

ROCHESTER CITY COUNCIL

REGULAR MEETING

February 19, 2019

Present – President Scott, Councilmembers Clifford, Evans, Gruber, Lightfoot, McFadden, Ortiz, Patterson, Spaul – 9.

The Council President requested the Council to rise for a Moment of Silence.

Pledge of Allegiance to the Flag of the United States of America.

Special Recognition:

Pop Warner Rochester Rams

Retirement:

DES:

*Richard C. Boyd
*Vernice V. Crues
*Thomas D'Agostino
*Roy Thomas

ECD:

*David L. Smith

FIN:

*Susan A. Caufield
*Bruce P. Natalie

I.T.:

*Lisa M. Bobo
*Anthony P. Sutera

RFD:

*David Dunwoody
*Frank R. Vallone
*Richard Yackel

RPD:

*Brett J. Scheur

*Did not attend

APPROVAL OF THE MINUTES

By Councilmember Lightfoot

RESOLVED, that the minutes of the Regular Meeting of January 15, 2019 be approved as published in the official sheets of the Proceedings.

February 19, 2019

Adopted unanimously.

COMMUNICATIONS FROM THE MAYOR, COUNCIL PRESIDENT, CORPORATE OFFICERS AND OTHERS.

The Mayor submits the following:

Quarterly Reports – Schedule of Revenues and Expenditures –December 31, 2018. – 4300-19.
Administrative Cancellation or Refund of Erroneous Taxes – January 2019. 4301-19.

The Council submits Disclosure of Interest Forms from President Scott on Int. No. 26, Vice President McFadden on Int. No. 42 and Councilmember Gruber on Int. No. 26

THE COUNCIL PRESIDENT --- PRESENTATION AND REFERENCE OF PETITIONS AND OTHER COMMUNICATIONS.

REPORTS OF STANDING COMMITTEES
AND ACTION THEREON

By Vice President McFadden
February 19, 2019

To the Council:

The **FINANCE COMMITTEE** recommends for **ADOPTION** the following entitled legislation:

- Int. No. 22 Authorizing the cancellation or refund of erroneous taxes and charges
- Int. No. 23 Authorizing an amendatory agreement for support and enhancement of the Ektron Web Content Management System
- Int. No. 24 Authorizing an amendatory agreement with Tyler Technologies, Inc.

The following entitled legislation is being **HELD** in committee:

- Int. No. 46 Establishing a pilot program for advertising on City-owned assets

Respectfully submitted,
Adam C. McFadden
Molly Clifford
Malik Evans
Michael A. Patterson
Loretta C. Scott
FINANCE COMMITTEE

Received, filed and published.

February 19, 2019

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-17
Re: Cancellation or Refund of
Erroneous Taxes and Charges

Transmitted herewith for your approval is legislation approving the cancellation or refund of taxes and charges totaling \$2,819.20.

A work order for 1104 S. Plymouth Avenue was requested on 12/13/2016 for trash and debris. At the time the work order was initiated, the property was vacant. The property was sold on 4/4/2017. The prior owner should have been billed and the charges should not have been added to the tax bill.

If these cancellations are approved, total cancellations thus far for 2018-19 will be as follows:

	<u>Accounts</u>	
City Council	3	\$11,796.31
Administrative	<u>51</u>	<u>\$18,509.52</u>
Total	54	\$30,305.83

These cancellations represent 0.0117% of the tax receivables as of July 1, 2018.

Respectfully submitted,
Lovely A. Warren
Mayor.

Attachment AS-11

Ordinance No. 2019-17
(Int. No. 22)

Authorizing the cancellation or refund of erroneous taxes and charges

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The City Treasurer is hereby authorized to cancel \$2,819.20 in taxes and charges for the property located at 1104 S. Plymouth Avenue. A work order for 1104 S. Plymouth Avenue was requested on December 13, 2016 for trash and debris. At the time the work order was initiated, the property was vacant. The property was sold on April 4, 2017. The prior owner should have been billed and the charges should not have been added to the current owner's tax bill.

February 19, 2019

S.B.L. #: 135.28-1-14
Class: H
Address: 1104 S. Plymouth Ave.
Tax year: 2019
Amount cancelled: \$2,819.20

Section 2. If full or partial payment of the afore-said taxes and charges has been made and received, the City Treasurer is hereby authorized and directed to remit to the owner of the parcel the amount of said payment without interest.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-18
Re: Amendatory Agreement-
FuseIdeas, LLC, Ektron Web
Content Management System
Support

Transmitted herewith for your approval is legislation establishing \$35,000 as maximum compensation for an amendatory agreement with FuseIdeas, LLC (Dennis Franczak, Principal), Winchester, MA to provide continued technical support and enhancement services for the City's website platform. The original agreement for website redesign, technical support, and enhancement services was executed in March 2015. An amendatory agreement was authorized in January 2017 (Ordinance 2017-1) for services to upgrade the Ektron Web Content Management System and provide an additional two years of support and enhancements to the City's website platform.

This amendment will extend the services provided by FuseIdeas, LLC for a total compensation of \$235,000. The term of the agreement will be extended for two years, to March 5, 2021. Costs will be funded as follows: \$20,000 from the 2019-20 Information Technology budget, and \$15,000 from the 2020-21 Information Technology budget, contingent upon adoption.

This extension is requested to provide continuity of support and stability of the website platform until a new web content management system is selected and implemented.

FuseIdeas, LLC was selected via a RFP process in 2014 and has expertise with supporting our current environment. A justification for not issuing another RFP is attached.

February 19, 2019

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment AS-12

Ordinance No. 2019-18
(Int. No. 23)

Authorizing an amendatory agreement for support and enhancement of the Ektron Web Content Management System

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an amendatory professional services agreement with FuseIdeas, LLC for continued technical support and enhancement services for the City's Ektron Web Content Management System. The amendatory agreement shall increase the maximum compensation for the agreement, which was previously authorized in Ordinance No. 2014-364 and amended in Ordinance No. 2017-1, by \$35,000 to a new total of \$235,000 and shall extend the agreement's term by two years to March 5, 2021.

Section 2. The increase in compensation shall be funded in the amounts of \$20,000 from the 2019-20 Budget for Information Technology (IT) and \$15,000 from the 2020-21 Budget for IT, contingent upon the adoption of said budgets.

Section 3. The agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 4. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Re: Ordinance No. 2019-19
Amendatory Agreement –
Tyler Technologies, Inc. Tyler
Cashiering Implementation/
MUNIS Enhancements

Transmitted herewith for your approval is legislation authorizing an amendatory agreement with Tyler Technologies, Inc., Plano, TX for professional services to replace legacy cashiering systems and implement additional MUNIS enhancements. The original agreement, authorized in December 2015 (Ordinance 2015-

February 19, 2019

285) established maximum compensation of \$180,000 for a term of three years. This amendment will extend the term one additional year to February 25, 2020. There will be no change in the maximum compensation.

Tyler is providing services to replace legacy cashiering systems and implement an enterprise cashiering solution at multiple City payment handling sites. These projects will continue beyond the current contract end date

Respectfully submitted,
Lovely Warren
Mayor

Ordinance No. 2019-19
(Int. No. 24)

Authorizing an amendatory agreement with Tyler Technologies, Inc.

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an amendatory professional services agreement with Tyler Technologies, Inc. to replace legacy cashiering systems and implement additional MUNIS enhancements. The amendment shall extend the term of the original agreement, authorized by Ordinance No. 2015-285 for one additional year.

Section 2. The amendatory agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

Vice President McFadden moved to discharge Int. No. 46 from committee.

The motion was seconded by Councilmember Evans.

The motion was adopted unanimously.

Vice President McFadden moved to amend Int. No. 46.

The motion was seconded by Councilmember Patterson

The motion was adopted unanimously.

February 19, 2019

TO THE COUNCIL
Ladies and Gentlemen:

Re: Ordinance No. 2019-20
City Asset Advertising Pilot
Program

Council Priority: Deficit Reduction and
Long Term Financial Stability

Transmitted herewith for your approval is legislation adopting a City Asset Advertising Pilot Program. The City wishes to establish a temporary pilot program to test and evaluate how to authorize and regulate advertising on City-owned assets in order to ascertain how to make the best utilization of those assets to generate revenue while protecting the public interest.

The Program authorizes the City to either directly engage companies to place advertising on City assets; or to engage a broker to solicit and promote the advertising use of City assets by other parties. Advertising will comply with all applicable federal, state and local laws, appear as incidental to the public purpose or function of the City asset upon which it is placed, and be deemed suitable for placement on City assets by using a baseline criteria as outlined in the proposed legislation.

To implement the Program, the Mayor will establish a six member Advertising Committee consisting of one representative from each of the Mayor's Office, Law Department, Bureau of Communications, Department of Environmental Services, Police Department, and an appointee of the President of City Council. The role of the Committee will be to review and advise the Mayor on the suitability of proposed Advertising Agreements and to assist the Mayor to review and report to Council regarding the efficacy of the Program and regarding recommendations for future Advertising activities.

The pilot program will end on September 30, 2021. Based upon the experience from the Pilot, the City will then decide if it will formalize a permanent program through subsequent legislation.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-13

Ordinance No. 2019-20
(Int. No. 46, as amended)

Establishing a pilot program for advertising on City-owned assets

WHEREAS, the City wishes to establish a temporary pilot program to test and evaluate how to authorize and regulate advertising on City-owned assets in order to ascertain how to make the best utilization of those assets to generate revenue while protecting the public interest.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Council does hereby adopt the City Asset Advertising Pilot Program (the “Program”). The Program shall be authorized for a limited time and shall be defined and limited in accordance with the following sections of this Ordinance.

Section 2. General authorization and definitions. Under the Program, an advertising sign or display (“Advertising”) may be placed on a City Asset pursuant to an agreement (“Advertising Agreement”) between the City of Rochester (“City”) and another party. Program Advertising may be placed on a “City Asset,” which shall consist of any real or personal property, or appurtenance thereto, that is owned, leased or otherwise controlled by the City, including but not limited to land, buildings, recreational facilities, sidewalks, curbs, light poles, benches, planters, parking facilities, roads, vehicles and equipment.

Section 3. An Advertising Agreement may take one of the following forms:

- A. engaging a media company to solicit, promote and broker the Advertising use of City Assets by one or more other parties (“Broker Advertising Agreement”); or
- B. engaging one party directly to place its own Advertising on City Assets (“Direct Advertising Agreement”).

Section 4. The Advertising authorized under the Program shall be limited to:

- A. advertising signs or displays that propose a commercial transaction, product or service for which a nongovernmental individual or entity pays a fee for placement on a City Asset;
- B. temporary signs or displays intended to promote a special event that is sponsored by the City or granted a permit by the City (collectively, a “Special Event”); or
- C. signs or displays that acknowledge a private party’s sponsorship of a Special Event or of a City Asset, in the form of a monetary payment or of in-kind assistance, without endorsing the sponsor’s product or service.

The City shall not accept Advertising for political, religious or issue-oriented messages because the City’s screening of such Advertising might convey the false impression that the City either endorses or opposes such messages. This restriction is also intended to avoid creating the impression that the City intends to open up all City Assets that display Advertising to use as a public forum for the open exchange of ideas.

Each Advertising proposal shall be reviewed for its suitability by the Mayor in consultation with an Advertising Committee as described below.

Section 5. The Mayor shall establish an Advertising Committee consisting of one representative ~~from~~ of each of the following: ~~Mayor’s Office, Law Department, Bureau of Communications and Special Events, Police Department, Department of Environmental Services, the Neighborhood Service Centers Director, the Manager of Zoning~~ and one additional member to be appointed by the President of City Council. The role of the Committee will be to review and advise the Mayor on the suitability of proposed Advertising Agreements and to assist the Mayor to review and report to Council regarding the efficacy of the Program and regarding recommendations for future Advertising activities.

Section 6. Advertising shall only be placed on City Assets where the City has the legal authority to allow advertising. Advertising shall comply with all applicable Federal, State and Local laws, ordinances, codes, regulations, policies, legal opinions and procedures, including this Ordinance (collectively, “Applicable Law and Policies”). All Advertising Agreements will be reviewed for compliance with Applicable Law and Policies. Every Advertising Agreement shall reserve for the City the right to terminate and require the immediate removal of Advertising in the event that it is determined that such Advertising violates this Ordinance or any other Applicable Law or Policy and shall indemnify and hold the City harmless from any claims or losses arising from the early termination of an Advertising use in this manner.

Section 7. Advertising shall not interfere with, the public purpose and function of the City Asset upon which it is placed or otherwise interfere with the public interest (“Suitable” or “Suitability”). The Mayor shall consult with the Advertising Committee to assure that only Suitable Advertising is placed on City Assets by considering the nature of the Advertising medium, the function and location of City Asset upon which the Advertising is to be placed, and compliance with this and other Applicable Laws and Policies. Factors relevant to the evaluation of the Suitability of Advertising may include but are not limited to:

- identifying functions and locations of City Assets where Advertising is contrary to Applicable Laws and Policies;
- the size, location, condition and municipal uses of the City Asset where the Advertising would be placed;
- the size and prominence of the Advertising relative to the City Asset where it would be placed;
- the potential for the Advertising to cause distractions that interfere with traffic or pedestrian safety;
- the Advertising’s potential to interfere with or “crowd out” City signs or other communications important to the City Asset’s public purpose;
- the potential for the Advertising to cause an unacceptable implication of City endorsement of the Advertising’s content;
- the potential for the Advertising to detract from desirable aesthetic, historical, architectural or cultural attributes of a City Asset or nearby areas; and
- mechanical or other physical elements (e.g., type of sign structure, posts or brackets attaching the sign to the City Asset; the condition of the part of the City Asset to be attached to the Advertising sign, etc.) bearing on whether and how the Advertising can be installed and thereafter quickly removed without harming the City Asset.

Any Advertising Agreement that is approved shall require the Broker and/or private advertiser to abide by and maintain those specified conditions that are necessary to maintain the Suitability of the Advertising arrangement.

Section 8. The standards and arrangements for administrative management and review of Advertising set forth in this Policy are subject to and will not supersede the oversight and authority that the Mayor and City Council exercise over City Assets, including, but not limited to, the requirement of City Council approval for any professional services agreement that will exceed \$10,000 in value or one year in duration.

Section 9. All Advertising and all Advertising Agreements that are authorized under the Program shall terminate no later than September 30, 2021 (“Program Expiration”), except to the extent that any such Advertising or Advertising Agreement is permissible under Applicable Law and Policies other than this

Ordinance. After the Program Expiration, the Mayor shall consult with the Advertising Committee to prepare a report to Council that describes the extent of Advertising and the amounts of revenues and in-kind contributions generated by the Program, addresses the efficacy of the Program and offers any recommendations for future Advertising activities.

Section 10. Chapter 35 of the Municipal Code, Bill posting and advertising, as amended, is hereby further amended at Section 35-1, Handbills and signs prohibited in or on public places or objects, to read as follows:

- A. No person shall paint, mark or write on or post or otherwise affix any handbill or sign to or upon any sidewalk, crosswalk, curb, street lamppost, hydrant, tree, shrub, tree stake or guard, electric light or power or telephone pole or wire, fire alarm box, bridge, street sign, traffic sign or other traffic control device, parking meter or any other street appurtenance.
- B. Any handbill or sign found posted or otherwise affixed contrary to the provisions of this section may be removed or obliterated by the City. The person responsible for any such illegal posting shall be liable for the cost incurred in the removal thereof, in addition to any penalty which may be imposed.
- C. This section shall not apply to the placement of advertisements by the Rochester-Genesee Regional Transportation Authority on bus shelters within the right-of-way.
- D. This section shall not apply to the placement of advertisements approved by the City in accordance with the City Asset Pilot Advertising Program adopted in Ordinance 2019-20, provided that this exception shall not extend to any such advertisements that are placed or that remain on or after October 1, 2021.

Section 11. This ordinance shall take effect immediately.

Strikeout indicates deleted text, new text is underlined.

Passed unanimously.

By Councilmember Patterson
February 19, 2019

To the Council:

The **NEIGHBORHOOD & BUSINESS DEVELOPMENT COMMITTEE** recommends for **ADOPTION** the following entitled legislation:

Int. No. 25 Authorizing the sale of real estate

Int. No. 26 Authorizing an agreement and amending Ordinance No. 2018-263 relating to the 2018–2019 Street Liaison Program

- Int. No. 27 Authorizing the sale of a land parcel at 125 Howell Street
- Int. No. 28 Authorizing an intermunicipal agreement with the County of Monroe to fund enforcement of the Lead-Based Paint Poisoning Prevention ordinance

The **NEIGHBORHOOD & BUSINESS DEVELOPMENT COMMITTEE** recommends for **CONSIDERATION** the following entitled legislation:

- Int. No. 5 Determinations and findings relating to the acquisition of properties to establish a new Goodman Section office for the Rochester Police Department and a new Neighborhood Service Center for the City's Southeast Quadrant

Respectfully submitted,
Michael A. Patterson
Willie J. Lightfoot
Jacklyn Ortiz
Adam C. McFadden
Loretta C. Scott
NEIGHBORHOOD & BUSINESS DEVELOPMENT COMMITTEE

Received, filed and published.

Introductory 5 was introduced on January 15, 2019 and appears in its original transmittal letter on page___ of the 2019 Council Proceedings.

Attachment No. AS-14

Ordinance No. 2019-21
(Int. No. 5)

Determinations and findings relating to the acquisition of properties to establish a new Goodman Section office for the Rochester Police Department and a new Neighborhood Service Center for the City's Southeast Quadrant

WHEREAS, the Rochester Police Department (RPD) has reorganized its patrol functions from a Two-Division structure to a Five-Section model in order to maintain and exceed the previous levels of service, increase community policing initiatives, connect officers to smaller, neighborhood-based patrol beats, and decentralize police services to neighborhoods;

WHEREAS, the RPD requires a permanent headquarters for its operations in one of the five newly delineated patrol areas, the Goodman Section, and the City wishes to collocate that facility with the Neighborhood Service Center (NSC) for the Southeast Quadrant, because the two operations encompass nearly

the same territory and a collocated facility, hereinafter referred to as the “Project,” will allow RPD and NSC to better coordinate their neighborhood-based services;

WHEREAS, the City has identified a suitable site for the Project, consisting of approximately 2.42 acres of land located in the Beechwood neighborhood on the north side of East Main Street, adjacent to and including a portion of Laura Street (the “Project Site”);

WHEREAS, the search for a suitable Project site was guided by goals of finding a central location within the Goodman Section that is large enough and best situated to satisfy the needs of RPD and NSC customers and personnel and, after reviewing over 20 different sites, the Project Site was deemed to be the optimal one because it is a conspicuous location, readily accessible by vehicles, located on an RGRTA bus line, and because it will promote a more vibrant neighborhood by redeveloping a number of underutilized vacant parcels, including a Brownfield Cleanup site that is owned by the City;

WHEREAS, the Project Site is comprised of three parcels of land owned by the City located at 2 Laura Street and at 1200 and 1240 East Main Street, the southern end of the Laura Street right-of-way that extends approximately 125 feet northward from East Main Street, and the 10 privately-owned Acquisition Parcels listed below;

WHEREAS, the City of Rochester proposes to assemble the Project Site by acquiring the 10 Acquisition Parcels, abandoning a portion of Laura Street as a public street, using 3 City-owned parcels, and removing the existing dwellings in order to construct an approximately 18,000 square foot building to house the RPD Goodman Section and Southwest Quadrant NSC, and a parking lot for customers, personnel and official vehicles; and

WHEREAS, the Council of the City of Rochester held a public hearing on January 10, 2019 pursuant to Article 2 of the Eminent Domain Procedure Law to consider the Project and __ speakers appeared at the hearing.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Council hereby makes the following determinations and findings concerning the Project:

- A. Project description – acquire the following 10 parcels of real estate (the “Acquisition Parcels”) and join them with three adjacent City-owned parcels located at 2 Laura Street and at 1200 and 1240 East Main Street and the southern end of the Laura Street right-of-way to assemble a site for an approximately 18,000 square foot building to house the RPD Goodman Section and the Southwest Quadrant NSC, and a parking lot for customers, personnel and official vehicles (collectively, the “Project”):

1-5 Laura Street	11-15 Laura Street
4-6 Laura Street	1214-1216 E. Main Street
7-9 Laura Street	1222 E. Main Street
8-8½ Laura Street	1228-1230 E. Main Street
10 Laura Street	1252 E. Main Street

- B. Project purpose – To develop and operate collocated offices for the RPD Goodman Section and Southeast NSC to better coordinate their neighborhood-based services at a site that is best situated for that purpose while promoting a more vibrant neighborhood by redeveloping a number of vacant parcels of land.
- C. Relocation assistance and compensation – In accordance with the City’s rules and regulations for relocation benefits approved in Resolution No. 2002-25, City staff will give occupants of the Acquisition Parcels fair notice and provide a \$1,000 moving allowance for each dwelling unit. In addition, for those occupants who request it, City staff will assist them to find comparable replacement housing before they are required to vacate.
- D. Project effect – The purchase of the Acquisition Parcels and the overall Project have been evaluated for potential significant adverse environmental effects on the environment pursuant to the State Environmental Quality Review Act (“SEQR”) and Chapter 48 of the Municipal Code.

Section 2. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-22
Re: Sale of Real Estate

Council Priority: Rebuilding and
Strengthening Neighborhood
Housing

Transmitted herewith for your approval is legislation approving the sale of one property. City records have been checked to ensure that purchasers (except those buying unbuildable vacant lots) do not own other properties with code violations or delinquent taxes, and have not been in contempt of court or fined as a result of an appearance ticket during the past five years.

The property was sold to the adjoining owner who will utilize the parcel for expansion of his recently acquired storage facilities. The Planning Commission approved his plans to include outside storage of metal poles and trailers at their November meeting.

The first year projected tax revenue for the property, assuming full taxation, current assessed valuations and current tax rates, is estimated to be \$131.

All City taxes and other charges, except water charges against properties being sold by the City, will be canceled on the first day of the month following adoption of the ordinance because either the City has agreed to convey the properties free of City tax liens and other charges, or these charges have been included in the purchase price.

