

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

SUBCOMMITTEE ON ZONING AND FRANCHISES

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December 15, 2009

Start: 10:03 am

Recess: 11:00 am

HELD AT: Council Chambers
City Hall

B E F O R E:
TONY AVELLA
Chairperson

COUNCIL MEMBERS:

Council Member Simcha Felder
Council Member Erin N. Gioia
Council Member Robert Jackson
Council Member G. Oliver Koppell
Council Member Joel Rivera
Council Member Larry B. Seabrook
Council Member Helen Sears
Council Member Albert Vann

A P P E A R A N C E S [CONTINUED]

Stanley Shore
Assistant Commissioner
Franchise Administration
Department of Information Technology and
Telecommunications

Bruce Regal
Senior Counsel
New York City Law Department

Michael Kelly
Representative
5693 Restaurant Corporation a/k/a Greentree

Grace Han
Planner
Department of City Planning

Keith O'Conner
Planner
Department of City Planning

Steven Wygoda
Representative
Trel d/b/a Rosie O'Grady's

Tony Avella
Closing Statement
Chairperson
Subcommittee on Zoning and Franchises

Tony Avella Thank you's:
Committee Staff
Gail Benjamin
Christian Hylton
Carol Shine
Amy Levitan
Danielle Decerbo
Alonzo Carr
Peter Janosik

2 [START 1001.MP3]

3 MR. NICHOLAS ECONOMOU: Yes.

4 Tuesday December 15th, 2009, Subcommittee on Zoning
5 and Franchises recorded by Nick Economou and Jerry
6 Staffieri.

7 [END 1001.MP3]

8 [START 1002.MP3]

9 CHAIRPERSON AVELLA: Good morning
10 everyone. I'd like to call this meeting of the
11 Zoning and Franchises Subcommittee to order.
12 Joining me this morning are Council Members Simcha
13 Felder, Helen Sears, Joel Rivera, Larry Seabrook
14 and Al Vann was just with us. He had to leave.
15 He's chairing a meeting of another Committee but
16 he will return. We have a number of items on the
17 agenda which we'll go through.

18 The first one is Land User Number
19 1282 an authorizing resolution for the granting of
20 franchises for the installation of public pay
21 telephones. I'll ask the DOIT to testify.

22 [Pause]

23 MR. STANLEY SHORE: Thank you.

24 Good morning Chairman Avella and Subcommittee
25 members. My name is Stanley Shore, I'm the

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2 Assistant Commissioner for Franchise
3 Administration at the Department of Information
4 Technology and Telecommunications or as we call it
5 DOIT. With me today is Bruce Regal, Senior
6 Counsel at the New York City Law Department who
7 represents the City on many telecommunications
8 matters including matters related to sidewalk pay
9 telephones.

10 I am testifying today in connection
11 with the proposed authorizing resolution regarding
12 franchising of sidewalk public pay telephone
13 providers as contemplated in Local Law 68 of 1995.
14 Before detailing the resolution at hand I would
15 like to provide some brief contextual background.

16 The first City law managing
17 payphone installations on City sidewalks was
18 adopted as Local Law 78 of 1959. That Local Law
19 required any entity that wished to install a
20 payphone on City sidewalks to obtain a license
21 from the City. However after the breakup for the
22 old monopoly Bell System in 1986 and prior to the
23 adoption of Local Law 68 of 1995 the City saw a
24 proliferation of illegally installed, unlicensed
25 payphones springing up on City sidewalks.

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2 That development led to the
3 adoption of the above mentioned Local Law 68 which
4 replaced the old licensing system with a new
5 approach. This new approach combines a franchise
6 process for companies seeking to install and
7 operate payphones on City sidewalks with a
8 permitting process administered by DOIT for the
9 review of individual permit applications for
10 specific sidewalk payphone installations by those
11 holding the required franchises. Local Law 68
12 also included an amnesty and grandfathering
13 process for those who had installed unlicensed
14 payphones on the sidewalks before the new law was
15 adopted.

16 As part of the implementation of
17 Local Law 68 the Council over the years as adopted
18 a series of sidewalk payphone franchise
19 authorizing resolutions. Acting under the
20 authority granted by such resolutions the City
21 issued a number of public pay telephone franchises
22 although it has not issued any new franchises of
23 this type since 1999. As you may know the recent
24 such authorizing resolution 1043 adopted on
25 October 15th, 2003 and subsequently amended by

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2 Resolution 502 on July 21st, 2004, recently
3 expired.

4 Although usage of public pay
5 telephones located on sidewalks has declined with
6 the growth of mobile telecommunications, not
7 everyone has access to mobile telephone service
8 and those who have access to mobile telephone
9 service do not have such access all the time.
10 There thus remains a role for public pay
11 telephones on City sidewalks.

12 Adoption of the proposed resolution
13 by the City Council will authorize DOIT to award,
14 subject to approval of the Franchise Concession
15 and Review Committee, franchises for public pay
16 telephone service from phones located on City
17 sidewalks in accordance with the provisions of the
18 City Charter. Thank you for your time this
19 morning. Mr. Regal and I would now be happy to
20 take any questions you may have.

21 CHAIRPERSON AVELLA: During the
22 briefing that I received from you, I had asked for
23 an updated list of the current franchisees. Do
24 you have that?

25 MR. SHORE: Yes.

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2 CHAIRPERSON AVELLA: Okay. Well
3 the Sergeant at Arms will take it, thanks.
4 Council Members have some questions. First
5 Council Member Rivera and then Council Member
6 Sears.

