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RULES

OF THE

NEW YORK CITY

DEPARTMENT

OF

INFORMATION TECHNOLOGY

AND

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Title 67

Department of Information Technology and Telecommunications

Chapter 1 Microtrenching

Section 1-01 Definitions

The following terms are defined for purposes of this chapter:

- (a) "Conduit" means equipment installed by means of microtrenching to house fiber-optic cabling in multiple enclosed pathways or pipes.
- (b) "Department" means the Department of Information Technology and Telecommunications.
- (c) "Duct" means one enclosed pathway or pipe within a conduit.
- (d) "Excess capacity" means ducts within a conduit that may not be used by the owner or for the owner's business. Each excess capacity duct must be no smaller than the largest duct within the conduit that is reserved for use by the owner, but in any event each excess capacity duct must have the capacity to house at least 96 strands of fiber-optic cable.
- (e) "Low density residential block" means the side of a street on a City block that consists entirely of residential buildings with no more than three residential units each.
- (f) "Microtrenching" means a technique for installing conduit to house fiberoptic cable to provide telecommunications services, utilizing a shallower and narrower cut that can be made in the expansion joint between the sidewalk and the curb as well as within the roadway.
- (g) "Owner" means the holder of a current telecommunications franchise pursuant to section 1072(c) of the New York City Charter, that proposes to install or has installed conduit. A franchise is not "current" if the term of the franchise agreement has expired and the franchise is in holdover status.
- (h) "Telecommunications franchisee" means the holder of a current franchise pursuant to section 1072(c) of the New York City Charter, or of a revocable consent from the City of New York for installation of telecommunications equipment above, below or on any of the streets within the City. A franchise is not "current" if the term of the franchise agreement has expired and the franchise is in holdover status.

Section 1-02 Microtrenching permitted: notifications to the Department

- (a) An owner may perform microtrenching to the extent allowed by a permit issued by the Department of Transportation. New microtrenching will not be permitted where sufficient excess capacity is available in existing microtrenching. Before

applying to the Department of Transportation for such a permit, the owner must obtain a certification from the Department that no excess capacity is available in the location the owner proposes for microtrenching. The owner must submit that certification to the Department of Transportation as part of the owner's application for a permit.

(b) An owner must install conduit in a way that will readily permit another owner to add length to the microtrenching by connecting its own conduit to the first owner's conduit. Where an owner connects its own conduit to another owner's previously installed conduit, the owner must install conduit that has the same number of pathways or pipes as the previous owner's conduit.

(c) Microtrenching will be permitted only for:

(a) fiber-optic service to properties within the following zoning districts as defined pursuant to the New York City Zoning Resolution: R1, R2, R2A, R2X, R3, R3-1, R3-2, R3-A, R3-X, R4, R4-1, R4A, R4B, R5, R5-A, R5-B, R5-D, C1-1, C1-2, C1-4, C1-5, C2-1, C2-2, C2-3, C2-4, C2-5, C-3, C4 (but only to premises with a commercial floor area ratio of 2.0 or less), M-1 (but only to premises with a manufacturing floor area ratio of 2.0 or less), M-2, M-3, and special purpose districts (but only to premises with a floor area ratio of 2.0 or less); and

(b) fiber-optic service to telecommunications structures or equipment within the boundaries of streets regardless of zoning.

(d) Before applying for a permit for microtrenching from the Department of Transportation the owner must submit the following documents to the Department:

a. *Proof of security.* "Proof of security" means proof that the issuer of any bond, insurance, letter of credit or other security issued in connection with the owner's telecommunications franchise agreements has agreed to extend the coverage of such security to the owner's microtrenching, without change to any other terms and conditions of such security that are for the benefit of the Department or the City. The Department will have the right to draw on the security to cover any unpaid fines assessed pursuant to section 1-07(c) of this chapter, or to cover any unmet obligation to remove conduit pursuant to section 1-06 of this chapter.

b. *Indemnification.* The owner shall execute an indemnification agreement prepared by the Department.

(e) After obtaining a permit for microtrenching from the Department of Transportation, but before beginning microtrenching construction, the owner must notify the

Department of the intended dates of the start and completion of microtrenching construction. Notification must be made on a form and in a format prescribed by the Department.

(f) Promptly after completion of microtrenching construction, and at most within 40 calendar days after the Department of Transportation issued the permit for microtrenching, the owner must file a document with the Department, in a format to be prescribed by the Department, containing the following information:

- a. An “as-built” drawing of the conduit installed. The “as-built” drawing will be treated as proprietary and confidential, to the extent permitted by law.
- b. A map showing the street location of the conduit including the side of the street the conduit is on, the beginning and ending points of the conduit, the number of ducts in the conduit, and the number of ducts of excess capacity in the conduit. The map must accurately reflect the addresses of buildings that are passed by the conduit. The map may be made public, by itself or in aggregation with other maps, at the discretion of the Department.

Section 1-03 Requirement to install excess capacity

- (a) The owner must use microtrenching materials and equipment that will facilitate the use of excess capacity by telecommunications franchisees.
- (b) On a low density residential block, all conduit must have excess capacity of at least four ducts.
- (c) In any other location, all conduit must have excess capacity of at least six ducts.

Section 1-04 Ownership and maintenance of conduit

Except as provided in section 1-08(b) of this chapter, the owner must retain title to the conduit and must maintain the conduit in working order and good repair, and in compliance with the rules of this chapter. The owner must comply with all requirements, directives and orders of the Department of Transportation regarding microtrenching.

Section 1-05 Use and management of excess capacity

- (a) The owner must make one duct of the excess capacity available without charge or fee to the City for installation of fiber-optic cable for use by the City for the City’s direct benefit. The “City” includes any agency or office of New York City government, and any City-related public institution including the New York City

Housing Authority, the Health and Hospitals Corporation, the New York City Department of Education, and the Metropolitan Transportation Authority.

- (b) The owner must make all other ducts of the excess capacity available to any telecommunications franchisee for installation of fiber-optic cable to serve the telecommunications franchisee's business or customers. The owner may charge the telecommunications franchisee up to but not more than 75 cents per year per foot of duct occupied.
- (c) Inquiries about the availability and ownership of excess capacity may be submitted to the Department.
- (d) A City request to use excess capacity may be submitted to the owner only by the Department.
- (e) A telecommunications franchisee's request to use excess capacity must be submitted by the telecommunications franchisee to the owner. The telecommunications franchisee must submit a copy of the request to the Department simultaneously with submission of the request to the owner.
- (f) The owner must respond to a request to use excess capacity within fifteen business days of the owner's receipt of the request. The owner's response must either approve or deny the request, and if the owner denies the request the owner must state the reasons for the denial. If the request is a City request, the owner must submit its response to the Department. If the request is by a telecommunications franchisee, the owner must submit its response to the telecommunications franchisee and simultaneously submit a copy of its response to the Department.
- (g) The owner must make excess capacity available to telecommunications franchisees on a first-come, first-served basis. However, the owner is not obligated to provide excess capacity to a telecommunications franchisee other than for the actual use for the telecommunications franchisee's business or customers. That is, a telecommunications franchisee may not reserve or use excess capacity for the possibility of future use or for hoarding. Also, the telecommunications franchisee may not sublease excess capacity.
- (h) The owner must make excess capacity available to a telecommunications franchisee no later than 45 calendar days of the owner's receipt of the telecommunications franchisee's request, unless the owner denies the request as provided by subdivision (f) or (g) of this section.
- (i) If a telecommunications franchisee does not complete the installation of fiber-optic cable within 45 calendar days after the owner makes excess capacity available to the telecommunications franchisee, the owner may deem any portion of the excess capacity that the telecommunications franchisee did not occupy by that time to be

available to other telecommunications franchisees as provided by subdivision (g) of this section.

