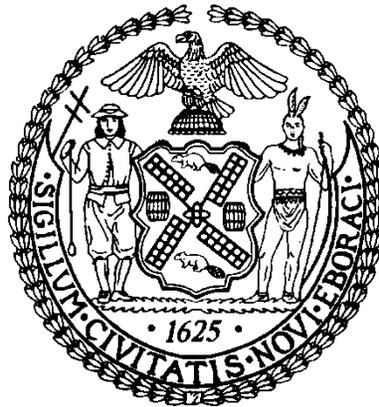


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

FINANCIAL AUDIT

**Tina Kim
Deputy Comptroller for Audit**



**Follow-up Audit Report on the Compliance of
Lakeside Restaurant Corporation with Its
License Agreement**

FM11-136F

October 11, 2011



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

John C. Liu
COMPTROLLER

October 11, 2011

To the Residents of the City of New York:

My office has audited Lakeside Restaurant Corporation (Lakeside) to determine whether the concessionaire implemented the recommendations made in a previous audit, *Audit Report on the Compliance of Lakeside Restaurant Corporation with Its License Agreement* (Audit No. FM09-130A, issued January 29, 2010). We perform follow-up audits of City concessionaires as a means of ensuring that concessionaires comply with their license agreements and pay the license fees due the City.

The current follow-up audit disclosed that of the 17 recommendations originally made, five were implemented, one was partially implemented, six were not implemented, three we were unable to determine if implemented, and two were no longer applicable. As a result, Lakeside has now improved its internal controls over reporting and recording over revenue. However, Lakeside still does not issue contracts for special events, did not amend its prior years' sales tax returns to include the banquet gratuities as taxable sales, does not always maintain the facility in a sanitary condition, and does not pay its license fees on time. As of July 1, 2011, Lakeside owes \$59,264 in license fees. In addition, it appears Lakeside has not ceased employing "off-the-books" employees.

The audit recommends that Lakeside remit the \$59,264 in license fees and late charges; enter into written agreements with all operators and vendors that use Lakeside's facilities; amend its New York State sales tax filings to include the banquet gratuities as taxable sales and pay the additional sales tax plus interest and penalties; maintain the facility in a sanitary condition; pay its minimum annual fees and applicable percentage fees on time; submit annual income and expense statements to Parks within 30 days after the end of each operating year; and report all current employees on its payroll records.

The results of the audit have been discussed with officials of Lakeside and Parks, 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 "John C. Liu".

John C. Liu

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

**Follow-up Audit Report on the Compliance of
Lakeside Restaurant Corporation
with Its License Agreement**

FM11-136F

AUDIT REPORT IN BRIEF

This follow-up audit determined whether the 17 recommendations made in the prior audit, *Audit Report on the Compliance of Lakeside Restaurant Corporation with Its License Agreement* (Audit No. FM09-130A, issued January 29, 2010), were implemented. Fourteen of these recommendations were made to Lakeside Restaurant Corporation (Lakeside), and three were made to the New York City Department of Parks and Recreation (Parks).

The prior audit determined whether Lakeside accurately reported its gross receipts, properly calculated license fees due, paid its license fees on time, and complied with certain major non-revenue terms of the license agreement.

The prior audit found that Lakeside had significant internal control weaknesses and deficiencies over the collecting, recording, and reporting of revenue. As a result of these weaknesses, we could not be assured that Lakeside accurately reported all of its gross receipts from its banquet, restaurant, snack bar, and boat rental operations or that it paid the appropriate fees to the City. Although the internal control weaknesses were so extensive as to raise red flags concerning the potential for fraud, we were able to conservatively calculate that Lakeside underreported revenues by at least \$87,494, resulting in \$8,041 in additional fees and related late charges due the City.

Lakeside also did not maintain the premises in a sanitary condition, had unpaid water and sewer charges totaling \$3,973 (which were subsequently paid), did not pay its fees on time, and failed to submit annual income and expense statements to Parks on a timely basis. Furthermore, Lakeside employed “off-the-books” employees, violated New York State Labor Law, and did not accurately report wait staff gratuities to the Internal Revenue Service.

Audit Findings and Conclusions

This follow-up audit determined that of the 17 recommendations originally made (14 recommendations to Lakeside and three recommendations to Parks), five were implemented, one was partially implemented, six were not implemented, three we were unable to determine if

implemented, and two were no longer applicable. While Lakeside has now improved its internal controls related to the weaknesses cited in the previous report, there are still several outstanding issues. It currently uses a point of sales system to collect, record, and report revenue over banquet and restaurant sales. Lakeside now has a cash register that records the boat and snack bar sales. However, Lakeside still does not issue contracts for special events, did not amend its prior years' sales tax returns, does not apply one accounting method in preparing its books and records, does not always maintain the facility in a sanitary condition, and does not pay its license fees on time. As of July 1, 2011, Lakeside owes \$59,264 in license fees. In addition, it appears Lakeside has not ceased employing "off-the-books" employees.