7 COUNCIL MEMBER RIVERA: Thank you
8 very much. You just, I see, touched on the last
9 part. I thought the payphones were going the way
10 of the museums as opposed to more street corners.
11 So is there an increase in payphones on street
12 corners or--

13 MR. SHORE: [Interposing] No
14 there's actually been a decrease but we still have
15 a considerable number, about 16,800 out there now
16 from a high of 33,000 but it's much higher than
17 when it was only New York Telephone. New York
18 Telephone had about 9,500. So there's still
19 considerable number out there. The companies are--
20 -we don't force them to maintain them so they are
21 keeping as many as they think are being used so it
22 does show a significant amount of usage. So.

23 COUNCIL MEMBER RIVERA: Okay. And
24 is there a public safety benefit in terms of a
25 blackout? Do they, like landlines in homes, stay

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2 functional or are they like cell phones that they
3 don't exist--I mean they don't function during
4 moments like the previous blackout that the City
5 had a few years back. Do they function during
6 blackout times or?

7 MR. SHORE: Most of the existing
8 payphones are copper technology which does
9 function when there is a blackout 'cause the
10 electricity is run on the phone line that's
11 carrying it. Yeah, its own electricity.

12 COUNCIL MEMBER RIVERA: So there's
13 a benefit to making sure there's still a supply of
14 payphones on street corners throughout the City.

15 MR. SHORE: Yes.

16 COUNCIL MEMBER RIVERA: Okay.
17 Thank you.

18 CHAIRPERSON AVELLA: Council Member
19 Sears.

20 COUNCIL MEMBER SEARS: Thank you.
21 Good morning. My question was, are there any
22 rules for maintaining these telephones? And
23 you've said that you don't force the companies to
24 maintain them.

25 MR. SHORE: No. We don't force

2 them to not remove them. We do force them to
3 maintain them. We--

4 COUNCIL MEMBER SEARS:

5 [Interposing] Okay because one of the things I
6 find--and I agree that we do need these
7 telephones, certainly in my District, somehow they
8 think that Jackson Heights is a haven for all of
9 them, and one of the problems is they're not
10 maintained. They're unhealthy. They're filthy.
11 They don't come and clean them. And a good many
12 times they're broken, if you put the coin in which
13 has come into my office, they never get it back.
14 So there's a major problem with those that are
15 existing and I don't quite know what is a
16 monitoring program to do that. Because they are
17 important. And the fact is though that some of
18 them are in pretty bad shape, non-functional.
19 They don't know that and they don't get their
20 money back.

21 MR. SHORE: Okay. Well first off
22 we do have inspectors that go out and they issue
23 violations. We have requirements in the contract
24 that they clean the phones at least twice a month
25 and that they maintain the operability of the

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phones so that they shouldn't be out more than 24 hours. So therefore if there's--if you or any of your constituents have any specific locations, they can either avail themselves of 311 which comes right to us or you can send the complaints directly to me and we'll have someone go look at them.

COUNCIL MEMBER SEARS: Do you have a list according to Councilmatic District of exactly where the locations are for these independent phones?

MR. SHORE: We can create a list for you if that's what you'd like--

COUNCIL MEMBER SEARS:
[Interposing] Could you do that?

MR. SHORE: Sure.

COUNCIL MEMBER SEARS: For the 25th, that would be very helpful because then I think it would help to see that they are maintained and that they're not removed because they are important.

MR. SHORE: Okay.

COUNCIL MEMBER SEARS: Thank you.

MR. SHORE: You're welcome.

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COUNCIL MEMBER SEARS: Thank you
Mr. Chair.

CHAIRPERSON AVELLA: I think it
might be appropriate; Council Member Seabrook
would also like it, what's your District number?

COUNCIL MEMBER SEABROOK: 12.

CHAIRPERSON AVELLA: 12. Council
Member Seabrook would also like a list. Council
Member Felder.

COUNCIL MEMBER FELDER: Thank you
Mr. Chairman and you had mentioned, I think,
earlier that this is your last hearing, is that
correct, Chair Avella?

COUNCIL MEMBER SEARS: Yes.

COUNCIL MEMBER FELDER: So I just
wanted to say that it was a pleasure being in, you
know, in your Committee for well it's not eight
years 'cause I chaired Landmarks for four. But it
was much more of a pleasure sitting on your
Committee than chairing Landmarks.

[Laughter]

COUNCIL MEMBER FELDER: Was I
allowed to say that Gale? So it's an honor and a
pleasure and I look forward to working with you in

2 whatever capacity you decide to undertake in the
3 future. And having said that, I would ask that--

4 [Off mic]

5 COUNCIL MEMBER FELDER: --no I
6 would ask the Chair, perhaps if it's appropriate
7 to ask from the witnesses, they said that there
8 are inspections done every two weeks. I don't--is
9 that of every phone? Of every phone?

10 MR. SHORE: Let me clarify. The
11 contract requires the companies themselves to
12 clean their phones at least twice a month. Our
13 inspectors do not go out to every phone every two
14 weeks. We go out around the City as we have
15 complaints, as we have specific issues that we
16 have to look at, so we spread ourselves around.

17 COUNCIL MEMBER FELDER: Do you do
18 any random tests without complaints?

19 MR. SHORE: Absolutely.

20 COUNCIL MEMBER FELDER: Do you have
21 records of those tests?

22 MR. SHORE: We have inspections,
23 yes.

24 COUNCIL MEMBER FELDER: Yeah so
25 can--if you can forward--I would ask the Chair to

2 request, because it's our request but I want it to
3 be with the permission of the Chair to make sure,
4 in other words, it's understood when there are
5 complaints, obviously for you to send out.

6 The question that Council Member
7 Sears and Chair just raised is when there are no
8 complaints but the phones are filthy, are they
9 being inspected randomly so that those who have
10 the franchise know that they may be violative.
11 And just to see how that goes about if, with
12 permission of the Chair, I would request that you
13 submit for 2008, 2007, whichever year you have,
14 you know, more easily what the, you know, what the
15 type of inspections went on randomly.