- (j) Making excess capacity available to the City and to telecommunications franchisees includes making available the opportunity to enter and connect to the conduit at the nearest manhole or similar utility access space.
- (k) No later than ten business days after the end of each calendar quarter, the owner must submit a report to the Department, in a format to be prescribed by the Department, stating:
 - a. The name of each telecommunications franchisee that took occupancy of excess capacity during the previous quarter, and, for each such telecommunications franchisee, the location of the beginning and ending points of each length of duct the telecommunications franchisee occupied; and
 - b. The name of each telecommunications franchisee that vacated excess capacity during the previous quarter, and, for each such telecommunications franchisee, the location of the beginning and ending points of each length of duct the telecommunications franchisee vacated.
- (l) No later than January 20 of each year, the owner must submit a report to the Department, in a format to be prescribed by the Department, stating the location of each conduit repair and service outage that occurred in the owner's microtrenching during the previous year.

Section 1-06 The owner's obligation to remove or otherwise dispose of conduit

- (a) If an owner no longer intends to maintain conduit in working order and good repair, the owner must either remove the conduit at its own expense, or, at the Department's option, transfer the conduit to another owner, or otherwise dispose of the conduit as directed by the Department.
- (b) If an owner's telecommunications franchise or microtrenching permit is terminated or revoked, or if an owner's right to own microtrenching is revoked, the owner must either remove the conduit at its own expense, transfer the conduit to another owner, or otherwise dispose of the conduit as directed by the Department.
- (c) If the Department determines that microtrenching is unsuitable or unsafe, either entirely or under specified conditions, the owner must remove the conduit and fiber-optic cable at the owner's expense, or, at the Department's option, transfer title to the conduit and fiber-optic cable to the City without fee or cost.

Section 1-07 Enforcement

- (a) Telecommunications franchisees may submit complaints about owners' compliance with the rules of this chapter to the Department.
- (b) The Department may audit or otherwise investigate or review an owner's use of microtrenching and compliance with the rules of this chapter. The owner and any telecommunications franchisee that uses or has applied to use the owner's excess capacity must cooperate with the Department in the conduct of such an audit, investigation or review, and must cooperate with any other governmental entity lawfully authorized to conduct such an audit, investigation or review. The owner must provide access to individuals, documents, records and information as may be reasonable and appropriate to such audit, investigation or review.
- (c) In the event of a violation of the rules of this chapter, the Department may initiate proceedings before the Office of Administrative Trials and Hearings (OATH) to seek the imposition of penalties on an owner, including fines or revocation or other limitation of the owner's right to engage in microtrenching. The rules of OATH will apply to such proceedings. Those rules are set forth in title 48, chapter 1 of the Rules of the City of New York.
 - a. Following a hearing, an administrative law judge will issue a report and recommendation to the Commissioner of the Department or his or her designee. The report and recommendation will state proposed findings of fact and conclusions of law, and a recommended disposition. The responding party will have ten business days from the date of the report and recommendation to submit comments on the report and recommendation to the Commissioner. The Commissioner will issue a final decision, subject only to judicial review.
 - b. Penalties include fines no less than \$100 and no more than \$25,000 per violation, termination of the owner's right to engage in additional microtrenching, and revocation of the owner's right to own microtrenching. Factors relevant to the determination of the penalty include the severity of the offense; whether the offense was willful or inadvertent; whether the offense furthered the owner's evasion of oversight and monitoring; the degree of the cost, disadvantage or inconvenience imposed on others by the offense; and the owner's history of offenses, if any.
 - c. Violations include the following. (Descriptions are for informational purposes only; the text of the rule itself determines the scope and meaning of the rule.)

- i. Section 1-02(a): Performing microtrenching without or beyond the scope of a Department of Transportation-issued microtrenching permit.
- ii. Section 1-02(c): Providing fiber-optic service by microtrenching where prohibited.
- iii. Section 1-02(e): Failure to notify the Department, or to timely notify the Department, of the intended dates of microtrenching construction.
- iv. Section 1-02(f): Failure to file, or to timely file, drawings as required after conclusion of microtrenching construction.
- v. Section 1-03: Failure to install required excess capacity.
- vi. Section 1-04: Failure to maintain conduit in good repair, in compliance with these rules, or in compliance with requirements of the Department of Transportation.
- vii. Section 1-05: Failure to make excess capacity available; failure to make excess capacity available timely; attempt to overcharge for excess capacity; failure to respond or respond timely to a request for excess capacity; failure to offer excess capacity on a first-come, first-served basis.
- viii. Section 1-05(j): Failure to report to the Department as required.
- ix. Section 1-06: Failure to remove or dispose of conduit as directed.
- x. Section 1-07(b): Failure to cooperate with an audit, investigation or review.
- xi. Any other violation of the rules of this chapter.

Section 1-08 Miscellaneous provisions

- (a) Conduit that was installed before the effective date of this chapter, in compliance with the terms of a microtrenching pilot program, will be allowed to remain in place despite any non-compliance with sections 1-02 or 1-03 of this chapter. All of the other rules of this chapter apply to such conduit.
- (b) An owner may transfer ownership of conduit to another entity that would be an “owner” as defined by section 1-01(g) of this chapter. A transfer may not be made effective before the submission to the Department of the contract or other document effectuating the transfer.
- (c) To the extent that any applicable federal or state law or regulation requires an owner to make excess capacity available to a person or entity more expeditiously or on any other term more favorable to that person or entity than a term provided for

by the rules of this chapter, then the applicable federal or state law or regulation applies with respect to such persons or entities instead of the term provided for by the rules of this chapter.

- (d) By voluntarily choosing to install conduit pursuant to this chapter, an owner agrees that the owner will not charge telecommunications franchisees any fees or costs for the use or occupancy of duct installed pursuant to this chapter greater than the fees provided in section 1-05(b) of this chapter; represents that the owner has received any regulatory permission, approval or authority that may be required to install such conduit and to charge such fees; and acknowledges that the City of New York relies on that agreement and that representation in furtherance of the City's interests in expanding fiber-optic cable deployment, especially in underserved areas.
- (e) The provisions of this chapter that require an owner to install excess capacity, to make it available to telecommunications franchisees, and to forego any fees and costs except as provided in section 1-05(b) of this chapter that might otherwise be permitted by any applicable rate regulation are integral to this chapter and essential to the City's purposes in promulgating this chapter. The City's determination to permit microtrenching is expressly based on the assumptions that an owner's conduit will include excess capacity and that the excess capacity will be available to telecommunications franchisees without payment of any fees or costs except as provided in section 1-05(b) of this chapter. Therefore, if any court or other tribunal of competent jurisdiction invalidates any of those provisions, this chapter will be invalidated in its entirety and microtrenching will not be permitted, and owners must remove or otherwise dispose of all conduit as directed by the Department.

Chapter 2 Reserved

Chapter 3 Reserved

§4-01 **Definitions.**

Authorized agent. "Authorized agent" shall mean any person or entity which is authorized by lease, contract or other agreement to act on behalf of a premises owner with respect to the matters covered by this rule.

Cable television. "Cable television company" shall mean any person, firm, partnership, or corporation which provides one-way transmission to subscribers of video programming or other programming services.

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Information Technology and Telecommunications.

Department. "Department" shall mean the Department of Information Technology and Telecommunications of the City of New York.

Direct billing. "Direct billing" shall mean a system by which the user is billed directly by the utility for either (1) actual use of electricity, as measured by a properly installed and operating meter or (2) estimated use of electricity, as agreed to by the cable television company and the utility. Direct billing shall include only electrical usage which is independent of the premises owner's metering.

Electricity. "Electricity" shall mean electrical current or service as provided by a utility other than electricity used to operate equipment placed within individual subscriber units for the purpose of receiving cable television service.