Audit Recommendations

To address the issues that still exist, we recommend that Lakeside should:

- Remit the \$59,264 in license fees and late charges;
- Enter into written agreements with all operators and vendors who use Lakeside's facilities;
- Amend its New York State sales tax filings to include the banquet gratuities as taxable sales and pay the additional sales tax plus interest and penalties for all the periods (including prior operating years) that banquet gratuities were not fully distributed to the wait staff;
- Maintain the facility in a sanitary condition;
- Pay its minimum annual fees and applicable percentage fees on time;
- Submit annual income and expense statements to Parks within 30 days after the end of each operating year; and
- Report all current employees on its payroll records and comply with all laws governing unemployment insurance, workers' compensation, social security, tax withholding, temporary disability insurance, minimum wage, and overtime as well as regularly update the Positouch employee list when employees are hired or terminated.

We recommend that Parks should:

- Issue a Notice-to-Cure to Lakeside requiring that it pay \$59,264 in license fees and late charges assessed, and
- Ensure that Lakeside complies with all of the recommendations in this report.

Agency Response

In its response, Lakeside stated it has complied with, or is in the process of complying with, the recommendations set forth by the Comptroller's Office. However, Lakeside took exception with the audit's findings related to maintaining the facility in a sanitary condition and employing off-the-books employees.

Parks officials agreed with the audit findings and recommendations.

INTRODUCTION

Background

On March 25, 2002, the City of New York, through the Department of Parks and Recreation (Parks), entered into a 10-year license agreement with Lake Restaurant Development, Ltd. for the renovation and operation of a restaurant (known as the Lake Club), snack bar, and row boat rental in Staten Island, New York. Subsequently, on January 18, 2005, Lake Restaurant Development, Ltd. assigned its agreement to a new operator, Lakeside. The agreement requires Lakeside to operate, renovate, and maintain the existing structure of the restaurant, snack bar, and row boat rental.

Under the agreement, for operating year 2011, Lakeside was required to pay the higher of either a minimum annual fee of \$70,807.62 plus an additional 8 percent of gross receipts over \$500,000 or the total annual fee paid in the previous year. In addition, Lakeside is required to maintain the required security deposit with the City, maintain certain types and amounts of insurance coverage, submit monthly statements of gross receipts and annual income and expense statements, and pay all utility charges.

For operating year 2011, Lakeside reported \$1,099,641.24 in gross receipts and paid \$130,815.44 in license fees and late charges to the City.

Objective

The objective of this follow-up audit was to determine whether the 17 recommendations made in the previous audit, *Audit Report on the Compliance of Lakeside Restaurant Corporation with Its License Agreement* (Audit No. FM09-130A, issued January 29, 2010), were implemented.

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 period of this follow-up audit was May 2011 for detailed testing. 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 Lakeside and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to these officials and discussed at an exit conference on August 30, 2011. On August 31, 2011, we submitted a draft report to Lakeside and Parks officials with a request that comments be submitted by September 15, 2011. We received written responses from Lakeside and Parks on September 15, 2011.

In its response, Lakeside did not specifically address all of the audit's findings and recommendations. Lakeside stated it has complied with, or is in the process of complying with, the recommendations set forth by the Comptroller's Office. However, Lakeside took exception with the findings related to maintaining the facility in a sanitary condition and employing off-the-books employees.

Parks officials agreed with the audit findings and recommendations.

The full texts of the comments are included as addenda to this report.

RESULTS OF THE FOLLOW-UP AUDIT

This follow-up audit determined that of the 17 recommendations originally made (14 recommendations to Lakeside and three recommendations to Parks), five were implemented, one was partially implemented, six were not implemented, three we were unable to determine if implemented, and two were no longer applicable. While Lakeside has improved its internal controls related to the weaknesses cited in the previous report, there are still several outstanding issues. It currently uses a point-of-sale system to collect, record, and report revenue over banquet and restaurant sales. Lakeside now has a cash register that records the boat and snack bar sales. However, Lakeside still does not issue contracts for special events, did not amend its prior years sales tax returns, does not apply one accounting method in preparing its books and records, does not always maintain the facility in a sanitary condition, and does not pay its license fees on time. As of July 1, 2011, Lakeside owes \$59,264 in license fees. In addition, it appears that Lakeside has not ceased employing “off-the-books” employees.

Previous Finding: “Lakeside Did Not Accurately Report Its Gross Receipts to Parks”

Previous Recommendation #1: Immediately remit the \$8,041 in additional license fees and late charges.

Previous Lakeside Response #1: “The Lakeside Restaurant Corporation agrees to pay \$8,041.00 in additional license fees and late charges.”

Current Status: PARTIALLY IMPLEMENTED

Parks provided us with a payout schedule for its license agreement between Lakeside and Parks dated March 9, 2010, which allows Lakeside to make monthly installment payments to pay the \$8,041. Lakeside did not immediately remit the \$8,041 as recommended in the previous audit and has been late in paying some of the monthly installments. Therefore, we consider this recommendation to be partially implemented.