February 19, 2019

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-15

Ordinance No. 2019-22
(Int. No. 25)

Authorizing the sale of real estate

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Council hereby approves the negotiated sale of the following parcel of vacant land with proposal:

Address	SBL#	Lot Size	Price	Purchaser
120 Joseph Ave	106.64-1-57	16 x 169	\$1,400	425 Ormond LLC

Section 2. City taxes and other City charges, except water charges, against said property is hereby canceled up to the first day of the month following the date of adoption of this ordinance for the reason that the City has agreed to convey said property free of City tax liens and other charges or because these charges have been included in the purchase price.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-23
Re: 2018-2019 Street Liaison Agreements

Council Priority: Creating and
Sustaining a Culture of Vibrancy

Transmitted herewith for your approval is legislation related to the Street Liaison Program. This legislation will amend Ordinance No. 2018-263 to:

- 1) Add \$5,000 to the existing Street Liaison Agreement with Action for a Better Community, Incorporated (Steve Turner, Program Director - 550 East Main Street, Rochester, 14604) increasing the total amount to \$20,000 for the Northeast Quadrant, Public Market Business District which includes the Public Market footprint and the immediate surrounding streets of Railroad Street, North

February 19, 2019

Goodman Street, East Main Street, and North Union Street. This additional amount will be funded from the 2018-2019 Operating Budget of Neighborhood and Business Development.

- 2) Award \$5,000 as maximum compensation to ISLA Housing & Development Corporation (Sonia Nunez, Executive Director - 1164 North Clinton Avenue, Rochester, 14621) for a Street Liaison Agreement for the Northeast Quadrant, North Clinton Commercial Corridor which includes N. Clinton Avenue between Upper Falls Boulevard and Norton Street. The original award went to Group 14621, but they were unable to meet the requirements of the agreement. Therefore, these funds are now being awarded to ISLA because they scored second on the Request for Qualifications (RFQ). This amount will be funded from the Street Liaison allocation of the 2018-2019 Annual Action Plan from the Community Development Block Grant for the City's use to operate the program.

The mission of the Street Liaison is to provide outreach and assistance to businesses within the targeted commercial corridors found in their respective quadrants of the city of Rochester. This assistance is expected to result in increased business and community investment, retention of existing jobs, and the creation of new jobs. The Street Liaison may also contribute to additional business and community development efforts.

A Request for Qualifications (RFQ) was completed to locate vendors for each quadrant as described on the attached Vendor Selection Form.

The agreements will be in effect from January 1, 2019 through June 30, 2019.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-16

Ordinance No. 2019-23
(Int. No. 26)

Authorizing an agreement and amending Ordinance No. 2018-263 relating to the 2018-2019 Street Liaison Program

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an agreement with Action for a Better Community, Incorporated in the maximum amount of \$5,000 for business development street liaison services within the Public Market Business District, which includes the Public Market footprint and the immediate surrounding streets of Railroad Street, N. Goodman Street, E. Main Street, and North Union Street. Said amount shall be funded from the 2018-19 Budget of the Department of Neighborhood and Business Development. The term of the agreement shall be from January 1, 2019 through June 30, 2019 with the option to extend if some of the funds provided for herein remain.

Section 2. Ordinance No. 2018-263, authorizing agreements for the 2018-2019 Street Liaison Program, is hereby amended in Section 3 to read as follows:

Section 3. The Mayor is hereby authorized to enter into an agreements to obtain business development street liaison services for each of the city's four quadrants for the maximum compensation amounts as follows:

- a) for the Northeast Quadrant, with Action for a Better Community, Incorporated, for \$15,000, and with ~~Group 14621 Community Association, Inc.~~ ISLA Housing & Development Corporation for \$5,000, both funded from the appropriation in Section 1;
- b) for the Northwest Quadrant, with Highland Planning LLC for \$20,000 funded from the appropriation in Section 1;
- c) for the Southeast Quadrant, with Highland Planning LLC for \$25,000 funded in the amount of \$20,000 from the appropriation in Section 1 and in the amount of \$5,000 from the appropriation in Section 2; and
- d) for the Southwest Quadrant, with 19th Ward Community Association of Rochester, New York, Inc. for \$20,000 funded from the appropriation in Section 1.

Section 3. The agreements shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 4. This ordinance shall take effect immediately.

Strikeout indicates deleted text, new text is underlined.

Passed by the following vote:

Ayes: President Scott, Councilmembers Clifford, Evans, Lightfoot, McFadden, Ortiz, Patterson, Spaul -8.

Nays: None -0.

Councilmember Gruber abstained due to a professional relationship.

TO THE COUNCIL

Ladies and Gentlemen:

Ordinance No. 2019-24
Re: Sale of Land: 125 Howell Street
to Capstone Real Estate
Development LLC

Council Priorities: Creating and Sustaining
a Culture of Vibrancy; Rebuilding and
Strengthening Neighborhood Housing.

Transmitted herewith for your approval is legislation related to the sale of one City-owned property at 125 Howell Street, Rochester, NY (the "Property") to Capstone Real Estate Development LLC with principal Don Lasher (the "Developer"), or an entity to be formed by Capstone Real Estate Development LLC. The Property's SBL number is 121.41-2-31. This legislation will:

- 1) Authorize the sale of the Property to the Developer for the appraised value of \$65,000.

The sale price of the Property was determined by an independent appraisal completed by Kevin L. Bruckner, MAI, CCIM, of Bruckner, Tillett, Rossi, Cahill & Associates, in October 2016.

The Property is a new parcel resulting from the assembly of land due to the Inner Loop East Transformation Project. As part of the City’s efforts to reintegrate the neighborhoods previously separated by the eight-lane highway on the eastern portion of the Inner Loop, a request for proposals for the purchase and redevelopment of this parcel was issued on June 6, 2018. The City received one proposal, which was evaluated by staff from the Department of Neighborhood and Business Development and the Department of Environmental Services. The Developer’s proposal was recommended for selection based on the proposed development program.

The selected proposal includes one building consisting of five four-story rental townhomes. Each will have a garage on the first floor. The Developer currently owns the adjacent site and has located their offices there. The Property is small (0.132 acres) and irregularly shaped, and ownership of the adjacent site makes development of the Property most feasible. The Developer proposes commencing construction in late Spring 2019 and completion in Spring 2020.

The estimated sources and uses of funds for the Property are as follows:

Sources		Uses	
Canandaigua Nat’l Bank Loan	\$1,120,625	Land Acquisition	\$ 65,000
Developer Equity	<u>299,470</u>	Construction Costs	1,224,269
Total	\$1,420,095	Site Work	56,900
		Soft Costs	<u>73,926</u>
		Total	\$1,420,095

The Developer will abide by the City’s policy on Minority and Women-Owned Business Enterprise (MWBE) and workforce participation. The City’s MWBE goal is 30%, the workforce minority goal is 20%, the workforce female goal is 6.9%, and the City of Rochester resident workforce goal is 25%.

The State Environmental Quality Review for the Inner Loop East Transformation Project included future development parameters. This project falls within those parameters, and is therefore covered by the Negative Declaration issued on December 23, 2013.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-17

Ordinance No. 2019-24
(Int. No. 27)

Authorizing the sale of a land parcel at 125 Howell Street

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Council hereby approves the negotiated sale with proposal of 125 Howell Street (SBL# 121.41-2-31), comprising approximately 0.13 acres of vacant land that has been assembled from the Inner Loop East Transformation Project, to Capstone Real Estate Development LLC to construct multifamily dwellings. The sale price shall be \$65,000.

Section 2. The Mayor is hereby authorized to grant and accept any easements or licenses for utilities, ancillary development, or public access that the Mayor determines to be necessary or appropriate to effectuate the terms and purposes of the sale.

Section 3. The Mayor is hereby authorized to enter into such agreements and to execute such other instruments as may be necessary to implement the actions authorized herein. The agreements and other instruments shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 4. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-25
Re: Inter-municipal Agreement
with Monroe County for Lead
Paint Poisoning Prevention
Inspection Services

Council Priority: Rebuilding and
Strengthening Neighborhood Housing

Transmitted herewith for your approval is legislation authorizing an Inter-municipal Agreement with Monroe County for the receipt and use of \$310,000 for lead paint poisoning prevention inspection services. The term of said agreement is April 1, 2019 through March 31, 2020.

The funds associated with this agreement provide a reimbursement of expenses related to the enforcement of the City's Lead-Based Paint Poisoning Prevention Ordinance. These funds are part of the State's Lead Primary Prevention Grant dollars provided to Monroe County. The \$310,000 covers visual inspections for lead hazards, Lead Dust Wipe Sampling tests and Clerical and IT support provided by the City of Rochester. This agreement has been in place since October 1, 2007. A chart showing the history of the past eight years of the grant is attached.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-18

Ordinance No. 2019-25
(Int. No. 28)

Authorizing an intermunicipal agreement with the County of Monroe to fund enforcement of the Lead-Based Paint Poisoning Prevention ordinance

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an intermunicipal agreement with the County of Monroe for the receipt and use of New York State funding in the amount of \$310,000 for enforcement of the City's Lead-Based Paint Poisoning Prevention ordinance. The term of agreement shall be April 1, 2019 through March 31, 2020.

Section 2. The agreement shall contain such additional terms and conditions as the Mayor deems appropriate.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

By Councilmember Evans
February 19, 2019

To the Council:

The **PARKS & PUBLIC WORKS COMMITTEE** recommends for **ADOPTION** the following entitled legislation:

- | | |
|-------------|---|
| Int. No. 29 | Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$1,510,000 Bonds of said City to finance the costs of the South Avenue Parking Garage Lighting and Electrical System Replacement Project |
| Int. No. 32 | Amending Ordinance No. 2018-67 relating to a resident project representation services for the Hazardous Sidewalk Replacement Program |
| Int. No. 33 | Authorizing an agreement with the New York State Department of Environmental Conservation for the disposition of electronic waste material |

February 19, 2019

- Int. No. 34 Authorizing an intermunicipal lease agreement for radio transmitting equipment
- Int. No. 35 Authorizing an agreement for the supply of electricity to City facilities

The **PARKS & PUBLIC WORKS COMMITTEE** recommends for **CONSIDERATION** the following entitled legislation:

- Int. No. 10 Approving geometric changes related to the Atlantic Avenue/Merriman Street Safety Improvements Project
- Int. No. 30 Amending the Official Map
- Int. No. 31 Authorizing the acceptance of right of way from the New York State Department of Transportation and amending the Official Map by dedicating for street purposes land to be named Karges Place

Respectfully submitted,
Malik Evans (Absent)
Mitch Gruber
Elaine M. Spaul
Adam C. McFadden
Loretta C. Scott
PARKS & PUBLIC WORKS COMMITTEE

Received, filed and published.

TO THE COUNCIL
Ladies and Gentlemen:

Introductory 10 was introduced on January 15, 2019 and appears in its original transmittal letter on page ___ of the 2019 Council Proceedings

Attachment No. AS-19

Ordinance No. 2019-26
(Int. No. 10)

Approving geometric changes related to the Atlantic Avenue/Merriman Street Safety Improvements Project

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Council hereby approves the following changes in the pavement width related to the Atlantic Avenue/Merriman Street Safety Improvements Project:

- a. reducing the width on the north side of Atlantic Avenue beginning at a point approximately 50 feet west of Merriman Street with the existing 36-foot width and extending easterly to a proposed width of 30 feet (a narrowing of 6 feet) at the pavement edge on the west side of Merriman Street; and
- b. reducing the width on the north side of Atlantic Avenue beginning with the existing 32-foot width at a point approximately 90 feet east of Merriman Street and extending westerly with a gradual taper to a proposed width of 28 feet (a narrowing of 4 feet) at the pavement edge on the east side of Merriman Street.

Section 2. The changes shall be made in accordance with plans and specifications approved by the City Engineer, who may make reasonable modifications to such plans.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-27
Re: South Avenue Parking Garage
Lighting and Electrical System
Replacement Project

Council Priority: Jobs and Economic
Development

Transmitted herewith for your approval is legislation authorizing the issuance of bonds totaling \$1,510,000, and the appropriation of the proceeds thereof, to finance the cost of the South Avenue Parking Garage Lighting and Electrical System Replacement Project.

The project will remove the existing deteriorated lighting and electrical systems throughout the garage and provide new electrical infrastructure with LED fixtures, circuits and controls. The project will improve lighting in the garage to meet code-compliant lighting. The design and installation will be completed by the New York Power Authority under the current Energy Efficiency Services Program Agreement authorized by City Council under Ordinance No. 2015-398.

The project is anticipated to start design in early 2019, bidding and award in fall 2019, and completion by fall 2020. It is estimated that the project will create and/or retain 16.4 full-time jobs.

February 19, 2019

Respectfully submitted,
Lovely A. Warren
Mayor

Ordinance No. 2019-27
(Int. No. 29)

Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$1,510,000 Bonds of said City to finance the costs of the South Avenue Parking Garage Lighting and Electrical System Replacement Project

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The City of Rochester, in the County of Monroe, New York (herein called "City"), is hereby authorized to finance the costs of the South Avenue Parking Garage Lighting and Electrical System Replacement Project. The estimated maximum cost of said class of objects or purposes, including preliminary costs and costs incidental thereto and the financing thereof, is \$1,510,000. The plan of financing includes the issuance of \$1,510,000 bonds of the City to finance this appropriation and the levy and collection of taxes on all the taxable real property in the City to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

Section 2. Bonds of the City in the principal amount of \$1,510,000 are hereby authorized to be issued pursuant to the Constitution and laws of the State of New York, including the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), this Ordinance, and other proceedings and determinations related thereto.

Section 3. The City intends to finance, on an interim basis, the costs or a portion of the costs of said improvements for which bonds are herein authorized, which costs are reasonably expected to be reimbursed with the proceeds of debt to be incurred by the City, pursuant to this Ordinance, in the amount of \$1,510,000. This Ordinance is a declaration of official intent adopted pursuant to the requirements of Treasury Regulation Section 1.150-2.

Section 4. The period of probable usefulness of said class of objects or purposes described in Section 1 of this Ordinance, within the limitations of 11.00 a. 13. of the Law, is ten (10) years.

Section 5. Each of the bonds authorized by this Ordinance and any bond anticipation notes issued in anticipation of the sale of said bonds shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation of said bonds, shall be general obligations of the City, payable as to both principal and interest by an ad valorem tax upon all the taxable real property within the City without limitation as to rate or amount. The faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds and provision shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this Ordinance and of said Law, and pursuant to the provisions of Section 30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals thereof, and of Sections 50.00, 56.00 to 60.00 and 168.00 of said Law, the powers and duties of the City Council relative to authorizing the issuance of any notes in anticipation of the sale of the bonds herein authorized, or the renewals thereof, and relative to providing for substantially level or declining debt service, prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and of any notes issued in anticipation of the sale of said bonds or the renewals of said notes, as well as to executing agreements for credit enhancement, are hereby delegated to the Director of Finance, as the Chief Fiscal Officer of the City.

Section 7. The validity of the bonds authorized by this Ordinance and of any notes issued in anticipation of the sale of said bonds may be contested only if:

(a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of such Ordinance are not substantially complied with, and an action, suit or proceeding contesting such validity, is commenced within twenty (20) days after the date of such publication, or

(c) such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This Ordinance shall take effect immediately, and the City Clerk is hereby authorized and directed to publish a summary of the foregoing Ordinance, together with a Notice attached in substantially the form prescribed by Section 81.00 of the Law in "The Daily Record," a newspaper published in Rochester, New York, having a general circulation in the City and hereby designated the official newspaper of said City for such publication.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-28
Re: Official Map Amendment –
Abandonment and Dedication
of Additional Rights of way

Council Priority: Jobs and Economic
Development

Transmitted herewith for your approval is legislation amending the Official Map by:

1. Authorizing the proposed abandonment of 697 square feet, more or less, portion East Broad Street right-of-way adjacent to 66 Broadway, and
2. Dedicating the following 9 City owned parcels as public rights-of-way for street purposes.

February 19, 2019

<u>Address</u>	<u>SBL#</u>
407 E. Broad Street	SBL# 121.33-1-1
55 Manhattan Sq. Drive	SBL# 121.33-1-3.0021
121 Chestnut Street	SBL# 121.32-2-2.002
90 Chestnut Street	SBL# 121.24-2-25.002
141 Chestnut Street	SBL# 121.32-2-2.003
110 Chestnut Street	SBL# 121.24-2-25.003
Part of 64 Broadway	SBL# 121.25-2-39.002
Part of 68 Broadway	SBL# 121.25-2-37.002
Part of 74 Broadway	SBL# 121.25-2-38.002

The City Planning Commission held an informational meeting on January 14, 2019, by a vote of 6 to 0 the Commission recommended approval. Minutes and recommendations are attached.

Pursuant to the requirements of Article 8 of the New York State Environmental Conservation Law and Chapter 48 of the Rochester City Code, the project was determined to be a Type II action requiring no further environmental review.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-20

Ordinance No. 2019-28
(Int. No. 30)

Amending the Official Map

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. Chapter 76 of the Municipal Code, Official Map, as amended, is hereby further amended by changing and deleting therefrom the following parcel heretofore dedicated to street purposes:

**PROPOSED REVERSE APPROPRIATION OF A SECTION
OF EAST BROAD STREET TO THE INN ON BROADWAY**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Rochester, County of Monroe and State of New York being known and described as part of lots 35 & 36 of the Triangular

Tract, also being an existing piece of land of the Right of Way of East Broad Street and more particularly bounded and described as follows:

Beginning at the point of intersection of the northerly bounds of East Broad Street (right of way varies) and the westerly bounds of Ajax Alley (right of way 15' wide), Said point also being the southeast corner of Tax Parcel No. 121.25-02-36; thence

1. S21°22'35"W , a distance of 11.16 feet to a point of curvature; thence
2. Continuing along a curve to the right having a radius of 5.00 feet, a arc length of 5.67 feet and delta angle of 65°00'50" to a point of tangency; thence
3. S 86°23'27"W, a distance of 38.94 feet to a point of curvature; thence
4. Continuing along a curve to the right having a radius of 11.60 feet, an arc length of 11.41 feet and delta angle of 56°20'20" to a point of reverse curvature; thence
5. Continuing along a curve to the left having a radius of 382.74 feet, an arc length of 8.85 feet and delta angle of 01°19'27" to a point on the said existing northerly bounds of East Broad Street; thence
5. N85°32'00"E, along the said existing northerly bounds of East Broad Street a distance of 60.52 feet to the point and place of beginning, representing a parcel which contains 0.016 acres more or less.

Section 2. Chapter 76 of the Municipal Code, Official Map, as amended, is hereby further amended by dedicating the following 9 City-owned parcels as public right-of-way, as more particularly described below and as depicted in maps on file with the City Clerk.

LEGAL DESCRIPTION OF PROPOSED LANDS TO BE DEDICATED
407 EAST BROAD STREET
T.A. #121.33-1-1
(Map 6 Parcel 12)

All that tract or parcel of land, situate in the City of Rochester, County of Monroe, State of New York and being more particularly bounded and described as follows: Beginning at a point in the southerly ROW line of East Broad Street (ROW Varies) with the easterly ROW line of Manhattan Square Drive (45' ROW); said intersection being the Point or Place of Beginning thence

- 1) North 21°52'44" East, along the southerly ROW line of East Broad Street, a distance of 19.34 feet to a point; thence
- 2) North 77°43'41" East, continuing along the southerly ROW line of East Broad Street, a distance of 53.70 feet to a point; thence
- 3) North 86°06'59" East, continuing along the southerly ROW line of East Broad Street, a distance of 109.69 feet to a point on the division line between the property of now or form The

February 19, 2019

City of Rochester (T.A. #121.33-1-1) on the north and the property of now or formerly Southeast Loop Area Three B Part 1A Houses, Inc. (T.A. #121.33-1-3) on the south; thence

- 4) South 77°43'41" West, along the last mentioned division line a distance of 173.07 feet to the Point or Place of Beginning

Hereby intending to describe a parcel of land containing 1814 square feet more or less, all as shown as parcel P12 on a map entitled "Map of Fee Acquisition" - East Broad Street – Manhattan Square Drive Intersection", prepared by Fisher Associates and dated July 08, 2010.

**LEGAL DESCRIPTION OF PROPOSED LAND TO BE DEDICATED
55 MANHATTAN SQUARE DRIVE
T.A.#121.33-1-3.002
(Map 6 Parcel 13)**

All that tract or parcel of land situate in the City of Rochester, County of Monroe, State of New York and being more particular bounded and described as follows: Beginning at a point in the southerly ROW line of East Broad Street (ROW Varies) with the easterly ROW line of Manhattan-Square Drive (45' Wide) said point also being the division line between the property of now or formerly The City of Rochester (T.A. #121.33-1-1) on the north and the property of now or formerly South Loop Area Three B Part 1A Houses, Inc. on the south; said intersection being the Point or Place of Beginning; thence

- 1) North 77°43'41" East, along the last mentioned division line, a distance of 57.80 feet to a point; thence
- 2) South 65°42'36" West, through lands at No. 463 East Broad Street a distance of 11.89 feet to a point at the corner of an existing face of a building; thence
- 3) South 21°18'39" West, through lands at No. 463 East Broad Street and along the existing face of building a distance of 135.70 feet to a point; thence
- 4) North 68°41'21" West, through lands at No. 463 East Broad Street a distance of 2.57 feet to the easterly ROW line of Manhattan Square Drive; thence
- 5) North 21°19'31" East, along the easterly ROW line of Manhattan Square Drive a distance of 17.58 feet to a point of curvature; thence
- 6) Northerly along the easterly ROW line of Manhattan Square Drive, on a curve to left having a radius of 127.50 feet through a central angle of 33°35'50", a distance of 74.76 feet to a point of tangency; thence

February 19, 2019

- 7) North 20°16'19" West, along the easterly ROW line of Manhattan Square Drive a distance of 28.91 feet to the Point or Place of Beginning.

Hereby intending to describe a parcel of land containing 2015 square feet more or less, all as shown as parcel P13 on a map entitled "Map of Fee Acquisition - East Broad Street-Manhattan Square Drive Intersection", prepared by Fisher Associates and dated July 08, 2010.

