



Legislation Text

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THE CITY COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 1004
L.U. NO. 226-A

CITYWIDE

20035026 GFY

Resolution authorizing the Department of Transportation to grant nonexclusive franchises for the installation, operation, and maintenance of coordinated franchise structures.

By City Council Member(s) Katz and Avella (by request of the Mayor):

Material to be added is underlined; material to be deleted is in [brackets].

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 stop shelters ("BSSs"), self-cleaning automatic public toilets ("APTs"), newsstand structures ("NSs"), and any combination thereof; and

WHEREAS, the Executive Order further provides that franchises authorized may include additional public service structures ("PSSs") that shall include and be limited to trash receptacles, multi-rack news racks and information/computer kiosks; and

WHEREAS, pursuant to Section 363 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 a nonexclusive combined franchise for BSSs, APTs, NSs, and PSSs in the City of New York ("City") and for allowing the placement of advertising thereon. Such BSSs, APTs, NSs, and PSSs shall hereinafter be known collectively as the "franchise structures;" and

WHEREAS, the City Council of the City of New York ("City Council") has determined that the granting of such franchises will be in the public interest by enhancing the health, welfare, convenience, and safety of the public;

NOW THEREFORE, BE IT RESOLVED,

FIRST, that the City Council hereby authorizes DOT to grant nonexclusive franchises that utilize the inalienable property of the City for installing, operating, and maintaining franchise structures in the five Boroughs of the City and that allow the placement of advertising thereon. All franchises granted pursuant to this resolution shall be subject to the approval of the Franchise and Concession Review Committee ("FCRC") and the separate and additional approval of the Mayor. For purposes of this resolution, "inalienable property of the City" shall mean the property designated in Section 383 of the Charter. 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.

SECOND, that prior to the granting of any such franchise, one or more Request(s) for Proposals ("RFP") or other solicitation shall be issued by DOT for the franchise structures. 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 ("CEQR") Rules of Procedure of 1991, Executive Order No. 91 of 1977, as amended, and Sections 197-c and 197-d of the Charter.

THIRD, that DOT shall develop siting criteria for the franchise structures be included in any RFP or other solicitation that shall address, but not be limited to, the following matters:

1. adequate sidewalk clearance to assure reasonable pedestrian flow;
2. proximity to other street furniture, sidewalk obstructions, and franchise structures;
3. permitted uses on adjacent zoning lots;
4. visual impact on vehicular traffic;
5. impact on designated landmarks and historic districts;
6. proximity to required water, sewer, and electrical connections; and

7. relative location of curb cuts.

FOURTH, that DOT shall develop design criteria for the franchise structures to be included in any RFP or other solicitation that shall address, but not be limited to, the following matters:

1. a requirement that all new franchise structures reflect a citywide coordinated design scheme;
2. a requirement that the design scheme take into account compatibility with special contexts, such as historic districts, including the ability to incorporate site specific design components;
3. the maximum envelope of the franchise structures;
4. the maximum number and area of the advertising panels on each type of franchise structure;
5. the number and placement of side enclosures for the BSSs so as to provide meaningful protection from the elements;
6. possible variation of footprints of the franchise structures as related to service needs; [and]
7. seating for the BSSs[.] ; and
8. interior design criteria for newsstands.

FIFTH, that DOT shall develop a process to be included in any RFP or other solicitation for consultation with City Council members and Community Boards regarding the selecting of sites for the installation of franchise structures and for responding to complaints[.] and requests for removal, provided, however, that a site for installation of an APT shall be subject to the approval of the Mayor and the Speaker of the Council.

SIXTH, that in reviewing and evaluating responses to any such RFP or other solicitation, DOT shall apply the evaluation criteria listed below uniformly to all such responses and shall review and evaluate all such responses within the same time period. The evaluation criteria to be used in evaluating the responses to such an RFP or other solicitation shall include, but not be limited to, the following:

1. the design of the franchise structures, including security, aesthetic and functional aspects, accommodation of persons with disabilities, and design flexibility so as to enable the franchise structures to relate to various built environments around the city;
2. an assessment of the fitness of the respondent with regard to:
 - a. experience and demonstrated ability in the design, installation, operation, and maintenance of franchise structures in an urban environment;
 - b. experience in the sale and maintenance of outdoor advertisements in an urban environment;
 - c. skill and capabilities of management, technical staff, and field personnel; and
 - d. business integrity and financial soundness, including, without limitation, adequate access to sources of capital and operating funds, and the demonstrated ability to maintain books and records adequately;
3. the adequacy of the proposed compensation to be paid to the City; provided, however, that a preference shall be granted to proposals that provide a greater compensation to the City in the initial period of the agreement provided that the total proposed compensation over the term of the franchise is determined to be in the best financial interest of the City;
4. the ability of the applicant to maintain the property of the City in good condition throughout the term of the franchise;
5. whether the place of manufacture and assembly for such franchise structures is in the City of New York, in which case a preference shall be granted to said applicant; and
6. whether the place of manufacture and assembly for such franchise structures is in the United States of America, but not in the City of New York, in which case a preference shall be granted to said applicant. The failure of an applicant to qualify for [either] any of the preferences set forth in evaluation criteria designated three (3), five (5) and six (6) above shall not preclude further review and evaluation of such applicant or the award of a franchise to such applicant.

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

EIGHTH, that any franchise granted pursuant to this authorizing resolution shall include the entire City.

NINTH, that in the event that any of the franchise structures include newspaper or periodical dispensers, boxes, or racks, such dispensers, boxes, or racks shall be installed, maintained, and removed in accordance with all laws, rules, and regulations adopted by the City of New

York.

TENTH, that in the event that any of the franchise structures include public pay telephones, such public pay telephones shall be installed, maintained, and removed in accordance with all laws, rules, and regulations adopted by the City of New York. Public pay telephone service in the franchise structures shall be provided only by a person or entity franchised by the City of New York to provide such service.

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

1. the term of such franchise, including any option(s) to renew, shall not exceed twenty (20) years;
 2. no direct public subsidy shall be made available to any franchisee;
 3. the compensation to be paid to the City shall be a percentage of any gross revenues derived by the franchisee as a result of the installation of the franchise structures and the display of advertising thereon, or a guaranteed minimum annual amount, whichever is greater. Such compensation shall not be considered in any manner in the nature of a tax, but such payments shall be made in addition to any and all taxes of whatever kind or description that are now or at any time hereafter may be required to be paid pursuant to any local law of the City or any law of the State of New York;
 4. a 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;
 5. there shall be a requirement for providing free space for public service advertisements on the franchise structures. Said space shall represent a minimum of 2.5% of the total number of advertising panels on the franchise structures. Such public service advertisements shall be equitably distributed among the various types of franchise structures. DOT shall be responsible for informing all agencies of City government of such free advertising space for public service announcements. In order to ensure wide and fair distribution of such free advertising space, DOT shall develop a plan for coordinating requests by said agencies for the use of such space[.]. At the request of the City, additional advertising space shall be set aside for other City purposes;
 6. advertising for tobacco products shall be prohibited;
 7. the design and placement of franchise structures shall be subject to the review and approval of the Landmarks Preservation Commission and the Art Commission, to the extent required by law;
 8. the design and placement of the franchise structures shall not result in an installation that causes the destruction or damage of any part of a [distinctive] sidewalk or historic pavement. Nothing herein shall preclude the franchisee from installing franchise structures, including utility connections appurtenant thereto, on a [distinctive] sidewalk or historic pavement by any means necessary; provided, however, that prior to such installation, the franchisee shall:
 - a. post a performance bond adequate to protect the adjacent property owner against any loss related to the condition of the [distinctive] sidewalk or historic pavement that may be occasioned by the installation, operation, maintenance, or removal of a franchise structure;
 - b. make a good faith effort to procure sufficient quantities of those materials of which the [distinctive] sidewalk or historic pavement is comprised to repair, replace, or restore it to its original condition;
- In the event that the placement of any franchise structure results in damage to a [distinctive] sidewalk or historic pavement, such sidewalk or pavement shall be restored to its original condition at the sole expense of the franchisee using in-kind materials.
9. the franchisee shall be required to maintain complete and accurate books of account and records in compliance with any and all specific requirements for record keeping, as shall be established by DOT. Such books and records shall be made available to the City for inspection on demand;
 10. the franchisee shall be required to maintain an office in the City where the above books and records shall be maintained and where the franchisee's accounting, billing, and clerical functions pertaining to the franchise operation shall be performed;
 11. 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;
 12. there shall be provisions requiring the franchisee to comply with all applicable City laws, regulations, and policies related, but not limited, to employment, purchasing, and investigations;
 13. 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;
 14. there shall be provisions to restrict the 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 franchisee without the prior written consent of the City;
 15. the franchisee shall submit to the City's Vendor Information Exchange System ("VENDEX") ;

