



Legislation Text

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THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 838-A

By Council Members Katz, Felder and Weprin (by request of the Mayor)

The Department of Transportation Authorizing Resolution for Certain Unsubsidized Bus Franchises.

CITYWIDE

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WHEREAS, by Executive Order No. 25, dated August 23, 1995, the Mayor has designated the Department of Transportation ("DOT") as the responsible agency for the granting of franchises for bus lines; and

WHEREAS, pursuant to Sections 363 and 378 of Chapter 14 of the Charter of the City of New York, ("Charter") the Commissioner of Transportation ("Commissioner") has made the initial determination of the need for franchises for unsubsidized bus lines providing common carrier service to passengers along designated routes, between the borough of Manhattan and LaGuardia and Kennedy Airports in the borough of Queens and between those airports, and local service to operate between Williamsburg and Borough Park in the borough of Brooklyn, ("Bus Service") in the City of New York; and

WHEREAS, the Council has determined that the granting of such franchises will promote the public interest, enhance the health, welfare and safety of the public and stimulate commerce by ensuring the continued availability of private Bus Service and enhancing the City's transportation network; and

WHEREAS, it is necessary to provide for the preparation of solicitations for such Bus Service, to conduct appropriate environmental review, to review proposals to provide unsubsidized Bus Service; and to make such technical evaluations as may be necessary to determine appropriate service levels, and fare structures;

NOW THEREFORE, BE IT RESOLVED,

That the Council hereby authorizes DOT to grant non-exclusive franchises for unsubsidized bus lines providing common carrier service to passengers along designated routes, between the borough of Manhattan and LaGuardia and Kennedy Airports in the borough of Queens and between those airports, and local service to operate between Williamsburg and Borough Park in the borough of Brooklyn, in the City of New York as provided for herein, subject to the approval of the Franchise and Concession Review Committee ("FCRC") and the separate and additional approval of the Mayor. 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 City Council ("Expiration Date"). No franchise shall be granted pursuant to this resolution by DOT, nor approved by the FCRC or the Mayor, after the Expiration Date;

and be it further **RESOLVED,**

FIRST, that there shall be one uniform maximum fare for unsubsidized airport service and one uniform maximum fare for unsubsidized local service. The appropriate maximum fare shall be included in each solicitation and franchise agreement. With regard to the uniform maximum fare, DOT may request from the FCRC a modification to each and every franchise agreement for airport and/or local service authorized by this resolution changing the uniform maximum fare. Each franchise agreement for unsubsidized service shall specify that upon the approval of the FCRC of any such proposed change, the franchise agreement shall be deemed to be modified to provide for the revised maximum fare.

SECOND, that prior to the granting of any such franchise, one or more Requests For Proposal ("RFP") shall be issued by DOT for

each route or group of routes. DOT may group routes in such a way as to maximize potential efficiencies, increase competition, and/or increase revenue. For the purpose of conducting solicitations, routes authorized pursuant to this Resolution may be grouped with routes authorized under other Authorizing Resolutions where DOT determines that it is in the best interest of the City to do so. Prior to issuing any such solicitation, environmental and land use review, if necessary, shall be conducted in accordance with City Environmental Quality Review and Section 197c of the Charter. Upon request of the City, a proposed franchisee shall, as a condition of receiving a franchise, assume the cost of, or reimburse the City for, the City's costs of any such environmental or land use review or shall provide for the conduct of such review itself, at its own cost.

THIRD, that no franchisee operating service pursuant to this Resolution may receive any subsidy from the City.

FOURTH, the evaluation criteria to be used in assessing the responses to such RFPs shall be the following:

1. An assessment of the relative fitness of the respondents with regard to:
 - experience operating bus or other transportation services in New York City or other urban environments;
 - demonstrated ability in the management of bus or other transportation service, including, without limitation, satisfactory performance on:
 - (a) service indicators (*e.g.*, percentage of scheduled service actually operated, adherence to published schedules, interruptions to service resulting from mechanical failures, vehicle cleanliness, and handling of customer inquiries), and
 - (b) management indicators, (*e.g.*, employee absentee rates, number of vehicular accidents, training programs, adherence to inspection, insurance, driver training, and safety requirements, and bus scheduling efficiency and effectiveness);
 - business integrity and financial soundness, including without limitation adequate access to sources of operating capital and the demonstrated ability to adequately maintain books and records;
2. the amount of franchise fee proposed and the amount of service proposed.

FIFTH, initial schedules need to be specified in the RFP only to the extent that the level of service must be specified for purposes of completing an environmental review, as appropriate.

SIXTH, that DOT shall apply the MacBride principles when granting franchises pursuant to this resolution.