LEGAL DESCRIPTION OF PROPOSED LANDS TO BE DEDICATED
121 CHESTNUT STREET
T.A.#121.32-2-2.002
(Map 3 Parcel 6)

All that tract or parcel of land situate in the City of Rochester, County of Monroe, State of New York, and being more particularly bounded and described as follows: Beginning at a point in the southerly ROW line of East Broad Street (80' ROW) with the westerly ROW line of Chestnut Street (66' ROW); said intersection being the Point or Place of Beginning; thence

- 1) South 02°35'35" East, along the westerly ROW line of Chestnut Street, a distance of 124.52 feet to a point; thence
- 2) North 15°43'47" West, through lands at No. 131 Chestnut Street, a distance of 22.00 feet to a point; thence
- 3) North 02°35'35" West, through lands at No. 131 Chestnut Street and parallel with Chestnut Street, a distance of 90.00 feet to a point; thence
- 4) North 35°50'49" West, through lands at No. 131 Chestnut Street, a distance of 15.50 feet to the south ROW line of East Broad Street; thence
- 5) North 86°51'31" East, along the south ROW line of East Broad Street, a distance of 13.50 feet to the Point or Place of Beginning.

Hereby intending to describe a parcel of land containing 624 square feet more or less, all as shown as parcel P6 on a map entitled "Map of Fee Acquisition/Temporary Easement to be Acquired" -East Broad Street – Chestnut Street Intersection", prepared by Fisher Associates and dated July 08, 2010

LEGAL DESCRIPTION OF PROPOSED LANDS TO BE DEDICATED
90 CHESTNUT STREET
T.A.#121.24-2-25.002
(Map 3 Parcel 7)

All that tract or parcel of land, situate in the City of Rochester, County of Monroe, State of New York, and being more particular bounded and described as follows: Beginning at a point in the southerly ROW line of East Broad Street (80' ROW) with the easterly ROW line of Chestnut Street (66' ROW); said intersection being the Point or Place of Beginning; thence

- 1) North 86°51'31" East, along the southerly ROW line of East Broad Street a distance of 11.50 feet to a point; thence

- 2) South 42°07'15" West, through lands at No. 100 Chestnut Street, a distance of 16.34 feet to the easterly ROW line of Chestnut Street; thence
- 3) North 02°35'35" West, along the easterly ROW line of Chestnut Street, a distance of 11.50 feet to the Point or Place of Beginning

Hereby intending to describe a parcel of land containing 66 square feet more or less, all as shown as parcel P7 on a map entitled "Map of Fee Acquisition/Temporary Easement to be Acquired" - East Broad Street - Chestnut Street Intersection", prepared by Fisher Associates and dated July 08, 2010.

**LEGAL DESCRIPTION OF PROPOSED LANDS TO BE DEDICATED
141 CHESTNUT STREET
T.A.#121.32-2-2.003
(Map 4 Parcel 9)**

All that track or parcel of land situate in the City of Rochester, County of Monroe, State of New York and being more particularly bounded and described as follows: Beginning at a point in the northerly ROW line of Court Street (ROW Varies) with the westerly ROW line of Chestnut Street (66' ROW); said intersection being the Point or Place of Beginning; thence

- 1) South 76°54'25" West, along the northerly ROW line of Court Street, a distance of 9.00 feet to a point; thence
- 2) North 43°05'32" East, through lands at No. 131 Chestnut Street, a distance of 12.37 feet to a point on the westerly ROW line of Chestnut Street; thence
- 3) South 02°35'35" East, along the westerly ROW of Chestnut Street, a distance of 7.00 feet to the Point or Place of Beginning

Hereby intending to describe a parcel of land containing 31 square feet more or less, all as shown as parcel P9 on a map entitled "Map of Fee Acquisition-Court Street Chestnut Street Intersection", prepared by Fisher Associates and dated July 07, 2010.

**LEGAL DESCRIPTION OF PROPOSED LAND TO BE DEDICATED
110 CHESTNUT STREET
T.A.#121.24-2-25.003
(Map 4 Parcel 10)**

All that track or parcel of land situate in the City of Rochester, County of Monroe, State of New York and being more particularly bounded and described as follows: Beginning at a point in the northerly ROW line of Court Street (66' Wide) with the easterly ROW line of Chestnut Street (66' ROW); said intersection being the Point or Place of Beginning; thence

- 1) North 02°35'35" West, along the easterly ROW line of Chestnut Street, a distance of 41.76 feet to a point; thence
- 2) South 09°24'58" East, through lands at No. 100 Chestnut Street a distance of 33.00 feet to a point of curvature; thence
- 3) Southeasterly on a curve to the left having a radius of 8.50 feet through a central angle of 69°16'11", a distance of 10.28 feet to a point on the northerly ROW line of Court Street; thence
- 4) South 77°43'41" West, along the northerly ROW line of Court Street, a distance of 10.47 feet to the Point or Place of Beginning.

Hereby intending to describe a parcel of land containing 115 square feet more or less, all as shown as parcel P10 on a map entitled "Map of Fee Acquisition- Court Street - Chestnut Street Intersection prepared by Fisher Associates and dated July 07, 2010.

**LEGAL DESCRIPTION OF PROPOSED
LANDS TO BE DEDICATED
PART OF 64 BROADWAY STREET
T.A. #121.25-2-39.2**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Rochester, County of Monroe and State of New York being known and described as part of lots 35 & 36 of the Triangular Tract, also now or formerly consisting of existing Tax Parcels No. 121.25-02-39.2 and more particularly bounded and described as follows:

Beginning at a point in the easterly ROW line of Broadway Street (55' ROW) at its intersection with division line between the property of now or formerly The City of Rochester (T.A. #121.25-2-38.2) on the southeast and the property of now or formerly The City of Rochester (T.A. #121.25-2-39.2) on the northwest; said intersection being the Point or Place of Beginning; thence

- 1) North 18° 09' 45" East, along the easterly ROW line of Broadway Street, a distance of 83.83 feet to a point; thence

2) South 04° 07' 28" East, through lands at No. 50 Broadway Street, a distance of 2.89 feet thence

3) Southerly along a curve to the left having a radius of 107.82 feet, a delta angle of 08° 52' 08", a curve length of 16.69 feet, a chord of North 09° 34'23" East, and a chord length of 16.67 feet to a point on the division line between the property of now or formerly The City of Rochester (T.A. #121.25-2-38.2) on the southeast and the property of now or formerly The City of Rochester (T.A. #121.25-2-39.2) on the northwest; thence

4) South 21° 19' 58" West, along the last mentioned division line a distance of 73.96 feet to the Point or Place of Beginning.

Hereby intending to describe a parcel of land containing 152.43 square feet, more or less, all as shown as parcel P3 on a map entitled "Map of Fee Acquisition- East Broad Street - Broadway Street Intersection", prepared by Fisher Associates and dated July 07, 2010.

**LEGAL DESCRIPTION OF PROPOSED
LANDS TO BE DEDICATED
PART OF 68 BROADWAY STREET
T.A. #121.25-2-37.2**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Rochester, County of Monroe and State of New York being known and described as part of lots 35 & 36 of the Triangular Tract, also now or formerly consisting of existing Tax Parcels No. 121.25-02-37.2 and more particularly bounded and described as follows:

Beginning at a point in the northerly ROW line of East Broad Street (ROW Varies) at its intersection with division line between the property of now or formerly The City of Rochester (T.A. #121.25-2-38.2) on the southwest and the property of now or formerly The City of Rochester (T.A. #121.25-2-37.2) on the northeast; said intersection being the Point or Place of Beginning; thence

1) North 68° 42' 17" West, along the last mentioned division line a distance of 37.86 feet to a point; thence

2) North 21° 20' 12" East, continuing along the last mentioned division line a distance of 26.42 feet to a point of curvature; thence

3) Southerly along a curve to the right having a radius of 382.74 feet, a delta angle of 08°44'04", a curve length of 58.35 feet, a chord of N 40° 01' 43" W, and a chord length of 49.47 feet; thence

4) South 85°31'49" West, along the northerly ROW line of East Broad Street, a distance of 6.17 feet to the Point or Place of Beginning.

Hereby intending to describe a parcel of land containing 650.6 square feet, more or less.

**LEGAL DESCRIPTION OF PROPOSED
LANDS TO BE DEDICATED
PART OF 74 BROADWAY STREET
T.A. #121.25-2-38.2**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Rochester, County of Monroe and State of New York being known and described as part of lots 35 & 36 of the Triangular Tract, also now or formerly consisting of existing Tax Parcels No. 121.25-02-38.2 and more particularly bounded and described as follows:

Beginning at a point in the northerly ROW line of East Broad Street (ROW Varies) at its intersection with division line between the property of now or formerly The City of Rochester (T.A. #121.25-2-38.2) on the southwest and the property of now or formerly The City of Rochester (T.A. #121.25-2-37.2) on the northeast; said intersection being the Point or Place of Beginning; thence

1) South 85°30'35" West, along the northerly ROW line of East Broad Street, a distance of 64.47 feet to a point of curvature of said parcel of land formerly dedicated for highway purposes in City Ordinance 1976-193; thence

2) Northerly on a curve to the right, having a radius of 19.00 feet through a central angle of 112° 39' 42", a distance of 37.36 feet to a point of tangency; thence,

3) North 18° 09' 45" East, along the easterly ROW line of Broadway Street, a distance of 37.17 feet to a point on the division line between the property of now or formerly The City of Rochester (T.A. #121.25-2-38.2) on the southeast and the property of now or formerly The City of Rochester (T.A.#121.25-2-39.2) on the northwest; thence

4) North 21° 19' 58" East along the last mentioned division line a distance of 64.77 feet to a point of curvature; thence

5) Southerly along a curve to the left having a radius of 107.82 feet, a delta angle of 27°23' 37", a curve length of 51.55 feet, a chord of N08°33' 29"E, and a chord length of 51.06 feet to a point of compound curvature; thence

6) Southerly along a curve to the left having a radius of 93.74 feet, a delta angle of 18°52'32", a curve length of 30.88 feet, a chord of N30°03'53"W, and a chord length of 30.74 feet to a point; thence

7) South 21° 20' 12" West, along the last mentioned division line a distance of 26.42 feet to a point; thence

8) South 68° 42' 17" East, continuing along the last mentioned division line a distance of 37.86 feet to the Point or Place of Beginning.

Hereby intending to describe a parcel of land containing 3993.06 square feet more or less.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL

Ladies and Gentlemen:

Ordinance No. 2019-29
Re: Land Transfer- New York State
Department of Transportation,
Right-of-Way Dedication, and
Naming Right-of-Way

Council Priority: Creating and Sustaining
a Culture of Vibrancy and Strengthening
Neighborhoods

Transmitted herewith for your approval is legislation related to improvements at 625 South Goodman Street.
This legislation will:

1. Request the disposal of parcels M369/P374 and M369/P373 from the New York State Department of Transportation (NYSDOT) as surplus lands,
2. Approve the acceptance of M369/P374 and M369/P373 for street purposes,
3. Amend the Official Map by dedicating M369/P374 and M369/P373 as right-of-way, and;
4. Amend the Official Map by naming the rights-of-way Karges Place.

In 1970 the tract of land located at the South Goodman Street and the former Uhlen Place/Karges Place intersection was acquired by the NYSDOT from the City for highway purposes. The NYSDOT disposed of the parcels on either side of the existing roadbed in 2016 to Mark IV Construction Co. Inc and in 2017 to South Clinton Village LLC. The remaining parcels containing the roadbed were not transferred and continue to be utilized for city street purposes.

The City Engineer has been in discussion with the New York State Department of Transportation with regard to the transfer of surplus State property in the City of Rochester designated on Map 369 as Parcel Numbers 373 and 374, formerly designated as Karges Place and Uhlen Place respectively.

The City Planning Commission held an informational meeting on January 14, 2019, by a vote of 6 to 0 the Commission recommended approval. Minutes and recommendations are attached.

Pursuant to the requirements of Article 8 of the New York State Environmental Conservation Law and Chapter 48 of the Rochester City Code, a negative declaration for this Unlisted Action was issued on November 21, 2017.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-21

Ordinance No. 2019-29
(Int. No. 31)

Authorizing the acceptance of right of way from the New York State Department of Transportation and amending the Official Map by dedicating for street purposes land to be named Karges Place

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Council hereby requests the transfer of surplus lands from the New York State Department of Transportation, parcel numbers 373 and 374 in the map entitled "New York State Department of Transportation Conveyance Map No. 369" and legally described in Section 3 herein.

Section 2. The Mayor is hereby authorized to enter into any agreement necessary to acquire said parcels, and such agreement shall contain such additional terms and conditions as the Mayor deems appropriate.

Section 3. Chapter 76 of the Municipal Code, Official Map, as amended, is hereby further amended by dedicating the following parcels to street purposes and naming said parcels Karges Place:

LEGAL DESCRIPTION OF PROPOSED LANDS TO BE TRANSFERRED FROM NEW YORK STATE TO THE CITY OF ROCHESTER

Parcel No. 373

Beginning at a point on the existing southwesterly street line of Uhlen Place at its intersection with the existing southeasterly street line of Karges Place, said point being southeasterly, 3.78 feet, measured at right angles, from station 0+02.54 of the hereinafter described Karges survey base line for the construction of Rochester City: Genesee Expressway (Rochester Inner Loop to Rochester City Line); thence S 58°-06'-54" W, 114.22 feet along the last mentioned street line to a point being southeasterly, 3.93 feet, measured at right angles, from station 1+16.76 of said base line; thence across Karges Place the following two courses and distances: N 47°-50'-54" W, 31.92 feet to a point being northwesterly, 26.75 feet, measured at right angles, from station 1+25.58 of said base line; thence northwesterly, on a curve to the left having a radius of 2849.79 feet, 5.52 feet to a point on the existing northwesterly street line of Karges Place, the last mentioned point being northwesterly, 32.06 feet, measured at right angles, from station 1+27.11 of said base line; thence N 58°-06'-54" E, 99.58 feet along the last mentioned street line to its intersection with the above mentioned southwesterly street line of Uhlen Place, the last mentioned point being northwesterly, 32.19 feet, measured at right angles, from station

0+27.53 of said base line; thence S 66°-36'-12" E, 43.80 feet along the last mentioned street line to the point of beginning ; being 3,848 square feet more or less.

Parcel No. 374

Beginning at a point on the existing northwesterly street line of Goodman Street South at its intersection with the existing southwesterly street line of Uhlen Place, said point being southwesterly, 4.08 feet, measured at right angles, from station 0+03.98 of the hereinafter described Uhlen survey base line for the construction of Rochester City: Genesee Expressway (Rochester Inner Loop to Rochester City Line); thence N 66°-36'-12" W, 136.39 feet along the last mentioned street line to its intersection with the existing northwesterly street line of Uhlen Place, the last mentioned point being northwesterly, 32.19 feet, measured at right angles, from station 0+27.53 of the hereinafter described Karges survey base line for the construction of Rochester City : Genesee Expressway (Rochester Inner Loop to Rochester City Line); thence N 58°-06'-54" E, 46.23 feet along the last mentioned street line to its intersection with the existing northeasterly street line of Uhlen Place, the last mentioned point being northwesterly, 32.25 feet, measured at right angles, from station 0+18.70 of the ahead tangent produced back of said base line; thence S 66°-36'-12" E, 110.06 feet along the last mentioned street line to its intersection with the above mentioned northwesterly street line of Goodman Street South, the last mentioned point being northeasterly, 33.92 feet, measured at right angles, from station 0+04.05 of the above mentioned Uhlen base line; thence S 23°-23'-48" W, 38.00 feet along the last mentioned street line to the point of beginning; being 4,682 square feet more or less.

The above mentioned survey base line for the construction of Rochester City: Genesee Expressway (Rochester Inner Loop to Rochester City Line), as shown on a map and plan on file in the office of the department of transportation and described as follows:

Beginning at P.I. Station 0+00.00 Uhlen = P.I. Station 3+52.12 Eisenberg; thence N 66°-30'-23" W, 98.23 feet to P.I. Station 0+98.23 Uhlen = P.I. Station 0+00.00 Karges; thence S 58°-11'-19" W, 378.93 feet to P.I. Station 3+78.93 Karges = P.O.L. Station 39+75.29 Clinton.

All bearings referred to true north at the 78°-35' Meridian of West Longitude.

Section 4. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL

Ladies and Gentlemen:

Re: Ordinance No. 2019-30
Amending Ordinance No. 2018-67
Resident Project Representation
Services for Hazardous Sidewalk
Replacement Program

February 19, 2019

Transmitted herewith for your approval is legislation Amending Ordinance No. 2018-67 which authorized resident project representation (RPR) services for the Hazardous Sidewalk Program in the Southwest Quadrant 2018 Phase 1 Project. This amendment will change the designation from Hazardous Sidewalk Program in the Southwest Quadrant 2018 Phase 1 Project to Hazardous Sidewalk Program. The term of the agreement shall be for three years and may extend until 3 months after completion and acceptance of a 2-year guarantee inspection of the work covered by the agreement.

This amendment will allow continued work by Vanguard Engineering PC for our hazardous sidewalk program as it was written in the Request for Proposal for these services.

Respectfully submitted,
Lovely A. Warren
Mayor

Ordinance No. 2019-30
(Int. No. 32)

Amending Ordinance No. 2018-67 relating to a resident project representation services for the Hazardous Sidewalk Replacement Program

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The title and Section 1 of Ordinance No. 2018-67 authorizing a professional services agreement for resident project representation services for the hazardous sidewalk replacement program is hereby amended to read as follows:

Authorizing an agreement for resident project representation services for the Hazardous Sidewalk Replacement Program ~~Southwest Quadrant 2018 Phase 1 Project~~ Project

...

Section 1. The Mayor is hereby authorized to enter into a professional services agreement with Vanguard Engineering, PC to provide resident project representation services for the Hazardous Sidewalk Replacement Program ~~Southwest Quadrant 2018 Phase 1 Project~~ (the Project). The maximum annual compensation for the agreement shall be \$540,000 and said amount, or so much thereof as may be necessary, shall be funded from 2014-15 Cash Capital. The term of the agreement shall be for three years and may extend until 3 months after completion and acceptance of a 2-year guarantee inspection of the work covered by the agreement.

Section 2. This ordinance shall take effect immediately.

Strikeout indicates deleted text.

Passed unanimously.

February 19, 2019

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-31
Re: Agreement – New York State
Electronic Waste Assistance
Grant for Calendar Year 2018

Transmitted herewith for your approval is legislation authorizing a grant agreement with the New York State Department of Environmental Conservation (NYSDEC). The grant will reimburse the City for up to 50% of direct costs paid to an e-waste recycler in the disposition of electronic waste material as outlined in the NYS Electronic Equipment Recycling and Reuse Act.

This grant opportunity is the latest offer of e-waste assistance that NYSDEC has made available. The eligible period for cost reimbursement was January 1, 2018 through December 31, 2018. The City has projected eligible e-waste recycling disposal costs of \$25,212.41, of which up to \$12,606.21 will be reimbursed through the grant, pending approval by NYSDEC. The proceeds of the grant reimbursement will help to offset the cost of sponsoring a City of Rochester E-Waste Day special one-day collection event that will be held at the Rochester Sports Stadium, 460 Oak Street. The City no longer picks up curbside e-waste recyclables, so this event provides city residents a venue to easily and safely dispose of e-waste without contaminating the environment.

The City applied for and was approved by NYSDEC to receive previous such grants from the same assistance program, which covered the periods of eligibility from January 1, 2016 through March 31, 2017, and April 1, 2017 through December 31, 2017. Those agreements were authorized by Council Ordinance 2017-190 and Council Ordinance 2017-397, respectively. The amount of reimbursement from the first period of the assistance program was \$25,140.24, and the amount of reimbursement from the second period was \$9,187.05.

Respectfully submitted,
Lovely A. Warren
Mayor

Ordinance No. 2019-31
(Int. No. 33)

Authorizing an agreement with the New York State Department of Environmental Conservation for the disposition of electronic waste material

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an agreement with the New York State Department of Environmental Conservation for the receipt and use of funds to reimburse up to 50% of the City's direct costs paid to an electronic waste recycler for the disposition of electronic waste material as outlined in the New York State Electronic Equipment Recycling and Reuse Act. The agreement shall cover a reimbursement period from January 1, 2018 through December 31, 2018.

February 19, 2019

Section 2. The agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL

Ladies and Gentlemen:

Ordinance No. 2019-32
Re: Inter-Municipal Agreement –
Leasing Space on Tower for Radio
Transmitting Equipment

Transmitted herewith for your approval is legislation authorizing an agreement with Livingston County for leasing space on their communications tower located on Jackman Hill Road in the Town of Livonia. The term of the lease is for one year and will provide for four additional one year renewals. This agreement was initially authorized by Ordinance No. 2009-244 under similar terms and reauthorized by Ordinance No. 2014-14.

Renewing this lease will allow the City to continue to maintain and operate the spread-spectrum Ethernet radio communications equipment, antennas and appurtenances necessary for transmission of data between the Hemlock Filtration Plant and various locations within the City's water distribution network.

A nominal annual lease fee is in part used to pay the City share of electrical expenses for equipment at the site. A fee of \$173.89 is due for the first year and increased by 3% for each additional year the lease is renewed. This fee will be paid from the annual operating budget of the Department of Environmental Services.

Respectfully submitted,
Lovely A. Warren
Mayor

Ordinance No. 2019-32
(Ord. No. 34)

Authorizing an intermunicipal lease agreement for radio transmitting equipment

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an agreement with Livingston County for the lease of space on said County's communications tower located on Jackman Hill Road in the Town of Livonia for the placement of radio transmitting equipment of the Water Bureau. The agreement shall extend for a term of one year, with four additional optional one-year renewal periods.

February 19, 2019

Section 2. The agreement shall obligate the City to pay \$173.89 for the first year, which amount shall increase by 3% for each renewal year, if any. The funding for the first year of the lease shall be from the 2018-19 Budget of the Department of Environmental Services (DES) and funding for each subsequent year shall be from a subsequent annual Budget of DES, contingent upon its approval.

Section 3. The agreement shall contain such terms and conditions as the Mayor deems to be appropriate.

Section 4. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL

Ladies and Gentlemen:

Ordinance No. 2019-33

Re: Agreements – Electricity Provider
for the City of Rochester

Transmitted herewith for your approval is legislation authorizing an agreement with Constellation NewEnergy, Inc., (CEO, Joseph Nigro) 10 South Dearborn Street, 49th Floor, Chicago, Illinois, 60603, to supply electricity, as a commodity, to all city facilities as well as street lighting.

The agreement will be financed from the annual budgets of the Department of Environmental Services. Constellation NewEnergy was selected through a request for proposal process, which is described in the attached summary. The RFP was issued to Public Service Commission (“PSC”) certified energy service providers (“ESCO’s”) in November of 2018.