16. the franchisee shall obtain all required permits and comply with all applicable rules of government agencies having jurisdiction over the franchise structures;
17. the franchisee shall at all times maintain on file with DOT a complete and accurate listing of sites, by borough and community district, at which franchise structures are located;
18. the franchisee shall establish and maintain prompt and efficient consumer complaint handling procedures including, but not limited to, the posting of a complaint phone number and instructions for filing a complaint on all franchise structures;
19. there shall be one or more security funds established to ensure the performance of the franchisee's obligations under the agreement;
20. there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;
21. there shall be other remedies, including liquidated damages, to protect the City's interests in the event of a franchisee's failure to comply with the terms and conditions of the agreement;
22. there shall be provisions to ensure quality workmanship and construction methods, and to encourage state-of-the-art building materials to be integrated into the franchise structures as they become available;
23. there shall be provisions for preventive maintenance, prompt repairs, and the removal of snow and ice, and provisions for the assessment of monetary damages if the franchisee fails to so maintain, repair, or remove;
24. there shall be provisions for inspecting and cleaning of the franchise structures and for the prompt removal of graffiti; such inspecting, cleaning, and graffiti removal shall be done not less than twice a week;
25. there shall be provisions preserving the right of the City to perform public works or improvements in and around those areas occupied by the franchise structures;
26. the City shall have the right to inspect the franchise structures and to order compliance with installation, maintenance, operational, and repair requirements set forth in the agreement;
27. there shall be provisions to minimize the extent to which the [public] use of the streets of the City is disrupted in connection with the construction, installation, operation, maintenance, repair, removal, or deactivation of the franchise structures;
28. all franchisees shall comply with all applicable sections of the building, plumbing, and electrical codes of the City of New York, and where the work to be done in connection with the installation, operation, maintenance, repair, removal, or deactivation of the franchise structures requires that such work be performed by a plumber or electrician, the franchisee shall employ and utilize only licensed plumbers and/or electricians;
29. the franchisee, at the request of the City, shall be required to remove franchise structures that interfere with the construction, maintenance, or repairs of public utilities, public works, or public improvements, or that the City otherwise deems to be inappropriate at a particular location. At the request of the City, franchise structures so removed shall be reinstalled when construction, maintenance, or repairs are completed, or shall be relocated to sites approved by the City[.]. All such removals, reinstallations, and/or relocations shall be at the sole expense of the franchisee.
30. the franchisee shall have the following specific obligations regarding the BSSs:
 - a. the design of the BSSs must include some form of passenger seating, such as a bench that may or may not be installed in every BSS, but which the City may require to be installed;
 - b. the franchisee shall be required to provide an area or areas on the BSSs for bus route maps, street maps, bus stop name identification, Guide-a-Ride canisters and other information, and shall be required to produce and install such signage as the City requests;
 - [c. the franchisee, at the request of the City, shall be required to remove, replace, and relocate BSSs;]
31. the franchisee shall have the following specific obligations regarding the APTs:
 - a. the maximum charge to the public for use of the APTs shall be a material term of the agreement to be approved by the FCRC;
 - b. the APTs must be open to the public at least between 8:00 A.M. and 8:00 P.M. daily;
32. the franchisee shall have the following specific obligations regarding the NSs:
 - a. the franchisee shall be required to cooperate with the operator of the newsstand regarding maintenance and repair of the newsstand structures[.]; while the operation of the newsstand shall be solely the responsibility of the newsstand operator who shall be subject to all applicable laws, rules, and regulations governing newsstands;

b. the franchisee shall be responsible for all installation and costs associated with any necessary electric and telephone hook-ups to the newsstand structures;

c. the franchisee shall be responsible for arranging and paying for the installation of any infrastructure required by the appropriate utility to establish a separate account for the newsstand operator's usage of electricity at the newsstand structure;

33. the franchisee shall not be responsible for cleaning the interiors of newsstands, for the cost of any telephone or electricity use by a newsstand operator or for any other utility cost which is not necessary to the franchise;

[33.]34. the franchisee shall have the following specific obligation regarding the PSSs: the public service provided shall be immediately apparent to the passerby and shall not be obscured physically or visually by advertising.

TWELFTH, that DOT shall file with the City Council the following documents:

1. within fifteen (15) days of issuance, a copy of each RFP or other solicitation issued pursuant to this resolution;
2. 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;
3. 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; and
4. on or before July 1 of each year, a report detailing the location of each franchise structure installed or removed during the preceding calendar year.

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 August 19, 2003, on file in this office.

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City Clerk, Clerk of the Council

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13