Previous Finding: “Significant Internal Control Weaknesses Over the Operation of the Lake Club”

Previous Recommendation #2: Take immediate action to strengthen its internal controls, including but not limited to the following:

- Ensuring that all revenue from all operations (i.e., banquet, restaurant, snack bar, and boat rental) is accurately recorded in a point-of-sale system that is capable of accounting for all guest checks.
- Using banquet reservation software that can record and track all banquet reservations and payments, and issue sequential banquet contracts and invoices.

- Maintaining complete and accurate banquet records (i.e., banquet calendars, logs, and files).
- Pre-numbering all gift certificates and accounting for the outstanding gift certificates.
- Installing a cash register or computerized point-of-sale system in the snack bar to record all snack bar and boat rental transactions.
- Maintaining for at least six years the required source documents to support the gross receipts reported to the City.

Previous Lakeside Response #2: “Lakeside has already taken immediate action to strengthen its internal controls to ensure that all revenues are accurately recorded in its point of sale system and ultimately to Parks.

* Banquet contracts are now pre numbered and sequential. In addition, the contract log is now on an Excel spreadsheet to ensure transparency of information regarding the recording of each catered event. This information will also include cancellations and date changes for easy cross referencing.

* Gift Certificates are now pre numbered and sequential. In addition, we have implemented a certificate log on an Excel spreadsheet indicating date of sale, dollar amount, the date of sale and date of redemption.

* We have consulted with Positouch’s technicians regarding the process of recording the sale of Gift Certificates, our system now includes them on the day it was sold. They are therefore included in our monthly gross receipts.

* We will install a cash register at our snack bar to record all boat rentals and snack bar transactions. This will take place at the beginning of the boat rental season.”

Current Status: IMPLEMENTED

Our assessment of Lakeside’s internal controls has revealed significant improvements. Lakeside now reports its revenue from its operations in a point-of-sale system. The point-of-sale system captures the revenue from the restaurant sales, banquet sales, and gift certificate sales. The Snack Bar has a cash register installed to separately record all boat rental and snack bar transactions. This cash register produces a record of each individual transaction and a cumulative total for the day. At the end of each day, total sales of boat rentals and from the snack bar are manually entered into the Positouch system. For May 2011, all the revenue posted on the point-of-sale system was reported to Parks.

Lakeside now maintains a log of banquets, including those that were booked over the phone, in Excel spreadsheets. These Excel spreadsheets also contain information about day changes and cancellations of banquets. We reviewed the banquets contracts and the invoices for

May 2011 and found that all the payments for banquet revenue were posted on the Positouch system and reported to Parks.

Banquet contracts are now pre-numbered. Gift certificates sold are now recorded in an Excel spreadsheet, which indicates date of sale, dollar amount, and date of redemption. The spreadsheet maintains a list of outstanding gift certificates.

Lakeside now records the value of the complimentary meals covered by complimentary gift certificates in Positouch. When a customer uses a complimentary gift certificate as the form of payment, Lakeside applies the gift certificate as a discount.

As per Lakeside's co-owners and its Certified Public Accountant, Lakeside now maintains the required source documents for six years to support the gross receipts reported to the City. Therefore, we consider this recommendation to be implemented.

Previous Recommendations #3, 4, and 5:

3. Ensure that all transactions, including but not limited to the gross receipts from its restaurant, banquet, snack bar, and boat rental operations, are accurately recorded in the general ledger.
4. Ensure that the proceeds generated from the banquet, snack bar, the sales of gift certificates, and boat rental operations, and all special events are accurately reported to Parks.
5. Include all revenue generated by any other operators using the facility as gross receipts and pay all associated license fees.

Previous Lakeside Response Numbers 3, 4, and 5: "We are in consultation with our CPA to ensure that all gross receipts are accurately recorded in the general ledger, and that all proceeds are properly reported to Parks."

Current Status: NOT ABLE TO DETERMINE

Our review of May 2011 sales transactions found that sales recorded on the Positouch system are posted to the general ledger. However, Lakeside has special events that have no contract. Without a contract, we cannot determine if any revenue earned from these special events should have been included in the general ledger. In addition, it took Lakeside's accountant approximately a month to provide the general ledger to us. Therefore, we were unable to determine if all transactions were accurately recorded in the general ledger.

Specifically, Lakeside failed to create contracts for at least two special events that we are aware of: a special dinner for the show *Mob Wives* on VH1 and Thursday night parties that were scheduled to start in June 2011. Therefore, we were unable to determine whether Lakeside

reports all revenue generated from any other operators using the facility as gross receipts and whether it pays all associated license fees.

Previous Recommendation #6: Amend its New York State sales tax filings to include the banquet gratuities as taxable sales and pay the additional sales tax plus interest and penalties for all the periods (including prior operating years) that banquet gratuities were not fully distributed to the wait staff.

Previous Lakeside Response #6: “We are under the advisement of our CPA and attorney regarding tax-filing amendments for the audit period as well as periods beyond the scope of the audit. We will be in close contact with Parks as we begin to rectify any accounting errors.”

Current Status: NOT IMPLEMENTED

Lakeside’s owner stated that “our accountant has prepared all of the prior years’ NYS sales tax returns. We are currently seeking an outside opinion with a tax attorney with regard to filing these prior years’ returns.” Therefore, we consider this recommendation to be not implemented.