Utility. "Utility" shall mean any person, firm, partnership or corporation authorized to provide electricity to commercial and residential users and subject to the jurisdiction and general supervision of the Public Service Commission of the State of New York.

§4-02 **Applicability.**

(a) This chapter applies to all cable television companies authorized by New York City by means of a franchise or other municipal authorization to construct, operate, maintain, or manage a cable television system in New York City.

§4-03 **Electricity Usage.**

(a) All electricity used by a cable television company shall be directly billed to the cable television company by a utility pursuant to the utility's applicable service tariffs, including all electricity used by a cable television company to operate equipment situated on premises owned, operated or leased by an entity other than the cable company, unless the cable television company and the premises owner have entered into a resale arrangement.

(b) To the extent allowable by applicable law and tariff, a cable television company may enter into a resale arrangement for use of electricity to operate equipment situated on premises not owned, operated or leased by the cable television company only upon prior written approval of the affected premises owner or authorized agent.

§4-04 Notice.

(a) The cable television company shall give each premises owner or authorized agent not less than fifteen (15) days written notice of its intention to locate equipment upon any premises not owned, operated or leased by the cable television company which may require the use of electricity.

(b) The cable television company shall contact the utility providing the electricity and arrange for direct billing for the use of electricity on premises not owned, operated or leased by the cable television company not less than fifteen (15) days prior to the installation of said equipment.

(c) The cable television company shall notify each affected premises owner or authorized agent when it has completed arrangements for direct billing when the utility providing electricity and the start date for such electricity usage.

(d) For electricity usage to operate equipment owned by the cable television company already situated on premises owned, operated or leased by an entity other than the cable television company as of the effective date of this rule, the cable television company shall contact the utility providing the electricity and arrange for direct billing for the use of electricity to operate such equipment on such premises. The cable television company shall submit a plan for the implementation of the requirements of this chapter for such electricity usage within thirty (30) days of the effective date of this chapter. Such plan shall be subject to the approval of the Commissioner.

(e) The cable television company shall submit to the Department quarterly reports with respect to any resale arrangement for use of electricity to operate equipment situated on premises not owned, operated or leased by the cable television company in a form and containing such information as the Commissioner may reasonably specify. Upon request of the Commissioner, the cable television company shall promptly submit to the Commissioner additional information in an appropriate format to verify and supplement the information contained in the report required by this subdivision. The Commissioner may waive the submission of such records as the Commissioner deems appropriate.

(f) The cable television company shall submit to the Department summary quarterly reports containing information on each notice sent out pursuant to the requirements of subparagraphs a, b, and c of this section in a form and containing such information as the Commissioner may reasonably specify. Upon request of the Commissioner, the cable television company shall promptly submit to the Commissioner additional information in an appropriate format to verify and supplement the information contained in the report required by this subdivision. The Commissioner may waive the submission of such records as the Commissioner deems appropriate.

Chapter 5 Reserved

Chapter 6 Public Pay Telephones

Subchapter A – General Provisions

§6-01 Definitions.

For the purposes of this Chapter, the following terms shall have the following meanings:

Code. "Code" shall mean the Administrative Code of the City of New York.

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Information Technology and Telecommunications or any successor agency.

Department. "Department" shall mean the Department of Information Technology and Telecommunications or any successor agency.

Owner. "Owner" shall mean a natural person or business entity that owns, leases, or is otherwise responsible for the installation, operation and maintenance of a public pay telephone.

Public Nuisance. "Public Nuisance" shall mean a public pay telephone which the Commissioner has reasonable cause to believe is used on a regular basis in furtherance of unlawful activity.

Public Pay Telephone. "Public Pay Telephone" shall mean a telephone and associated equipment, from which calls can be paid for at the time they are made by a coin, credit card, prepaid debit card or in any other manner which is available for use by the public and provides access to the switched telephone network for the purpose of voice or data communications. The term "Public Pay Telephone" shall include any pedestal or telephone bank supporting one or more such telephones, associated enclosure s, signage, and other associated equipment.

Public Pay Telephone Installation. A "Public Pay Telephone Installation" shall mean an installation, including the telephone, pedestal and housing of such telephone, with one or more public pay telephones on a pedestal, one or more public pay telephones in an in-line configuration, or a public pay telephone attached to another structure.

Street. "Street" shall have the meaning ascribed thereto in subdivision thirteen of §1-112 of the Code.

Substantial Common Ownership. "Substantial Common Ownership" shall mean that:

(i) one or more chains of business entities (a business entity shall include but not be limited to corporations, partnerships or limited liability companies) are connected through stock ownership with a common parent business entity, and the common parent business entity owns at least 50 percent (50%) of the total value of shares of all classes of stock in at least one of the other business entities, or stock

possessing at least 50 percent (50%) of the combined voting power of all classes of stock in each of the business entities is owned by one or more of the other business entities; or

(ii) two or more business entities are owned by 5 or fewer persons who are individuals, estates or trusts, and those persons own at least 50 percent (50%) of the total value of shares of all classes of stock in all of the business entities, or stock possessing at least 50 percent (50%) of the combined voting power of all classes of stock in all of the business entities; or

(iii) there are three or more business entities, each of which is a member of a group of business entities described in subparagraph (i) or (ii), and one of which is a common parent business entity included in a group of business entities described in subparagraph (i) and subparagraph (ii).

§6-02 Penalties.

(a) In addition to the civil penalties provided in subdivisions (c) and (d) of this section, an owner who maintains or operates a public pay telephone without a permit issued pursuant to this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars (\$10,000) and imprisonment of not more than thirty days, or both such fine and imprisonment.

(b) Notwithstanding any other provision of this section:

(1) an owner who fails on two occasions within any three month period to provide phone service from a public pay telephone for any period of time exceeding twenty-four continuous hours or who fails to provide coinless twenty-four hour 911 service from such public pay telephone in compliance with the provisions of subdivision (a) or subdivision (b) of §6-05 of this chapter, as the case may be, shall be in violation of such subdivision(s) and shall be liable for a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation which may be recovered in a civil action or in a proceeding before the Environmental Control Board. In the case of a violation exceeding twenty-four hours, each day's continuance shall be a separate and distinct occasion in which an offense has occurred. An owner of a public pay telephone shall not be considered to have failed to provide the service required in this subdivision where such owner has posted and maintained a written notification on the public pay telephone within seventy-two hours of the occurrence and provided written notification to the Department, within twenty-four hours, of the occurrence of an event or a condition beyond his or her control, such as a power failure or an inability of the telephone company to provide access to the switched telephone network, that has rendered such telephone unable to provide such service. (2) an owner who fails on at least two occasions, each such occasion lasting for a duration of forty-eight (48) hours, or on one occasion that lasts for a duration of seventy-two (72) hours to maintain a public pay telephone in compliance with the provisions of subdivision (c) of §6-05 of this chapter shall be in violation of such subdivision and shall be liable for a civil penalty of not more than one thousand dollars (\$1,000) for each such violation.

(c) Notwithstanding any other provision of §6-02, violation of any provision of this chapter shall be punishable by a civil penalty of not more than one thousand dollars (\$1,000) for each such violation, recoverable in a civil action or in a proceeding before the Environmental Control Board. In the case of a continuing violation, each day's continuance shall be a separate and distinct offense.

(d) An owner who is liable for a civil penalty for a violation pursuant to subdivision (c) of this section shall also be liable in the amount of the expense, if any, incurred by the city in the rendering inoperable,

removal, storage and/or disposal of the public pay telephone and the performance of related repair and restoration work.

(e) An owner who violates any provision of Chapter 4 of Title 23 of the Code, or any term or condition of a permit issued pursuant thereto, or any rule promulgated by the Commissioner pursuant thereto shall be liable for a civil penalty of not more than one thousand dollars (\$1,000) for each violation, which may be recovered in a civil action or in a proceeding before the Environmental Control Board. In the case of a continuing violation, each day's continuance shall be a separate and distinct offense.

