

Landmarks Preservation Commission

Notice of Public Hearing and Opportunity to Comment on Proposed Rules **Proposed Rule Amendment**

What are we proposing? Section 2-21 of the Landmarks Preservation Commission's (the "Commission" or the "LPC") rules currently provide standards for the approval of the installation of public pay telephones ("PPT") on LPC-designated property. The City of New York has awarded a franchise agreement for the installation, operation and maintenance of public communications structures ("PCS"), which includes the replacement of public pay telephones with PCS that will provide free WiFi and phone service. The proposed amendments will provide standards for the approval of the installation of PCS in a similar manner as the existing approval for PPTs.

When and where is the hearing? The LPC will hold a public hearing on the proposed rule at 9:30 a.m., on Tuesday May 3, 2016. The hearing will be in the public hearing room at the Commission's offices in the Municipal Building, 1 Centre Street, 9th Floor North, New York, NY 10007.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the LPC through the NYC rules website at [Http://rules.cityofnewyork.us](http://rules.cityofnewyork.us).
- **Email.** You can submit comments to nycrules@lpc.nyc.gov.
- **Mail.** You can mail comments to the LPC at the address above, Attention: Mark A. Silberman and Lauren George.
- **Fax.** You can fax comments to the LPC at: 212.669.7797.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Lauren George at 212.669.7923. You can also sign up in the hearing room before the hearing begins on May 3, 2016. You can speak for up to three minutes.

Is there a deadline to submit comments? Comments must be received no later than close of business on May 3, 2016.

Do you need assistance to participate in the hearing? You must tell the Office of Legal Affairs, attention Mark A. Silberman, if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212.669.7923. You must tell us by April 26, 2016.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Commission's offices, the Municipal Building, 9th Floor North, New York, NY.

What authorizes the LPC to make this rule? Sections 1043 and 3020 of the City Charter and Sections 25-303, 25-305, 25-306, 25-307, 25-308, 25-310, 25-313 and 25-319 of the Administrative Code of the City of New York authorize the LPC to make this proposed rule. This proposed rule was not included in the Commission’s most recent regulatory agenda because the need for it was not anticipated at that time.

Where can I find the Landmark Preservation Commission’s rules? The LPC’s rules are in Title 63 of the Rules of the City of New York.

What rules govern the rulemaking process? The Commission must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Landmarks Preservation Commission’s (LPC) rules currently provide standards for the approval of the installation of public pay telephones (“PPT”) on LPC-designated property. The City of New York has awarded a franchise agreement for the installation, operation and maintenance of public communications structures (“PCS”), which includes the replacement of public pay telephones with PCS that will provide free Wi-Fi and phone service. The proposed amendments to section 2-21 of the LPC’s rules will provide standards for the approval of the installation of PCS in a similar manner as the existing approval for PPTs.

The amendments to section 2-21 set forth the standards to permit for the installation of PCS without review and approval by the LPC staff:

- The PCS must be a design approved by the Public Design Commission;
- The location of the PCS must meet siting criteria established by the Department of Information Technology and Telecommunication; and
- The installation of the PCS must meet standards to preserve historic paving materials.

The Commission’s authority for these rules is found in Sections 1043 and 3020 of the New York City Charter and Sections 25-303, 25-305, 25-306, 25-307, 25-308, 25-310, 25-313 and 25-319 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this Commission, unless otherwise specified or unless the context clearly indicates otherwise.

§2-21 Rules Relating to Installation of Public Pay Telephones and Public Communications Structures.

(a) Introduction. Public pay telephones have been part of the city's [street scape] streetscape for half a century. First introduced in the 1950s pursuant to a franchise agreement with the city, legally permitted public pay telephones contribute to the urban experience as well as provide an important communication link for business, pleasure and public health and safety. [These] public] Public pay telephones have traditionally had a quiet presence on the [street scape] streetscape that allowed for their identification without calling undue attention to themselves. . The provisions set forth below are intended to ensure that public pay telephones and public communications structures installed in areas under the jurisdiction of the Landmarks Preservation Commission are installed in a manner that does not damage or destroy historic fabric and that the design and placement of such phones and structures shall not call undue attention to themselves or detract from the significant architectural features of an improvement or a historic district or adversely affect a historic district's distinct sense of place.