The evaluation team selected Constellation NewEnergy based on the price package offered, and Constellations experience with the City of Rochester. Constellation has provided electricity to the City of Rochester since 2005 (Ordinance No. 2005-295). Additionally, the City will be able to purchase renewable energy as part of its energy portfolio in further development of the City’s green initiatives.

The agreement will be for three years and with an additional three year option to renew..

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-22

Ordinance No. 2019-33
(Int. No. 35)

Authorizing an agreement for the supply of electricity to City facilities

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an agreement with Constellation NewEnergy, Inc. for the supply of electricity to all City facilities, including street lighting accounts, public libraries, the Blue Cross Arena at the War Memorial and the Rochester Riverside Convention Center, for a term of three years with one three-year renewal option.

Section 2. The Mayor is hereby authorized to exercise a fixed or variable rate pricing option under the agreement. Funding shall be provided from the 2018-19 Budget of the Department of Environmental Services (the "Department") and from subsequent budgets of the Department, contingent upon their approval.

Section 3. The agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 4. This agreement shall take effect immediately.

Passed unanimously.

Councilmember Evans moved to discharge Int. No. 20 from Committee.

The motion was seconded by Councilmember Lightfoot.

The motion was adopted unanimously.

Councilmember Evans moved to amend Int. No. 20.

The motion was seconded by Vice President McFadden.

The motion was adopted unanimously.

Introductory No. 20 was introduced on January 15, 2019 and appears in its original transmittal letter on page___ of the 2019 Council Proceedings.

Ordinance No. 2019-34
(Int. No. 20, as amended)

Amending the Municipal Code with regard to the telecommunications facilities in the right-of-way

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Municipal Code of the City of Rochester is hereby amended to add a new Chapter 106 to read as follows:

Chapter 106

Telecommunications in the Right-of-Way

Article I. General.

§106-1. Title.

This chapter shall be referred to as the Telecommunications Code of the City of Rochester, New York.

§106 - 2. Applicability.

This chapter shall apply to any Telecommunications Facilities and Accessory Equipment installed or otherwise placed in the Right-of-Way on or after the effective date of this chapter. Telecommunications Facilities constructed with a permit prior to the effective date of this chapter shall be brought into compliance with this chapter when that Facility is reconstructed, modified, repaired, or replaced. When any existing agreement authorizing such Facility requires compliance with this chapter or when any existing agreement governing Telecommunications Facilities expires, Facilities shall be brought into compliance with this chapter and this chapter shall apply to all related activities and Work in the Right-of-Way. This chapter shall also apply to any Facility previously located, installed, or otherwise placed in the Right-of-Way without undergoing review and approval by the City Engineer, unless otherwise authorized by a valid agreement. Any such unauthorized Telecommunications Facility shall be brought into compliance with this chapter and all applicable Laws.

In addition to new Applicants, this chapter shall apply to existing Telecommunications Providers currently occupying the Right-of-Way under a current Right-of-Way Permit and any Addendum Agreement, Pole Attachment Agreement, or Right-of-Way Agreement, pursuant to Chapter 104 of the Code of the City of Rochester. All such Persons shall comply with and be subject to all relevant requirements of this chapter, except that existing Permit fees and other requirements of Chapter 104 shall be determined by any existing, valid Permit agreements until their expiration date, or if no expiration date, the effective date this chapter ~~is adopted~~. As set forth in the terms of existing agreements with the City, including Addendum Agreements and other Right-of-Way agreements, such agreements shall be terminated and new Master License Agreements executed in compliance with this chapter. Such new Master License Agreements shall confirm that no changes shall be required with respect to Work performed under existing Permits issued prior to the ~~adoption~~ effective date of this chapter and shall only require compliance with this chapter with respect to new, replaced, modified or relocated Facilities requiring new Permits, except that all Licensees shall be required to comply with §106-5, Registration Requirements, and §106-15, Fees and Compensation, which shall apply to existing and new Facilities.

All Right-of-Way occupants defined as Telecommunications Providers, whether new or existing, party to a current agreement or not, shall be subject to this chapter, including all fees and requirements herein.

All Persons or entities subject to this chapter shall have six months from the effective date ~~that of this chapter is adopted~~ to achieve compliance, including Registration and associated requirements, completion of a Master License Agreement, completed Permit applications as necessary, and payment of all fees and compensation due to the City that accrued as of the effective date of this chapter ~~was adopted~~.

§106 - 3. Purpose.

The purpose of this chapter shall be to meet the following objectives:

- A. To promote the development of a state-of-the-art telecommunications infrastructure that will serve as an incentive to attract and retain businesses and will serve current and future needs of individual citizens as well as educational, governmental, cultural and community organizations;
- B. To ensure maximum access to the telecommunications infrastructure;
- C. To fully utilize the telecommunications infrastructure, including wherever possible through the use of Smart Poles, as a tool in the effective and efficient delivery of City services;
- D. To minimize unnecessary disruption in the Right-of-Way from the installation and operation of Telecommunications Facilities by coordinating installations, promoting Co-Location and encouraging innovative methods and technologies that minimize disturbances to pedestrians, residents, businesses, traffic, and parking;
- E. To comply with the federal Telecommunications Act of 1996 (“Telecommunications Act”), and any amendment thereto, by enacting policies and procedures that remove barriers to competition among existing and prospective Telecommunications Providers, and which treat providers in a competitively neutral and non-discriminatory manner;
- F. To ensure a fair assessment and assignment of the full cost of installation, maintenance, and repair of Telecommunications Facilities, and the value and use by Telecommunications Providers of the Right-of-Way, a valuable and limited municipal asset;
- G. To require that Telecommunications Facilities and Accessory Equipment are installed in such a way as to mitigate visual, environmental, and neighborhood impacts, to minimize unsightly encumbrances in the Right-of-Way and to promote the least intrusive Facilities possible, with particular attention to Facilities located in historic districts and areas or adjacent to or near historic structures where Facilities shall be installed in a manner that is aesthetically appropriate for the location;
- H. To ensure that all installations of Telecommunications Facilities, Accessory Equipment, and related Work pursuant to this chapter are done safely and completed in a manner consistent with all applicable Laws;
- I. To preserve the City’s right to manage the Right-of-Way and, in light of the ever-increasing number of uses of the Right-of-Way by Telecommunications Providers as well as Utilities and other users, to ensure that the City retains the ability to effectively manage and coordinate these uses in the limited space available; and
- J. To protect the public health, safety, and welfare with respect to the use of the Right-of-Way by Telecommunications Providers and owners or lessees of Telecommunications Facilities.

§106 - 4. Definitions.

For the purpose of this chapter, the following terms shall have the meanings stated below:

ADMINISTRATOR — The Commissioner of the Department of Environmental Services, or the Commissioner’s designee, or an administrator as designated by the Mayor responsible for administering this chapter and other related duties.

ABANDON — When an owner of a Telecommunications Facility permanently or substantially ceases all business activity associated with its Facilities or Accessory Equipment, or fails to comply with ongoing Permit or lease terms, or lets Facilities and Accessory Equipment fall into disrepair without timely cure.

ACCESSORY EQUIPMENT (“EQUIPMENT”) — Any equipment serving or being used in conjunction with a Telecommunications Facility. This Equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, storage sheds, shelters, vaults, or other structures. This definition excludes equipment owned by a Utility installed for the sole purpose of providing electricity.

AFFILIATE — A Person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another Person.

ANTENNA — A device used to transmit and/or receive radio or electromagnetic waves for the provision of services including, but not limited to cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas such as panel antennas, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (WiFi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

APPLICANT – Any Telecommunications Provider, Utility, owner of Telecommunications Facilities or other entity requesting permission to install or excavate for placement of Telecommunications Facilities in the Right-of-Way.

BASE STATION — A structure built for a purpose other than the installation of Telecommunications Facilities, upon which Telecommunications Facilities are subsequently installed.

CAMOUFLAGE — The means and methods by which Telecommunications Facilities and Accessory Equipment are designed to conceal the Equipment and blend the installation with the surrounding environment accomplished by requiring the use of one or more of the following concealment elements as set forth in more detail in the Rules and Regulations:

1. Radio frequency equipment screening;
2. Approved, specific colors;
3. Minimizing the size of the Facilities or Site;
4. Integrating the installation into existing infrastructure;
5. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed Site and dedicating the new infrastructure to the City;
6. Modifying the installation location;
7. Using alternative structures such as man-made trees, clock towers, bell steeples, or other alternative design mounting structures that conceal the presence of the Telecommunications Facilities in a manner that is appropriate to the location;
8. Embedded or underground Facilities, including but not limited to use of Smart Poles;
9. Landscaping; or

10. Mirroring existing structural elements or design.

CARRIER ON WHEELS or CELL ON WHEELS ("COW") — A portable self-contained Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or Emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure. COW does not include equipment for broadcasting live television coverage.

CITY — The City of Rochester, New York.

CITY COUNCIL — The Common Council of the City of Rochester, New York.

CITY PROPERTY — Includes all real property owned by the City, other than the Right-of-Way and Utility Easements as those terms are defined herein, and all property held in a proprietary capacity by the City, that is not subject to Right-of-Way licensing as provided in this chapter.

CO-LOCATION — With respect to underground Facilities, Co-location shall mean the existence or placement of Telecommunications Facilities or Accessory Equipment by two or more Telecommunications Providers within the same conduit, duct, or similar facility, which avoids the Excavation or substantial disturbance of the Right-of-Way. With respect to Overhead Facilities, Co-location shall mean the mounting, installation or placement of Telecommunications Facilities and Accessory Equipment on a pole or structure shared with one or more Telecommunications Providers.

COMMISSIONER — The Commissioner of Environmental Services of the City of Rochester.

DAY — One calendar day.

DISTRIBUTED ANTENNA SYSTEM ("DAS") — A network of one or more Antenna and fiber optic nodes connecting to a common base station or "hub."

EMERGENCY — A condition that poses an imminent threat to life or property, including a disruption in service.

EMF — Electro-magnetic frequency.

EXCAVATION — Any movement or removal of earth, rock, pavement, Right-of-Way fixtures, or other materials in or on the ground.

EXISTING HEIGHT — The height of a Base Station as originally approved for Telecommunications Facilities or as of the most recent modification that received regulatory approval prior to the passage of the Spectrum Act. Height shall be measured from natural grade to the top of all appurtenances.

FACILITY or FACILITIES — See TELECOMMUNICATIONS FACILITY.

LAWS — Any and all applicable federal laws, state laws, local ordinances, resolutions, regulations, administrative orders, or other legal requirements.

LICENSE — Any right and privilege or the renewal thereof awarded or granted by the City Council pursuant to §5-23 of the City Charter and this chapter to any Person who occupies the Right-of Ways of the City for the purpose of providing Telecommunications Services or for the purpose of installing Telecommunications Facilities.

For purposes of this chapter, the term License shall include the term “franchise” as used in existing addendums to Right-of-Way Permits, Pole Attachment Agreements, and other Right-of-Way agreements between the City and Telecommunications Providers.

LICENSEE — Any Person that holds a License to occupy the Right-of-Way.

MACROCELL SITE — A radio coverage cell that provides the largest area of coverage within a mobile network. The Antennas for macrocells are generally mounted on ground-based masts, rooftops or other existing structures, at a height that is not obstructed by terrain or buildings. They provide radio coverage over varying distances depending on the frequency used, the number of calls made and the physical terrain. Macrocells have a typical power output in hundreds or thousands of watts.

MASTER LICENSE AGREEMENT (“LICENSE AGREEMENT” or “MLA”) — An agreement entered into between any Person requiring Registration and the City that authorizes and governs the installation of Telecommunications Facilities and Accessory Equipment in the Right-of-Way and related requirements and responsibilities.

MODIFICATION — Any change to an existing Telecommunications Facility or Accessory Equipment not authorized by the Permit.

MUNICIPAL FACILITIES – City-owned light poles, poles installed by the City specifically for the placement of Telecommunications Facilities, lighting fixtures, electroliers, handholes, manholes, fiber optic strands, conduit and other City-owned structures or Equipment located within the Right-of-Way.

OTHER WAYS — The highways, streets, alleys, Utility Easements or other rights-of-ways within the City, but under the jurisdiction and control of a governmental entity other than the City.

OVERHEAD FACILITIES — Includes utility poles, utility facilities and Telecommunications Facilities located above the surface of the ground within the Right-of-Way, including the surface or underground supports or foundations for such Facilities.

PERMIT — Authorization granted by the City Engineer under Chapter 104 of the Code of the City of Rochester to perform specified alteration, Excavation, installation, construction, repair or any other Work whatsoever in the Right-of-Way. The term Permit includes any additional terms and conditions added to the Permit.

PERMITTEE — Any Person, Utility or Telecommunications Provider that has obtained permission through the issuance of a Permit from the Department of Environmental Services to make any Excavation or otherwise locate, install or place Facilities in the Right-of-Way.

PERSON — Any individual, association, firm, partnership, corporation, joint-stock company, limited liability company or other legal entity.

REGISTRATION — The requirement that, except as otherwise provided herein, any Person engaged in the business of transmitting, supplying or furnishing of Telecommunications Services originating or terminating in the City and/or occupying the Right-of-Way for the purpose of supplying or installing Facilities to provide Telecommunications Services in or outside the City shall register with the City pursuant to Article II of this chapter.

RIGHT-OF-WAY — The area on, below, or above a City-owned or controlled street, roadway, alley, bridge, tunnel, waterway or sidewalk, including the curbs, gutters, catch basins and related facilities adjacent thereto and any utility easements owned or controlled by the City.

RULES AND REGULATIONS — The Rules and Regulations for Work in the Right-of-Way, and any amendments thereto, as adopted by the City Engineer.

SECURITY — A financial instrument, including a letter of credit, certified check, cash, bond or other formal assurance used to guarantee that Permit work will be properly performed and completed, that any Right-of-Way restoration work will be completed and maintained as required by this chapter, and that all fees and compensation owed to the City are paid in full. Such Security shall be in a form approved by the Director of Finance or the Corporation Counsel.

SITE — The specific area occupied by Telecommunications Facilities, Accessory Equipment, and any structure supporting the Telecommunications Facilities.

SMALL CELL — An umbrella term for low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade WiFi. Small Cell technology includes, but is not limited to, femtocells, picocells, microcells, metrocalls and Distributed Antenna Systems, which provide a network densification solution that offloads traffic from the macro network to add capacity.

SMART POLE—A modular, multi-functional pole, as approved by the City Engineer, which enables small cell deployment as well as other wireless applications and services, designed to accept embedded wireless equipment within the pole structure, with no external or attached equipment. Smart Poles are deemed to comply with and satisfy any Camouflage requirements of this chapter or the Rules and Regulations.

SPECTRUM ACT — The Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96.

SUBSTANTIAL CHANGE — Changes to Telecommunications Facilities or Accessory Equipment that increase the number of Antennas, increase the size of the Antennas, increase the EMF output of the Telecommunications Facilities, or modify any existing Telecommunications Facilities or structures that include the following:

1. Increase in the structure's Existing Height by more than 10% or ten 10 feet, whichever is greater;
2. Installation of new Facilities or Accessory Equipment that protrude from the edge of any pole or the structure;
3. Installation of any new equipment cabinets;
4. Any Excavation or deployment outside the current Site as permitted;
5. Changes that defeat the existing Camouflage elements of the Telecommunications Facility; or
6. Other changes that do not comply with conditions of the prior approval of the Telecommunications Facility unless the changes do not exceed the above thresholds.

TELECOMMUNICATIONS FACILITY (“FACILITY” or “FACILITIES”) — The plant, equipment and property, including but not limited to cables, wires, fiber optic strands, conduits, pipes, ducts, dishes, pedestals, poles, Antennae, radio equipment, electronics and other appurtenances, including both underground and overhead Facilities, used or to be used to transmit, receive, distribute, support, provide or offer FCC licensed or FCC authorized Telecommunications Services.

TELECOMMUNICATIONS PROVIDER (“PROVIDER”) — Any Person who provides Telecommunications Service over Telecommunications Facilities. This definition shall not include the City or the County of Monroe or other government agencies, with respect to Telecommunications Facilities used for the provision of Telecommunications Services for governmental or public benefit purposes.

TELECOMMUNICATIONS SERVICE — The providing or offering for rent, sale or lease, or in exchange for other value received, of any service or Telecommunications Facilities that includes the transmission and/or distribution of voice, data, image, graphic or video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar Facilities, with or without benefit of any closed transmission medium.

UTILITY — Solely for the purpose of this chapter, a utility is an entity that is certified by the New York State Public Service Commission to provide or install any Facilities for the delivery of electricity, oil, gas, internet, programming, or other similar data transfer service, including any Utility owned or operated by another city, county, or other governmental agency to the extent allowed by law. For the purpose of this chapter, utilities shall also include companies providing cable television services. City-owned utilities and Facilities installed in the Right-of-Way are exempt from the provisions of this chapter.

UTILITY EASEMENT — Any easement acquired, established, dedicated or devoted for public utility purposes.

WORK — Includes all labor, materials, equipment, services, and all other things necessary to install within, excavate, or restore the Right-of-Way, all of which is subject to the determination and requirements of the City Engineer.

Article II. Registration

§106 - 5. Registration Application Requirements

A. **APPLICATIONS** – To ensure that the City is able to protect and manage the Right-of-Way, the City requires information about Providers and their agents and information and documents about Facilities and Equipment existing or proposed to be installed in the Right-of-Way. The owner, installer, or anticipated installer of Telecommunications Facilities in the Right-of-Way, including those installing on non-City owned property in the Right-of-Way, shall file a Registration application form with the City Engineer and pay the registration fee as specified in §106 – 15. Applications that do not include all of the required application information, as determined by the City Engineer to be necessary for the proper management of the Right-of-Way, shall be deemed incomplete and the City shall not be required to take any action, including the issuance of any Permits for Work in the Right-of-Way. It shall be the Applicant’s responsibility to ensure that all required information is submitted and to confirm with the City Engineer that the application is complete. If Applicant is required to provide the City with any information or documents it deems proprietary and confidential, such information or documents shall be clearly identified and marked as confidential. The City shall reasonably protect such information from public disclosure, subject to the requirements of the New York Freedom of Information Law (“FOIL”) or other federal or state laws or requirements. The City Engineer will review the Registration application within 10 business days and notify the Applicant of any deficiencies in the application within 5 business days thereafter. The Applicant may resubmit a revised application within 30 Days without additional charge.

B. REGISTRATION REQUIREMENTS – All mandatory Registration applications shall include the following information:

1. The identity and legal status of the Applicant, including any Affiliates.
2. The name, address, telephone number, and email address of the officer(s), agent(s) and employee(s) responsible for the accuracy of the application information and who will have responsibility and/or authority for the Applicant's Facilities located within the City. The name and address provided by Applicant shall be used by the City for any notifications or demands to an Applicant, and mailing any notification or demand set forth in this chapter to such name and address shall be deemed receipt by the Applicant.
3. The name, address, telephone number and email address of an officer, agent or employee who shall be available to City staff twenty-four hours a day, seven days a week, regarding problems or complaints resulting from the Facilities installed by Applicant in the Right-of-Way. Applicant shall immediately notify the City of any changes to such information.
4. The name, address, phone number and email address of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
5. The name, address, phone number and email address of all lessees, tenants or occupants using or intending to use Applicant's existing or proposed Telecommunications Facilities and Equipment.
6. A description of the Applicant's existing and proposed Telecommunications Facilities and Equipment within the City, including a complete map as required by the Rules and Regulations illustrating the existing locations and the type and location of new Facilities proposed for installation within the Right-of-Way, with an anticipated construction schedule for the next two years, to be updated January 1 of each year. These maps, plans, and schedule are necessary for Right-of-Way Work coordination and proper Right-of-Way management. The format and other requirements for the map will be determined by the City Engineer in the Rules and Regulations.
7. Proof of required approvals from the New York State Public Service Commission relating to the provision of Telecommunication Services or location of Facilities within the City.
8. A description of the excess capacity in or on the Applicant's proposed Telecommunications Facilities, including any excess capacity in underground conduits or other Facilities available for expansion by the Applicant or for Co-location by other Telecommunications Providers, and the availability of space for additional Antennas, Facilities, or Accessory Equipment on Overhead Facilities owned or controlled by the Applicant.
9. Such other information as the City Engineer or the Director of Finance may reasonably require to properly manage the Right-of-Way, including annual updates of the information required per this section and insurance and/or bonding documentation.
10. Documentation that Applicant has registered and complied with Dig Safely New York requirements.

C. APPLICATION CLOSED – A Registration application will be deemed closed if, after it has been processed by the City, the City has sent the Applicant notice that the application is deficient or incomplete and more than

30 Days lapses without a good faith response from the Applicant that resolves the issue raised. Once an application has been closed it may not be reopened and a new application must be made and a fee paid. No refunds will be provided for closed applications.

D. APPLICATION INFORMATION UPDATE – Applicants shall be required to provide updated information about all of the above requirements as soon as reasonably possible after a change of circumstances, or no later than one year from the date on which the Registration was completed, whichever is sooner.

E. POST-REGISTRATION REQUIREMENTS – Upon completion of the Registration application, Applicant shall obtain all required Permits and enter into a Master License Agreement as set forth in Article III of this chapter, prior to commencement of any Work in the Right-of-Way.

F. RE-REGISTRATION REQUIREMENTS - After the final renewal term of the Master License Agreement expires, the Applicant must file a new Registration application form as set forth above; however, in the City Engineer's sole discretion, when all or a substantial portion of the information on the original Registration is up to date and unchanged, the existing Registration may be accepted with a reduced fee sufficient to cover City administrative costs as determined by the City Engineer.

§106 - 6. Exemption from Registration.

This chapter shall not apply to cable services provided under a cable franchise pursuant to Chapter 4A of the Municipal Code of the City of Rochester. All of the requirements of this chapter shall apply to any Telecommunications Services provided by a cable service franchisee or an Affiliate, including internet and telephone services.

Article III. Master License Agreement and Permits

§106 - 7. General

A. A Master License Agreement shall be required of any Telecommunications Provider who, prior to the ~~adoption~~ effective date of this chapter, installed and owns or intends to install any Facilities or Accessory Equipment in the Right-of-Way for the purpose of providing Telecommunications Services by that Provider or another Provider. A Master License Agreement shall be executed between the Telecommunications Provider and the City, and such Agreement shall be a condition of the Permit and authorization to commence Work. Applicants are encouraged to commence the Permit application process concurrently with any negotiations and prior to execution of the Agreement. The Master License Agreement shall set forth the terms and conditions of this chapter as well as such additional terms as agreed to between the parties, so long as such terms are competitively neutral in relation to similar agreements with other Providers. A Master License Agreement may be executed prior to the issuance of permits, however no work shall be authorized in the Right-of-Way until the site specific permit is issued.