(f) If the Commissioner reasonably believes that an owner, or any employee, agent or independent contractor of such owner, has violated any provision of Chapter 4 of Title 23 of the Code, or any provision of this chapter or any term or condition of a franchise agreement or permit issued pursuant thereto, the Commissioner may, pursuant to §23-408(i)(1)(dd) of the Code, suspend review of all applications for the issuance of permits filed by such owner. Prior to any such suspension, the Commissioner shall notify the owner of the violation or unsatisfactory condition identified by the Commissioner and specify the action that must be taken to correct the condition in such manner and within such period of time as shall be set forth in such notice. Upon receipt of said notice the owner may contest the Commissioner's decision by responding in writing within five (5) business days of receipt of the notification from the Commissioner. A final determination will be made by the Commissioner and the owner will be notified of the determination. If the owner's appeal is rejected, the owner will have five (5) days to correct the specified condition or violation, or said suspension will go into effect. Such suspension may continue until either the Commissioner no longer reasonably believes that a violation has occurred, or the violation has been corrected to the satisfaction of the Commissioner and payment has been made of all fines or civil penalties imposed for the violation, any costs incurred by the City in the rendering inoperable, removal, storage, and/or disposal of the public pay telephone and related repair or restoration work, and any fees for any administrative expense or expense of additional inspections incurred by the City as a result of such violation.

§6-03 Liability for Violations.

An owner of a public pay telephone shall be liable for a violation by his or her employee, agent or independent contractor of the provisions of this subchapter made in the course of performing his or her duties.

§6-04 Notice.

Except where otherwise required by law, notice by the Commissioner pursuant to this chapter shall be by first class mail addressed to the address for service submitted in writing to the Department by an owner of a public pay telephone or as set forth in a permit for such telephone. Where an owner has provided a facsimile number with such address or on an application for a permit, notice shall be by facsimile to such number. Notice may also be by such other electronic or non-electronic means as the Commissioner may prescribe. In the case of a public pay telephone that is not identified on a registry or does not possess a permit issued pursuant to this chapter, such notice shall be provided only where the name and address of the owner is shown on the public pay telephone or can be readily identified by the Commissioner by virtue of a trademark prominently displayed on the public telephone. Notice may also be served on a public pay telephone owner by personal service or in any other manner permitted under the terms of a franchise agreement entered into by such public pay telephone owner or in any other

manner reasonably calculated to achieve actual notice, including but not limited to any method authorized in the Civil Practice Law and Rules.

§6-05 Maintenance of Public Pay Telephones.

(a) *Coinless 911 service.* A public pay telephone shall provide twenty-four hour access to 911 service without use of a coin or other payment device. For purposes of this subdivision a violation of this requirement may be found where a public pay telephone lacks a dial tone, a clear and audible transmission and reception, a keyboard and handset in working order, or any other feature necessary to provide or obtain access to 911 service (such as, but not limited to, coinless access to an operator services provider).

(b) *Telephone service.*

(1) A public pay telephone shall be installed, operated and maintained in a condition to accept a coin, credit card, prepaid debit card or other appropriate payment device and the telephone must enable a call to be completed when the proper payment has been made;

(2) The return mechanism of a public pay telephone shall be in working order and provide customers with return of coins when calls are not completed;

(3) A public pay telephone shall provide access to operator service without use of a coin or other payment device.

(4) A public pay telephone that is incorporated into a structure that provides free wifi service must provide free domestic telephone service pursuant to the provider's franchise contract and remain in working order.

(c) *Cleanliness.* A public pay telephone installation shall be maintained in accordance with the provisions of this subdivision.

(1) A public pay telephone shall be maintained free of offensive odors, litter, debris and damage.

(2) A public pay telephone shall be maintained free of stickers and graffiti.

(3) A public pay telephone shall be maintained in a clean condition, free of grime and rust and clean to the touch.

(4) All lettering and signage on an installation shall be clean and legible at all times.

(5) All painted surfaces must be repainted at least once per year.

(d) *Safety.*

(1) A public pay telephone installation that has been displaced from its original installation configuration (e.g. motor vehicle collision) must be made safe within 24 hours of displacement and removed or restored to its original position within 72 hours of displacement.

(2) A public pay telephone installation, or any section or component thereof, that becomes broken in place, fractured or otherwise detached must be made safe within twenty-four hours and fully repaired within 72 hours.

(e) *Enforcement.*

(1) A notice of violation may be issued for a violation of a provision of subdivision (a) of this section when inspections on two occasions within a period no shorter than twenty-four hours have disclosed a violation of such provision.

(2) A notice of violation may be issued for violation of subdivision (b) of this section where inspections have disclosed that telephone service was unavailable on two occasions, each such occasion lasting for a

duration of at least twenty-four (24) hours, within a period of ninety (90) calendar days. Each twenty-four hour period in which a failure to provide telephone service continues shall constitute a separate occasion on which an offense has occurred.

(3) A notice of violation for violation of a provision of subdivision (c) of this section may be issued where inspections disclose violation of such subdivision continuing at least forty-eight (48) hours on two separate occasions within a period of ninety (90) calendar days or a violation lasting at least seventy-two (72) hours on one occasion.

(4) A notice of violation for a violation of a provision of subdivision (d) of this section may be issued where two inspections at least seventy-two (72) hours apart disclose that a displaced public pay telephone has not been restored to its original position or that an installation or portion of an installation has been broken in place, fractured, detached or is otherwise unsafe and has not been repaired or made safe.

(5) A violation shall be considered to have continued throughout a period specified in this subdivision when a condition set forth in subdivisions (a), (b), (c) or (d) of this section has been identified upon at least two inspections that encompass such period within one hundred sixty-eight (168) hours; provided that, demonstration by an owner that the condition underlying such violation was corrected within such period shall be a defense to an action pursuant to §6-05.

(f) *Damage to streets.* An owner of a public pay telephone installation shall be responsible for all repairs to streets damaged due to the placement, installation, maintenance or removal of such public pay telephone installation.

§6-06 Advertisements.

(A public pay telephone shall not display advertising material, unless in accordance with the provisions of a franchise.

Subchapter C – Permits for Public Pay Telephones

§6-30 **Permit Required.**

(a) No public pay telephone shall be installed, operated or maintained on, over or under any street or other inalienable property of the City, or installed such that a user of such public pay telephone can only use such telephone while occupying, in whole or in part, the inalienable property of the City, unless the owner of the public pay telephone has received a permit for the public pay telephone from the Commissioner pursuant to the provisions of this subchapter.

(b) A permit shall include such terms and conditions for the operation of a public pay telephone as the Commissioner deems necessary to protect the public safety and to safeguard the interests of the City, including but not limited to the requirements that such telephone be in compliance with the requirements set forth in subchapter D of this chapter.

(c) A permit issued pursuant to this subchapter is valid only for the public pay telephone installation at the location for which such permit was issued and may not be transferred to a person other than the owner to whom such permit was issued without the written approval of the Commissioner.

(d) Notwithstanding any other provision of this chapter, a permit for a public pay telephone shall not be issued, unless the owner of such telephone demonstrates that he or she has obtained all permissions required by applicable provisions of Federal, State and local law, as well as rules and regulations promulgated and agreements entered into pursuant thereto.

§6-31 **Issuance and Transfer of Permits.**

(a) The Commissioner may issue permits based upon a determination, at his or her discretion, that issuance of a permit would be in the best interests of the City.