(b) Definitions. As used in this section, the following terms [shall] have the following meanings:

(1) ["]Curbfront["]. The term "curbfront" [shall mean] means the sidewalk curb that divides the sidewalk from the roadway.

[(2) "Public pay telephone" or PPT" shall be defined by Section 23-401(f) of the Administrative Code of the City of New York.]

(2) PCS Franchise Agreement. The terms "PCS Franchise Agreement" means a valid franchise granted by the City Department of Information Technology and Telecommunications ("DoITT") to provide public pay telephone and wireless internet service on the inalienable property of the City of New York.

(3) ["]PPT Enclosure["]. The term "PPT Enclosure" [shall be defined as] means any associated housing or enclosure that partially or fully surrounds a PPT, and including an associated pedestal, which has been approved by the Art Commission.

(4) ["]PPT Franchise Agreement["]. The term "PPT Franchise Agreement" [shall mean] means a franchise granted by the City pursuant to the revised solicitation issued by the Department of Information Technology and Telecommunications ("DoITT") on June 9, 1997 pursuant to Resolution No. 2248 or any subsequent solicitation with a similar purpose whether or not such subsequent solicitation includes all or part of the components of the June 9, 1997 solicitation.

(5) Public communications structure or PCS. The term "public communications structure" or "PCS" means a structure installed on public property pursuant to a valid PCS Franchise Agreement.

(6) Public pay telephone or PPT. The term "public pay telephone" or "PPT" is defined by Section 23-401(f) of the Administrative Code of the City of New York.

(c) Approval of Installation and Design of PPT Enclosure [Design] and of PCS Installation.

(1) PPT Enclosure and Installation. No application to the Commission, and no certificate, approval, permit or report shall be required for a proposal to install a PPT Enclosure if such proposal meets the following criteria:

(i) The PPT Enclosure is proposed to be installed no farther than 24 inches from and no closer than 18 inches [of] to the curbfront in an area zoned for commercial or manufacturing uses pursuant to the New York City Zoning Resolution;

(ii) Each PPT Enclosure shall be designed to be inconspicuous and to not call undue attention to itself, and shall have an exterior dimension no greater than 35" wide x 44" long x 90" high. A maximum of two PPTs may be installed in-line together, but in such instance the enclosure shall be no greater than 35" wide x 88" long x 90" high. The height limitation shall include the height of a mast if one is installed. The PPT Enclosure may have clear glazing panels and shall be rectilinear if the PPT Enclosure is designed to have advertising panels;

(iii) The PPT Enclosure shall not be installed in or on, or in the mortar joints between, bluestone, granite, slate or brick paving material, nor shall such paving material be disturbed in any manner in connection with the installation of the PPT;

(iv) The PPT Enclosure shall not be installed in front of an improvement designated as a landmark;

(v) The telephone and power lines to and from such PPT Enclosure, or any conduit containing such lines, shall not be visible;

(vi) The nonglazed portion of the PPT Enclosure shall be a dark brown, dark green, black or dark grey color, or is uncolored stainless steel or clear-finished aluminum. If the PPT Enclosure is less than 15 inches by 36 inches, all portions of the PPT Enclosure shall be stainless steel or clear-finished aluminum;

(vii) If the PPT Enclosure has advertising panels, the advertising panels shall be limited to two side panels, each of which is not larger than 27" wide x 57" high. There shall be no advertising panel on the rear of the PPT Enclosure facing the street. The advertising panels shall not be illuminated in any fashion. Advertising shall be limited solely to the PPT Enclosure. No advertising shall be permitted on a PPT Enclosure that is smaller than 27" wide x 57 inches high. No PPT Enclosure shall have any light emitting diode (L.E.D.) lettering, design or advertising. In addition to the above, a PPT Enclosure may identify the name or logo of the owner of the PPT and the fact that it is a public telephone. Where such identification is illuminated, it shall be illuminated internally from behind the lens, be limited to the top two inches of the PPT Enclosure, and may occur on all sides of the PPT Enclosure; and

(viii) The proposed PPT installation meets all applicable terms, conditions and requirements of the PPT Franchise Agreement, and all applicable distance, clearance and other siting requirements set forth in Title 67 of the Rules of the City of New York.