Previous finding: “Unacceptable Recordkeeping Practices”

Previous Recommendation #7: Consistently apply one accounting method in preparing its books and records.

Previous Lakeside Response #7: “Lakeside also agrees to use one standardized and consistent accounting method when preparing our books and records.”

Current status: NOT IMPLEMENTED

According to Lakeside’s accountant, Lakeside is preparing its books and records based on the one basis of accounting. However, our review of the general ledger found that Lakeside continues to simultaneously use both cash and accrual accounting, a practice that could cause material misstatements of its finances. Therefore, we conclude that this recommendation has not been implemented.

Previous finding: “Lakeside is Not in Compliance with Other Provisions of Its License Agreement”

Previous Recommendation #8: Maintain the facility in a sanitary condition.

Previous Lakeside Response #8: “Lakeside will continue to operate a safe and sanitary facility. Every effort and expense is made in this regard. Please note: Health Department inspections held on 11-16-09 and then 12-3-09 both resulted in passing grades.”

Current Status: NOT IMPLEMENTED

On June 29, 2011, the Department of Health and Mental Hygiene (DOHMH) conducted a restaurant inspection of Lakeside and observed a number of sanitary violations, including several critical ones, involving evidence of pests' infestation, improper food storage and protection, and unacceptable facility maintenance. Due to the serious issues found during this health inspection, Lakeside received 57 violation points. Subsequently, on July 14, 2011 DOHMH conducted another restaurant inspection of Lakeside that resulted in 11 violation points and a passing grade of A. Based on the results of these inspections, we cannot conclude that Lakeside is consistently in compliance with its license agreement to maintain its facility in a sanitary condition. Therefore, we consider this recommendation to be not implemented.

Lakeside Response: "On our most recent DOHMH inspection on July 14, 2011, Lakeside received an 'A' rating. We feel that the wording in your report is excessively negative, and based on our 'A' rating we have achieved compliance. We operate a clean and sanitary facility, which is in compliance with all State laws and regulations."

Auditor Comment: Although Lakeside recently received an A rating from DOHMH, Lakeside did not always maintain a clean and sanitary facility. As mentioned above, Lakeside failed a June 29, 2011, inspection by amassing 57 violation points, including several critical ones, involving evidence of pests' infestation, improper food storage and protection, and unacceptable facility maintenance. Although we acknowledge that Lakeside corrected those health violations as required by DOHMH, Lakeside is obligated under its license agreement to ensure that the facility is well maintained at all times.

Previous Recommendation #9: Immediately pay the \$1,468 in outstanding water and sewer charges related to the licensed premises.

Previous Lakeside Response #9: "As of Jan 6, 2010, all outstanding water and sewer charges have been paid in full."

Previous Parks Response #9: "Parks has directed Lakeside to pay the amount due to DEP immediately and to provide us with documentation to confirm payment."

Current Status: IMPLEMENTED

The \$1,468 water and sewer charges have been paid in full. In addition, all water and sewer charges were paid in full through July 13, 2011. Therefore, we consider this recommendation to be implemented.

Previous Recommendation #10: Pay its minimum annual fees and any applicable percentage fees on time.

Previous Lakeside Response #10: "Lakeside will make every attempt to pay its fees on time."

Current Status: NOT IMPLEMENTED

During the follow-up audit, we found that Lakeside has continued to be persistently late in paying monthly license fees. According to Parks' Concessionaire Ledger, as of July 1, 2011, Lakeside owes the City a total of \$59,264.14 in license and late fees.

Previous Recommendation #11: Submit annual income and expense statements to Parks within 30 days after the end of each operating year.

Previous Lakeside Response #11: "Our CPA will submit the annual income and expense statements in a timeframe acceptable to Parks."

Current Status: NOT IMPLEMENTED

Lakeside does not submit its annual income and expense statements in a timely manner. According to the license agreement, the annual income and expense statements should be submitted to Parks within 30 days for the each year ending April 30. For 2010, the statement was not received by Parks until February 4, 2011, which is almost a year late. For 2011, the annual income and expense statement was submitted on August 2, 2011, which is 63 days late. Therefore, we consider recommendation #11 to be not implemented.

Previous finding: "Other Issues"

Previous Recommendation #12: Cease employing "off-the-books" employees, report all employees on its payroll records, and comply with all laws governing unemployment insurance, workers' compensation, social security, tax withholding, temporary disability insurance, minimum wage, and overtime.

Previous Lakeside Response #12: "Lakeside no longer employs 'Off the Books' employees."

Current status: NOT IMPLEMENTED

Lakeside's Positouch employee list had more employees listed than were on the payroll summary. The owner explained that the Positouch employee list was not updated to remove former employees. However, during our walk-through, we asked the individuals working at Lakeside their names. We then matched the names obtained during our walk-through to the names on the payroll summary. As a result, we have questions regarding three Lakeside employees who appeared not to be included on payroll records or in the Positouch system. According to Lakeside's officials, two of these employees were kept on record under different last names and the third individual was not an employee of Lakeside. However, when we called the restaurant and asked for the third individual, we were told that he was currently on vacation. Therefore, we consider this recommendation to be not implemented.