(b) A permit shall not be issued:

(1) unless the applicant possesses a franchise to install, maintain and operate public pay telephones on, over and under the streets and other inalienable property of the City; (2) unless the applicant has, where required, obtained the consent of the owner or commercial lessee of a building as provided in §6-34 of this chapter;

(3) where a public pay telephone will unreasonably interfere with the use of a street by the public or where it will unreasonably interfere with the use of the abutting property.

(c) A permit issued pursuant to this chapter may be transferred to an owner other than the owner to whom the permit was issued, provided that such transfer has the written approval of the Commissioner and provided further that the transferee is the holder of a public pay telephone franchise granted by the City, and on the condition that, as of the date of the proposed transfer, neither party is in arrears or in default of: franchise fees; fines owed for notices of violation (assessed by the Environmental Control Board after either the entry of a guilty plea or the issuance of a decision in favor of the City after a hearing); or, any fees payable to the City associated with the installation, operation or maintenance of any public pay telephone installations owned or operated by either party. However, the Commissioner

may waive in writing any portion of this subsection if the Commissioner determines that there is a public safety need for the public pay telephone.

§6-32 Application and Fee for Permit.

(a) Prior to the issuance of a permit for a new installation, franchisee must submit the permit fee of three hundred ninety-five dollars (\$395).

(b) The Department will accept and review applications for proposed locations of installations other than those recommended by the Department.

§6-33 Term of Permit; Termination of Permit.

(a) *Term of permit.* A permit for a public pay telephone shall continue in effect, unless earlier revoked or suspended by the Commissioner pursuant to §6-37 of this subchapter or §23-404 of the Administrative Code, for the term of the franchise held by the owner of such telephone except:

- (1) as provided in subdivision (b) of this section; or
- (2) Reserved.
- (3) Reserved.
- (4) Reserved.

(5) if the Commissioner determines after grant of the permit that the permitted public pay telephone was located or installed in violation of any applicable provision of subchapter D of this chapter.

(6) Provided however that permits issued to an owner prior to the expiration of a franchise may be transferred or reallocated after such expiration to another owner whose franchise has not been terminated.

(b) *Termination of permit.* (1) The Commissioner may terminate a permit and require the removal of a public pay phone upon a determination that (i) the public pay telephone unreasonably interferes with or, as a result of changed conditions, will unreasonably interfere with the use of a street by the public or constitutes a public nuisance; or (ii) that removal of the public pay telephone is required in connection with a street widening or other capital project.

(2) The Commissioner shall notify the permittee of his or her intention to terminate the permit and the reason for such proposed action. No later than five business days following such notification, the permittee may submit a letter to the Commissioner setting forth any reasons why such permit should not be terminated and such telephone removed. The Commissioner shall review the reasons set forth in such letter and shall determine whether to terminate the permit and require the removal of the telephone. The Commissioner shall notify the permittee of his or her final determination and the reasons therefor and shall, where applicable, specify in such notice the date by which the telephone shall be removed. In the event that the permittee fails to remove the public pay telephone by the date specified by the Commissioner, the Commissioner may remove or cause the removal of the public pay telephones and have repair and restoration work performed at the expense of the permittee, who shall be liable in a civil action for the amount expended by the City.

(3) (i) In the event that a public pay telephone is removed in connection with a street widening or capital project as provided in subparagraph (b)(1)(ii) or at the request of the Commissioner, the permittee may apply to the Commissioner for permission to reinstall the public pay telephone at

another location (provided however that such installation shall be compliant with §6-41 of this chapter, unless such compliance is waived in writing by the Commissioner) or, following the completion of such street widening or capital project, at or near its original location. A fee will not be required.

(ii) Where such permission is granted, the permittee shall not be required to obtain a new permit for the public pay telephone and the permit previously issued for such public pay telephone shall continue in effect. In the event that the permittee elects not to install such public pay telephone at another location, the fee for such a permit shall be kept in reserve and may be applied to the next permit requested by the permittee.

(iii) If such public pay telephone is reinstalled at another location the permittee may apply to the Commissioner for a new permit to install another public pay telephone following the completion of such street widening or capital improvement at the same address as the original public pay telephone previously removed in connection therewith. The Commissioner, acting at his or her discretion, may award or deny such application based upon a determination that such action is in the best interests of the City.

§6-34 Consent of Building Owner/Commercial Lessee Required.

(a) *Opening, drilling or other physical alteration.* No permit for a public pay telephone shall be issued or renewed pursuant to this subchapter without the written consent of the owner of an affected building or other private property where the installation of such public pay telephone requires the opening, drilling or other physical alteration of a building facade or other private property or the affixing of such telephone to a building facade or other private property. Such consent shall be provided to DoITT in either of the following two forms:

(1) a photocopy of an effective and binding written agreement signed by the building owner which grants the owner of the applicable public pay telephone such rights to open, drill or otherwise physically alter (including, without limitation, affixing the telephone to) the building facade or private property as are necessary to install and operate such public pay telephone, which photocopy shall be accompanied by a sworn and notarized written certification from the public pay telephone owner certifying, under penalty of perjury, that the attached photocopy is a true and complete copy of a document signed by the building owner, or

(2) an alternative consent form to be prescribed by the Commissioner.

(b) *Access through conduit.* (1) Where the installation of a public pay telephone, if accomplished in a manner other than described in subdivision (a) of this section, requires access through an existing conduit or other opening on a building facade or other private property, or such installation is to be made within six feet of a building line, no permit shall be issued or renewed without the written consent of either the building owner or the commercial lessee.

(i) If the consent is from the building owner, the form of such consent shall be provided to DoITT in either of the following two forms:

(A) a photocopy of an effective and binding written agreement signed by the building owner which grants the owner of the applicable public pay telephone any and all rights of access necessary to install and operate such public pay telephone (or, if no such access is required but the applicable installation is to be within six feet of the building line, granting the building owner's consent to such location) which photocopy shall be accompanied by a sworn and notarized written certification from the public pay telephone owner certifying, under penalty of perjury, that the attached photocopy is a true copy of a document signed by the building owner; or

(B) an alternative consent form to be prescribed by the Commissioner.

(ii) If the consent is from the commercial lessee, the requirements for the form of such consent shall be the same as that for consent from the building owner as set forth in the preceding subparagraph (i), except that references to "building owner" in subparagraph (A) of said subparagraph (i) above shall be deemed to refer to "commercial lessee" and except that in addition to the consent required under subdivision (i) above, there shall also be required a certification by the commercial lessee certifying that the building owner has authorized the commercial lessee to grant such consent and the commercial lessee has provided the building owner (or its authorized agent) with written notification (by certified mail) of such granting of consent (such written notification to include the name and address of the owner of the public pay telephone and the location of the public pay telephone in relation to the building). Such certification by the commercial lessee must be accompanied by proof of mailing of the notification to the building owner referred to in such certification.

(2) Within thirty (30) days of receipt by a building owner of a commercial lessee's consent pursuant to subdivision (1) of this subdivision (b), a building owner or an authorized agent of an owner may object to the installation of a public pay telephone by notifying the applicant for a permit or the permittee, with a copy to the Commissioner, by certified mail. Within ten days of receipt of a notice in compliance with the provisions of this paragraph, such applicant or permittee shall (if the public pay telephone objected to in such notice has been installed) remove such public pay telephone unless he or she responds to the Commissioner, with a copy of such response to the owner, stating why the applicant or permittee believes that the owner lacks authority to object to the installation.

§6-35 Notification by Department to Agencies and Review of Application for Permits.

(a) Notification.

(1) The Department shall notify the Department of Transportation or any successor of such agency, on a periodic basis of the location of public pay telephones for which permits are being sought. The Department of Transportation may review such locations and, within thirty (30) business days of such notification, submit comments to the Commissioner in regard to any such telephone or telephones.