SEVENTH, that any franchise granted pursuant to this authorizing resolution shall be by written agreement that shall without limitation, provide that:

1. the term of the franchise shall be fixed and shall be in accordance with the terms of the solicitation pursuant to which it was issued. A franchise may contain a renewal clause, however, in no case shall the term of a franchise, including all renewal periods, exceed twenty-five (25) years.
2. the compensation to be paid to the City shall be fixed as a percentage of the gross revenues, cash or non-cash, derived by the franchisee from any source, in any manner, either directly or indirectly arising from or related to the operation of the Bus Service described in the franchise. Such compensation 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 or description which are now or may at any time hereafter be required to be paid pursuant to any local law of the City or any law of the State of New York; or any law of the federal government.
3. the maximum fare shall be the uniform maximum fare for such service set by DOT, as such may be from time to time amended by DOT upon request to and approval by the FCRC.
4. that a franchisee may be required to maintain integrated or reduced fare programs, the requirements for which shall be contained in the appropriate solicitation documents and franchise contracts.

5. the franchise may be terminated or canceled by the Commissioner in the event of the franchisee's failure to comply with the material terms and conditions of the agreement.
6. there shall be remedies, including liquidated damages, to protect the City's interests in the event of the franchisee's failure to comply with the terms and conditions of the agreement.
7. a security fund or other appropriate method shall be established to insure the performance of the franchisee's obligations under the agreement.
8. the franchise may permit or require advertising in the interior and/or exterior of buses; provided however, that advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful or obscene as determined by the City, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. In addition, advertising related to tobacco products shall be prohibited.
9. there shall be provisions regulating the technical specifications of bus equipment used to provide authorized Bus Service.
10. there shall be provisions to insure adequate oversight and regulation of the franchisee by the City, including adherence to standards of performance and guidelines for service.
11. the City shall have the right at all times to inspect the facilities, service and equipment used by the franchisee and to order compliance with operational requirements and performance standards set forth in the agreement.
12. there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City.
13. all franchisees shall be required to maintain complete and accurate books of account and records in compliance with any and all specific requirements for recordkeeping as shall be established by DOT. Such books and records shall be made available on demand to the City for inspection.
14. all franchisees shall be required to maintain an office in the City of New York.
15. 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.
16. there shall be provisions requiring the franchisee to comply with applicable City laws, regulations and policies related to, but not limited to employment and investigation.
17. there shall be provisions requiring the franchisee to comply with all applicable federal, state, and local laws whatsoever, including those relating to accessibility for persons with disabilities.;
19. there shall be provisions to restrict the subcontracting, assignment or other transfer of the franchise or portions thereof, without the prior written consent of the City and provisions to restrict changes in control of the carrier without the prior written consent of the City.
20. all franchisees, with the exception of public transportation authorities, shall submit to the City's Vendor Information Exchange System ("VENDEX") review.
21. all franchisees shall obtain all necessary authorizations, licenses, and/or permits from and comply with all applicable provisions of the New York State Vehicle and Traffic Law, and all applicable rules of the New York State Department of Motor Vehicles, the New York State Department of Transportation and any other governmental body having jurisdiction over bus operations.
22. all franchisees shall at all times maintain on file with DOT a complete, accurate, and current schedule of service, which will constitute an appendix to the agreement(s) and shall be fully part of the agreement(s).

For Bus Service pursuant to this Authorizing Resolution, written notification shall be given to the Commissioner not less than thirty days prior to any modification of the weekly scheduled vehicle revenue miles or change to the span of service of any route, provided, however, that the Commissioner may waive such notice requirement in the case of special events or other short-term contingencies where he/she deems it in the public interest to do so. Any changes in the number of weekly scheduled vehicle revenue miles on any route that **exceed** twenty-five percent (25%) or changes in the span of service of greater than four hours of any given route, either cumulatively within a three year period or singly, must receive the prior written approval of the Commissioner, a copy of which shall be sent to the FCRC.

There shall be provisions for liquidated damages if these requirements are not met.

23. There may be provisions for free reciprocal transfer privileges between local routes operated by the franchisee and intersecting local surface routes of the Metropolitan Transportation Authority New York City Transit ("MTA NYCT"), the Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA"), and the MTA Bus Company (together "the Operators"), and in addition with the franchisee's own intersecting routes . To the extent that such reciprocal transfer privileges require the agreement of the Operators, the franchisee(s) shall take all reasonable steps to obtain such agreement and DOT shall assist the franchisee(s) in obtaining such agreement.

EIGHTH, the streets comprising the route over which franchised Bus Services will be provided shall be described in the RFP and included in the franchise agreements. All changes to the routes or those streets must receive the **prior** written approval of the Commissioner before such change may be implemented. Where such changes to that route or those streets, either cumulatively within a three year period or singly, represent twenty-five percent (25%) or less of the total mileage of the route, a copy of the Commissioner's approval shall be sent to the FCRC for its information; where such changes to that route or those streets, either cumulatively within a three year period or singly, represent more than twenty-five percent (25%) of the total mileage of the route the written approval of the Commissioner shall be submitted to the FCRC for its additional approval prior to the implementation thereof.

And be it further **RESOLVED**, that DOT shall file with the Council the following documents:

1. within fifteen days of issuance, a copy of each RFP issued pursuant to this Resolution;
2. within fifteen days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this Resolution;
3. within fifteen days of approval by the Commissioner or the FCRC, a copy of any amendments to each franchise granted pursuant to this Resolution;
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.

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 June 5, 2007, on file in this office.

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City Clerk, Clerk of The Council