Lakeside Response: “With regard to ‘off-the-books’ employees, Lakeside does not have any ‘off-the-books’ employees. We feel that our explanation to the auditors was ignored, and that Lakeside is in compliance.

Auditor Comment: We did take into consideration Lakeside’s explanation. However Lakeside officials did not provide any sufficient reliable documentation to refute our finding. Therefore, we maintain our original position and consider this recommendation to be not implemented.

Previous finding: “Lakeside Violated NYS Labor Law Section 196-d”

Previous Recommendation #13: Distribute all gratuities to its wait staff in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor.

Previous Lakeside Response #13: “We are under the advisement of our CPA as well as labor experts at our payroll computing company regarding the collection and distribution of gratuities. Some key changes have already been made regarding banquet contract language as well as NYS Labor Law compliance. We will continue to consult with Parks regarding these issues.”

Current Status: NO LONGER APPLICABLE

Lakeside has amended the language used on its standard banquet contracts. The word “gratuity” is now replaced with “service charge,” which is not distributed to employees and staff but included in the gross sales reported to Parks. The contracts also clearly state that the banquet price does not include any gratuity. Therefore, we consider this recommendation to be no longer applicable.

Previous Finding: “Lakeside Did Not Accurately Report Wait Staff Gratuities to the Internal Revenue Service”

Previous Recommendation #14: Accurately report the wait staff gratuities to the Internal Revenue Service.

Previous Lakeside Response #14: “We are in the process of developing a system to ensure that all wait staff gratuities are being reported accurately to the IRS.”

Current Status: NO LONGER APPLICABLE

As stated earlier, Lakeside has amended the language used on its standard banquet contracts. The word “gratuity” is now replaced with “service charge,” which is not distributed to employees and staff but included in the gross sales reported to Parks. The contracts also clearly

state that the banquet price does not include any gratuity. Therefore, we consider this recommendation to be no longer applicable.

Recommendations for Parks

Previous Recommendation #15: Issue a Notice-to-Cure to Lakeside requiring that it pay \$8,041 in additional license fees and late charges as assessed in this audit report and mandating that Lakeside's management:

- Establish and implement an adequate system of internal controls over the banquet, restaurant, snack bar, and boat rental operations;
- Cease employing "off-the-books" employees and report all employees on its payroll records;
- Distribute all gratuities in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor, and
- Accurately report the wait staff gratuities to the Internal Revenue Service.

Previous Parks Response #15: "Parks has complied with Recommendation 15 and issued a NTC to Lakeside that addresses all of the matters listed in this Recommendation."

Current Status: IMPLEMENTED

Parks issued a Notice-to-Cure requiring Lakeside to pay \$8,041 in additional license fees and late charges as assessed in the previous audit report. Parks also required Lakeside's management to establish and implement an adequate system of internal controls over the banquet, restaurant, snack bar, and boat rental operations, cease employing "off-the-books" employees and report all employees on its payroll records, distribute all gratuities in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor, and accurately report wait staff gratuities to the Internal Revenue Service. Therefore, we consider this recommendation to be implemented.

Previous Recommendation #16: Calculate the total amount of banquet gratuities that were distributed to Lakeside's owners prior to operating year 2009 and assess Lakeside for the additional license fees and late charges owed.

Previous Recommendation #17: Ensure that Lakeside complies with all of the recommendations in this report.

Parks Response to Recommendation Numbers 16 and 17: "Parks will perform a follow-up review with Lakeside in 2010. The review will ensure that Lakeside has complied with the Recommendations in this Report. Parks will also calculate the total amount of

banquet gratuities distributed to Lakeside's owners prior to operating year 2009 and assess Lakeside for the additional fees owned."

Current Status: IMPLEMENTED

During the follow-up audit, it was found that Parks has conducted follow-up reviews to ensure that Lakeside complied with all of the recommendations in the previous report. Lakeside was assessed \$18,901 for the gratuities that were erroneously deducted from gross receipts. Therefore, we consider recommendations #16 and #17 to be implemented.

RECOMMENDATIONS

To address the issues that still exist, we recommend that Lakeside should:

1. Remit the \$59,264 in license fees and late charges;

Parks Response: "Parks has directed Lakeside to immediately remit payment to Parks for all amounts currently outstanding."

2. Enter into written agreements with all operators and vendors who use Lakeside's facilities;

Parks Response: "We have directed Lakeside to adequately document the hiring of independent contractors, such as a DJ, and to remit all payments to independent contractors in the form of a check so that these expenses are transparent and traceable."

3. Amend its New York State sales tax filings to include the banquet gratuities as taxable sales and pay the additional sales tax plus interest and penalties for all the periods (including prior operating years) that banquet gratuities were not fully distributed to the wait staff;

Parks Response: "Parks has directed Lakeside to inform us of how they intend to resolve this outstanding matter within thirty (30) days. If Lakeside is advised by its tax attorney that it does not need to file amended tax returns, we have requested a detailed written explanation as to its justification. Upon receipt of this explanation, Parks will assess it for legality and consistency with industry standards, and require the sales tax filing if appropriate."