16 MR. SHORE: So you, I mean what we
17 can do is just give you a list of the phones that
18 were inspected during--

19 COUNCIL MEMBER FELDER:
20 [Interposing] Yeah on what dates.

21 MR. SHORE: Okay.

22 COUNCIL MEMBER FELDER: Right. Now
23 the--

24 CHAIRPERSON AVELLA: [Interposing]
25 By Council District.

2 MR. SHORE: By Council District?

3 COUNCIL MEMBER FELDER: Yeah. I'm
4 very curious. The other issue is the reverse--
5 it's sort of the opposite issue is that where you
6 have a franchisee that is responsible and is
7 really doing what they're supposed to do, there
8 are probably locations that are impossible to keep
9 the way they should be kept. If there's a corner
10 somewhere where the phone keep on getting ripped
11 out, whatever the reason, they are bound by the
12 franchise agreement to keep on replacing them and
13 are violated if they're not.

14 Do you have anything in place that
15 would solve, would in essence address this type of
16 issue where a franchisee comes to you and says
17 you've given me violations for 49th Street and 18th
18 Avenue. They've ripped the phone out six times in
19 the last month. I've replace it over and over
20 again. I'm not replacing it. You can't force me
21 to replace it. Do you have anything to address
22 those situations?

23 MR. SHORE: Well quite frankly we
24 can't force them to replace it. They can
25 surrender that location and go to some other

2 location. And this is, you know, this is a market
3 that's out there that there has to be, I mean they
4 can also work with the police and see what's--

5 COUNCIL MEMBER FELDER:

6 [Interposing] No what I'm asking, I think, maybe
7 I'm misunderstanding you. Are they obligated,
8 once they give you, let's say the franchise is X
9 number of phones. And they pick a particular
10 location. Right? As one of those locations--

11 MR. SHORE: [Interposing] Yes.

12 COUNCIL MEMBER FELDER: And are
13 they obligated to maintain that location despite
14 the scenario I just gave you?

15 MR. SHORE: What they're obligated
16 to do is as long as they keep a phone there to
17 keep it working but they can choose to take out
18 the phone and notify us at any time and that--and
19 surrender their permit at that point.

20 COUNCIL MEMBER FELDER: Well you--
21 but--

22 MR. SHORE: [Interposing] It's just
23 a permit for that location, they can apply for
24 other locations.

25 COUNCIL MEMBER FELDER: I see. I

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other words at any time they can say to you, we can't handle this location. We--

[Crosstalk]

COUNCIL MEMBER FELDER: --want out on this location and they wouldn't be in violation of their franchise agreement.

MR. SHORE: Correct.

COUNCIL MEMBER FELDER: Thank you.

CHAIRPERSON AVELLA: Council Member Seabrook. And I see we've also been joined by Council Member Jackson.

[Pause]

COUNCIL MEMBER SEABROOK: Oh. Of all the phones that's there in the public, is there a requirement to have the listing of the owner, franchisee's name, phone number that's on the phone, is that there now?

MR. SHORE: Yes.

COUNCIL MEMBER SEABROOK: And that's a requirement?

MR. SHORE: That's a requirement.

COUNCIL MEMBER SEABROOK: Oh okay. All right. Thank you very much.

CHAIRPERSON AVELLA: On every

2 phone.

3 COUNCIL MEMBER SEABROOK: On every
4 phone.

5 MR. SHORE: On every phone.

6 COUNCIL MEMBER SEABROOK: Okay.
7 Yeah.

8 [Pause]

9 CHAIRPERSON AVELLA: How does it--
10 you know, obviously we're getting into some very
11 good questions here about how this whole franchise
12 operates. A prospective franchisee comes to DOIT,
13 says they want to put up X number of phones. And
14 then they have to get a permit for each location?

15 MR. SHORE: Yes.

16 CHAIRPERSON AVELLA: And approval
17 and you send it out to the Community Board and the
18 Council Members for review. So they could say,
19 let's say, X Company comes to you and says I want
20 to put up 40 payphones throughout the entire City.
21 The entire City is open to them?

22 MR. SHORE: Yes.

23 CHAIRPERSON AVELLA: So there's no-
24 -you don't limit the franchises to specific areas
25 of the City. It's up to their choosing. But they

2 have to get a permit for each location.

3 MR. SHORE: Yes.

4 CHAIRPERSON AVELLA: Okay. Sure,
5 Council Member Felder. No I thought--is that it?

6 COUNCIL MEMBER FELDER: No then
7 I'm--

8 CHAIRPERSON AVELLA: Council Member
9 Jackson.

10 COUNCIL MEMBER JACKSON: Thank you
11 Mr. Chair. Regarding the citywide franchises, I'm
12 sorry if I--I was late, what is the City's, how
13 much does this contract going to reap for the City
14 of New York over the course of the lifetime of the
15 contract?

16 MR. SHORE: Okay. These contracts,
17 there's--right now there are 25 franchisees and in
18 the last Fiscal Year generated \$17 million. It
19 really, the money amount changes depending on the
20 usage, depending on the advertising market. This
21 year may come in significantly lower because of
22 the recessions, people aren't advertising, you
23 know. The phone usage has been going down over
24 the years. It makes up a much smaller percentage
25 of the total as time goes on but advertising

2 remains a significant revenue source.

3 COUNCIL MEMBER JACKSON: Um-hum.

4 So is there a minimum amount of money that the
5 City is going to see out of this or is it totally
6 based on, for example, usage, advertising, so
7 forth and so on?

