



Legislation Details (With Text)

File #:	Res 2309-2009	Version:	*	Name:	LU 1282 - Zoning Resolution, Citywide (20105211GFY)
Type:	Resolution	Status:		Adopted:	Adopted
		In control:		Committee on Land Use:	Committee on Land Use
On agenda:	12/21/2009				
Enactment date:		Enactment #:			
Title:	Authorizing Resolution for the granting of franchises for the installation of public pay telephones and associated equipment on, over, and under the inalienable property of the City (L.U. No. 1282).				
Sponsors:					
Indexes:					
Attachments:	1. Committee Report, 2. Hearing Transcript - Stated Meeting 12/21/09				

Date	Ver.	Action By	Action	Result
12/17/2009	*	Committee on Land Use	Approved by Committee	
12/21/2009	*	City Council	Approved, by Council	Pass

THE COUNCIL OF THE CITY OF NEW YORK RESOLUTION NO. 2309

CITYWIDE

20105211 GFY

Authorizing Resolution for the granting of franchises for the installation of public pay telephones and associated equipment on, over, and under the inalienable property of the City (L.U. No. 1282).

By Council Members Katz and Avella:

WHEREAS, by Executive Order 25, dated August 23, 1995, the Mayor has designated the Department of Information Technology and Telecommunications (the “Department”) as the responsible agency for the granting of telecommunications franchises; and

WHEREAS, pursuant to Section 363 of the Charter (the “Charter”) of the City of New York (the “City”), the Commissioner of the Department of Information Technology and Telecommunications (the “Commissioner”) has made the initial determination of the need for franchises for public pay telephone service in the City of New York; and

WHEREAS, pursuant to Section 1072 of the Charter, the Department has proposed an authorizing resolution for franchises for public pay phones in the City of New York;

The Council hereby resolves that:

A. The Council authorizes the Department, or any successor thereto, to grant non-exclusive franchises for

the installation of public pay telephones and associated equipment on, over and under the inalienable property of the City.

B. “Public pay telephone” shall be defined as set forth Section 23-401(f) of the Administrative Code of the City of New York (the “Code”) or any successor provision thereto.

C. For purposes of this resolution, “inalienable property of the City” shall mean property designated as inalienable in Section 383 of the Charter.

D. For purposes of this resolution, “Street” shall be defined by subdivision 13 of Section 1-112 of the Code, or any successor provision thereto.

E. The public service to be provided pursuant to this resolution shall be public pay telephone service.

F. The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council (the “Expiration Date”). No franchises shall be granted pursuant to this resolution by the Department, nor approved by the Franchise and Concession Review Committee or the Mayor, after the Expiration Date.

G. Prior to the grant of such a franchise, a Request For Proposals (“RFP”) or other solicitation shall be issued by the Department or any successor thereto. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with the New York State Environmental Quality Review Act (“SEQRA”), the regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq., the City Environmental Quality Review process (“CEQR”) (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York), and Section 197-c of the Charter.

H. Any such RFP or other solicitation shall contain siting criteria (the “criteria”) which shall be utilized by the Department in approving or designating locations for the placement of public pay telephones and associated equipment on, over and under the inalienable property of the City. Said criteria shall address, but shall not be limited to, the following factors to the extent permitted by law:

- (1) proximity to water, sewer, electrical or other pipes, conduits or other structure(s);
- (2) visual impacts, if any, on vehicular traffic;

(3) proximity to other existing structures including but not limited to traffic lights, traffic and other signs, newsstands, fire hydrants, underground vaults, bus stop shelters, public pay toilets, enclosed and unenclosed sidewalk cafes, building entrances and exits, and curb cuts; (provided that in no event shall a pedestal or other structure which holds one or more public pay telephones be located less than fifty (50) feet from any other such pedestal or structure on any one “block”(the term “block” being defined as that portion of the sidewalk on one side of a street which is between the lot line and the curb and which is between two points,

each of which is ten (10) feet from the corner of said street and its intersecting street, in conformity with the City's sidewalk corner clearance policy generally);

- (4) adequate sidewalk clearance to assure reasonable pedestrian flow;
- (5) whether the proposed location is adjacent to a curb or adjacent to a building or other structure; and
- (6) impacts, if any, on landmarks or historic districts so designated by the Landmarks Preservation Commission ("LPC") or any successor thereto.

In no event however, shall the Department include any criteria in any such RFP or other solicitation which the City would be preempted, pursuant to federal law, from thus including; and in no event shall the Department apply any criteria to be included in any such RFP or other solicitation in a manner which the City would be preempted, pursuant to federal law, from thus applying.