(2) The Department shall also, on a periodic basis, notify the pertinent Borough Presidents, Council Members and Community Boards of the opportunity to review proposed locations. A Borough President, Council Member, or Community Board may review any such application and, within thirty business days of such notification, submit comments in writing to the Commissioner in regard to such application. The Commissioner may extend such review period by an additional ninety days upon determining that an additional period is necessary for a full and complete review of such proposed locations.

(3) If the Department determines that a proposed public pay telephone is located in an historic district, approval of such application will be contingent upon compliance with the rules of the Landmarks Preservation Commission concerning public pay telephone installations.

(b) Review of comments and application.

(1) The Commissioner shall review any comments received from agencies, Borough Presidents, Council Members, Community Boards, and other members of the public prior to making a determination regarding such permits. The Commissioner shall notify the owner of any requirement that shall be a condition of the issuance of a permit. The owner may, within five (5) business days of such notice from the Commissioner, object in writing to the Commissioner to any such condition. The Commissioner shall review such objection and notify the owner of his or her determination and the reasons therefor.

(2) Upon approval of a location, a notice to proceed shall be granted to the franchisee.

§6-36 Revocation of Permits, Removing and Rendering Public Pay Telephones Inoperable.

(a) *Grounds for action by the Commissioner.* The Commissioner may take such action pursuant to this section that he or she deems necessary and appropriate where:

(1) there is reasonable cause to believe that an owner, or any employee, agent or independent contractor of such owner has violated the provisions of chapter 4 of title 23 of the Code or any provision of this chapter, or any of the terms or conditions contained in the permit for a public pay telephone issued pursuant to the provisions of subchapter C or the terms and conditions of the owner's franchise agreement;

(2) a public pay telephone unreasonably interferes with the use of a street by the public or the use of abutting private property or constitutes a danger to life or property or a public nuisance;

(3) a knowing material omission or false statement has been made in relation to any application or certification made pursuant to this chapter; or

(4) an owner of a public pay telephone has failed to pay any fines or penalties imposed in relation to such telephone.

(b) *Actions by the Commissioner.* In addition to any civil or criminal penalties provided by law, the Commissioner may take one or more of the following actions upon the occurrence of an event described in subdivision (a) of this section.

(1) *Revocation of permit and removal of telephone.* The Commissioner may revoke a permit, and upon such revocation, may further order the removal of the public pay telephone for which such permit has been issued. In the event the permittee fails to remove the public pay telephone and to perform related repair and restoration work within the time period specified by such order, the Commissioner may remove or cause the removal of the public pay telephone and have repair and restoration work performed at the expense of the former permittee, who shall be liable for the amount expended by the City.

(2) Reserved.

(3) Reserved.

(4) *City authority to operate.* The Commissioner may invoke the Department's authority pursuant to §6-47 of this chapter.

(c) *Notification to permittee and opportunity to contest Commissioner's action.* Except as provided in subdivision (e) of this section, before taking an action pursuant to this section, the Commissioner shall notify the owner of a public telephone with regard to which the action is proposed of the reason for such proposed action. Such notice shall specify the action, if any, that may be taken by the permittee to correct the condition and the manner and time period in which such condition must be corrected or in which, if the condition is not one that is capable of correction, the time by which the telephone shall be removed. Except as provided in subdivision (d) of this section the owner shall respond no later than five business days following such notice. Such response shall either: (i) certify to the Commissioner that such condition has been corrected in accordance with the manner specified by the Commissioner in such notice; or (ii) set forth the reasons why the Commissioner should not take the proposed action. Failure of an owner to timely respond to such notice by the Commissioner shall constitute default, and shall subject the owner to revocation of the permit and removal of the telephone pursuant to the provisions of subdivision (a) of this section. The Commissioner shall review the response of the permittee and notify the permittee of the final determination and the reasons therefor.

(d) *Expedited removal of public nuisance.* Notwithstanding any other provision of this section the Commissioner may, upon determination that a public pay telephone constitutes a public nuisance, notify the permittee of such determination and order that such telephone be removed within five (5) business days. A permittee may respond in writing to the Commissioner no later than five (5) business days following receipt of such notice setting forth any reasons why such telephone does not constitute a public nuisance. If, following review of such reasons, the Commissioner makes a final determination that such telephone constitutes a public nuisance, the Commissioner shall notify the permittee that such telephone must be removed forthwith. Failure to remove such telephone forthwith will subject the telephone to removal by the Department and repair and restoration work shall be performed at the expense of the permittee, who shall be liable in a civil action for the amount expended by the City.

(e) *Emergency removal of telephone by Department.* (1) Notwithstanding any other provision of this section, if the Commissioner determines that an imminent threat to life or property exists, the Commissioner may remove or cause the removal of a public pay telephone and have repair and restoration work performed at the expense of the owner, without affording the owner an opportunity to be heard prior to such removal. The Commissioner may, if he or she determines that such telephone can be safely reinstalled and maintained, permit the owner to reinstall such telephone.

(2) No more than five (5) business days following the removal of a public pay telephone pursuant to paragraph (1) of this subdivision, an owner of such telephone who is a permittee shall be provided notice of such removal and the reasons therefor and may respond to the Commissioner in writing setting forth the reasons why such telephone should not have been removed. The Commissioner shall review such response and notify such owner within ten days of receipt of such response of his or her final determination and the reasons therefor.

§6-37 Determination of Public Nuisance.

For the purposes of this subchapter, "public nuisance" shall have the meaning set forth in §23-401 of the Code and §6-01 of subchapter A of this chapter. The Commissioner may determine that a public pay telephone constitutes a public nuisance when a written complaint is made, including, but not limited to a complaint by the Community Board in the Community District in which such telephone is located stating that such public pay telephone constitutes a public nuisance, as so defined. The complaint must also be verified by the police precinct in which such telephone is located.

§6-38 Reserved.

§6-39 Removal of Telephones by the Department and Disposition of Removed Telephones.

(a) Any public pay telephones not removed by a permittee in compliance with an order of the Commissioner pursuant to this chapter shall be subject to removal pursuant to §23-408 of the Code, and failure to so remove shall also be deemed a violation of subdivisions (b) and (c) of such section.

(b) Any telephone removed pursuant to this chapter that is not claimed by its owner within thirty (30) days of removal shall be deemed abandoned pursuant to §23-408 of the Administrative Code. All abandoned public pay telephones may be sold at public auction after having been advertised in the City Record and the proceeds paid into the general fund or such abandoned telephones may be used or converted for use by the Department or by another City agency. A public pay telephone shall be released to the owner upon payment of the costs of removal, repair and restoration work, storage, and any fees for any administrative expense or expense of additional inspections incurred by the Department as a result of the violation, or, if any action or proceeding for the violation is pending in a court or before the Environmental Control Board, upon the posting of a bond or other form of security acceptable to the Commissioner in an amount which will secure the payment of such costs and any fines or civil penalties which may be imposed for the violation. If the owner does not claim a public pay telephone that has been removed, the owner shall still be liable for said costs.

Subchapter D – Requirements for Public Pay Telephones

§6-40 Applicability.

A public pay telephone shall comply with the requirements set forth in this subchapter provided, however, that the provisions of subdivision (d), subparagraphs (i), (ii), (vii), (viii) and (x) through (xxiv) of paragraph (e)(2), and subdivisions (f) through (n) of §6-41 of subchapter D shall not apply to a public pay telephone permitted pursuant to this chapter that was previously licensed pursuant to former §19-131 or 19-128 of the Code.

§6-41 Siting and Clearance Requirements.

(a) *Pedestrian passage.* Sidewalk clearance must be maintained so as to ensure a free unobstructed pedestrian passage of eight feet or one-half the width of the sidewalk, whichever is greater. For building line public pay telephones, sidewalk clearance shall be measured perpendicularly from the curb line to a point on the public pay telephone installation in closest proximity to the curb line. For curb line public pay telephones, sidewalk clearance shall be measured perpendicularly from the building line to a point on the public pay telephone installation in closest proximity to the building line.