8 MR. SHORE: There are different
9 components to the payments. The only payment that
10 has a minimum is for the phones that are up
11 against a building. They pay us somewhere around
12 \$.60 a day for those. And that's a flat rate but
13 everything else is on a percentage.

14 COUNCIL MEMBER JACKSON: Now I had
15 one situation and this is a question that I have.
16 There, on 183rd Street and Fort Washington Avenue,
17 this was several years ago, it's not there
18 anymore, there's a bus stop going south. And they
19 put a phone, a public phone, right, let's say 15
20 feet from the actual crosswalk or 10 feet going
21 south at the bus stop.

22 And to me that was a ridiculous
23 location because people pull over in their cars
24 and they're pulling over in the bus stop to make a
25 phone call. Why do we allow something like that

2 to happen?

3 MR. SHORE: That's actually against
4 the rules.

5 COUNCIL MEMBER JACKSON: Okay.

6 MR. SHORE: And so--

7 COUNCIL MEMBER JACKSON:

8 [Interposing] I mean it's not there anymore but it
9 was there for a while.

10 MR. SHORE: Well then I hope it was
11 because we found it--

12 [Laughing]

13 MR. SHORE: It shouldn't have been
14 there. It should never--

15 COUNCIL MEMBER JACKSON:

16 [Interposing] Because I was getting ready to just
17 knock it down automatically---

18 MR. SHORE: [Interposing] Right.

19 COUNCIL MEMBER JACKSON: --you
20 know, run it over with my car.

21 MR. SHORE: And yeah we have a lot
22 of--we have a lot of rules about where they should
23 be and if there's any, any location that you see
24 that's a problem, just let us know.

25 COUNCIL MEMBER JACKSON: Okay. All

2 right. Thank you Mr. Chair.

3 CHAIRPERSON AVELLA: Council Member
4 Felder.

5 COUNCIL MEMBER FELDER: Thank you
6 again. In terms of the future, does the
7 Department have a mandate to, for the future
8 locations, to switch them from the walls to public
9 spaces? I've been getting, you know, you usually
10 get notices of these things. And more recently
11 the locations are being pushed to the side for I
12 believe for advertising revenue. And I'm
13 wondering if there's an overall plan in general as
14 to moving the payphones closer to the street,
15 both, you know, I guess to do more business as
16 well as to help the City with its advertising
17 revenue.

18 MR. SHORE: Sure.

19 MR. BRUCE REGAL: DOIT reviews each
20 particular permit application--

21 CHAIRPERSON AVELLA: [Interposing]
22 You have to introduce yourself.

23 MR. REGAL: Sorry. Bruce Regal
24 from the City Law Department. DOIT has an
25 approach of reviewing each permit application on

2 its own merits. There's no overall plan with
3 respect to permit approvals to approve them at one
4 location or another location. Each one is
5 reviewed basically on its own merits.

6 COUNCIL MEMBER FELDER: Thank you.
7 So again, Mr. Chair, I would ask that, with your
8 permission, I think this has to be reviewed in a
9 more, a general scope, because the payphones that
10 are going up in locations certainly that are
11 closer to the street, I don't think the issue is a
12 one by one issue.

13 I think there's a general zoning
14 issue like other issues as to where phones in the
15 City should be placed on the sidewalks closer to
16 the streets. Councilman Jackson raised the issue
17 about one that was in violation but I don't think
18 placing these payphones anywhere on a case by case
19 basis is the way it should be handled. I think
20 it's a citywide issue it's, you know, something
21 that could be addressed.

22 COUNCIL MEMBER SEABROOK: Just--

23 CHAIRPERSON AVELLA: [Interposing]
24 Council Member Seabrook.

25 COUNCIL MEMBER SEABROOK: As it

2 relates to that, who makes the selection of where
3 a public phone can be located? How is that
4 arrived at?

5 MR. SHORE: Okay the Department has
6 citing rules which dictate where the applicant can
7 apply to put the phone. So it can't be closer
8 than 50 feet from another phone. There can't be
9 more than a certain number on a block with a
10 certain length of a block. They can't be within 5
11 feet of a canopy. There's a whole laundry list of
12 relationships to other items on the sidewalk. So
13 then the company will apply based upon what they
14 think the market is.

15 COUNCIL MEMBER SEABROOK: So the
16 company makes the recommendation or the request
17 for a particular site, not the agency.

18 MR. SHORE: Correct.

19 COUNCIL MEMBER SEABROOK: So they
20 say well this is a site and they come to you and
21 then you, in terms, look at it, evaluate it and
22 see what it is. So that the selection process is
23 not done by you.

24 MR. SHORE: Correct.

25 COUNCIL MEMBER SEABROOK: Okay.

2 That's all. I just wanted to find that out.

3 CHAIRPERSON AVELLA: [Laughing] Go
4 ahead, go ahead, Council Member Felder--

5 COUNCIL MEMBER FELDER: Sorry. I--
6 it's your last time and I--and I just want to make
7 sure I know that when you leave you're going to
8 leave a lot of instructions and advice for whoever
9 it is that will try to replace you. It sounds
10 like this issue has a lot more, a lot more detail.
11 I mean Councilman Seabrook brought up the issue of
12 placement.

13 I don't know how it works but it
14 would seem that in poorer neighborhoods where
15 there may not be as much profit, I don't know if
16 there is a requirement or not, whether they place
17 a certain number of phones in areas that may not
18 be as profitable but where it's more necessary.
19 And it sounds like there are a lot of issues that
20 maybe that's one of the recommendations.

21 [Off mic]

22 CHAIRPERSON AVELLA: Sure, Council
23 Member Jackson.

24 COUNCIL MEMBER JACKSON: Sorry.
25 With respects to I believe in your response to

2 Council Member Seabrook you said the placement of
3 the phones is based on the franchisee, where they
4 feel it's appropriate for space, is that correct,
5 to place them?