B. Telecommunications Providers shall obtain individual Permits from the City Engineer, pursuant to Chapter 104 of the Municipal Code, for all Sites of construction or installation of Facilities within the Right-of-Way. Permit Applicants shall comply with all applicable requirements and procedures as set forth in the Rules and Regulations and any terms and conditions contained in the Permit.

C. The City Engineer may determine that installers of Telecommunication Facilities on private property, which require a *de minimus* use of the Right-of-Way, are not subject to the Master License Agreement requirements of this chapter, however, the City Engineer in his/her sole discretion, may require such Registration information or other requirements of this chapter, as is necessary to enable the City to manage and protect the Right-of-Way.

§106 - 8. Permitted Locations and Facilities.

A. Authorization to use the Right-of-Way granted hereunder shall be limited to the approval to use specific locations, install specific Facilities and Equipment, and to use specific Municipal Facilities as described in the Master License Agreement and the Permits. Any Substantial Change, Modification, extension, addition or relocation of a Telecommunication Provider's Facilities or Accessory Equipment in or to locations in the Right-of-Way not included in the Permits or to new or different Municipal Facilities shall require an amendment of the Permit or an additional Permit to include those new locations or Facilities. The Master License Agreement shall also be amended whenever fees or other requirements for new Facilities or Accessory Equipment were not addressed in the existing agreement.

B. Any Modifications made to an existing Telecommunications Facility or any Accessory Equipment in the Right-of-Way shall require that all aspects of that Facility be brought into compliance with this chapter and the Rules and Regulations and shall require a new Permit.

§106 - 9. Nonexclusive Grant.

No License or Permit granted hereunder shall confer any exclusive right, privilege or license to occupy or use the Right-of-Way for delivery of Telecommunications Services or any other purposes. All Permits and Licenses to construct or place Facilities and Equipment in the Right-of-Way shall be nonexclusive and shall not prohibit Co-location or City use.

§106 - 10. Rights Granted.

A. No License granted hereunder shall convey any right, title or interest in the Right-of-Way, but shall be deemed a license only to use and occupy the Right-of-Way for the limited purposes and term stated under this chapter or as defined by the Master License Agreement and Permit.

B. No License granted hereunder shall authorize or excuse a Licensee from securing such further leases or other approvals as may be required to lawfully occupy and use the Right-of-Way, including any locations in the Right-of-Way not specifically authorized by the Master License Agreement or Permit.

C. No License granted hereunder shall be construed as any warranty of title.

D. With the exception as stated in §106-7(C), no Permit granted hereunder shall be effective until the Applicant and the City have executed a written Master License Agreement setting forth the particular terms and conditions under which the Licensee is to occupy and use the Right-of-Way.

§106 - 11. Permit Determination by City.

A. The City shall issue a written determination granting or denying a Permit application, in whole or in part, and may impose additional conditions related to the management and protection of the Right-of-Way on the Permit at its discretion. After receipt of a complete application, the City will issue such determination consistent with the requirements of applicable Laws.

The City has determined that to protect the public safety and ensure proper management of the Right-of-Way, the review and approval of Permit applications for Facilities and Equipment in the Right-of-Way requires a comprehensive review of all submitted documents and site inspections as needed.

B. With respect to Small Cell installation, such Permit review includes but is not limited to inspection visits to each proposed site to verify field conditions such as existence of overhead lines, areaways and other aboveground facilities, inspection of electrical circuits for the pole, coordination with electrical utilities, evaluation of adjacent road and sidewalk conditions, identification of other competing right-of-way projects in the area, and addressing complaints or issues with adjacent residential and business neighbors. When applications for multiple sites are submitted at the same time, sufficient additional time shall be required for the review and inspection of each individual site. Accordingly, such Permit determination shall be issued within 30 Days of receipt of a completed single-Site application, extended by 2 business days for each additional Site requested on the Permit application. Failure of the City to act within the prescribed timeframe shall not be deemed an approval of the application.

A Small Cell Permit application shall be deemed incomplete, and the above time frames shall not commence, if the Applicant is so notified in writing within 10 Days from receipt of the application, stating the manner in which the application is incomplete, including but not limited to the failure of the Applicant to complete the Registration requirements or the determination, as set forth below, that the services of an expert consultant are required. If the Applicant submits a revised application which does not include the documents or information identified in the prior notification, the City shall within 10 days provide written notice that the application is incomplete and that no further action will be taken by the City to review the application until all deficiencies in the application have been corrected.

C. If the City determines that it does not have the expertise needed to evaluate the equipment, location, or technology associated with an application with respect to the factors in subsection D, below, or other material issues in the application, it may secure the services of an expert consultant to review the application at the Applicant's cost. The Applicant shall cooperate with the expert and ensure that all necessary information is supplied to both the City and the expert in a timely manner. ~~A deficient application under this subsection, shall be deemed complete when the City receives the report or determination of the expert.~~

D. If the Permit application is denied, the determination shall state in writing the reason for such denial. Among the factors to be used in making a determination to approve or deny a Permit application, including a renewal application, the City may consider:

1. Failure to comply with Registration applications requirements as set forth in §106-5;
2. The legal authority of the Applicant to occupy the Right-of-Way as evidenced by proof of required state and federal approvals;
3. The capacity of the Right-of-Way and Municipal Facilities to accommodate the Applicant's proposed Facilities;

4. Damage or disruption to public or private Facilities, improvements, service or travel in the Right-of-Way, including violation of the Dig Once, or other policies as set forth in the Rules and Regulations, if the approval is granted;
5. The effect on public health, safety and welfare;
6. The availability of practicable alternative routes, excess capacity and/or Co-Location options which would avoid damage or disruption to the Right-of-Way;
7. Applicable Laws;
8. Material errors or omissions in required data or materials submitted;
9. Failure to use reasonable Camouflage methods to mitigate the impacts of the proposed Telecommunications Facilities and Accessory Equipment, as set forth in more detail in the Rules and Regulations;
10. Compliance with Federal EMF emissions standards;
- ~~11. Failure to reasonably mitigate the impact of its proposed Facilities or Equipment by the least intrusive means possible in its design, placement, location, size, and number of Facilities and Equipment; and~~
- ~~12.~~ Applicant's history of non-compliance with this chapter, Chapter 104, the Rules and Regulations, the Permits or a Master License Agreement.

E. Appeals. Any Person may appeal the City Engineer's decision in writing to the Commissioner of Environmental Services within 10 Days after the determination is served on the Applicant. Applicant shall have the right to submit any relevant evidence as an attachment to such appeal. The Commissioner may conduct a hearing on the appeal to collect and review pertinent information and will notify the Applicant of his or her determination within 20 Days. Judicial review of the determination may be sought pursuant to Article 78 of the New York State Civil Practice Law and Rules.

Section 332(c)(7)(b)(iv) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions. Accordingly, appeals based on the environmental effects of radio frequency emissions will not be considered.

§106 - 12. Term of the Master License Agreement.

A Master License Agreement granted hereunder shall be approved by City Council and may remain in effect for a term of ~~5~~ 10 years with the option for ~~3~~ 2 renewals of 5 years each upon agreement of the parties. Such renewals, so long as provided for in the ordinance approved by City Council, may be processed by the Administrator.

§106 – 13. Renewal Applications.

A. Any Licensee that desires to exercise the renewal term in its Master License Agreement shall, not more than 180 Days nor less than 90 Days before expiration of the current Master License Agreement, file an application

with the Administrator for renewal. The application shall provide any information required by §106-5 which differs from the original application. The City and Licensee shall execute a Master License Agreement extension or the City shall issue a written determination denying the renewal application in whole or in part within 30 business days from receipt of the completed renewal request. Failure of the City to respond within 30 business days does not constitute an automatic approval of the renewal. If the renewal is denied, the determination shall state the reason for such denial. Denial of a License renewal may be appealed in the same manner as an appeal of the denial of a Permit application detailed in §106-11(D).

B. After the final renewal term of the Master License Agreement expires, the Applicant must re-register as required by §106-5 and negotiate a new Master License Agreement. Such efforts should be started at least 180 Days prior to expiration of the Master License Agreement to allow sufficient time for negotiations and City Council approval.

§106 - 14. Obligation to Cure as a Condition of Renewal.

No Master License Agreement shall be renewed until any ongoing violations or defaults in the Licensee's performance of the requirements of this chapter, and violations of all applicable Laws and Permit conditions have been cured, or a plan detailing the corrective action to be taken by the Licensee within a defined schedule has been approved by the City Engineer or designee.

Article IV. Fees and Compensation.

§106 - 15. General.

A. REGISTRATION FEE. All Applicants shall pay a non-refundable Registration fee in the amount of \$1,000 to reimburse the City for the administrative costs of processing Registration information and materials, including all subsequent information updates required during the term of a Master License Agreement. Upon expiration of any Master License Agreement, including extension requests, the Applicant shall re-register with the City and pay a renewal fee in the amount of \$500.

B. RIGHT-OF-WAY COMPENSATION. All Licensees shall pay annually to the City, as compensation for use of the City's Right-of-Way and/or for the use of Municipal Facilities, the reasonably approximate costs for the maintenance, operation and management of the Right-of-Way related to such use, including but not limited to site inspection costs, repair and maintenance costs of Municipal Facilities and the Right-of-Way, administrative costs for retaining and managing documents and records, legal services costs for Master License Agreements and other related documents and issues, costs for managing, coordinating and responding to public concerns and complaints, the costs of the City's self-insurance and the value of the Right-of-Way and the Municipal Facilities, in the following annual amounts:

1. UNDERGROUND INSTALLATIONS

a. OPEN TRENCHING. In the first year, \$10,000 for up to 2,500 linear feet of Telecommunications Facilities per contiguous Site, per conduit or multiple conduits up to 5 inches total in diameter in the Right-of-Way \$1.50 per linear foot for 2,500 through 12,500 linear feet of Telecommunications Facilities and \$0.75 per linear foot thereafter. Annually after the first year of installation, \$5,000 for up to 2,500 linear feet of Telecommunications Facilities and \$1.00 per linear foot for 2,500 through 12,500 linear feet of Telecommunications Facilities and \$0.50 per linear foot thereafter;

b. **INSTALLATION IN EXISTING FACILITIES.** Five thousand dollars (\$5,000) for up to 2,500 linear feet of Telecommunications Facilities, including wire, fiber optic strands, innerduct or other Facilities which do not require the installation of new conduit and are installed in existing Facilities and \$1.00 per linear foot for 2,500 through 12,500 linear feet of Telecommunications Facilities and \$0.50 per linear foot thereafter;

c. **DIRECTIONAL BORING.** In the first year, \$500 for each site of Excavation required to facilitate directional boring for placement of conduit or multiple conduits up to 5 inches total in diameter in the Right-of-Way and \$1.50 per linear foot of installed facilities resulting from such directional boring for 2,500 through 12,500 linear feet of Telecommunications Facilities and \$0.75 per linear foot thereafter. Annually after the first year, \$5,000 for up to 2,500 linear feet of installed Telecommunications Facilities and \$1.00 per linear foot for 2,500 through 12,500 linear feet of Telecommunications Facilities and \$0.50 per linear foot thereafter;

2. **AERIAL INSTALLATIONS.** Aerial installation of fiber or other Telecommunications Facilities and Accessory Equipment strung between poles, buildings, or other Facilities is strongly discouraged due to area weather, safety concerns, limited capacity, and aesthetic disturbances. Upon demonstrating that there is no reasonable alternative to such installation, and if such installation is approved, then \$10,000 for up to 2,500 linear feet of Telecommunications Facilities, \$1.50 per linear foot for 2,500 through 12,500 linear feet of Telecommunications Facilities and Equipment and \$0.75 per linear foot thereafter. Annually after the first year of installation, \$5,000 for up to 2,500 linear feet of Telecommunications Facilities and \$1.00 per linear foot for 2,500 through 12,500 linear feet of Telecommunications Facilities and \$0.50 per linear foot thereafter.

3. **STRAND-MOUNTED FACILITIES.** Installations of aerial fiber optic strand-mounted wireless Wi-Fi equipment as described in § 106-30 shall be subject to an annual fee of \$250 per unit when installed in the Right-of-Way between two City-owned poles and \$150 per unit when installed between any other poles. Such fees are not inclusive of any additional compensation required herein.

4. **POLE ATTACHMENTS.** One thousand five hundred dollars (\$1,500) per standard City-owned pole or standard pole purchased and replaced by the Licensee and dedicated to the City, and \$1000 per Smart Pole installed by the Licensee and dedicated to the City. Any Smart Poles installed by the City shall be such amount as set forth in a Master License Agreement.

5. **RELOCATED AERIAL INSTALLATIONS.** Existing aerial installations which are relocated to approved underground locations shall pay 50% of the underground installation compensation amounts set forth above.

C. Additional Telecommunications Facilities, including Facilities not addressed or anticipated by this section, shall be subject to such compensation requirements as determined by the City Engineer, as is reasonably consistent with the forms of compensation required herein.

D. A prorated payment to the end of the calendar year shall be made within 30 Days from the issuance of the Permit. Thereafter, the annual payment shall be due and payable on January 1 of each year. Payments not received on or before the due date shall be assessed compound interest of 1% per month. Upon renewal of each 5-year term of the Master License Agreement, all fees set forth in subsection B above shall increase by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Northeast Urban Region.

F. Licensees shall pay the actual costs, including but not limited to legal and engineering fees, of any expert consultant the City may reasonably require for review of applications submitted pursuant to this chapter.

G. The compensation set forth in this section shall be exclusive of, and in addition to, any other applicable fees, including but not limited to Permit fees, Registration costs, or other costs established by this chapter or by Chapter 104, any rental amounts for lease of City Municipal Facilities and all special assessments and taxes of whatever nature.

H. Except as otherwise required by Law, neither the fees pursuant to this section nor any portion thereof shall be billed or otherwise separately charged, identified or designated on any bills or invoices to any customers or users of services or commodities furnished by Licensee.

I. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of a Master License Agreement or Permit condition, nor shall acceptance of any partial payments preclude the City from later establishing that a larger amount was due or from collecting any balance due the City.

J. At the discretion of the Administrator, the City may require in-kind or alternative payments as described in §106 - 16, ~~such as the installation of conduit and fiber dedicated to the City, Rochester Public Library, or the City School District~~, in lieu of the compensation payments described above, provided that such in-kind or alternative payments result in an annual value amount substantially similar to the payments required by this section and that any such in-kind or alternative payments are described in the Master License Agreement or any amendment thereto.

§106 - 16. Alternative payment.

A. Notwithstanding the foregoing, Licensees may, in the City's sole discretion, provide alternative services for all or a portion of the compensation owed to the City by providing in-kind telecommunications-related services or Facilities to the City, the Rochester Public Library (Library), or to the Rochester City School District (District). These in-kind services or Facilities may include fiber, dedicated conduit space, telecommunications services or equipment, drilling or Excavation for the purpose of Telecommunications Facilities installation, technical support and training or other services determined by the City to be consistent with the telecommunication requirements of the City, Library, or the District and in compliance with the law. These services or Facilities shall be provided to the City at Licensee's cost and shall be of equal value, as much as reasonably possible, as the monetary amount of the compensation required herein.

B. If a Licensee desires to take advantage of the alternative payment option, it must provide the City with a detailed description of the Telecommunications Services or Facilities it proposes in lieu of monetary payment.

C. Licensee shall provide to the City, at its own expense, an analysis prepared by an independent entity that demonstrates that the value of in-kind services or Facilities, which shall be based on Licensee's costs, is equal to or greater than the amount of compensation to be offset. The ultimate value of any in-kind services shall be determined by the Administrator after reviewing such analysis. The Administrator may develop rules and procedures for the implementation of this section.

D. Licensee may contact the City and request a conference regarding in-kind payment opportunities, if any, that the City may be willing to accept. The City will endeavor to schedule such conference within 30 Days of the request.

§106 - 17. Co-Location.

A. As set forth in the Purpose statement of this chapter, in order to minimize community disruption from the installation and operation of Telecommunications Facilities, the City encourages Co-location. Whenever a Licensee permits another Telecommunications Provider to Co-locate its Facilities, to the extent that no Excavation of the Right-of-Way is required, the Licensee shall be entitled to an annual 10% reduction in the compensation payment due and owing to the City as described in §106 - 15 for the length of time that the Facilities are Co-located. The reduction will be pro-rated for partial years to reflect the reduction only during periods of Co-location.

B. Interference with existing Facilities or Equipment caused by the Co-locating party shall be the sole responsibility and liability of the Co-locating party.

Article V. Additional Requirements applicable to Licensees.

§106 - 18. Revocation of License Agreement or Permit.

A. A Master License Agreement or Permit granted by the City may be revoked for a violation of the provisions of this chapter or violation of any terms or conditions of such License or Permit, including but not limited to the following:

1. Construction or operation at an unauthorized location;
2. Material misrepresentation or fraud by the Licensee or Permittee;
3. Abandonment of Facilities or Accessory Equipment in the Right-of-Way without proper notice or removal;
4. Failure to relocate or remove Facilities or Accessory Equipment as required by the City Engineer;
5. Failure to timely pay compensation, fees or other costs due the City;
6. Failure to maintain required insurance and Securities;
7. Failure to provide or maintain required records, maps, and studies;
8. Failure to obtain Permits pursuant to Chapter 104 or to comply with any Permit conditions or requirements;
9. Failure to adhere to the specifications authorized by the Permit or Master License Agreement, including but not limited to altered uses, expanded dimensions, or changes in character;

10. Selling or leasing an interest in Telecommunications Facilities in the Right-of-Way without proper notice, documentation and authorization as required by this chapter;
11. The use approved has ceased, never begun, or has been suspended for six months or more;
12. Failure to comply with any applicable Laws, including this chapter;
13. A substantive change in Law affecting the Licensee or Permittee's authority to occupy or use the Right-of-Way or the City's authority to impose regulations relating to such occupation or use;
14. Facilities or Accessory Equipment interfere with a City project;
15. Facilities or Accessory Equipment interfere with vehicular or pedestrian use of the Right-of-Way; or
16. Failure to make timely and safe restoration of the Right-of-Way.

B. In determining whether the any of the foregoing violations have occurred and whether to revoke the License or Permit, the City Engineer may consider the nature, circumstances, extent and gravity of the violation, including but not limited to one or more of the following considerations:

1. Whether the violation was egregious;
2. Whether substantial harm resulted;
3. Whether the violation was intentional;
4. Whether there is a history of prior violations;
5. Whether there is a history of overall compliance; and
6. Whether the violation was voluntarily disclosed.

C. In the event that the City finds that grounds exist for revocation of a License and/or Permit, written notice of the violation shall be sent to the Licensee or Permittee. Such notice will provide ~~10~~ 30 Days from issuance of the notice of violation for the Licensee or Permittee, to correct the violation or rebut the violation in writing to the City Engineer and request a hearing; provided however, that the City reserves the right to take any action authorized in this chapter to correct the violation.

If Licensee or Permittee does not request a hearing or does not respond within 10 Days to the City's notice, the License or Permit will be immediately revoked. Upon notice of revocation, Licensee and/or Permittee must immediately cease Work, remove all equipment and property from the Right-of-Way, and restore the Right-of-Way to a condition acceptable to the City Engineer. Revocation may be appealed as set forth in §106 - 19 below.

If the Licensee or Permittee submits a written statement rebutting the violations and requesting a hearing, the City Engineer shall either:

1. Issue a written decision withdrawing the notice of violation;
 2. Settle with the Licensee and/or Permittee by agreeing to a conditional Permit, Permit addendum, or other written agreement; or
 3. Schedule a revocation hearing.
- D. Nothing herein shall preclude the City from pursuing any available legal remedies.

§106 - 19. Revocation Hearing.

A. The Commissioner shall grant a hearing to be scheduled no later than 30 Days from the receipt of a request for a hearing.

B. The appellant shall be permitted representation by counsel, the ability to submit evidence and summon witnesses on his or her behalf, and to inspect appropriate documents and cross-examine opposing witnesses. Compliance with the technical rules of evidence shall not be required. The Commissioner shall make the final determination in writing, based upon evidence produced at the hearing and the standards and considerations set forth in this chapter. The Commissioner may impose reasonable costs incurred by the City as a result of the specified violations. The determination of the Commissioner shall be a final decision and shall be subject to review pursuant to Article 78 of the Civil Practice Law and Rules.

§106 - 20. Assignment.

~~A License or Permit granted pursuant to this chapter shall not be assignable to any other entity including a parent, Affiliate or subsidiary, without the prior written approval of the City so that the City may properly manage its Right of Way and obtain all necessary information to do so. Licensee and/or Permittee must notify the City at least 60 Days in advance of any proposed assignment. The City's approval shall not be unreasonably withheld so long as the proposed assignee of the License or Permit meets the requirements of this chapter. A License or Permit granted pursuant to this chapter, may be assigned by Provider to a parent, affiliate, or subsidiary acquiring fifty-one percent (51%) or more of Provider's stock or assets, without the prior written approval of City, by reason of a merger, acquisition or other business reorganization, however in such case the City shall be so notified within ten (10) days of the transaction and shall be provided with any changes in contact information and revisions or amendments to securities and insurances. Provider shall provide written confirmation, acceptable to the Director of Finance, that all securities and insurances required under this Agreement, remain in effect. As to other parties, this Agreement and any Permit under it may not be sold, assigned or transferred without the written consent of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. The City's consent to the assignment of this Agreement shall be conditioned upon the new owners, assignees, partners or other necessary parties confirming to the City's satisfaction, their ability and obligation to comply with all of the requirements of this Agreement and absent such confirmation, this Agreement may be terminated and any Permits voided.~~

§106 - 21. Abandonment of Telecommunications Facilities and Accessory Equipment.

A. If a Permittee intends to Abandon any portion of its Facilities or Accessory Equipment it shall notify the City Engineer in writing at least thirty (30) Days in advance and shall either promptly vacate and remove the Facilities and obtain all necessary Permits, at its own expense, or upon written City Engineer approval, Abandon some or all of the Facilities in place, in which case ownership of the Abandoned Facilities shall be deemed to transfer to the City.