4. Maintain the facility in a sanitary condition;

Parks Response: "Based upon current evaluations Parks believes that Lakeside management has devoted a large amount of time and attention to ensuring the facility is maintained in a sanitary condition. Parks considers [the prior report's] Recommendation 8 to be implemented. Moreover, we reminded Lakeside that it is obligated to ensure that the facility is well maintained at all times and is in full compliance with DOHMH's

sanitary requirements for restaurants. We will continue to conduct regular inspections of the facility.”

5. Pay its minimum annual fees and applicable percentage fees on time;

Parks Response: “We have directed Lakeside to immediately remit payment to Parks for all amounts currently outstanding.”

6. Submit annual income and expense statements to Parks within 30 days after the end of each operating year; and

Parks Response: “Although Lakeside has submitted all of its required income and expense statements, these statements were not submitted on a timely basis. Parks has reminded Lakeside of its obligation to comply with its Agreement and submit its annual income and expense statements on time.”

7. Report all current employees on its payroll records and comply with all laws governing unemployment insurance, workers’ compensation, social security, tax withholding, temporary disability insurance, minimum wage, and overtime as well as regularly update the Positouch employee list when employees are hired or terminated.

Parks Response: “Parks has directed Lakeside to regularly reconcile its Positouch employee list with its payroll summary and ensure that all employees are included on payroll records. Parks will monitor Lakeside’s compliance with this directive.”

We recommend that Parks should:

8. Issue a Notice-to-Cure to Lakeside requiring that it pay \$59,264 in license fees and late charges assessed, and

Parks Response: “Parks has directed Lakeside to immediately remit payment to Parks for all amounts currently outstanding.”

9. Ensure that Lakeside complies with all of the recommendations in this report.

Parks Response: Parks has issued a notification to Lakeside requiring it take certain actions based on the report’s recommendations.

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 follow-up audit was May 2011 for detailed testing. To ensure whether or not the prior report's recommendations were implemented, we reviewed the prior Lakeside audit report issued by the Office of the Comptroller, *Audit Report on the Compliance of Lakeside Restaurant Corporation with Its License Agreement*, Audit No. FM09-130A, issued January 29, 2010. In addition, we reviewed the current license agreement between Lakeside and Parks and correspondence between Lakeside and Parks, including the monthly gross receipts report, annual income and expense statements, and other relevant documents on file with Parks.

On June 14, 2011, we conducted an unannounced observation of the facility and obtained the names of the Lakeside employees present during our visit. We also reviewed DOHMH inspection reports on Lakeside.

For banquet operations, we reviewed the 2010 and 2011 banquet logs as well as the contracts that were written and completed in May 2011 and compared them with the banquet calendar for May 2011 to determine whether the contracts were pre-numbered in consecutive order and if there were any missing contracts. We also analyzed the banquet payments made in May 2011 and traced the payments to the Point of Sale System.

To ensure that all guest checks were accounted for, we totaled all the guest checks issued for May 2011 and determined whether all the revenue was posted to the Point of Sale System and accurately reported to Parks.

In addition, we:

- Reviewed payments recorded on Parks' Lakeside ledger and other Parks' correspondence to determine whether the additional license fees and late fees assessed during the prior audit were paid on time;
- Compared the employees listed on Lakeside's payroll summary to the employees listed on the Positouch system and to the names of individuals working at the facility during our visit;
- Reviewed Lakeside's payments made to the City for past and current water use; and
- Reviewed Park's follow-up audit reports that were conducted after the prior audit.

Lakeside Restaurant Corp.
d/b/a: The Lake Club
1150 Clove Road
Staten Island, NY 10301

Response to Follow-Up Audit Report:
FM11-136F

Gentlemen.

Please consider this our final response to Follow-Up Audit Report of August 19th.

Lakeside has complied with, or is in the process of complying with the recommendations set forth by the Comptrollers Office. Lakeside has implemented the recommendations to the best of our abilities. Two specific items that Lakeside takes exception with are; 1) maintaining the facility in a sanitary condition; and 2) employing "off-the-books" employees.

On our most recent DOHMH inspection on July 14, 2011, Lakeside received an "A" rating. We feel that the wording in your report is excessively negative, and based on our "A" rating we have achieved compliance. We operate a clean and sanitary facility, which is in compliance with all State laws and regulations.

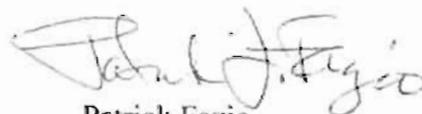
2) With regard to "off-the-books" employees, Lakeside does not have any "off-the-books" employees. We feel that our explanation to the auditors was ignored, and that Lakeside is in compliance.

Lakeside has done everything in its power to satisfy the Comptroller's recommendations.