6 MR. SHORE: They would make an
7 application--

8 COUNCIL MEMBER JACKSON:
9 [Interposing] All right. And that would have to
10 go to the Community Board and then the normal
11 process, is that correct?

12 MR. SHORE: Yes.

13 COUNCIL MEMBER JACKSON: Okay. And
14 if the Community Board objected to the placement
15 at that location, what would happen? Walk me
16 through.

17 MR. SHORE: Well the Community
18 Board makes an objection and we have to evaluate
19 the objection, whether there's something that we
20 missed as far as the placement, the, you know,
21 information.

22 [Pause].

23 COUNCIL MEMBER JACKSON: I'm sorry-

24 -

25 CHAIRPERSON AVELLA: [Interposing]

2 Any more questions?

3 COUNCIL MEMBER JACKSON: Yeah I'm
4 sorry but we're just talking 'cause we have
5 another hearing and if we don't go over there
6 we're marked absent even though we're over here.
7 It's like kind of crazy--

8 MR. SHORE: [Interposing] I
9 understand.

10 COUNCIL MEMBER JACKSON: --so we're
11 just struggling [chuckling]

12 MR. SHORE: Right.

13 COUNCIL MEMBER JACKSON: I'm sorry,
14 go ahead please.

15 MR. SHORE: So we take into
16 consideration what the Community Board tells us.
17 If there's--if they tell us that there's criminal
18 activity we may need to contact the police and get
19 more information but we take it very seriously
20 what the Community Board tells us.

21 But we also have to back up
22 whatever they tell us because in effect we're
23 making a rejection then of an application which
24 the company has spent--paid us a fee to process
25 and had an expectation. So we can't just say well

2 the Community Board doesn't want it. It has to be
3 based upon, you know, conditions at that location
4 that are somehow unique.

5 COUNCIL MEMBER JACKSON: Okay.

6 But, you know, I was having some sidebar
7 discussions with Council Member Seabrook with
8 respects to in the neighborhoods I represent and I
9 represent Northern Manhattan from 123rd Street and
10 Broadway all the way north to the end of
11 Manhattan, 220th Street, basically covering the
12 West Side which includes geographical areas of the
13 most northern side of Morningside Heights, all of
14 West Harlem, part of Harlem, part of Washington
15 Heights and Inwood.

16 And as a member of the City
17 Council, you know, when I see phones up against a
18 building in the middle of a block, in my opinion,
19 that's inappropriate because it lends to the
20 ghetto-ization of our community which is not
21 appropriate in my opinion. I would rather see
22 phones placed more appropriately on a corner so if
23 a resident wants--that doesn't have cell phones
24 and what have you, and as you know, as you said, I
25 believe one of you said, because of the

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2 technology, you know, the volume of usage of
3 payphones have reduced over the years.

4 And we all know that. But from a
5 community quality of life point of view, it's more
6 appropriate to be on a corner rather than in the
7 middle of the block against a building. That's
8 clearly inappropriate in my opinion. And I know
9 I've seen situations like that, especially in the
10 community that I represent.

11 And I wanted to hear what your
12 opinion is on that particular matter and whether
13 or not we can have any say in that overall. And I
14 know that, you know, some of the franchisees may
15 think it's more profitable to be up against the
16 building versus a corner but the quality of life
17 and the way our community looks is extremely
18 important overall to us. So if you can comment on
19 that I would appreciate it--

20 MR. SHORE: [Interposing]

21 Absolutely. Almost all of the phones that are up
22 against the buildings are old phones unless
23 something has been put in more recently without a
24 permit. In the whole time that I've been in this
25 job which is eight-plus years, I've gotten one

2 application for a building line phone.

3 The Local Law that the Council
4 passed requires, after 1994 that building line
5 phones, if an applicant wants a building line
6 phone that they have to get the landlord's consent
7 in writing for that. Also from speaking with the
8 companies, they have indicated that the usage is
9 better at the curb. So they actually prefer to be
10 at the curb and they can have advertising if
11 they're at the curb in an area that allows for,
12 you know, commercial zoning.

13 So the desire is primarily to be at
14 the curb. The cost of installing at the curb is
15 higher but there's been a huge decline in the
16 building line phones to the point now where
17 approximately 68% of the phones are at the curb
18 where it used to be 68% of the phones were at the
19 building line.

20 COUNCIL MEMBER JACKSON: Um-hum.
21 Now with respect to that, you said that if a
22 franchisee wanted to place a building, a phone
23 against a building they would have to get the
24 permission of the land owner or the landlord of
25 the building. Is there a fee that is given to the

2 landlord as a result of permission to put a phone
3 up against a building?

4 MR. SHORE: Traditionally the
5 phones that were placed against a building were
6 done as, you know, with a business arrangement
7 with the store owner. Because the phones now
8 generate so much less money, the companies are
9 very reluctant to make any kind of deal with the
10 store owners to allow them to be next to the
11 building.

12 COUNCIL MEMBER JACKSON: And what--
13 and you said store owner, what if there's no store
14 but it's against the building--

15 MR. SHORE: [Interposing] Well it
16 could be a store, it could be any building. But
17 usually in times past they would make arrangements
18 with merchants, usually, to put this--put the
19 phones out.

20 COUNCIL MEMBER JACKSON: So as you
21 indicated in approximately the last eight years,
22 you've only seen approximately one application for
23 a, I guess, a building--

24 MR. SHORE: [Interposing] A
25 building--

2 COUNCIL MEMBER JACKSON: --phone.

3 MR. SHORE: --we call it a building
4 line phone--

5 COUNCIL MEMBER JACKSON:

6 [Interposing] Building line. And so if I asked
7 just from an informational point of view, would
8 you--would it be difficult to determine how many
9 building lines are there in my Councilmatic
10 District, for example, is that difficult to
11 ascertain?