(2) PCS Installation. No application to the Commission, and no certificate, approval, permit or report shall be required for installation of a PCS if:

(i) The PCS is to be installed in accordance with the siting criteria described in the applicable PCS Franchise Agreement and in an area zoned for commercial or manufacturing uses pursuant to the New York City Zoning Resolution, or, if the PCS does not include advertising, in an area zoned for residential use;

(ii) No more than one PCS shall be installed at the same location;

(iii) If the PCS has advertising panels, the advertising panels are limited to two side panels, each of which is not larger than 27" by 47.5". There shall be no advertising panel on the rear of the PCS facing the street. Static digital advertising shall be permitted in commercial or manufacturing districts. For purposes of this rule, "static digital" shall mean advertising in which a series of fixed digital images are displayed electronically, and each fixed image must be displayed for a minimum of 15 seconds and fade in and fade out no faster than 1 second;

(iv) The PCS conforms to the design and materials that have been approved by the New York City Art Commission, also known as the Public Design Commission, and has an exterior dimension no greater than 11" wide x 35" deep x 122.9" high;

(v) The PCS shall not be installed in or on, or in the mortar joints between, bluestone, granite, slate or brick paving material, nor shall such paving material be disturbed in any manner in connection with the installation of the PCS;

(vi) The PCS is not installed in front of an improvement designated as an individual landmark, unless the PCS is replacing an existing public pay telephone that was previously operated pursuant to a valid franchise agreement with DoITT; and

(vii) The telephone and power lines to and from such PCS, or any conduit containing such lines, are not visible.

(3) Other Proposals.

[(2)](i) All [other] proposals to install a PPT Enclosure or a PCS that does not satisfy the requirements of subsections (1) or (2) of this section shall be reviewed and approved by the Landmarks Preservation Commission by a certificate of appropriateness public hearing, report, permit for minor work or certificate of no effect, as appropriate, as set forth below.

(ii) Application Procedures for [proposals] Proposals to [install] Install a PPT Enclosure [requiring] or PCS Requiring a [certificate, permit] Certificate, Permit or [report] Report. An application form shall be filed for each proposed PPT Enclosure or PCS. Notwithstanding the requirements of section 2-01 of Title 63 of the Rules of the City of New York, the application form for the installation of a PPT Enclosure or PCS shall be signed by the person who owns the PPT or PCS or the agent or principal of such person, or any other person authorized to apply for a permit to install a PPT or PCS pursuant to the [PPT Franchise

Agreement] relevant franchise agreement or Title 67 of the Rules of the City of New York. No advertising shall be permitted on [non-curbside PPTs] a PPT, [or] PPT Enclosure, or PCS that is not located at the curb.

[(3)] (4) Nothing in this rule shall be interpreted to obviate the need to obtain all necessary approvals from the Department of Information Technology and Telecommunications, or any other governmental agency, for all installations of a PPT [Enclosures] Enclosure or a PCS.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Installation of Public Communications Structures

REFERENCE NUMBER: 2016 RG 023

RULEMAKING AGENCY: Landmarks Preservation Commission

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: March 15, 2016
Acting Corporation Counsel
NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400

CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Installation of Public Communications Structures

REFERENCE NUMBER: LPC-3

RULEMAKING AGENCY: Landmarks Preservation Commission

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Elvita Dominique
Mayor's Office of Operations

March 15, 2016
Date