B. After the removal or relocation of its Facilities and Accessory Equipment, Permittee, at its own cost, shall repair and restore the Right-of-Way to a safe and satisfactory condition in accordance with generally applicable construction standards and specifications established by this chapter, Chapter 104, and the Rules and Regulations. Should Permittee remove or relocate its Facilities in the Right-of-Way, it shall give the City not less than 30 Days prior written notice of its intent to do so. Before proceeding with removal or relocation work, Permittee shall obtain such additional Permits as may be required.

C. In the event that the City has received notice of intent to Abandon as set forth in subsection A above and Permittee fails to remove its Facilities or Accessory Equipment within 30 Days from such Abandonment notice (except for any Facilities which the City Engineer has approved to remain in place), the City may remove or cause to be removed some or all of the Abandoned Facilities or Accessory Equipment without further notice and may charge Permittee for all costs incurred for such removal and storage, including all costs to restore the Right-of-Way and any penalties authorized by Chapter 104. Failure of Permittee to pay all such costs within 10 Days from receipt of the City's demand for payment shall constitute grounds for the City to draw on the Security established pursuant to §106-24.

D. If the City has not received a notice of intent to abandon from Permittee but otherwise determines that Permittee has Abandoned its Facilities or Accessory Equipment, the City shall notify Permittee of its determination that Permittee's facilities or Accessory equipment have been Abandoned and demand a plan for removal of the Abandoned Facilities or Accessory Equipment. If Permittee fails to respond or to provide an acceptable plan, within 30 days from the date of the notice, the City may remove or cause to be removed some or all of the Abandoned Facilities or Accessory Equipment without further notice and may charge Permittee for all costs incurred for such removal and storage, including all costs to restore the Right-of-Way and any penalties authorized by Chapter 104. Failure of Licensee or Permittee to pay all such costs within 10 Days from receipt of the City's demand for payment shall constitute grounds for the City to draw on the Security established pursuant to §106-24.

E. If the City removes the Abandoned Telecommunications Facilities and Accessory Equipment, City shall notify Permittee of the removal. If the Permittee does not remove the Facilities and Accessory Equipment from the storage location and pay all removal costs, Right-of-Way restoration costs, and reasonable storage costs within 30 Days of notification of removal, the Facilities and Accessory Equipment shall become City property. The City Engineer may declare the Facilities and Accessory Equipment as surplus property and the City Purchasing Agent may dispose of the property pursuant to Code Chapter 8A-17.

§106 -22. Relocation of Facilities and Accessory Equipment.

If ordered by the City Engineer to move or relocate its Telecommunications Facilities or Accessory Equipment in the Right-of-Way, the Licensee or Permittee shall relocate such Facilities at its own expense, subject to the requirements of Chapter 104 and the Rules and Regulations.

§106 - 23. Insurance.

A. At all times during the term of any Permit, License, Master License Agreement or other Right-of-Way agreement (“ROW Approvals”) hereunder, all Licensees and/or Permittees shall maintain insurance in the amounts set forth below. Said insurance shall be issued by a reputable insurance company authorized to do business in the State of New York. Said insurance shall also name the City as an additional insured and copies of the policy endorsements reflecting the same must be provided to the Director of Finance. Licensee and/or Permittee shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force, including policy information and amounts and a listing of any and all exclusions under said policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least 30 Days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to any License, Permit or other Right-of-Way agreement.

B. Licensees and/or Permittees shall maintain a comprehensive general liability insurance policy with bodily injury limits of at least \$5,000,000 per person, \$5,000,000 per occurrence, and property damage limits of at least \$5,000,000 per occurrence. The policy must insure with regard to liability for bodily injury, death and property damage, as well as other claims and damages, and provide the following coverage: comprehensive form, premises/operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, independent contractors and personal injury.

C. Licensees and/or Permittees shall maintain comprehensive automobile liability insurance covering all motor vehicles owned or used by the Licensee or Permittee for any Right-of-Way Work, including but not limited to maintenance, installation, repair, and restoration, with bodily injury limits of at least \$3,000,000 per person, \$3,000,000 per occurrence, and property damage limits of at least \$3,000,000 per occurrence.

D. Licensees and/or Permittees shall require all of its subcontractors to keep insured, during the life of any Right-of-Way Approval, all employees of said subcontractors as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. In the event the Licensee and/or Permittee hires its own employees to do any Work authorized by the License, Permit, or Right-of-Way agreement, it shall insure its own employees. Licensee and/or Permittee shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage has been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Workers' Compensation and/or Disability Benefits coverage is not required by submitting a completed New York State Workers' Compensation Board's form WC/DB-100.

Licensee and/or Permittee shall also provide and maintain insurance to protect it from all claims under Worker's Compensation Law as required by the State on a scheduled basis. Proof that such Workers' Compensation Insurance has been secured and duly subscribed by an insurance carrier shall be provided to the City in advance of all Work performed in the Right-of-Way or otherwise relevant to this Section.

E. The insurance hereby required shall include the City as an additional insured, shall not exclude municipal employees, property or operations and shall be maintained in full force and effect throughout the term of the Right-of-Way Approval. Modifications to the requirements of this section may be authorized by the Director of Finance for good cause demonstrated, so long as the welfare and interests of the City are equally protected.

§106 - 24. Security.

At all times during the term of any Permit, License, Master License Agreement or other Right-of-Way agreement (“ROW Approvals”), all Licensees and/or Permittees shall provide to the City, in a form acceptable to the City Director of Finance or the Corporation Counsel, Security in the amount of \$100,000 or such greater amount as determined by the City Director of Finance to be necessary to protect the interests of City in the event of Licensee or Permittee’s failure to comply with the requirements of this chapter, Chapter 104, the Rules and Regulations or ROW Approvals, or based on the nature and extent of the Telecommunications Facilities being installed in the Right-of-Way. The City may draw upon the Security as a result of any breaches or violations of this chapter, Chapter 104, the Rules and Regulations, Permit conditions or the Master License Agreement, including in the event that Licensee and/or Permittee fails to pay any fees, costs or compensation due and payable under the Permit or Master License Agreement within 10 Days of a demand for payment served by the City.

§106 - 25. Indemnification.

Licensees and Permittees shall defend, indemnify and hold harmless the City, its officers, employees, agents, boards and commissions against any claims, lawsuits or proceedings, damages, penalties, or costs whatsoever brought by a third party arising out of a Permit or Master License Agreement and any activities engaged in by Licensee or Permittee. This provision shall not require a Licensee or Permittee to defend or indemnify the City from claims to the extent that they are attributable to the gross negligence or intentional acts or omissions of the City, its officers, employees, agents, boards and commissions.

§106 – 26. No Recourse Against the City.

A Licensee or Permittee shall have no recourse whatsoever against the City or its officers, employees, agents, boards or commissions for any loss, costs, expenses or damages arising out of any provision or requirement of this chapter, or due to the good faith enforcement of this chapter, the Permit or Master License Agreement. This provision shall not prevent a Licensee or Permittee from asserting any legal right or pursuing any legal remedy it believes it possesses with regard to this chapter.

§106 - 27. Right of City to Inspect Facilities and Records.

A. Each Licensee and Permittee shall maintain records, including as-built drawings as described in more detail in the Rules and Regulations and maps of the location of its own Facilities and any Facilities it installs for the City’s benefit in the Right-of-Way, and such other records as the City Engineer may reasonably require to enable the proper and efficient enforcement of the provisions of this chapter and management of the Right-of-Way. Such records and maps shall be filed with the City within 10 Days of the completed Work.

B. The City’s designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to the Licensee and/or Permittee, all documents, records or other information which pertain to the Facilities in the Right-of-Way pursuant to this chapter and Chapter 104.

C. Each Licensee or Permittee, its agents, and outside contractors shall make available for examination by the City or its authorized representative or agent, within 30 Days from such request, during normal business hours, all documentation (i.e. books, records & accounts or other documentation of the Licensee or Permittee hereinafter collectively referred to as the “Documents”) in the format requested by the City that, in the City’s discretion, is necessary to determine the accuracy of information concerning installed Facilities and Accessory Equipment. Licensee or Permittee shall allow the City, or its authorized representatives or agents to make copies of the Documents as necessary. The City or its designated representative shall have the right during the life of each

License, Permit, or Master License Agreement and for a period of three years from the expiration or termination of any such agreement, to examine the Documents. The City agrees to keep any Documents and reports confidential to the extent allowed by Law.

§106-28. Protection of Property and Service Disruption.

A. No Licensee, Permittee, or any Person acting on its behalf shall take any action or permit any action which may impair or damage any Municipal Facilities, the Right-of-Way, real or personal City property, or other property located in, on or adjacent thereto except in accordance with provisions of Chapter 104. Each Licensee or Permittee shall be responsible for the cost of service disruption and repairs of any such property as determined by the City.

B. Unless directly and proximately caused by the willful, intentional or malicious acts of the City, the City shall not be liable for any damage to or loss of any Telecommunications Facility or Accessory Equipment within the Right-of-Way as a result of or in connection with any public works, public improvements, construction, Excavation, grading, filling, or Work of any kind in the Right-of-Way by or on behalf of the City.

§ 106-29. Small Cell Sites in the Right-of-Way.

The preferred location for Small Cell Sites shall be on existing Municipal Facilities, other existing poles or structures (“Existing Infrastructure”) or on replacement poles located in the same location as Existing Infrastructure. If the Facility is not able to be placed on Existing Infrastructure, the Applicant shall provide a map of all Existing Infrastructure in the service area and describe why each such Site is not feasible.

For the protection and management of the Right-of-Way, it is the City’s policy that no new poles or structures shall be installed in the Right-of-Way unless approved by the City Engineer. The City Engineer shall, in his/her sole discretion, approve new poles or structures in the Right-of-Way only if the Applicant establishes that:

- A. There is no Existing Infrastructure that will enable the Applicant to provide its Telecommunications Services; and
- B. It is not possible to reconfigure or relocate its existing Facilities, or a combination of relocated existing Facilities with Existing Infrastructure that will enable Applicant to provide its Telecommunications Services; and
- C. It is not possible for Applicant to secure required Facilities through Co-location or purchasing or leasing of Facilities from other Providers; and
- D. It is not possible to use alternative technologies, facilities or equipment, including underground facilities, which do not require the installation of new poles or structures in the Right-of-Way.

§ 106-30. Aerial Fiber Optic Strand-Mounted Wireless and Wi-Fi Equipment.

A. All aerial fiber optic strand-mounted wireless and Wi-Fi equipment installations shall comply with the requirements of this chapter.

B. Equipment mounted on aerial fiber optic strands shall be of the smallest possible volume.

C. The Applicant shall provide proof of authorization for the installation from any non-City owners of the adjacent poles on each side of the Equipment.

D. Only one installation shall be allowed between any two poles.

§ 106-31. Carrier/Cell on Wheels (COW) and Cellular on Light Truck (COLT).

A. Carrier on Wheels (COW) or cellular on light truck (COLT) may be placed in the Right-of-Way or on City-owned property upon issuance of a Permit.

1. The setup location requested for the COW or COLT will be reviewed, and at the discretion of the City Engineer or designee, may be modified to ensure public health and safety.

2. The duration of a Permit for a COW or COLT will be no longer than is necessary to establish the network and provide the temporary coverage required by the event or Emergency.

3. At the discretion of the City Engineer or designee, the Permit may be revoked or modified when in the best interests of the City.

4. A Permit will not be required for a COW or COLT when the installation is for the primary purpose of disseminating news, recent events, and other current, public affairs during a declared state of emergency. Notification of such installation must be provided to the City Engineer within a reasonable amount of time under the circumstances. Whether installation of a COW or COLT meets the requirements of this subsection is at the sole discretion of the City Engineer.

§ 106-32. Compliance with Applicable Laws and Regulations.

This chapter is not intended to be the exclusive means of regulating the installation and operation of Facilities in the Right-of-Way and nothing herein is intended to waive any other applicable City requirements, including but not limited to building permit requirements, storm water runoff requirements, business license requirements, and undergrounding regulations. The Applicant or Permittee must obtain all permits, licenses, and similar authorizations that are required by other governmental entities for the installation of its Facilities. The Licensee or Permittee must also achieve and remain in compliance with all applicable statutes, ordinances, rules, regulations, orders, and decisions issued by any Federal, State or local governmental body or agency, including without limitation those issued by the New York Public Service Commission and the Federal Communications Commission.

§ 106-33. Right-of-Way Coordination.

To the maximum extent possible and as Permitted by Law, an Applicant shall design and schedule its Work so as to coordinate with other Persons installing, constructing, or maintaining Facilities in the Right-of-Way and with the City as set forth in the Rules and Regulations.

§ 106-34. Reservation of Rights.

A. By granting a Permit under the terms of this chapter, the City does not waive any rights reserved to the City under any applicable Law, including but not limited to the City's right to regulate the time, place, and manner of access to the City's Right-of-Way.

B. Nothing in this chapter shall be construed as granting any right, whether express or implied, to any Licensee or Permittee to place a Facility on City-owned property.

§ 106-35. Non-enforcement by City.

No Licensee or Permittee shall be excused from complying with any of the provisions of this chapter, Permit, or Master License Agreement by any failure of the City to enforce compliance with any requirements or provisions. Regardless of the City's failure to seek compliance on any occasions, such action shall not be considered a waiver of any kind.

§ 106-36. Severability.

If any provision of this chapter is declared invalid or unconstitutional for any reason, the remaining provisions shall be severable and continue in full force and effect.

§ 106-37. Operation of Law.

If any application is deemed approved by operation of law, such approval shall only be valid if the Applicant has registered as required by this chapter, submitted a completed application, and has complied with this chapter in all other respects.

§ 106-38. Existing Agreements.

Any Permit, License, Addendum Agreement, Master License Agreement or other Right-of-Way agreement (collectively "ROW Approvals") pre-dating this chapter that reference a future telecommunications ordinance or the requirement to enter into a franchise agreement are subject to this chapter. A Master License Agreement under this chapter shall be deemed as the equivalent of a franchise agreement solely with regard to agreements in effect prior to the effective date this chapter ~~was adopted~~.

§ 106-39. Penalties.

Any installation, modification, or other Work performed in the Right-of-Way without complying with this chapter shall be subject to removal and penalties as follows:

A. For each offense, a penalty equivalent to twice the Permit fee that the City Engineer determines would have been required for the installation;

B. For each Day any equipment is not removed after being given notice to do so, \$100;

C. For each Day that a Site remains in disrepair or is not returned to its preexisting condition as directed by the City, \$100;

Any evidence of multiple, severe, repeated, or intentional violations will result in denial of all pending applications and may result in a revocation of the Licensee's Master License Agreement and Permits. Should there be a revocation, the Licensee can appeal consistent with this chapter. The former Licensee shall not be eligible to apply for a new Master License Agreement with the City of Rochester for one calendar year.

§ 106-40. Notice to Neighbors and Neighborhood.

Where deemed necessary by the City Engineer, Permittee shall send written notice mailed or hand-delivered to all properties within 500 feet of the installation at least 20 Days in advance of the installation detailing the location of the installation, the time frame for construction, and a photo simulation of the Facility and Equipment drawn to scale. Contact information for an available agent of the Licensee and/or Permittee must be included on the notice and such agent must be reachable during normal business hours. Any complaints, questions, and comments shall be summarized by the agent and delivered to the City Engineer within 24 hours of the contact.

Permittees are strongly encouraged, especially for visible residential Right-of-Way installations, to voluntarily schedule public meetings to inform the neighborhood about the project. Public meetings shall be a Permit condition where the City Engineer determines such meetings necessary.

§ 106-41. Replacement and Dedication.

Whenever City Property in the Right-of-Way requires replacement to facilitate the installation of Telecommunications Facilities or Accessory Equipment, the Permittee shall replace such property with property that meets or exceeds the quality, appearance and life span of the existing property at no cost to the City, and the Permittee shall dedicate such property to the City upon replacement.

§ 106-42. Reimbursement or Pre-Payment of Costs.

Where the City incurs costs, including but not limited to legal fees, engineering costs, inspection expenses, and expert and consultant fees, such costs shall be the full responsibility of the Applicant, Licensee or Permittee. The City shall submit an invoice for such costs to the Applicant, Licensee, or Permittee within 150 Days of the Work performed. The City shall also have the right to receive pre-payment from the Applicant or Licensee for any services deemed essential by the City Engineer.

Section 2. Chapter 104 of the Municipal Code, Streets and Street Encroachments, as amended, is hereby further amended so that Sections 104-1, 104-16, 104-17, 104-18, 104-19, 104-50, 104-51, 104-52, 104-53, and 104-55, 104-56, and 104-57 shall read in their entirety as follows:

§ 104-1 Title; definitions.

A. This article which comprises Chapter 104 of the Municipal Code shall be known and cited as the "Right-of-Way Code."

B. The following definitions shall apply to words used in this chapter:

ABOVE SURFACE

Above ground level.

BARRICADE

Device or structure used to prevent access to a specific area.

CENTER CITY DISTRICT

Center City District as established pursuant to Chapter 120, Article IX of the Zoning Code of the City of Rochester.

~~**CENTRAL BUSINESS DISTRICT**~~

~~The area bounded by the Inner Loop, but excluding the Inner Loop and its frontage.~~

COMMISSIONER

Commissioner of Environmental Services.

CURBLINE

The boundary line on either side of a roadway or paved portion of a street.

ENCROACH

To intrude upon, above or beneath the right-of-way.

ENCROACHMENT

A building or object which intrudes upon, above or beneath the right-of-way.

EXCAVATION

Any movement or removal of earth, rock, pavement, Right-of-Way fixtures, or other materials in or on the ground.

PERMITTEE

One who receives a permit under this chapter.

PERSON

Any individual, association, firm, partnership, corporation, joint-stock company, limited liability company or other legal entity.

RIGHT-OF-WAY

The area on, below, or above a City-owned or -controlled street, roadway, alley or sidewalk, including the curbs, gutters, catch basins and related facilities adjacent thereto.

RIGHT-OF-WAY LINE

The boundary line on either side of the right-of-way.

ROADWAY

That portion of the right-of-way improved, designed or ordinarily used for vehicular traffic.

RULES AND REGULATIONS

The Rules and Regulations for Work in the Right-of-Way, and any amendments thereto, as adopted by the City Engineer.

SECURITY

A financial instrument, including a letter of credit, certified check, cash, bond or other formal assurance used to guarantee that permit work will be properly performed and completed, that any right-of-way restoration work will be maintained as required by this chapter and that all fees and compensation owed to the City are paid in full. Such security shall be in a form approved by the Director of Finance or the Corporation Counsel.

SIDEWALK

That paved portion of the right-of-way between the curblines or the lateral lines of a roadway, and the adjacent property lines intended for pedestrian use.

SUBSURFACE

Below ground level.

TELECOMMUNICATION FACILITIES

The plant, equipment and property, including but not limited to cables, wires, fiber optic strands, conduits, pipes, ducts, dishes, pedestals, poles, antennas, radio equipment, electronics and other appurtenances, including both underground and overhead facilities, used or to be used to transmit, receive, distribute, support, provide or offer FCC licensed or authorized telecommunication service.

TELECOMMUNICATION PROVIDER

Any person who provides telecommunication service over telecommunication facilities. This definition excludes the City of Rochester.

TELECOMMUNICATION SERVICE

The providing or offering for rent, sale or lease, or in exchange for other value received, of any service or telecommunications facilities that includes the transmission and/or distribution of voice, data, image, graphic or video programming information between or among locations by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

§ 104-16 Restoration of rights-of-way.

A. All persons working, obstructing or making excavations in the right-of-way ~~must~~ shall restore the right-of-way ~~to its condition prior to the work, obstruction or excavation in a manner approved by the City Engineer in accordance with the Rules and Regulations or as otherwise directed by the City Engineer.~~ The City Engineer shall have the authority to order the proper restoration of right-of-way or any public place where work was done without a permit or in violation of any conditions of such a permit or of this chapter. If proper restoration is not made, the person shall be liable for any damages sustained as a result of the failure to properly restore the area.

B. The City Engineer may perform or cause to be performed such restoration at the expense of the Permittee, with an additional 15% for administrative costs and 10% for inspection costs, on five days' written notice served by ordinary mail, ~~or the Commissioner or his or her representative may,~~ without notice if an emergency situation exists, ~~effect such restoration at the expense of the person doing such work in the right of way, with an additional 15% for administrative costs .~~ The City may draw upon the security to pay the costs of such

restoration and/or an~~An~~ invoice for the total cost shall be mailed to the responsible person for payment within 30 days of the invoice date. Within this thirty-day period, the responsible person may appeal the invoice or any portion thereof to the Commissioner. The Corporation Counsel may institute an appropriate action or proceeding at law against such person for recovery of the costs and administrative expenses of such restoration by the City Engineer, plus any penalties prescribed by this chapter and the costs of such action or proceeding. No further permits shall be granted to such person until he or she has properly restored the right-of-way or has reimbursed the City Engineer for restoration effected by the City.

§ 104-17 Restoration guarantee.

- A. All persons working and making excavations in the right-of-way must guarantee provide security as set forth in § 104-56 to ensure that their permanent restoration work survives for a period of at least two years from the date of acceptance of the permanent restoration by the City Engineer. The ~~permit holder~~ permittee may be required to completely re-excavate, refill and repave any permanent restoration that fails within the two-year guarantee period. At the City Engineer's discretion, a longer guarantee may be required based on the existing useful life of the right-of-way affected.
- B. If, at any time, whether during or after the required guarantee period, it is discovered that the permanent restoration was not made in accordance with City specifications, the ~~permit holder~~ permittee shall be responsible for making a proper restoration and failure to comply shall be a basis for the City to draw upon the security and to perform or cause to be performed all necessary restoration work.

§ 104-18 Tests on right-of-way restorations.

The City has the right to order a test on any right-of-way restoration in order to determine if the work has been completed in accordance with City specifications. If the test shows the restoration to be acceptable, the testing costs will be borne by the City. If the first test shows the restoration to be unacceptable, the ~~permit holder~~ permittee must pay the amount of ~~\$1,000~~^{\$40}, and for additional tests the amount of ~~\$1,200~~^{\$50}, in addition to making the proper restoration. No further permits will be issued to said ~~permit holder~~ permittee until the invoice for the testing and penalty has been paid.

§ 104-19 Restoration by City; costs.