12 MR. SHORE: No that's very easy.

13 COUNCIL MEMBER JACKSON: Okay.

14 MR. SHORE: We could very easily
15 get that for you.

16 COUNCIL MEMBER JACKSON: And...

17 [Pause]

18 MR. SHORE: We can give you a list
19 of all the phones and we can break it out by
20 curbside and building lines--

21 COUNCIL MEMBER JACKSON:

22 [Interposing] Because the contracts, how long are
23 the contracts for overall, as far as, you know,
24 for a franchisee?

25 MR. SHORE: The current franchise

2 expires next October--

3 COUNCIL MEMBER JACKSON:

4 [Interposing] Um-hum.

5 MR. SHORE: --with a 4-year renewal
6 option that the City has. And then under this
7 authorizing resolution the franchises can be for
8 any term up to 15 years.

9 COUNCIL MEMBER JACKSON: Up to 15
10 years, okay. And so, for example, if everything
11 went green light on all of the aspects and let's
12 assume that a franchisee requested permission for
13 a building line and then it was subsequently
14 installed. And if there were objections by the
15 Community Board and by the local representatives,
16 hum, you would hear the appeal on that?

17 MR. SHORE: Basically if we--we
18 would hope that we would get the comments before
19 the phone is installed. You know, preferably
20 during the application process we would get the
21 comments. Once it's installed and has a permit,
22 you know, there would have to be some very serious
23 things going on for us to try to revoke that
24 permit.

25 COUNCIL MEMBER JACKSON: Okay.

2 thank you very much--

3 MR. SHORE: [Interposing] You're
4 welcome.

5 COUNCIL MEMBER JACKSON: --and if I
6 would request, if you don't mind, and my staff get
7 follow-up, I would like to have a list within my
8 Councilmatic District so I could see both online
9 and curb issues, whatever you--if that's not too
10 difficult.

11 MR. SHORE: No that's not
12 difficult--

13 COUNCIL MEMBER JACKSON:
14 [Interposing] Okay.

15 MR. SHORE: --we'll get that for
16 you.

17 COUNCIL MEMBER JACKSON: Thank you
18 very much. Thank you Mr. Chair.

19 COUNCIL MEMBER SEABROOK: Thank you
20 very much. No further questions? Okay. Thank
21 you very much.

22 MR. SHORE: Thank you.

23 COUNCIL MEMBER SEABROOK: Next up
24 we're going to have the Greentree, which is in
25 Council Member Oliver Koppell's District.

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[Pause]

CHAIRPERSON AVELLA: Obviously we, you know, as mentioned, when I had to leave and Joel Rivera, that we have other Committee meetings going on and people have to check in. So we're now moving onto Greentree application.

[Pause]

CHAIRPERSON AVELLA: Which is a petition by 5693 Restaurant Corporation, also known as Greentree, for an unenclosed sidewalk café at 5693 Riverdale Avenue, which lies within Council Member Oliver Koppell's District and he is here. And we'll ask representative of the applicant to testify.

[Pause]

MR. MICHAEL KELLY: Good morning Chairman Avella, Council Member Koppell, members of the Council. My name is Michael Kelly. I'm representing 5693 Restaurant Corp. We are applying for a sidewalk café license at 5693 Riverdale Avenue in the Bronx with 18 tables and 36 seats. We have Community Board approval and comply with all Consumer Affairs regulations.

CHAIRPERSON AVELLA: And for the

2 record, although he's not seated at a mic, he,
3 Council Member Koppell said he is in favor of the
4 application. And--

5 COUNCIL MEMBER KOPPELL:

6 [Interposing] It's not that I'm at a mic--I'm not--
7 -

8 CHAIRPERSON AVELLA: [Interposing]

9 No you can sit, you can join us. I guess those
10 chairs are more comfortable, yeah [laughing]. Any
11 questions from my colleagues? Seeing none, thank
12 you.

13 MR. KELLY: Okay thank you. I wish

14 to wish you good luck in the future Chairman--

15 CHAIRPERSON AVELLA: [Interposing]

16 Oh thanks, thanks. I see no one has signed up to
17 speak on this public hearing item, is that
18 correct? Seeing none, I will close the public
19 hearing on this item. We will now move to Land
20 Use number 1284, Delury Square Park Text
21 Amendment. I'll call City Planning up to give the
22 presentation. This lies within Council Member
23 Gerson's District.

24 COMMITTEE COUNSEL: Bottom line

25 looking at the map--

2 [Pause]

3 CHAIRPERSON AVELLA: Okay.

4 [Pause]

5 MS. GRACE HAN: Good morning

6 Council Members. I name is Grace Han and I am
7 here with Keith O'Conner, we are Planners at the
8 Department of City Planning. The Department of
9 City Planning has submitted a Zoning Text change
10 called the Delury Square Park Text Amendment to
11 the Special Lower Manhattan District. And we are
12 here to present and testify in support of the
13 proposed change.

14 The Delury Square Park Text
15 Amendment clarifies that for lot lines bounding
16 Delury Square Park, these lot lines would be
17 considered street lines for the purposes of
18 applying bulk and use regulations.

19 For background in 2008 the City
20 Planning Commission approved the mapping of a new
21 park and acquisition of property from South Bridge
22 Towers for the creation of Delury Square Park.
23 Delury Square Park is located at the northeast
24 corner of Fulton and Gold Streets in Lower
25 Manhattan on the same block as the South Bridge

1
2 Towers Housing Development. Prior to the CPC
3 mapping action, a portion of the project site was
4 occupied by a small traffic island plaza in a
5 mapped street and was improved with benches and
6 trees. The rest of the project site was mapped
7 street--was privately owned by South Bridge Towers
8 that included grass and trees but no benches,
9 pathways or other public amenities.