I. The criteria to be used by the Department to evaluate responses to any such RFP or other solicitation shall, include, but not be limited to, the following, if and to the extent permitted by law:

- (1) the financial, legal, technical and managerial experience and capabilities of the applicant(s);
- (2) the adequacy and nature of the proposed compensation to be paid to the City; and
- (3) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise.

In no event however, shall the Department include any criteria in any such RFP or other solicitation which the City would be preempted, pursuant to federal law, from thus including; and in no event shall the Department apply any criteria to be included in any such RFP or other solicitation in a manner which the City would be preempted, pursuant to federal law, from thus applying.

J. Any franchise granted pursuant to this resolution shall be by written agreement and shall include, but not be limited to, terms and conditions consistent with the following to the extent permitted by law (provided however, that no term or condition, whether or not listed hereinafter, shall be included in a written franchise agreement if the City is preempted, by federal law, from including such a term or condition in such agreement, and provided that no term or condition, whether or not listed hereinafter, shall be included in a written agreement in a form or manner which the City is preempted by federal law from using with respect to such agreement):

- (1) The term of such franchise shall not exceed fifteen (15) years.
- (2) The compensation paid to the City shall be adequate and shall not be considered in any manner to be in the nature of a tax, but such payments shall be made in addition to any and all taxes of whatsoever kind and description which are now or may at any time hereafter be required to be paid pursuant to any local law of the City, law of the State of New York, or law of the federal government.
- (3) Such franchise may be terminated or canceled by the Department in the event of a franchisee's failure to comply with the terms and conditions of this agreement.

(4) Such franchise shall include provisions for the franchisee to provide security to the City securing the performance of the franchisee's duties and obligations.

(5) The City shall have the right to inspect the facilities of the franchisee that are located on the City's inalienable property and to order the relocation or removal of such facilities at the direction of the Department.

(6) There shall be requirements for adequate insurance and indemnification to protect the interests of the public and the City.

(7) The franchisee shall be required to maintain complete and accurate records and books of account that shall be made available for audit by the City for the purpose of auditing performance of the franchisee's duties and obligations under such franchise.

(8) There may be provisions to allow the franchisee to sell or lease advertising space on its public pay telephones, but in no event shall such advertising be permitted in zoning districts other than commercial and/or manufacturing zoning districts (defined as zoning districts where commercial and/or manufacturing uses are permitted as of right), and provided that in the event that a franchise authorizes such advertising the franchise shall require that prior to the installation of any such advertising, the franchisee shall (i) submit to the Commissioner a list of each location where advertising is sought to be sold or leased; (ii) indicate the zoning designation for each such location; and (iii) certify, in writing, that each location complies with the zoning district requirements of this paragraph (8).

(9) In the event that a franchisee is authorized to, and does, sell or lease advertising space on its public pay telephones, then: (i) advertising for tobacco products shall be prohibited; (ii) there shall be a requirement for the provision of free advertising space for public service announcements, (iii) said space for public service announcements shall represent at least two percent (2%) of total advertising space; (iv) the Department shall be responsible for informing all agencies of City government of such free advertising space for public service announcements; and (v) in order to ensure wide and fair distribution of such free advertising space, the Department shall maintain and implement a plan for coordinating requests by said agencies for use of such space.

(10) There shall be provisions requiring that all work involved in the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the equipment and facilities of the franchisee on, over and under the inalienable property of the City shall be performed in a safe, thorough and reliable manner using materials of good and durable quality and that such work will be done in accordance with any rules promulgated under Section 23-403 of the Code (or any successor provision thereto) in relation thereto; additionally, the installation of public pay telephones on distinctive sidewalks shall be prohibited.

(11) The franchisee shall comply with all applicable sections of the buildings and electrical codes of the City of New York and, where the nature of any work to be done in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of such public pay telephones and associated equipment on, over and under the inalienable property of the City requires that such work be done by an electrician, the franchisees shall employ and utilize only licensed electricians.

(12) There shall be provisions containing the agreements required pursuant to paragraph 6 of subdivision (h) of Section 363 of the Charter relating to collective bargaining and other matters.

(13) There shall be provisions requiring the franchisee to comply with all applicable City, state and federal laws, regulations and policies.

(14) There shall be provisions to ensure the adequate oversight by the City of the franchisee's performance of its obligations under such franchise.