(b) *Crosswalks and sight lines.* Pay telephone installations shall not obstruct or interfere in any manner with curb cuts or crosswalks and shall not interfere with free, unobstructed passage and unobstructed lines of sight for vehicular traffic.

(c) *Fire escapes and building access.* (1) A public pay telephone may not be located where it will interfere with the normal operations of a fire escape or where it will obstruct or impede the free use of any means of egress required by the Building Code.

(2) A public pay telephone shall not be located in a manner that prevents a cellar door from opening to its fullest extent.

(3) A public pay telephone installed subsequent to March 1, 1996 shall not be placed at the curb directly opposite a building entrance or cellar door.

(d) *Underground vaults and sewers.* A public pay telephone shall not be installed in such a manner so as to affect the structural integrity of an underground vault or sewer.

(e) *Distances required.*

(1)(i) A public pay telephone shall not be installed on or over the sidewalk or other inalienable property of the City immediately parallel to a landmark site, as such term is defined in §25-302 of the Code. If a public pay telephone was installed parallel to a landmark site prior to September 16, 1998, the owner may receive a permit but shall be subject to the rules of the Landmarks Preservation Commission regarding advertising in historic districts whether or not the landmark site is located in a historic district.

(ii) No permit under this chapter shall be granted for any site within an "Historic District", as that term is defined in §25-302 of the Code unless the permit application conforms to the Landmarks Preservation Commission rules concerning public pay telephones.

(2) Unless otherwise authorized by the Commissioner in writing, public pay telephones shall not be installed within:

- (i) 3 feet of a traffic sign;
- (ii) 4 feet of a traffic light;
- (iii) 5 feet of the end of a ramp of an entrance to or an exit from a wheelchair lift;
- (iv) 15 feet of the entrance way of an outdoor or elevated subway entrance, except where the public pay telephone is attached to, or is immediately adjacent to, the building and clear pedestrian passage is maintained;
- (v) 5 feet from a subway station entrance;
- (vi) 15 foot radius of a fire hydrant and, unless otherwise authorized by the Commissioner in writing, within 5 feet of a standpipe and/or sprinkler, siamese connection or wall hydrant;
- (vii) 3 feet from a subway grate, utility hole cover, or transformer vault;
- (viii) 15 feet of a sidewalk cafe;
- (ix) 15 feet of a bus stop zone unless the public pay telephone is attached to a bus stop shelter within the zone or is installed at the building line and does not obstruct pedestrian passage on the sidewalk;
- (x) 15 feet of a newsstand unless the public pay telephone is attached to such newsstand or is installed at the building line and does not obstruct pedestrian passage of the sidewalk;
- (xi) 15 feet of a public pay toilet unless the public pay telephone is attached to such public pay toilet or is installed at the building line and does not obstruct pedestrian passage on the sidewalk;
- (xii) 5 feet of a bench located at the curblines;
- (xiii) 10 feet of a driveway unless the public pay telephone is attached to or immediately adjacent to a building immediately adjacent to such driveway;
- (xiv) 5 feet of a canopy as defined in §19-124 of the Code;
- (xv) 4 feet of a mailbox located at the curblines;
- (xvi) 4 feet of the base of a street light;
- (xvii) 4 feet of a parking meter;
- (xviii) 3 feet of a fire box unless otherwise approved in writing by the Commissioner; (xix) 3 feet of a news rack located at the curblines unless the public pay telephone is attached to the newsrack;

- (xx) 3 feet of a newsbox located at the curblin e;
- (xxi) 5 feet of a tree (without a tree pit);
- (xxii) 3 feet of a grating if the public pay telephone is installed at the building line and does not cover the grating or in any way impede the opening of the grating;
- (xxiii) 3 feet of a signpole;
- (xxiv) 3 feet of the edge of a tree pit or planter located at the curblin e.
- (xxv) 4 feet from a "Pedestal Structure," (herein defined as any telecommunications utility box, cabinet, or enclosure and related construction, such as foundations, that is located, in whole or in part, above grade and within the public right-of-way of a public street and/or sidewalk, except when such structure is attached to a utility pole or other legal street furniture installation);
- (xxvi) 8 feet from a bicycle rack; and
- (xxvii) 4 feet of any sidewalk encumbrance not specifically enumerated herein.

(f) *Required distance from other public pay telephone.* A pedestal or other structure that holds a public pay telephone shall be located at least fifty (50) feet from any other such pedestal or structure on any one block face. For purposes of this subdivision "block face" shall mean that portion of the sidewalk on one side of a street which is between the building line and the curb and which is between the boundaries of the corner area at either end of the block. For purposes of this subdivision, "corner area" shall mean the area bounded by extending the intersecting building lines to the curb and the lines to the curb between the two extended building lines.

(g) *Distance from corner and curb.* A public pay telephone installed after April 13, 1995 at the curblin e shall not be located within the corner quadrant and the edge of such installation closest to the curb shall be at least 18 inches, but no more than 24 inches, from the curb. For purposes of this subdivision, "corner quadrant" shall mean the area from ten (10) feet on either side of the corner area in conformity with the definition of corner quadrant found in Executive Order No. 22 of 1995. For purposes of this subdivision, "corner area" shall have the same meaning as such term is defined in subdivision (f) of this section.

(h) *Location of public pay telephones in relation to other street furniture or street conditions.* No public pay telephone or public pay telephone pedestal shall be installed in a location: (1) where the City of New York or any agency thereof has issued a permit for a location-specific street vending installation; (2) for which a revocable consent has previously been issued that would be inconsistent with installation of a public pay telephone or public pay telephone pedestal; or (3) where other street furniture that has been previously authorized is to be located, except that permitted public pay telephones may be affixed or attached to such authorized street furniture pursuant to an agreement between the public pay telephone service provider and the Department, any other City agency with jurisdiction over such street furniture, and the owner of such street furniture.

(i) *Measurements from enclosures.* If a public pay telephone is mounted in an enclosure, the distances set forth in subdivision (e) of this section shall be measured from the side of the enclosure nearest the object in question.

(j) *Number of public pay telephones at any location.* (1) There shall be no more than three (3) public pay telephones installed on a single pedestal or in an in-line configuration on a sidewalk between two street corners in the City. There shall be no more than one wall-mounted public pay telephone in any one location. There shall be a distance of fifty (50) feet between any two installations of public pay telephones. An in-line configuration shall not exceed a footprint of 35" x 120".

(2) There shall be no more than the following number of public pay telephones on any sidewalk between two street corners in the City;

(i) on any such sidewalk that is one hundred (100) feet or less, a maximum of: one public pay telephone installation that includes no more than one public pay telephone;

(ii) on any such sidewalk that is more than one hundred (100) feet and less than three hundred (300) feet, a maximum of: two public pay telephone installations;;

(iii) Reserved.

(iv) After March 21, 2015 new public pay telephone installations may not be installed closer than 170 feet to an existing public pay telephone installation.

(3) There shall be no more than one public pay telephone installation within fifty (50) feet of any corner area of any street corner. "Corner area" shall have the same meaning as set forth there of in paragraph (f) of this section. Notwithstanding any other provision of this paragraph, in no event shall a public pay telephone be installed where such installation would result in more than four public pay telephone installations within fifty feet of the corner area at any intersection with any number of corner areas. This paragraph shall not apply to public pay telephones installed or issued a notice to proceed by the Department prior to June 26, 1998.

(4) Nothing in this subdivision shall be construed to require the removal of a public pay telephone that has been issued a permit by the Department prior to the effective date of these rules or was operational pursuant to a license issued pursuant to the provisions of former §19-128 or 19-131 of the Administrative Code of the City of New York.

