

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 07-0567

Introduced by: The Council President
At the request of: The Administration (Department of Public Works)
Introduced and read first time: January 22, 2007
Assigned to: Highways and Franchises Subcommittee

Committee Report: Favorable with amendments
Council action: Adopted
Read second time: July 16, 2007

AN ORDINANCE CONCERNING

**Franchise – Private Communications Ductbanks Under the Beds of
North Wolfe Street and Ashland Avenue**

FOR the purpose of granting a franchise to Forest City - New East Baltimore Partnership, LLC, to construct, use, and maintain private communications ductbanks under and across the 900 block of North Wolfe Street, the 800 block of North Wolfe Street, and the 1900 block of Ashland Avenue, subject to certain terms, conditions, and reservations; and providing for a special effective date.

By authority of
Article VIII - Franchises
Baltimore City Charter
(1996 Edition)

Recitals

An overall plan for portions of East Baltimore near Johns Hopkins Hospital is under construction for creation of a biotechnological and residential redevelopment, known as the East Baltimore Development Initiative. As part of the redevelopment, Forest City - New East Baltimore Partnership, LLC, will be participating in Phase I of the New East Baltimore Community.

Forest City - New East Baltimore Partnership, LLC, owns property located on opposite sides of N. Wolfe Street and Ashland Avenue.

Forest City - New East Baltimore Partnership, LLC, wishes to link data and voice networks through a fiber optic cable connection from its building and throughout Phase I of the New East Baltimore Community.

Portions of the private communications ductbanks will be located beneath the beds of the 900 block of N. Wolfe Street, the 800 block of N. Wolfe Street, and the 1900 block of Ashland Avenue public rights-of-way. At no point will the ductbanks be less than 30 inches below the finished grade of the rights-of-way.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

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SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That a franchise or right is granted to Forest City - New East Baltimore, LLC, its tenants, successors, and assigns (collectively, the “Grantee”) to construct, use, and maintain, at Grantee’s own cost and expense, and subject to the terms and conditions of this Ordinance, private communications ductbanks that will connect buildings located in the New East Baltimore Community, by crossing beneath the N. Wolfe Street and Ashland Avenue rights-of-way, located within easement areas more particularly described as follows:

Beginning for the same at a point on the existing easterly right-of-way line of North Wolfe Street, said point being North 02 degrees 46 minutes 39 seconds West 302.29 feet from the corner formed by the existing northerly right-of-way line of Ashland Avenue and the existing easterly right-of-way line of North Wolfe Street and having Baltimore Survey Control System coordinates of North 1,464.6791 and East 6,986.3323, and with all bearings and distances being referenced to the said Baltimore City Control System, thence leaving the aforesaid existing easterly right-of-way line of North Wolfe Street and running in a westerly direction, (1) South 87 degrees 12 minutes 06 seconds West 51.00 feet to a point in North Wolfe Street, thence (2) by a curve to the left having a radius of 4.50 feet and an arch length of 7.07 feet and being subtended by a chord bearing South 42 degrees 12 minutes 06 seconds West 6.36 feet to a point in North Wolfe Street, thence running in a southerly direction, (3) South 02 degrees 47 minutes 54 seconds East 69.00 feet to a point in North Wolfe Street, thence (4) by a curve to the right having a radius of 7.50 feet and an arch length of 11.78 feet, and being subtended by a chord bearing South 42 degrees 12 minutes 06 seconds West 10.61 feet and crossing over the existing westerly right-of-way line of North Wolfe Street to a point, thence (5) North 02 degrees 47 minutes 54 seconds West 3.00 feet to a point, thence (6) by a curve to the left having a radius of 4.50 feet and an arch length of 7.07 feet and being subtended by a chord bearing North 42 degrees 12 minutes 06 seconds East 6.36 feet and crossing over the existing westerly right-of-way line of North Wolfe Street to a point in North Wolfe Street, thence (7) North 02 degrees 47 minutes 54 seconds West 69.00 feet to appoint in North Wolfe Street, thence (8) by a curve to the right having a radius of 7.50 feet and an arch length of 11.78 feet and being subtended by a chord bearing North 42 degrees 12 minutes 06 seconds East 10.61 feet to a point in North Wolfe Street, thence (9) North 87 degrees 12 minutes 06 seconds East 52.00 feet crossing over the aforesaid existing easterly right-of-way line of North Wolfe Street to a point, thence (10) South 02 degrees 47 minutes 54 seconds East 3.00 to a point, thence (11) South 87 degrees 12 minutes 06 seconds to the place of beginning.