10 The new Delury Square Park is
11 currently under construction and was designed by
12 the Department of Parks and Recreation with
13 extensive input from Community Board 1 and South
14 Bridge Towers. The newly established Delury
15 Square Park contains approximately 8,900 square
16 feet and is designed for public use and passive
17 recreation.

18 The creation of this park is part
19 of a broader initiative under the Fulton Street
20 Corridor Revitalization Project to revitalize
21 Lower Manhattan following the events of September
22 11th. It is funded by the Federal Housing and
23 Urban Development Agency through the Lower
24 Manhattan Development Corporation. And the
25 program includes the creation of two new parks

1 including Delury Square Park, enhancement of two
2 existing parks as well as streetscape enhancements
3 and storefront upgrades and façade restorations
4 along both Fulton and Nassau Streets.
5

6 Delury Square Park will help to
7 provide better pedestrian continuity, enhance view
8 corridors to the water's edge and provide much
9 needed open space in Lower Manhattan.

10 The proposed Text Amendment
11 facilitates the development of this park. The
12 Zoning Resolution under 23-861 requires that the
13 minimum distance between legally required windows
14 and a lot line be 30 feet. When Delury Square
15 Park was mapped and subsequently acquired as a
16 park the lot line for South Bridge Towers which
17 was this former lot line in the blue dotted line
18 was modified in accordance with the boundaries of
19 the new park. And so the red line, the red dotted
20 line shows the new boundaries of the park.

21 The lot line was reconfigured in
22 such a way that the park's lot line is only 15
23 feet from the façade of South Bridge Towers and
24 the legally required windows. This creates a
25 lawful noncompliance with the Zoning Resolution

2 23-861. This Text Amendment rectifies this
3 unintended consequence and reinforces the legality
4 of the location of the required windows of South
5 Bridge Towers. By establishing that the new lot
6 lines bounding Delury Square Park is equivalent to
7 a street line for purposes of applying bulk and
8 use regulations, thus the 30 feet requirement
9 becomes inapplicable.

10 The proposed Text Amendment is
11 applicable onto the Special Lower Manhattan
12 District and only to zoning lot lines bounding
13 Delury Square Park.

14 In conclusion the proposed text
15 amendment helps to facilitate the proposed park, a
16 desired enhancement of open public spaces in Lower
17 Manhattan under the Fulton Street Corridor
18 Revitalization Project. The Department of City
19 Planning worked closely with and has the support
20 of the South Bridge Towers Association. Community
21 Board 1 Manhattan voted unanimously to approve the
22 text. Finally at the City Planning Commission
23 public hearing on October 22nd, there were no
24 speakers in opposition and South Bridge Towers
25 issued a letter of support.

2 Thank you very much for you time
3 and consideration and we're available to answer
4 any questions.

5 CHAIRPERSON AVELLA: For my
6 colleagues on the Committee, this lies within
7 Council Member Gerson's District. He is in
8 support and this is a sort of a cleanup action
9 requested by the Community Board and the Board
10 approved it 40 to nothing. So that's, [chuckling]
11 a pretty strong vote. Any questions from my
12 colleagues? Council Member Sears.

13 COUNCIL MEMBER SEARS: It's really
14 a comment. I think that's wonderful. And for
15 someone who doesn't have one park in her District
16 I have to tell you that I always admire something
17 like that. It's good work.

18 CHAIRPERSON AVELLA: Seeing no
19 other questions. Thank you. I see no one signed
20 up to speak on the public hearing aspect of this
21 item, is that correct? Seeing none, close the
22 public hearing on this item.

23 And we will now move to the last
24 item of the day which is application by Rosie
25 O'Grady's for an unenclosed, small, sidewalk café

2 at 800 7th Avenue. And Steve Wygoda is here to
3 represent the owner.

4 [Pause, off mic]

5 CHAIRPERSON AVELLA: And if we can
6 try and track down the other members who are
7 around, I know Al Vann, so we'll be moving to a
8 vote after this.

9 [Pause]

10 MR. STEVE WYGODA: Good morning.
11 My name is Steve Wygoda. I represent the owners
12 of Rosie O'Grady's, Trel. I just want to preface
13 this by wishing the Chair and all other outgoing
14 members my sincerest thank you's for working on
15 the various projects that I've had here and good
16 luck on everything in the future to you.

17 I just would like to read a letter
18 that--on this project. In regards to Trel d/b/a
19 Rosie O'Grady's, for the sidewalk café we are
20 hereby authorized by the owner to modify the
21 design to reduce the seats from 21 tables and 82
22 chairs to 13 tables and 26 chairs in accordance
23 with the attached Community Board Resolution.
24 Revised drawing will be filed with the Department
25 of Consumer Affairs as required.

2 The Community Board approved it. I
3 believe it was almost unanimous. There was one no
4 vote but otherwise it was unanimous.

5 CHAIRPERSON AVELLA: Well we have a
6 note on our records that the Community Board
7 actually disapproved it because the applicant
8 failed to appear at a Community Board meeting.
9 Then--okay, then I understand that the applicant
10 then came--I guess the owner came back to another
11 meeting or did you represent him at a follow-up
12 meeting--

13 MR. WYGODA: [Interposing] Yeah.
14 Well they postponed it and then I came back to the
15 second meeting--

16 CHAIRPERSON AVELLA: [Interposing]
17 Oh and then they approved it.

18 MR. WYGODA: They approved it.

19 CHAIRPERSON AVELLA: Okay.

20 MR. WYGODA: Just this past
21 Thursday.

22 CHAIRPERSON AVELLA: Okay. This
23 application lies within Speaker Quinn's District
24 and with the letter submitted to the Council
25 reducing from 21 tables, 82 chairs to 13 tables

2 and 26 chairs she is in support now of the
3 application. Any questions from my colleagues?
4 Seeing none, thank you.