(k) Reserved.

(l) *Sidewalks of a distinctive design.* A public pay telephone shall not be installed on, or result in the destruction, damage or removal of any part of, a sidewalk of a distinctive design. For purposes of this subdivision, "sidewalk of a distinctive design" shall include a pavement of granite, slate, bluestone or brick and a sidewalk constructed and approved pursuant to §2-09(f)(xvi) of Title 34 of the Rules of the City of New York.

(m) A public pay telephone must be installed upon a paved surface, unless such telephone is attached to the facade of building or other structure.

(n) *Waiver by Commissioner.* If the Commissioner determines that a public pay telephone is necessary in a location in order to provide for public health and safety, and one or more provisions set forth in this chapter cannot be satisfied, he or she may waive such provisions of this chapter as may be necessary to permit the installation of a public pay telephone. In no case, however, shall a public pay telephone installation be placed within eighteen (18) inches of a curb or within ten (10) feet from a corner or constitute an impediment to pedestrian traffic or interfere with the function of fire escapes or the unimpeded passage of building inhabitants.

§6-42 **Sign Required.**

Each public pay telephone location, single or multiple, shall have a sign in a form prescribed by the Commissioner, and consistent with the Rules and Regulations promulgated by the New York State Public Service Commission, installed so that it is visible within the enclosures for such telephone. Such sign shall:

- (a) be of dimensions no less than 2" by 5"
- (b) include Americans with Disabilities Act ("ADA") symbols indicating that the telephone is equipped to assist hearing impaired persons;
- (c) be in compliance with requirements of the ADA;
- (d) clearly and legibly identify the owner of the public pay telephone;
- (e) clearly and legibly identify the New York State Public Service Commission certified Operator Service Provider of such telephone in the same typeface and in a size that is no larger than that used to identify the owner of the telephone;
- (f) contain the following statement: "To register a complaint with the City of New York, call 311."; and,
- (g) clearly and legibly identify the public pay telephone using the PPT identification number issued by the Department.

§6-43 **Installation and Maintenance.**

(a) *Workmanship.* (1) Materials, workmanship and wiring shall comply with all applicable provisions of Title 27 of the Code and the National Electrical Safety Code.

(2) Where the nature of any work to be done in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation requires that such work be done by an electrician, only a licensed electrician shall perform such work.

(b) *Materials.* Materials shall be of good and durable quality, in accord with all applicable codes, and all work shall be performed without unreasonable disruption of public streets.

(c) *Installation.*

(1) Every public pay telephone installation (as such is defined in §6-01 of this chapter) shall be maintained in a condition of good repair. All painted surfaces must receive a fresh coat of paint at least once a year.

(2) Broken or missing lights, broken or unattached or missing advertising panels or other components of a public pay telephone enclosure shall all be repaired or replaced, as applicable, within seventy-two hours, of being damaged, provided however that upon notice from the Department, such disrepair shall be remedied within forty-eight (48) hours.

(3) Dangling or protruding wires, whether originating from the enclosure or the pedestal or conduit of a public pay telephone installation, shall be repaired within forty-eight (48) hours of the commencement of such state, provided however that upon notice from the Department, such disrepair shall be remedied within twenty-four (24) hours.

(4) The pedestal(s) upon which a public pay telephone enclosure is mounted shall be kept free of holes or missing or unattached plates, or missing or unattached or broken mounting brackets, screws or bolts or other attachments, covers, panels or associated equipment, and upon notice of non-compliance with this subdivision (c), the pedestal(s) shall be repaired within forty-eight (48) hours.

(5) Notwithstanding the foregoing, any dangerous condition shall be fixed as soon as possible but no later than twenty-four hours. For the purposes of this subdivision (c), the definition of "dangerous

condition" shall include, but not be limited to, a public pay telephone installation and associated equipment possessing jagged or sharp edges, improperly grounded or insulated or bare telephone or electrical wires carrying electrical current, and deteriorated or damaged sidewalk flags.

(d) *Telephone service.* A public pay telephone shall be maintained such that upon proper payment, a call can be completed. For example, a public pay telephone that could not complete a call to a location or instrument using "anonymous call rejection" on a caller ID or caller number identification device would be in violation of this subdivision (d) of §6-43 and of subdivision (b) of §6-05 of this chapter.

(e) *[Reserved]*

(f) *Wiring.* (1) Overhead communications wiring between the building line and the curb is prohibited.

(2) Overhead communications wiring that crosses the street is prohibited except where such wire is part of a common or existing wire path with other non-public pay telephone communication wire or other telephone communication wire.

(3) Overhead communications wiring of any kind is prohibited in the Borough of Manhattan. In all other Boroughs, except as otherwise waived in writing by the Commissioner, wiring for public pay telephones shall be installed underground wherever the City has required electric cables be installed underground. Existing ducts, conduits, or other facilities such as above ground terminal boxes on the sidewalk served by underground facilities or other facilities subject to any and all reciprocal agreements between the dial tone provider and another party shall be utilized. No property belonging to a party other than the dial tone provider may be used without the express written consent of such party and the Department.

(4) All aerial communication wiring must be at least 10 feet off the ground at all times.

(5) All overhead public pay telephone communication wires following an existing or common communication wire path will be transferred by the dial tone provider to an alternate means of dial tone connection when such existing communication wire path is discontinued or removed or when the City requires electrical cabling be installed underground at the public pay telephone installation location.

(6) Where overhead wiring is generally permissible, new overhead public pay telephone communication wires between a public pay telephone and a pole with existing facilities will be permitted if the distance between such telephone and pole is thirty-five (35) feet or less in a straight line, and telephone service in that location is provided via aerial means.

(7) Where overhead wiring is generally permissible and the distance between a public pay telephone and a pole with existing facilities is greater than thirty-five (35) feet, the dial tone connection may be underground to the pole.

(8) All underground communication wiring shall be installed through conduits except where underground ducts are used.

(9) All aboveground communication wiring from a pedestal or wall mount to a source of dial tone located on private property shall be installed through weather resistant conduits using appropriate sealant.

§6-44 Compliance with Americans with Disabilities Act.

A franchisee shall comply with the provisions of the Americans with Disabilities Act and the regulations promulgated thereunder, contained in 28 CFR Parts 35 and 36, and any additional applicable Federal, State and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

§6-45 Compliance with Other Authority.

(a) As provided in subdivision (d) of §6-30 of this subchapter, notwithstanding any other provision of this chapter, a permit shall not be issued for a public pay telephone pursuant to this chapter unless the owner of such telephone demonstrates that he or she has obtained all permissions required by applicable provisions of Federal, State and local law, as well as rules and regulations promulgated and agreements entered into pursuant thereto.

(b) A public pay telephone shall be sited, installed, operated and maintained in compliance with all applicable provisions of Federal, State and local law, as well as rules and regulations promulgated and agreements entered into pursuant thereto.

§6-46 Reserved.

§6-47 City Authority to Operate.

If pursuant to any provision of this chapter, a public pay telephone, or group of public pay telephones, becomes subject to removal by the Department, and if the location of such payphone or group of payphones is consistent with the requirements of subchapter D of this chapter, then the Department shall have the authority to, in lieu of removal of such payphone or payphones, operate (directly or through a designee) such payphone or payphones for the account of the City and/or make such payphone or payphones available for purchase or lease from the City by holders of public pay telephone franchises granted by the City. The Department, or its designee, purchaser or lessee, shall be authorized to make any necessary or convenient modifications to such payphone or payphones to secure the service provided from such payphone or payphones and the revenues generated from such payphone or payphones.

§6-48 Fee Nonrefundable.

A three hundred ninety five dollars (\$395) fee will be required prior to the issuance of a new permit and shall be nonrefundable.