- A. Permanent restoration of a cut or excavation in the right-of-way may be made by the City, through its Street Maintenance Division, if the ~~permit holder~~ permittee so desires and if approved by the Commissioner. The Commissioner shall establish rules and regulations regarding restoration by the City and the requirements for ~~permit holders~~ permittees requesting the City to perform such restoration.
- B. The ~~permit holder~~ permittee shall pay to the City the total cost estimate of the work based upon the current unit prices prepared by the Street Maintenance Division. The Street Maintenance Division may revise unit prices twice a year. The initial payment by the ~~permit holder~~ permittee shall be calculated from his or her estimate of the size of the excavation including a six-inch cutback on all sides of the excavation to be performed by the City. If the actual dimensions exceed the original estimate, the ~~permit holder~~ permittee shall be responsible for the additional amount due.
- C. If any charge so made by the City remains unpaid after 30 days of the invoice date, no further permits

for any excavation shall be issued to said ~~permit holder~~ permittee until the payment is made.

§ 104-50 Requirements for ~~bonds or~~ insurance.

~~Whenever~~ Whenever ~~bonds or~~ insurance is required pursuant to this article or by a ~~franchise or a master~~ license agreement, ~~such bonds or certificates~~ a certificate evincing such insurance shall be filed with the City Engineer and approved by the Director of Finance or the Corporation Counsel. ~~The bonds or insurance must~~ shall be kept continuously in force pending completion of the ~~contractual undertaking to the written satisfaction of the City Engineer~~ permit work or for such longer period as required by a master license agreement, or in the case of a permanent encroachment, in the City Engineer's sole discretion, so long as the encroachment remains in place. Required insurance shall indemnify the City of Rochester against all loss, cost, damage or expense incurred or sustained by or recovered against the City by reason of the permitted activity. ~~Bonds shall assure appropriate payment or performance of the contractual undertaking in accordance with the requirements of the Director of Finance. Such bonds and e~~ Certificates of insurance shall each contain a provision that they shall not expire, nor shall they be canceled, altered or amended, except on 30 days' prior written notice to the City Engineer, served personally or by certified mail. Municipal operations and property shall not be excluded from coverage. ~~Such bonds or insurance shall not limit the liability of the contract party~~ Permittee. ~~The City shall be the named beneficiary under under any bonds, and the certificate of insurance shall name the City as an additional insured party and copies of policy endorsements reflecting same shall be provided to the Director of Finance. Liability insurance shall be issued by entities authorized to do business in the State of New York and rated "B+" or better by A.M. Best. Failure to obtain and maintain required insurance may result in permit revocation and removal or discontinuance of the permit activity.~~

§ 104-51 Requirements for security.

Whenever security is required pursuant to this article or by a master license agreement, such security shall be filed with the City Engineer and approved by the Director of Finance or the Corporation Counsel. The security shall be kept continuously in force pending completion and acceptance of the permit work or for such longer period as required by a master license agreement or for such period as the City Engineer determines to be necessary to protect the right-of-way, specifically but not limited to the need for continuous security for restoration work or permanent encroachments. Security shall contain a provision that it shall not expire, nor shall it be canceled, altered or amended, except on 30 days' prior written notice to the City Engineer, served personally or by certified mail. Municipal operations and property shall not be excluded from coverage. Failure to obtain and maintain required security may result in permit revocation and removal or discontinuance of the permit activity.

§104-52-104-51 Bonds and Security and insurance for projecting signs.

A. ~~Either General liability insurance or bonds, issued by entities authorized to do business in the State of New York and rated "B+" or better by A.M. Best, security shall be required for the construction of signs projecting over the right-of-way. For two signs or fewer, there shall be not less than a \$50,000 performance bond security and not less than \$1,000,000 single limit general liability insurance covering both bodily injury and property damage. For more than two signs, there shall be not less than a \$100,000 performance bond security and not less than \$2,000,000 single limit general liability insurance covering both bodily injury and property damage. Performance bond security may be released upon successful completion of installation or construction of all such signs. Liability insurance shall be maintained as required by this section so long as the signs remain in place.~~

~~B. — Insurance policy certificates heretofore filed for the maintenance of existing signs may continue in full force and effect until the renewal date thereof, at which time a liability insurance policy certificate in the amount hereinabove specified shall be filed.~~

~~§ 104-53 (Reserved)~~

~~§ 104-53~~ **104-52 Bonds Security and insurance for other types of construction.**

In cases in which applications are made to the City Engineer for a permit to construct and maintain areaways in the right-of-way, or for a permit to place any permanent structure or construction of any kind in the right-of-way, liability insurance and performance ~~bonds security~~ shall be required. With the exception of applications involving telecommunication facilities, the performance ~~bonds security~~ shall be in an amount not less than \$250,000, and there shall be not less than ~~\$1,000,000~~ \$2,000,000 single limit general liability insurance covering both bodily injury and property damage. The ~~bond security~~ and insurance requirements for all telecommunications facilities shall be as set forth in the master license or franchise agreement.

§ 104-55 Annual ~~bonds security~~ or insurance for plumbers and other contractors.

- A. Licensed plumbers, contractors and other persons engaged in any business the nature of which requires or results in frequent applications for permits to make obstructions or excavations in the right-of-way shall not be required to furnish a separate ~~bond security~~ or insurance certificate for each permit, but a general ~~bond security~~ or insurance certificate may be given annually, indemnifying the City from any and all loss, cost or damage resulting or arising from any act done or permitted in pursuance of such permits, which ~~bonds security~~ or certificates shall be renewed from year to year so long as the person shall continue business within the City.
- B. Annual insurance shall be in an amount required by the City Engineer, but not less than \$1,000,000 for bodily injury and property damage, or an annual ~~bond security~~ not less than \$100,000.

~~§ 104-56 Irrevocable letter of credit~~ **Security required for excavations or obstructions.**

- A. ~~With the exception of Telecommunication Providers subject to Chapter 106, the~~ The City Engineer is hereby directed, in all cases in which applications are made to him or her for consent or permission to make any excavation in the right-of-way or for permission to place any materials, equipment or obstruction in the right-of-way, to require an irrevocable unconditional letter of credit security, approved by Director of Finance or the Corporation Counsel as to form and substance, in a minimum an amount of \$25,000, determined in the sole discretion of the City Engineer, sufficient to be filed with the City protect the right-of-way and the City's interests.
- B. ~~The City Engineer is authorized to require a letter of credit for a higher amount for reasons such as previous failures to comply with City codes, specifications or permit requirements and for large scale projects.~~
- C. ~~The City Engineer is authorized to waive the requirement of an irrevocable letter of credit security in all cases where the work to be done under permit will not cause damage to pavement, sidewalks, curbing or any other portion of the City right-of-way.~~

- ~~DC.~~ The City Engineer is authorized to draw upon the ~~letter of credit security~~ as may be necessary to cover the costs to the City including administrative costs to perform work which a permit applicant failed to perform after receiving a written request from the City to perform said work. The City Engineer may draw upon the ~~letter of credit security~~ only after the permit applicant has failed to perform said work, failed to pay the invoice for the cost of the work performed by the City and failed to win an appeal to the Commissioner of Environmental Services of the invoice or failed to make such an appeal in a timely fashion.
- ~~ED.~~ ~~No~~ If the City has drawn upon the security, no new permits shall be issued to the permit applicant until the full amount of the ~~letter of credit security~~ is restored.

§ 104-57 Permit fees.

- A. Applications for permits required by this chapter shall be made in writing to the City Engineer, shall contain such information as the City Engineer may require and shall be accompanied by the fee detailed in the permit fee schedule maintained by the City Engineer. The permit fee schedule shall be amended from time to time to time by the City Council. Any fee not specified in the fee schedule shall be determined by the City Engineer based on a reasonable estimate of actual costs and expenses associated with the permit review process.
- B. Utility companies and other companies performing work in the City may pay an annual maintenance fee, which shall include the fees for all work other than work requiring excavation in the City rights-of-way.
- C. There shall be an additional fee for performing work for which a permit is required and for which no permit has been obtained or for which a permit was obtained but the work has been stopped by the City Engineer. The additional fee shall be equal to the applicable permit fee. The applicable permit fee shall also be paid.
- D. The City Engineer shall have the power to waive the permit fee for work done by a contractor performing or accommodating a City project or a project of another government agency.
- E. Where multiple openings are made, the permit fee shall be the lesser of the fee based upon the total square footage of the multiple openings or the sum of the fees for the individual openings.
- F. (Reserved)
- G. The annual fee for vaults and areaways, bridges and tunnels shall be a lien upon the adjoining parcel or parcels of real property which they benefit. At the option of the Director of Finance, such fees may be added to the annual real property tax bill for such parcels.
- H. Fees for excavation in the right-of-way. No fee shall be required for excavation in the right-of-way, provided that the work does not disturb the roadway or public sidewalk and is for the renewal of residential water service only.

Section 3. This ordinance shall take effect ~~March~~ April 1, 2019.

Strikeout indicates deleted text, new text is underlined.

February 19, 2019

Passed by the following vote:

Ayes: President Scott, Councilmembers Evans, Gruber, Lightfoot, McFadden, Ortiz, Patterson-7.

Nays: Councilmembers Clifford, Spaul -2.

By Councilmember Lightfoot
February 19, 2019

To the Council:

The **PUBLIC SAFETY YOUTH & RECERATION** recommends for **ADOPTION** the following entitled legislation:

- Int. No. 36 Authorizing agreements for the body worn camera program
- Int. No. 37 Authorizing amendatory agreements relating to the PetSmart Charities 2018 Spay/Neuter Grant
- Int. No. 38 Authorizing an agreement to conduct a tour of historically black colleges and universities for City youth
- Int. No. 39 Authorizing an agreement with Eskay Concerts, Inc. for concert series management services
- Int. No. 40 Authorizing a license agreement for the use of a water sports facility at Genesee Valley Park
- Int. No. 41 Authorizing an intermunicipal agreement with the County of Monroe for water testing services at Durand Eastman Beach
- Int. No. 42 Authorizing a grant agreement with the Rochester Area Community Foundation and funding for the Youth Voice, One Vision Program
- Int. No. 43 Authorizing an intermunicipal agreement and funding for the STOP DWI Program
- Int. No. 44 Authorizing agreements and funding for an animal population control program

Respectfully submitted,

February 19, 2019

Willie J. Lightfoot
Mitch Gruber
Jacklyn Ortiz
Adam C. McFadden
Loretta C. Scott
PUBLIC SAFETY YOUTH & RECREATION COMMITTEE

Received filed and published

TO THE COUNCIL

Ladies and Gentlemen:

Re: Ordinance No. 2019-35
New York State Attorney
General's Office, Capture an
Account of a Material Situation
Grant

Council Priority: Public Safety

Transmitted herewith for your approval is legislation related to a New York State Attorney General's Office (NYSAGO) grant. This legislation will

1. Authorize an agreement with NYSAGO for the receipt and use of a Capture an Account of a Material Situation (CAMS) grant in the amount of \$104,600. The term of the agreement is through June 30, 2019;
2. Authorize \$139,500 as maximum compensation for an amendatory agreement with Municipal Emergency Services, Inc. (Principal: Mark Windover) for the Body Worn Camera Program, bringing the total compensation for the agreement to \$995,800. The term of the agreement will remain the same, through January 31, 2021, and the cost will be funded from the NYSAGO grant referenced in number one above and a match of \$34,900 from 2018-19 Cash Capital funds.

The CAMS program makes available asset forfeiture funds to assist local law enforcement agencies with introducing new, or expanding existing, body-worn camera programs. The Police Department will use these funds to purchase and deploy 70 body-worn camera units and 25 vehicle bases. Matching funds of \$34,900 will be used to purchase docking stations with extended warranties, computer monitors and accessories, and to pay for installation costs.

This is the first time we have received this award from NYSAGO.

Respectfully submitted,

February 19, 2019

Lovely A. Warren
Mayor

Ordinance No. 2019-35
(Int. No. 36)

Authorizing agreements for the body worn camera program

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an agreement with the New York State Attorney General's Office for the receipt and use of a Capture an Account of a Material Situation grant in the amount of \$104,600. The term of the agreement shall be through June 30, 2019.

Section 2. The Mayor is hereby authorized to enter into an amendatory professional services agreement with Municipal Emergency Services, Inc. to provide additional services for the Body Worn Camera Program. The amendment shall increase the maximum compensation of the original agreement, which was authorized by Ordinance No. 2016-35, by \$139,500 to a total amount of \$995,800. The amendatory compensation amount shall be funded from the grant authorized in Section 1 herein and by \$34,900 in 2018-19 Cash Capital.

Section 3. The agreements shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 4. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-36
Re: Amendment – Ordinance No.
2018-48

Council Priority: Public Safety

Transmitted herewith for your approval is legislation amending Ordinance No. 2018-48 relating to the PetSmart Charities 2018 Spay/Neuter Grant.

This grant is supporting the no-cost spay/neuter initiative for Animal Services. Animal Services provides vouchers to pet owners in underserved neighborhoods throughout the City. The vouchers can be redeemed for pet sterilization surgeries at Animal Hospital of Pittsford, P.C. The grant funds are being used to pay for the redeemed vouchers, and medical supplies and surgical expenses for additional spay/neuter surgeries at Rochester Animal Services.

February 19, 2019

RPD requested an extension from the grantor in order to fully expend the funds. Therefore, Ordinance No. 2018-48 Sections 1 and 3 are amended from “The term of the agreement shall be through December 31, 2018” to “The term of the agreement shall be through June 1, 2019.

Respectfully submitted,
Lovely A. Warren
Mayor

Ordinance No. 2019-36
(Int. No. 37)

Authorizing amendatory agreements relating to the PetSmart Charities 2018 Spay/Neuter Grant

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an amendatory grant agreement with PetSmart Charities, Inc. for receipt and use of a 2018 Spay/Neuter Grant. The amendment shall revise the term of the agreement that was authorized in Ordinance No. 2018-48 to extend through June 1, 2019.

Section 2. The Mayor is hereby authorized to enter into an amendatory professional services agreement with Animal Hospital of Pittsford, P.C. to provide spay and neuter services for the pets of those who have received spay/neuter program vouchers funded by the PetSmart Charities 2018 Spay/Neuter Grant. The amendment shall revise the term of the agreement that was authorized in Ordinance No. 2018-48 to extend through June 1, 2019.

Section 3. The agreements shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 4. This ordinance shall take effect immediately.

Passed unanimously

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-37
Re: Agreement – Town & Country
Travel, Inc., Tour of Historically
Black Colleges and Universities

Council Priority: Support the Creation of
Effective Educational Systems

Transmitted herewith for your approval is legislation establishing \$38,000 as maximum compensation for an agreement with Town & Country Travel, Inc. (owned and operated by Teresa Johnson, Pittsford, New York) to conduct a tour of Historically Black Colleges and Universities for city youth. The cost of this agreement, which

February 19, 2019

includes all transportation, hotel, food and fees, will be funded from the 2018-19 Budget of the Department of Recreation and Youth Services (DRYS). The term of the agreement will not exceed one year.

The tour will expose city youth to the college experience and reinforce the importance of school attendance, good grades and planning for the future. It will also reinforce the connection between education and careers. Approximately 40 youth ages 14-18 who participate in DRYS programs will go on the tour, planned for April 15 – April 18, 2019. They will visit three or four colleges/universities in Washington, D.C. and Maryland and also nearby historical sites.

The funding is from the remaining 2018 Summer of Opportunity grant from the New York State Department of Labor (NYSDOL) (Ord. No. 2018-146). The NYSDOL requires that the City expend 30% of the grant funds with certified M/WBE businesses.

Town and Country Travel was selected to provide the student tour service based on being the only local certified M/WBE travel agency. A full justification for not issuing a request for proposals is attached.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-23

Ordinance No. 2019-37
(Int. No. 38)

Authorizing an agreement to conduct a tour of historically black colleges and universities for City youth

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into a professional services agreement with Town & Country Travel, Inc. in the maximum amount of \$38,000 to conduct a tour of historically black college and universities for City youth. The term of the agreement shall not exceed one year and said amount shall be funded from the 2018-19 Budget of the Department of Recreation and Youth Services.

Section 2. The agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

February 19, 2019

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-38
Re: Agreement – Eskay Concerts Inc.,
Public Market Bands on the
Bricks Concert Series

Council Priority: Creating and Sustaining
a Culture of Vibrancy; Public Safety

Transmitted herewith for your approval is legislation establishing \$30,000 as maximum annual compensation for an agreement with Eskay Concerts, Inc. d/b/a Up All Night, (Gerard Fisher, Rochester, NY) for event management and beverage concession services for the 2019 Bands on the Bricks Concert series. The cost of this agreement will be funded from the 2018-19 Budget of the Department of Recreation and Youth Services (DRYS). The term of this agreement will be for one year, with the option of two additional one-year renewals that will be funded from the 2019-20 and 2020-21 Budgets of DRYS, contingent upon approval.

Eskay Concerts will provide talent, production, sound, and beverage services for the Bands on the Bricks Concert series to be held at the Rochester Public Market on Friday evenings during July and August 2019. Eskay Concerts was selected through a request for qualifications process described in the attached summary. They have provided these services since 1999 and were involved with the establishment of the popular summer series.

This agreement was last authorized by City Council Ordinance No. 2018-78 adopted on March 21, 2018.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-24

Ordinance No. 2019-38
(Int. No. 39)

Authorizing an agreement with Eskay Concerts, Inc. for concert series management services

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into a professional services agreement in the maximum annual amount of \$30,000 with Eskay Concerts, Inc. (d/b/a Up All Night) to provide event management and beverage concession services for the Bands on the Bricks Concert Series. The agreement shall have a term of one year, with two optional one-year renewals. The cost of the agreement shall be funded from the 2018-19 Budget of the Department of Recreation and Youth Services (DRYS) for the first year and, for the renewal periods if exercised, from the 2019-20 and 2020-21 Budgets of DRYS, contingent upon approval.

February 19, 2019

Section 2. The agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-39
Re: Agreement – Genesee Waterways
Center, Inc.

Council Priority: Creating and Sustaining
a Culture of Vibrancy

Transmitted herewith for your approval is legislation authorizing a license agreement with Genesee Waterways Center Inc. (GWC, John Courain, Director of Operations), a not-for-profit organization, for continued use of a City owned structure and adjoining parcel of land in Genesee Valley Park as a water sports facility. The term of the new license agreement is for one year with the option to extend for two additional one-year terms.

GWC's mission is to facilitate public opportunities for recreational and competitive rowing and paddling. In 1989, the City entered into a 10-year agreement with the GWC for them to develop, promote and operate a water sports facility in this location, including a canoe and kayak livery. GWC has invested over \$125,000 in improvements to the facility over the course of the agreement in addition to its operation of the facility. The City has continued to license the space to the GWC, with the most recent license agreement expiring in April 2019.

The City has completed a master plan for the west side of Genesee Valley Park. The study includes concepts for an expanded community facility with additional meeting and rental space and other amenities. At this time there is no funding identified for these improvements, but grants and other sources will be explored in the near future. For this reason, the term of the new license agreement is for one year with an option to extend for an additional two years. This will allow time for input from the rowing community and the public about the concepts and programming at the facility in the future.

The GWC will pay an annual fee of \$1.00 for the license and will continue to be responsible for all utilities, maintenance and necessary repairs of the property, including docks, ramps, fencing, buildings and structures on the site.

This license agreement was last authorized by City Council Ordinance No. 2009-82 adopted on March 18, 2009.

Respectfully submitted,
Lovely A. Warren
Mayor

Ordinance No. 2019-39
(Int. No. 40)

Authorizing a license agreement for the use of a water sports facility at Genesee Valley Park

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into a license agreement with Genesee Waterways Center, Inc. for the use of a portion of the premises in Genesee Valley Park West, consisting of a maintenance building, an adjacent boat house, and the adjoining area, for the development, promotion and provision of water sports activities. The term of the agreement shall be one year with the option to extend up to two additional periods of 1 year each. Genesee Waterways Center, Inc. shall be obligated to pay an annual fee of \$1.00 for said license, and shall assume responsibility for all utilities, maintenance and necessary repairs of the licensed property, including docks, ramps, fencing, buildings, structures, and storage areas.

Section 2. The license agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-40
Re: Inter-municipal Agreement –
Monroe County, Durand Eastman
Beach Water Testing

Council Priority: Creating and Sustaining
a Culture of Vibrancy; Public Safety

Transmitted herewith for your approval is legislation establishing \$10,000 as maximum annual compensation for an inter-municipal agreement with Monroe County for water testing services at Durand Eastman Beach. The cost of this agreement will be funded from the 2018-19 (\$5,000) and 2019-20 (\$5,000) Budgets of the Department of Recreation and Youth Services (DRYS), contingent upon approval of the latter budget. The term of this agreement will be for one year, with the option of three one-year renewals. The optional renewals would be funded from subsequent budgets of DRYS, contingent upon their approval.

Under the agreement, the County Health Department will collect water samples daily at locations determined by the Health Department along the beach to determine water quality and clarity. This data, and historical data, will be utilized to determine if the beach will be open for swimming. In addition, the County will continue to operate a telephone hot-line that provides information on swimming conditions at both Durand Eastman Beach and Ontario Beach Park.

February 19, 2019

These services were last authorized by City Council Ordinance No. 2015-140 adopted on May 19, 2015.

Respectfully submitted,
Lovely A. Warren
Mayor

Ordinance No. 2019-40
(Int. No. 41)

Authorizing an intermunicipal agreement with the County of Monroe for water testing services at Durand Eastman Beach

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an agreement with the County of Monroe for water testing services at Durand Eastman Beach in the maximum annual amount of \$10,000. The agreement shall have a term of 1 year with an option to extend for up to 3 additional periods of 1 year each. The cost of the agreement shall be funded in the amounts of \$5,000 from the 2018-19 Budget of the Department of Recreation and Youth Services (DRYS) and \$5,000 from the 2019-20 Budget of DRYS contingent upon the adoption of the latter budget. Any optional extension of the term shall be funded from future Budgets of DRYS contingent upon the adoption thereof.

Section 2. The agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2019-41
Re: Agreement – Rochester Area
Community Foundation, Youth
Voice, One Vision

Council Priority: Support the Creation
of Effective Educational Systems

Transmitted herewith for your approval is legislation

1. Authorizing an agreement with the Rochester Area Community Foundation for the receipt and use of a 2019 calendar year grant of \$25,000 for the Youth Voice, One Vision (YVOV) youth leadership program; and
2. Amending the 2018-19 Budget of the Department of Recreation and Youth Services by \$5,000 for the program. The remaining \$20,000 will be anticipated and included in the 2019-20 Budget of the Department of Recreation and Youth Services, contingent upon approval.