Containing approximately 419.55 square feet in plane, or 0.10 acres, more or less.

Beginning for the same at a point South 87 degrees 10 minutes 15 seconds West 33.08 feet from the corner formed by the existing northerly right-of-way line of Ashland Avenue and the existing westerly right-of-way line of North Chapel Street, said point having Baltimore City Survey Control System coordinates of North 1,168.2948 and East 7,113.2649, and with all bearings and distances being referenced to the Baltimore City Survey Control System, thence leaving the aforesaid existing northerly right-of-way line of Ashland Avenue and running in a northerly direction, (1) North 02 degrees 53 minutes 13 seconds West 1.00 feet to

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a point, thence (2) South 87 degrees 06 minutes 47 seconds West 3.00 feet to a point, thence (3) South 02 degrees 53 minutes 13 seconds East 55.00 feet, and crossing over the aforesaid existing northerly right-of-way line of Ashland Avenue, to a point, thence (4) by a curve to the left having a radius of 13.50 feet and an arch length of 7.07 feet and being subtended by a chord bearing South 17 degrees 53 minutes 30 seconds East 6.99 feet to a point, thence (5) by a curve to the right having a radius of 10.50 feet and an arch length of 5.50 feet and being subtended by a chord bearing South 17 degrees 53 minutes 30 seconds East 5.44 feet to intersect the existing southerly right-of-way line of Ashland Avenue, thence leaving the aforesaid right-of-way line and running in a southerly direction South 02 degrees 53 minutes 13 seconds East 1.00 feet to a point, thence (6) North 87 degrees 06 minutes 47 seconds East 3.00 feet to a point, thence (7) North 02 degrees 53 minutes 13 seconds West 1.00 feet, to intersect the existing southerly right-of-way line of Ashland Avenue, thence (8) by a curve to the left having a radius of 13.50 feet and an arch length of 7.07 feet, and being subtended by a chord bearing North 17 degrees 53 minutes 30 seconds West 6.99 feet, to a point, thence (9) by a curve to the right having a radius of 10.50 feet and an arch length of 5.50 feet, and being subtended by a chord bearing North 17 degrees 53 minutes 30 seconds West 5.44 feet to a point, thence (10) North 02 degrees 53 minutes 13 seconds West 54.00 feet to the place of beginning.

Containing approximately 204.20 square feet in plane, or 0.005 acres, more or less.

Beginning for the same at a point on the existing westerly right-of-way line of North Wolfe Street, said point being North 02 degrees 48 minutes 50 seconds West 113.05 feet from the corner formed by the existing northerly right-of-way line of East Madison Street and the existing westerly right-of-way line of North Wolfe Street, with all bearings and distances being referenced to the Baltimore City Survey Control System and having coordinates of North 886.151 and East 6948.641, thence running in an easterly direction, across North Wolfe Street and crossing over the proposed new easterly right-of-way line of North Wolfe Street, (1) North 87 degrees 12 minutes 06 seconds East 69.00 feet to a point, said point being 1.00 feet east of the proposed new easterly right-of-way line of North Wolfe Street, thence running parallel to the aforesaid proposed new easterly right-of-way line (2) North 02 degrees 47 minutes 54 seconds West 3.00 feet to a point, thence in a westerly direction and crossing over the proposed new easterly right-of-way line of North Wolfe Street and also the westerly right-of-way line of the aforesaid North Wolfe Street, (3) South 87 degrees 12 minutes 06 seconds West 70.00 feet to a point, said point being 1.00 feet west of the existing westerly right-of-way line of North Wolfe Street, thence running parallel to the westerly right-of-way line of the said North Wolfe Street, (4) South 02 degrees 47 minutes 54 seconds East 3.00 feet to a point, thence running in an easterly direction (5) North 87 degrees 12 minutes 06 seconds East 1.00 feet to the place of beginning.

Containing approximately 210.00 square feet in plane, or 0.004 acres, more or less.

SECTION 2. AND BE IT FURTHER ORDAINED, That to become effective, the franchise or right granted by this Ordinance (the "Franchise") must be executed and enjoyed by the Grantee within 6 months after the effective date of this Ordinance.

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1 **SECTION 3. AND BE IT FURTHER ORDAINED,** That as compensation for the Franchise, the
2 Grantee shall pay to the Mayor and City Council of Baltimore a franchise charge of \$6,856.42 a
3 year, subject to increase or decrease as provided in Section 5 of this Ordinance. The franchise
4 charge must be paid annually, at least 30 days before the initial and each renewal term of the
5 Franchise.