(15) There shall be provisions to restrict the assignment or other transfer of such franchise without the prior written consent of the City and provisions to restrict changes in control of the franchisee without the prior written consent of the City.

(16) There shall be provisions to require the franchisee to comply with the applicable provisions of the Americans with Disabilities Act and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities, and at least twenty-five (25) percent of each franchisee's telephones shall be equipped with volume control equipment to enable hearing impaired persons to access and utilize telecommunications services (such volume control-equipped telephones to be distributed reasonably evenly among the telephones installed by the franchisee).

(17) There shall be remedies to protect the City's interests in the event of the franchisee's failure to comply with the terms and conditions of the agreement.

(18) There shall be provisions to protect the City's interest in the event of the subsequent invalidity of any portion of the agreement and in the event of any change in applicable law.

(19) The franchisee shall have been subject to, prior to commencement of the term of such franchise, review pursuant to the City's Vendor Information Exchange System ("VENDEX") or any successor system.

(20) The franchisee shall obtain all necessary licenses and permits from and comply with all rules and regulations of the New York State Public Service Commission, the Federal Communications Commission and any other governmental body having jurisdiction over the franchisee.

(21) The franchisee shall obtain the permit(s) required by Section 23-402 and defined by Section 23-401(d) of the Code, or any successor provision thereto, and the fees paid to obtain said permits shall not be considered in any manner to be compensation or in the nature of a tax.

(22) The franchisee shall establish and maintain prompt and efficient complaint handling procedures.

(23) There shall be provisions for inspecting and cleaning the public pay telephones and associated equipment and for the prompt removal of graffiti, which inspection, cleaning and graffiti removal shall occur a minimum of two times per month.

(24) The franchisee shall establish and maintain a program, accessible by the City, to monitor the operability of its equipment at all times at all locations.

(25) In the event of an outage, the source of which is under the direct control of the franchisee(s), the franchisee(s) shall be required to restore service within twenty-four (24) hours at all locations so affected, and if the source of the outage is not under the direct control of the franchisee(s) then the franchisee(s) shall notify the responsible party and the Commissioner within twenty-four (24) hours.

(26) The franchisee shall ensure that not more than ten percent (10%) of its public pay telephones are out of service at any given time.

(27) There shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas subject to such franchise.

(28) There shall be provisions requiring the franchisee to protect the property of the City and the delivery of other public services from damage or interruption of operation resulting from the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the equipment or facilities related to the franchise.

(29) There shall be provisions designed to minimize the extent to which the public use of the streets of the City is disrupted in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the equipment and facilities related to such franchise.

(30) There shall be provisions requiring that emergency calling to the 911 emergency number, to the certified operator service provider and to any other appropriately authorized emergency access number be in accordance with the rules and regulations promulgated by the New York State Public Service Commission.

(31) There shall be a provision, consistent with such regulations as have been or may be promulgated by the New York State Public Service Commission, requiring that each public pay telephone clearly and legibly (i) identify the owner and/or operator of such public pay telephone, (ii) indicate that the owner and/or operator has been franchised by the City of New York and (iii) provide such telephone numbers as may be required by the Department where complaints regarding the telephone may be directed.

(32) There shall be provisions incorporating the MacBride Principles.

K. The Department shall maintain a process for consultation with Council Members and Community Boards with respect to the siting of public pay telephones on the Streets and complaints regarding same including requests for removal and relocation. This process shall include, but not be limited to:

(1) allowing Council Members and Community Boards to submit to the Department a prioritized list of areas requiring additional service, reduced service, or a change in service;

(2) requiring the Department to make available for public review proposed locations for new public pay telephones on the Streets; and

(3) requiring the Commissioner to respond in writing to complaints and requests received from Council Members and Community Boards regarding installation, change of service, removal or relocation of public pay telephones on the Streets pursuant to the Commissioner's authority under the Code.

L. The Department shall file the following documents with the Council:

(1) within fifteen (15) days of filing or receipt, a copy of all documents, including but not limited to forms, applications, reports and correspondence, regarding SEQRA, CEQR and ULURP;

(2) within fifteen (15) days of issuance, a copy of each RFP or other solicitation issued pursuant to this

resolution;

(3) within fifteen (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution and any subsequent modification thereof; and

(4) on or before July 1 of each year, for the preceding calendar year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution.

M. This Resolution repeals and replaces in their entirety Resolution No. 1043 of 2003 and Resolution No. 502 of 2004.

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on December 21, 2009, on file in this office.

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City Clerk, Clerk of The Council