Please consider this as Lakeside Restaurant Corp.'s final response to the audit recommendations, and please include this response in the final audit report.



Eugene Lucarini
President



Patrick Fazio
Vice-President



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

September 15, 2011

Ms. H. Tina Kin
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**Re: Comptroller's Draft Follow-up Audit Report on the Compliance of Lakeside Restaurant Corporation with Its License Agreement
May 2011, Audit No. FM11-136F, Dated August 31, 2011**

Deputy Comptroller Kim:

This letter addresses the findings and recommendations contained in the New York City Comptroller's ("Comptroller") Follow-Up Draft Audit Report ("the Follow-up Report") on the Compliance of Lakeside Restaurant Corporation ("Lakeside") with its License Agreement ("Agreement"). The Follow-up Report assessed Lakeside's implementation of the recommendations from a prior Comptroller audit report ("Prior Report") of Lakeside, issued on January 29, 2010. Parks is pleased that the Follow-up Report found that Lakeside has implemented stronger internal controls and implemented or partially implemented other recommendations from the Prior Report. However, the Follow-up Report also found, among other things, that Lakeside did not amend prior years' sales tax returns and was not applying one accounting method when preparing its book and reports. As a result, Parks has issued a notification to Lakeside requiring it to take the following actions:

Prior Report Recommendation 1 - Immediately remit the \$8,041 in additional license fees and late charges.

During the audit period of the Prior Report, Lakeside underreported revenue from its banquet, snack bar, boat rental, gift certificates and special events. Additionally, Lakeside improperly deducted \$63,325 in banquet gratuities that were not distributed to wait staff or reported to Parks. In total, the Prior Report found that Lakeside underreported \$87,494 in gross receipts and owed the City \$8,041, inclusive of late charges.

The Follow-up Report found Recommendation 1 to be partially implemented due to late payments made by Lakeside as part of a payment plan to address this outstanding balance as well as other outstanding amounts. Parks has directed Lakeside to immediately remit payment to Parks for all amounts currently outstanding.

Prior Report Recommendation 2 - Take immediate action to strengthen its internal controls, including but not limited to the following:

- Ensuring that all revenue from all operations (i.e. banquet, restaurant, snack bar and boat rental) is accurately recorded in a point-of-sale system that is capable of accounting for all guest checks.
- Using banquet reservation software that can record and track all banquet reservation and payment, and issue sequential banquet contracts and invoices.
- Maintaining complete and accurate banquet records (i.e., banquet calendars, logs, and files).



- Pre-numbering all gift certificates and accounting for the outstanding gift certificates.
- Installing a cash register or computerized point-of-sale system in the snack bar to record all snack bar and boat rental transactions.
- Maintaining for at least six years the required source documents to support the gross receipts reported to the City.

The Follow-up Report found Recommendation 2 to be implemented.

Prior Report Recommendations 3, 4 and 5:

- 3 - Ensure that all transactions, including but not limited to the gross receipts from its restaurant, banquet, snack bar, and boat rental operations, are accurately recorded in the general ledger.
- 4 - Ensure that the proceeds generated from the banquet, snack bar, the sales of gift certificates, and boat rental operations, and all special events are accurately reported to Parks.
- 5 - Include all revenue generated by any other operators using the facility as gross receipts and pay all associated license fees.

The Follow-up Report was not able to determine Lakeside's implementation status for Recommendations 3, 4 and 5. In particular, the Follow-up Report could not reach a determination because the auditors identified two functions that did not have contracts—a taped dinner for a VH1 reality show and Thursday night parties—which they considered to be special events. At the August 30, 2011 exit conference for this Follow-up Report, Lakeside provided the auditors and Parks with the following explanations:

- The VH1 taping was not pre-scheduled. Lakeside was contacted by the producers of the show (who did not disclose the specific show or channel with which they were affiliated) shortly before they arrived—the facility was not closed to the public because of the dinner, no security deposit was received to reserve the date and time, nor was there a specialized menu or price-fixe menu. The sale of food and a site fee for the taping were charged, run through Lakeside's point-of-sale system and reported to Parks.
- The Thursday night parties represented a series of Thursday evenings where Lakeside hired a DJ to attract customers. While the DJ did promote his appearance at the facility, no cover fee was charged to customers. Lakeside generated revenue through the sale of food and drinks.

Given the above circumstances, Parks does not believe that Lakeside inappropriately accounted for VH1's reality show taping. However, with regard to the party series, we have directed Lakeside to adequately document the hiring of independent contractors, such as a DJ, and to remit all payments to independent contractors in the form of a check so that these expenses are transparent and traceable.

Prior Report Recommendation 6 - Amend its New York State sales tax filings to include the banquet gratuities as taxable sales and pay the additional sales tax plus interest and penalties for all the periods (including prior operating years) that banquet gratuities were not fully distributed to the wait staff.

The Follow-up Report states that Lakeside is "...currently seeking an outside opinion with a tax attorney with regard to filing these prior returns."