5 MR. WYGODA: Thank you.

6 CHAIRPERSON AVELLA: I see no one
7 signed up to speak on this item, is that correct?
8 Okay, seeing none I'll close the public hearing on
9 this item. And if we're still in the process of
10 tracking down members for a vote. Because Al Vann
11 must be in the building.

12 MR. ECONOMOU: He's on - -

13 [Pause]

14 CHAIRPERSON AVELLA: He's at a
15 hearing. He's the Chair.

16 [Pause]

17 CHAIRPERSON AVELLA: So. While
18 we're waiting for Council Member Vann to come from
19 his hearing, I just wanted to, first of all, thank
20 the members of my Committee. This is the last
21 meeting I will chair as Zoning and Franchises.
22 It's been a pleasure to serve, you know, in this
23 capacity and with my colleagues on this Committee.

24 It's certainly been one of the most
25 busiest committees in controversial items we've

2 had since we've been here but I want to thank my
3 Committee members for their attendance and their
4 support.

5 And I also really do want to give a
6 special message to the Land Use staff, of course,
7 Gail, Christian, Carol, Amy, Danielle, Alfonso and
8 Peter. You have to be the best staff in the City
9 Council of any Committee. And I know it's a very
10 difficult job to deal with because we're
11 constantly laying over items to negotiate and then
12 you have to do the paperwork to get it ready for
13 the votes, not only for this Committee but for the
14 Land Use Committee and the full City Council. So
15 it really is a tough job. But I want to thank you
16 for your support. You've been great over the
17 years. And I can't thank you enough.

18 [Pause]

19 CHAIRPERSON AVELLA: Should we wait
20 a few minutes or start? Okay. I'll ask--

21 COUNCIL MEMBER SEABROOK:

22 [Interposing] Could I ask the Chair, just--

23 CHAIRPERSON AVELLA: [Interposing]
24 Sure.

25 COUNCIL MEMBER SEABROOK: Just a

2 comment I wanted to say that it has certainly been
3 a delight and very information in the number of
4 years that you've chaired the Committee that I had
5 the opportunity to sit on and serve. And I wish
6 you well and you will certainly be missed.

7 [Pause]

8 CHAIRPERSON AVELLA: With that I'll
9 ask counsel to call the vote. Chair recommends
10 approval and I sort of had to leave at the end of
11 the authorizing resolution for the payphones but I
12 think what we'll do is we'll ask Stanley Shore to
13 come back when there's a new Chair in the new
14 session to go into this in more depth because I
15 think all of the questions that the Committee
16 members asked were very appropriate and there's a
17 lot that could be improved. So we'll follow up on
18 that.

19 COMMITTEE COUNSEL: Chair Avella.

20 CHAIRPERSON AVELLA: Aye.

21 COMMITTEE COUNSEL: Council Member
22 Rivera.

23 COUNCIL MEMBER RIVERA: I vote aye.

24 COMMITTEE COUNSEL: Council Member
25 Felder.

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COUNCIL MEMBER FELDER: Yes.

COMMITTEE COUNSEL: Council Member Gioia.

COUNCIL MEMBER GIOIA: Yes.

COMMITTEE COUNSEL: Council Member Seabrook.

COUNCIL MEMBER SEABROOK: I vote aye.

COMMITTEE COUNSEL: Council Member Sears.

COUNCIL MEMBER SEARS: Aye.

COMMITTEE COUNSEL: By a vote of six in the affirmative, none in the negative, no abstentions, LU 1282, 1283, 1284, 1286 are approved and referred to the full Land Use Committee.

CHAIRPERSON AVELLA: Thank you and we'll keep the vote open for five minutes for Council Member Vann. And Jackson too.

COMMITTEE COUNSEL: Yes.

CHAIRPERSON AVELLA: And Council Member Jackson.

[Pause]

CHAIRPERSON AVELLA: Council Member

2 Jackson for his vote.

3 COUNCIL MEMBER JACKSON: I vote aye
4 on all.

5 COMMITTEE COUNSEL: The vote now
6 stands seven in the affirmative, none in the
7 negative.

8 CHAIRPERSON AVELLA: Okay we've got
9 to--wait we've got to do it again. He wasn't
10 ready. I'd like to call on Council Member Jackson
11 for his vote.

12 COUNCIL MEMBER JACKSON: I vote aye
13 on all.

14 COMMITTEE COUNSEL: The vote now
15 stands seven in the affirmative, none in the
16 negative, no abstentions.

17 [Pause]

18 CHAIRPERSON AVELLA: I'd like to
19 call on Council Member Al Vann for his vote.

20 COUNCIL MEMBER VANN: [No audible
21 response]

22 COMMITTEE COUNSEL: By a vote of
23 eight in the affirmative, none in the negative, no
24 abstentions all items are referred to the full
25 Land Use Committee.

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[Pause]

COMMITTEE COUNSEL: Gavel it out.

Gavel us out.

[Background conversations]

CHAIRPERSON AVELLA: Gavel it out.

[Pause]

[Gavel banging]

CHAIRPERSON AVELLA: That closes
this meeting of the Subcommittee on Zoning and
Franchises.

[Cheering, applause]

[END 1002.MP3]

C E R T I F I C A T E

I, Laura L. Springate certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "Laura L. Springate". The signature is written in black ink on a light-colored background.

Signature Laura L. Springate

Date December 20, 2009