6 **SECTION 4. AND BE IT FURTHER ORDAINED,** That:

7 (a) The initial term of the Franchise is 1 year, commencing on the effective date of this
8 Ordinance. Unless sooner terminated as provided in this Ordinance, the Franchise will
9 automatically renew, without any action by either the Mayor and City Council of Baltimore or
10 the Grantee, for 24 consecutive 1-year renewal terms. Except as otherwise provided in this
11 Ordinance, each renewal term will be on the same terms and conditions as the initial term. The
12 maximum duration for which the Franchise may operate, including the initial and all renewal
13 terms, is 25 years.

14 (b) Either the Mayor and City Council of Baltimore, acting by and through the Director of
15 Public Works, or the Grantee may cancel the Franchise as at the end of the initial or any renewal
16 term by giving written notice of cancellation to the other at least 90 days before the end of that
17 term.

18 **SECTION 5. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council of Baltimore,
19 acting by and through the Board of Estimates, may increase or decrease the annual franchise
20 charge by giving written notice of the increase or decrease to the Grantee at least 150 days
21 before the end of the original or renewal term immediately preceding the renewal term to which
22 the increase or decrease will first apply. The new franchise charge will apply to all subsequent
23 annual renewal terms, unless again increased or decreased in accordance with this section.

24 **SECTION 6. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council of Baltimore
25 expressly reserves the right at all times to exercise, in the interest of the public, full municipal
26 superintendence, regulation, and control over and in respect to all matters connected with the
27 Franchise and not inconsistent with the terms of this Ordinance.

28 **SECTION 7. AND BE IT FURTHER ORDAINED,** That the Grantee, at its own cost and expense,
29 shall maintain in good condition and in compliance with all applicable laws and regulations of
30 Baltimore City, all structures for which the Franchise is granted. The maintenance of these
31 structures shall be at all times subject to the regulation and control of the Commissioner of
32 Housing and Community Development and the Director of Public Works. If any structure for
33 which the Franchise is granted must be readjusted, relocated, protected, or supported to
34 accommodate a public improvement, the Grantee shall pay all costs and expenses in connection
35 with the readjustment, relocation, protection, or support.

36 **SECTION 8. AND BE IT FURTHER ORDAINED,** That at the option of the Mayor and City
37 Council of Baltimore, acting by and through the Director of Public Works, the Grantee's failure
38 to comply with any term or condition of this Ordinance constitutes a forfeiture of the Franchise.
39 Immediately on written notice to the Grantee of the exercise of this option, the Franchise
40 terminates. Once so terminated, only an ordinance of the Mayor and City Council of Baltimore
41 may waive the forfeiture or otherwise reinstate the Franchise.

42 **SECTION 9. AND BE IT FURTHER ORDAINED,** That at any time and without prior notice, the
43 Mayor of Baltimore City may revoke the Franchise if, in the Mayor's judgment, the public

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1 interest, welfare, safety, or convenience so requires. Immediately on written notice to the
2 Grantee of the exercise of this right, the Franchise terminates.

3 **SECTION 10. AND BE IT FURTHER ORDAINED,** That on cancellation, expiration, forfeiture,
4 revocation, or other termination of the Franchise for any reason, the Grantee shall remove all
5 structures for which the Franchise is granted. The removal of these structures shall be
6 (i) undertaken at the cost and expense of the Grantee, without any compensation from the Mayor
7 and City Council of Baltimore, (ii) made in a manner satisfactory to the Commissioner of
8 Housing and Community Development and the Director of Public Works, and (iii) completed
9 within the time specified in writing by the Director of Public Works.

10 **SECTION 11. AND BE IT FURTHER ORDAINED,** That the Grantee is liable for and shall
11 indemnify and save harmless the Mayor and City Council of Baltimore against all suits, losses,
12 costs, claims, damages, or expenses to which the Mayor and City Council of Baltimore is at any
13 time subjected on account of, or in any way resulting from, (i) the presence, construction, use,
14 operation, maintenance, alteration, repair, location, relocation, or removal of any of the
15 structures for which the Franchise is granted, or (ii) any failure of the Grantee, its officers,
16 employees, or agents, to perform promptly and properly any duty or obligation imposed on the
17 Grantee by this Ordinance.

18 **SECTION 12. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it
19 is enacted.

Certified as duly passed this ____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,

this ____ day of _____, 20__

Chief Clerk

Approved this ____ day of _____, 20__

Mayor, Baltimore City