Parks has directed Lakeside inform us of how they intend to resolve this outstanding matter within thirty (30) days. If Lakeside is advised by its tax attorney that it does not need to file amended tax returns, we have requested a detailed written explanation as to its justification. Upon receipt of this explanation, Parks will assess it for legality and consistency with industry standards, and require the sales tax filing if appropriate.

Prior Report Recommendation 7 - Consistently apply one accounting method in preparing its books and records.

The Prior Report noted that Lakeside simultaneously used both cash and accrual accounting, a practice that could cause material misstatements of its finances. Parks has discussed this matter with Lakeside's accountant, and has requested a written explanation of the "modified cash" accounting method used by Lakeside. It is our understanding that Lakeside's accounting method allows for inclusion of all party deposits and gift card sales in gross receipts at the time of sale (cash basis) while also including funds that have been charged but not collected (accrual basis) due to instances of a customers' bounced checks or disputed credit card charges—this meets the Agreement's requirements for monthly reporting of gross receipts. Moreover, we will work with Lakeside to resolve the potential for misstatements in other financial reports submitted to Parks as well as reports that Lakeside's management utilizes to make operating decisions.

Prior Report Recommendation 8 - Maintain the facility in a sanitary condition.

The Follow-up Report found that Recommendation 8 was not implemented. The Follow-up Report cited a DOHMH inspection on June 29, 2011 that the facility failed. However, in a subsequent DOHMH inspections Lakeside earned a DOHMH grade of A. Based upon current evaluations Parks believes that Lakeside management has devoted a large amount of time and attention to ensuring the facility is maintained in a sanitary condition. Parks considers Recommendation 8 to be implemented. Moreover, we reminded Lakeside that it is obligated to ensure that the facility is well maintained at all times and is in full compliance with DOHMH's sanitary requirements for restaurants. We will continue to conduct regular inspections of the facility.

Recommendation 9 - Immediately pay the \$1,468 in outstanding water and sewer charges related to the licensed premises.

The Follow-up Report found that Recommendation 9 was implemented.

Prior Report Recommendation 10 - Pay its minimum annual fees and any applicable percentage fees on time.

The Follow-up Report found that Recommendation 10 was not implemented. As stated in our comments to Recommendation 1, we have directed Lakeside to immediately remit payment to Parks for all amounts currently outstanding.

Prior Report Recommendation 11 - Submit annual income and expense statements to Parks within 30 days after the end of each operating year.

The Follow-up Report found that Recommendation 11 was not implemented. Although Lakeside has submitted all of its required income and expense statements, these statements were not submitted on a timely basis. Parks has reminded Lakeside of its obligation to comply with its Agreement and submit its annual income and expense statements on time.

Prior Report Recommendation 12 - Cease employing "off-the-books" employees, report all employees on its payroll records, and comply with all laws governing unemployment insurance, workers' compensation, social security, tax withholding, temporary disability insurance, minimum wage and overtime.

The Prior Report disclosed that Lakeside employed at least 10 "off-the-books" employees to work at the Lake Club during the audit. The Follow-up Report found that Recommendation 12 was not implemented. In particular, the Follow-up Report questioned three Lakeside employees whose names "...appeared not to be on payroll records or in the Positouch system." In this regard, Parks has directed Lakeside to regularly reconcile its Positouch employee list with its payroll summary and ensure that all employees are included on payroll records. Parks will monitor Lakeside's compliance with this directive.

Prior Report Recommendation 13 - Distribute all gratuities to its wait staff in accordance with Labor Law Section 196-d, Division of Labor Standards, New York state Department of Labor.

Prior Report Recommendation 14 - Accurately report the wait staff gratuities to the Internal Revenue Service.

The Follow-up Report found that Recommendations 13 and 14 were no longer applicable. Indeed, Lakeside has amended the language in its standard banquet contracts by replacing references to "gratuity" charges, which require Lakeside to remit the full amount of any gratuity to employees, with "service charges," which are included in gross receipts.

The following recommendations were directed to Parks:

Prior Report Recommendation 15 – Issue a Notice-to-Cure to Lakeside requiring that it pay \$8,041 in additional license fees and late charges as assessed in this audit report and mandating that Lakeside's management:

- Establish and implements an adequate system of internal controls over the banquet, restaurant, snack bar, and boat rental operations;
- Cease employing "off-the-books" employees and report all employees on its payroll records;
- Distribute all gratuities in accordance with Labor Law Section 196-d, Division of Labor Standards, New York State Department of Labor, and
- Accurately report the wait staff gratuities to the Internal Revenue Service.

Prior Report Recommendation 16 – Calculate the total amount of banquet gratuities that were distributed to Lakeside's owners prior to operating year 2009 and assess Lakeside for the additional license fees and late charges owed.

Prior Report Recommendation 17 – Ensure that Lakeside complies with all of the recommendation in this report.

The Follow-up Report found that Recommendations 15, 16 and 17 were implemented.

Finally, we wish to thank the Comptroller's Office and its audit staff for its work in preparing this Follow-up Report.

Sincerely,



Elizabeth W. Smith

cc: Vincent Liquori, Lawrence Welgryn, George Davis, Robert Garafola, Melissa Auerbach, Jun Lee