Youth Voice, One Vision, the Mayor's Youth Advisory Council, is a youth leadership and youth development program administered by the City of Rochester Bureau of Recreation since 1996. YVOV is led by a team of thirty youth who serve on the Executive, Event Planning, or Service Learning Committees and engages an additional 50 youth at council meetings and 75 - 150 youth at city-wide special events and service learning projects. The participants range in age from 8 to 18, with the majority between the ages of 10 and 15.

YVOV participants develop their own goals and strategies, conduct meetings, nominate officers, meet with community leaders and carry out service learning projects. The members also plan, host and facilitate regular service learning projects, workshops, conferences, special events and a radio/television show. YVOV members act as presenters and "youth experts" at local forums and events. The grant will be used to support YVOV activities, including technical assistance and training for youth members and adult advisors, college tours, transportation, and program and event supplies.

The Community Foundation has offered grant funds to support a variety of Youth Voice, One Vision projects since 2007, with receipt and use of grant funds most recently authorized by Ordinance No. 2018-20.

Respectfully submitted,
Lovely A. Warren
Mayor

Ordinance No. 2019-41
(Int. No. 42, as amended)

Authorizing a grant agreement with the Rochester Area Community Foundation and funding for the Youth Voice, One Vision Program

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into a grant agreement with the Rochester Area Community Foundation for the receipt and use of \$25,000 for the Youth Voice, One Vision youth leadership program (Program). The anticipated reimbursements under this agreement are hereby appropriated to implement the Program. The term of the agreement shall be one year.

Section 2. The agreement shall contain such additional terms and conditions as the Mayor deems appropriate.

Section 3. Ordinance No. 2018-157, the 2018-19 Budget of the City of Rochester, is hereby amended by increasing the revenue estimates and appropriations to the Budget of the Department of Recreation and Youth Services by ~~\$15,000~~ \$5,000 to reflect the receipt of a portion of the grant funds authorized herein.

Section 4. This ordinance shall take effect immediately.

Strikeout indicates deleted text, new text is underlined.

Passed unanimously.

TO THE COUNCIL

Ladies and Gentlemen:

Re: Ordinance 2019-42
Agreement – Monroe County,
DWI Crackdown Weekend
Enforcement Grant

Council Priority: Public Safety

Transmitted herewith for your approval is legislation authorizing an agreement with Monroe County for the receipt and use of \$3,700 for the 2018-19 STOP DWI Foundation, Inc. Crackdown Weekend Enforcement Grant, and amending the 2018-19 Budget of the Police Department by \$2,000 to reflect a portion of this grant. The remaining funds will be included in the 2019-20 Budget of the Police Department.

The grant funds will be used to pay for overtime for police officers and, as necessary for police experts to detect drug abuse in drivers during Memorial Day, Fourth of July and possibly Labor Day holiday crackdowns. This grant does not allow fringe expenses, estimated at \$1,145.

The term of this grant is October 1, 2018 through September 30, 2019. This is the sixth time the City has received this grant.

Respectfully submitted,
Lovely A. Warren
Mayor

Ordinance No. 2019-42
(Int. No. 43)

Authorizing an intermunicipal agreement and funding for the STOP DWI Program

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into an intermunicipal agreement with the County of Monroe for the receipt and use of the 2018-19 STOP DWI Foundation, Inc. Crackdown Weekend Enforcement grant in the amount of \$3,700. The term of the agreement shall be October 1, 2018 through September 30, 2019.

Section 2. The agreement shall contain such additional terms and conditions as the Mayor deems to be appropriate.

February 19, 2019

Section 3. Ordinance No. 2018-157, the 2018-19 Budget of the City of Rochester, as amended, is hereby further amended by increasing the revenue estimates and appropriations to the Budget of the Police Department by the sum of \$2,000 received under the grant agreement authorized herein.

Section 4. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Re: Agreement - 2019 The American
Society for the Prevention of Cruelty
to Animals, Low Cost Spay/Neuter
Voucher Program

Council Priority: Public Safety

Transmitted herewith for your approval is legislation related to The American Society for the Prevention of Cruelty to Animals (ASPCA) Low Cost Spay/Neuter Voucher Program. This legislation will:

1. Authorize an agreement with ASPCA for the receipt and use of a Low Cost Spay/Neuter Voucher Program grant in the amount of \$51,600 for the term of December 27, 2018 through December 27, 2019, with the option to extend funding if not fully expended and with approval from grantor;
2. Amend the 2018-19 Budget of the Police Department by \$51,600 to reflect the addition of this grant;
3. Establish \$51,600 as maximum compensation for an agreement with Animal Hospital of Pittsford, P.C. (Principal: Todd Wihlen), 2816 Monroe Avenue, Rochester, 14618, to provide spay/neuter services for Rochester Animal Services. The term of the agreement will be December 27, 2018 through December 27, 2019, with the option to extend if funding is not fully expended and with approval from grantor.

ASPCA is providing this grant to assist low income residents in paying for spay/neuter services for their pets for the purpose of reducing the number of animals born and surrendered to the shelter. These funds are for Spay/Neuter Vouchers which will be provided to qualifying residents for redemption at Animal Hospital of Pittsford, P.C./Rochester Community Animal Clinic where their pets can be spayed or neutered. Funds will pay for approximately 550 spay/neuter services with residents providing a co-pay of \$1 per service.

A justification for not issuing an RFP is attached.

This is the third time Rochester Animal Services has received a grant from ASPCA.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AS-25

Ordinance No. 2019-43
(Int. No. 44)

Authorizing agreements and funding for an animal population control program

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into a grant agreement with The American Society for the Prevention of Cruelty to Animals for the receipt and use of \$51,600 to fund no-cost spay/neuter vouchers for pets of qualifying residents (the Program). The agreement shall have a term of one year, with an option to extend for up to one additional year if funds remain in the original grant and contingent upon the grantor's approval.

Section 2. Ordinance No. 2018-157, the 2018-19 Budget of the City of Rochester, as amended, is hereby further amended by increasing the revenue estimates and appropriations to the Budget of the Police Department by \$51,600 to reflect the receipt of the grant funds authorized herein, which funds are hereby appropriated to implement the Program.

Section 3. The Mayor is hereby authorized to enter into a professional services agreement with Animal Hospital of Pittsford, P.C. to provide spay and neuter services for pets of those who have received Program vouchers. The agreement shall have a term of one year, with an option to extend for up to one additional year if funds remain in the original grant authorized herein and contingent upon the grantor's approval. The sum of \$51,600, or so much thereof as may be necessary, is hereby established as the maximum compensation for the agreement. Said amount shall be funded from the 2018-19 Budget of the Police Department.

Section 4. The amendatory agreements shall contain such additional terms and conditions as the Mayor deems to be appropriate.

Section 5. This ordinance shall take effect immediately.

Passed unanimously.

By President Scott
February 19, 2019

To the Council:

February 19, 2019

The **COMMITTEE OF THE WHOLE** recommends the following entitled legislation to be **HELD** in committee:

Int. No. 45 Amending the City Charter with respect to establishing the Rochester Police Accountability Board

Respectfully submitted,

Molly Clifford
Malik Evans (*Absent*)
Mitch Gruber
Willie J. Lightfoot
Jacklyn Ortiz
Michael A. Patterson
Elaine M. Spaul
Adam C. McFadden
Loretta C. Scott
COMMITTEE OF THE WHOLE

Received, filed and published.

TO THE COUNCIL
Ladies and Gentlemen:

INTRODUCTORY NO. 45
Re: Local Law to Create a Police
 Accountability Board

Transmitted herewith for your approval is a local law establishing a Police Accountability Board (PAB) in the City of Rochester. The newly created authority will ultimately replace the Civilian Review Board (CRB) that was established in Rochester in 1992, Resolution 1992-4 and all subsequent legislation amending that resolution.

The PAB will be an independent civilian-controlled process, and will be housed and staffed outside of the Rochester Police Department (RPD). The Board shall consist of 9 community members serving 3 years terms, of which 1 will be nominated by the Mayor, 4 will be nominated by the Council, and 4 will be nominated by the Police Accountability Board Alliance.

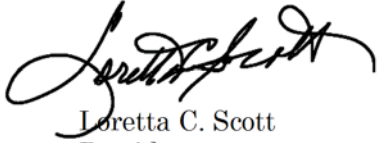
The PAB will impartially investigate and adjudicate complaints of misconduct involving employees of the RPD. The PAB will be empowered to conduct investigations as they deem necessary and will be provided any information gathered from RPD's internal investigations. The PAB will be granted the power of subpoena for records and testimony relevant to its investigation and deliberations.

The PAB will work with the City of Rochester, the RPD, and the Locust Club to establish a disciplinary matrix that will provide a range of disciplinary actions for RPD employees who are found to be in violation of RPD policies with regard to force, procedure, courtesy, or conduct. The Chief of Police will be compelled to discipline any RPD employee for whom a complaint was sustained by the PAB, through the guidelines outlined in the

disciplinary matrix.

The PAB will be responsible for reviewing and assessing RPD patterns, practices, policies, and procedures, and make recommendations for changes they deem necessary. In addition to these functions, the PAB shall publish monthly dispositions of complaints and quarterly and annual reports accessible on the City’s website.

Respectfully Submitted,



Loretta C. Scott
President
At-Large Member

 Elaine M. Spaul

Adam C. McFadden
Vice-President
South District

Elaine M. Spaul
East District



Jacklyn Ortiz
At-Large Member



Michael A. Patterson
Northeast District



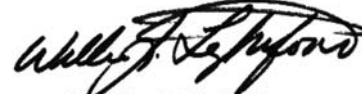
Molly Clifford
Northwest District



Malik D. Evans
At-Large Member



Mitch Gruber
At-Large Member



Willie J. Lightfoot
At-Large Member

INTRODUCTORY NO. 45

AMENDING THE CITY CHARTER WITH RESPECT TO ESTABLISHING THE ROCHESTER POLICE ACCOUNTABILITY BOARD

Be IT ENACTED, by the Council of the City of Rochester as follows:

Section 1. Chapter 755 of the Laws of 1907, entitled “An Act Constituting the Charter of the City of Rochester”, as amended, is hereby further amended by adding the following new Article XVIII Police Accountability Board:

Article XVIII Police Accountability Board

§ 18-1. Purpose.

The Rochester City Council hereby intends to establish a civilian-controlled process to fairly investigate and make determinations respecting complaints of misconduct involving employees of the Rochester Police Department. The Police Accountability Board shall be the mechanism to investigate such complaints of police misconduct and to review and assess Rochester Police Department patterns, practices, policies, and procedures. The Police Accountability Board shall ensure public accountability and transparency over the powers exercised by employees of the Rochester Police Department. The Police Accountability Board shall provide a non-exclusive

alternative to civil litigation.

§ 18-2. Definitions.

The following terms are defined, for purposes of this Article, as follows:

Alliance

The Police Accountability Board Alliance, a group of community organizations that nominate community members to be appointed by City Council to the Police Accountability Board.

Chief

The Chief of Police of the Rochester Police Department.

City

The City of Rochester, New York.

Complaint

A written or oral report regarding police misconduct made by any individual or group of individuals.

Council

The Rochester City Council.

Day(s)

Sequential days according to the calendar unless otherwise specified as “business days.”

Disciplinary Matrix

A written, consistent, progressive, and transparent tool or rubric to determine discipline for misconduct.

Executive Director

The highest-ranking staff hired by the Police Accountability Board, with ultimate responsibility for making managerial decisions.

Immediate Family

A parent, sibling, spouse or child of a person or any members of a person’s immediate household.

Misconduct

Any acts or omissions by an employee of the Rochester Police Department that are unlawful, contrary to Rochester Police Department policy, or otherwise inappropriate.

PSS

Professional Standards Section, which is the internal affairs department of the Rochester Police Department.

RPD

Rochester Police Department of the City of Rochester, New York.

Sanction

Disciplinary action for RPD employee misconduct.

The Board

The Police Accountability Board; such Board is a public agency within the meaning of New York Civil Rights Law Section 50-a.

Use of They, Their, Them

A plural term or pronoun that shall be construed to mean the singular and vice versa where appropriate.

§ 18-3. Establishment and Jurisdiction.

- A. The Civilian Review Board, established by Rochester City Council Resolution 92-40 and expanded by Resolution 95-08, will be abolished after and only after the PAB is established and fully functional for sixty (60) days.
- B. There is hereby established an independent office of municipal government to be known as the Police Accountability Board. It shall be an autonomous office of the City separate from the Rochester Police Department and other local, state, and federal law enforcement agencies. The members of the Board, regardless of the original appointee of each member, shall be appointed through legislation approved by the City Council.
- C. The Board shall be independent of the RPD and shall investigate and adjudicate complaints of misconduct against the RPD or any of its officers, staff, administrative and executive professionals, including but not limited to the Chief, deputies, captains, lieutenants, commanders, and all other law enforcement professionals.
- D. As a condition of employment with the RPD, all employees and personnel, including but not limited to the Chief, shall fully cooperate with the Board and this Article. In cases where employees do not cooperate, the Board shall send a recommendation to City Council to invoke its power under City Charter § 2-19 to remove the RPD employee. This shall not in any way limit the Board's right to invoke other remedies including judicial of the Article.
- E. The Board shall have the power to conduct independent investigations as further outlined in Section 1-5(G) below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD employee(s) if a complaint of misconduct is sustained.
- F. Based on information and belief that an investigation is warranted the Board shall have the power to conduct an investigation, even in the absence of a civilian complaint.
- G. The Board in conjunction with the Chief of the Rochester Police Department and Locust Club President shall establish a disciplinary matrix. The Board shall request input from the Chief, the Community Justice Advisory Board, the Police Accountability Board Alliance, and the President of the Rochester Police Locust Club when developing the matrix.
- H. The RPD and the City shall provide to the Board, as requested: access to all documents and evidence, including but not limited to RPD personnel files, IA Pro database, all other RPD databases, PSS investigative files, criminal and civil case files, disciplinary hearing records, video and audio recordings from body cameras or other sources, all RPD policies, procedures, and practices, the General Manual, and any other documents that pertain to policies, tactics, complaints, or charges against RPD employees and their subsequent investigation and adjudication, or other sources of information deemed appropriate by the Board.
- I. The Board shall have the power to investigate any and all conduct, acts, or omissions by any

RPD employee.

- J. The Board shall have the power to review and recommend changes to RPD regarding RPD policies, procedures, patterns, practices and training.

§ 18-4. Board Composition, Appointment, Vacancy, and Removal.

- A. The Police Accountability Board shall consist of nine (9) members.
- B. Members of the Board shall serve terms of three (3) years except for the initial Board, which shall serve staggered terms, pursuant to Section 1-4 (J).
- C. Members of the Board shall be residents of the City of Rochester for a minimum of 12 months at the time of appointment to the Board.
- D. Members of the Board shall reflect the City's diverse community, including, but not limited to: age, race, creed, color, national origin, gender, gender identity or expression, sexual orientation, disability, marital status and source of income.
- E. Members of the Board and their immediate family shall not be currently or formerly employed by the RPD or any other local, state, or federal law enforcement agencies.
- F. Board members shall not be current (or within the immediately preceding three (3) year period) City elected officials or immediate family of any incumbent elected official representing/serving any district or municipality in the State of New York.

No practicing attorney or their immediate family who represents or has represented a plaintiff or defendant in a police misconduct lawsuit initiated against the RPD, the Chief or the Rochester Police Locust Club shall be a member of the Board. Board members may not represent a complainant or an RPD employee at Board hearings.

The provisions of Article 23-a of New York State Correction Law shall apply to any appointment to the Board.

- G. The provisions of Article 2, Section 5 and Article 3, Section 30 of the Public Officers Law of the State of New York, regarding vacancies, shall apply to all members of the Board.
- H. Appointments to the initial Board shall be made within sixty (60) days from the effective date of this Local Law as follows:
 - 1) The Mayor shall appoint one (1) members.
 - 2) Council shall appoint four (4) members; one (1) appointee from each of the four Council Districts: East District, Northeast District, Northwest District, and South District.
 - 3) The Alliance shall nominate twelve (12) individuals, three (3) for each of its four (4) board members, within thirty (30) days from the effective date of this local law, from which Council shall confirm and appoint one (1) such individual for each of the four (4) member-seats at Council's discretion. If all three (3) nominees for any one member-seat are rejected by Council, then the Alliance will nominate replacement(s) within fifteen (15) days until all four (4) members are confirmed. If necessary this process will repeat until Council has deemed a candidate qualified and capable of serving the Board.

All appointments will be approved through legislation passed by a majority of Council.

I. Police Accountability Board Alliance Nomination Process

The initial Alliance shall include no more than two (2) representatives from each organization

listed in Appendix A. The process used by the Alliance to make initial Board appointments shall be as follows:

- 1) The first Alliance Executive Committee shall consist of five (5) individuals selected by the Alliance.
- 2) The Executive Committee will call for applications for nominees to fill four (4) positions on the Board;
- 3) Each organization represented in the Alliance as well as City residents may submit applications to nominate individuals;
- 4) The Executive Committee shall screen nominee submissions and narrow the field to finalists, then call a meeting of the Alliance to seek input regarding the qualifications of the finalists;
- 5) The Executive Committee shall determine the final twelve (12) names for the four (4) nominees and submit them to Council for confirmation and appointment;
- 6) Should Council reject a nominee, a written rejection will be submitted to the Alliance and the Alliance will resume the nominating process to select a replacement;
- 7) The final list of community appointments shall not be published until all four (4) nominees are confirmed by Council for the initial Board;
- 8) Future Board appointments to fill term-ended and mid-term vacancies shall follow a process determined by Alliance by-laws based on the initial selection process.

J. Terms

- 1) The first term of the initial Board commences when all nine (9) Board members are appointed and ends on the following June 30th.
- 2) Except for the initial Board, members shall serve staggered three (3) year terms and may be reappointed for another three (3) year term, for a total of six (6) years, after which, the member shall not be reappointed for at least three (3) years.
- 3) Except for the initial Board, each term shall commence on July 1st and end on June 30th. If a person is appointed to complete the unexpired term of a former Board member, they shall complete the term. The members shall be appointed for terms of three (3) years, except the first nine (9) members appointed. Of the first nine (9) members appointed:
 - a) three (3) members shall be appointed for terms of one (1) year, of whom one (1) shall have been designated by Council, and two (2) shall have been designated by the Alliance;
 - b) three (3) members shall be appointed for terms of two (2) years, of whom two (2) shall have been designated by the Council, and one (1) shall have been designated by the Alliance;
 - c) three (3) members shall be appointed for terms of three (3) years, of whom one (1) shall have been designated by the Mayor one (1) shall have been designated by the Alliance, and one (1) shall have been designated by Council.

K. Vacancies

After the initial nine (9) member Board has been established, when any member vacates the Board, the Board shall notify the Mayor, Council, and the Alliance. The vacant position shall be filled in the same manner by which it was initially filled, within sixty (60) days of the vacancy.

L. Removal

- 1) A Board member seeking public office shall resign their seat at the time they announce their candidacy or file their petitions, whichever happens first.
- 2) A Board member who no longer resides in the City shall resign immediately.
- 3) By a majority vote, the Board may request that Council remove a Board member for good cause.

§ 18-5. Powers and Duties.

- A. The Board shall have the power to conduct independent investigations as further outlined in Section 1-5(G) below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD employees if a complaint of misconduct is sustained.
- B. The Board shall establish a disciplinary matrix in conjunction with the Chief of the Rochester Police Department and Locust Club President. The Board shall request input from the Chief and the President of the Rochester Police Locust Club with respect to the disciplinary matrix. The disciplinary matrix shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints. The Board, in consultation with the Chief and the President of the Rochester Police Locust Club, shall review the disciplinary matrix annually, and consider any recommended changes. The Board shall decide the final version of the disciplinary matrix to be used.
- C. The Board shall review and assess RPD policies, procedures, patterns, practices and training and recommend changes to the RPD. Written acknowledgment of receipt of recommendations will be sent to the Executive Director from the Chief of Police within sixty (60) days with a detail listing of what items are and are not being implemented.
- D. The Board and the Chief shall establish a cooperative relationship to ensure the orderly and efficient flow of information.
- E. Accessibility
 - 1) The Board shall provide language access for limited or non-English proficient complainants and witnesses at all stages of the investigative and adjudicative process. Language access shall be available during all operating hours of the Board.
 - 2) The Board shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities at all stages of the investigative and adjudicative process. Such accommodations shall be available during all operating hours of the Board and shall include but not be limited to: accessible means of egress, accessible means of communication via auxiliary aids or services giving primary consideration to preferences of the individual deserving such services, and access to ASL interpreters.
- F. Initiation of Complaints
 - 1) Complaints may be received directly by the Board, or upon referral from PSS, the Mayor, the Council, any Councilmember, or the Chief. Any complaint received and accepted by the Board shall be transmitted to PSS, and any complaint received and accepted by PSS shall be transmitted to the Board.
 - 2) The Board shall receive complaints by telephone, in person, by mail, email or web form. Complaints shall be received and considered whether submitted under signature or

anonymous. Efforts to simplify the procedure shall be made to encourage filing. Professional standards of confidentiality with regard to the written release of information and informed consent will apply to all complaints filed. With respect to the confidentiality of all interested parties, the Board shall comply with all local, state, and federal law, including Civil Rights Law Section 50-a.

- 3) Before proceeding with the complaint process, the complainant shall be made aware of and referred to organizations that advocate for people who have experienced police misconduct and can explain the process of the Board and other options that exist beyond the jurisdiction of the Board.
- 4) Complainants shall be apprised by the Board of legal assistance options and the procedure for filing a Notice of Claim with the Corporation Counsel against the City, pursuant to Article IX of the City Charter.

G. Board Investigation of Complaints

- 1) A City employee assigned to the Police Accountability Board shall interview complainants, witnesses and RPD employees, and gather relevant evidence. PSS shall provide the Board with written notice of the commencement of any investigation and likewise, the Board shall provide PSS with written notice of the commencement of any investigation.
- 2) The Board shall have the power to investigate any and all conduct, acts or omissions by any RPD employee independent of any investigation conducted by PSS.
- 3) Subpoenas may be issued at any time during the review and adjudication processes. Such subpoenas may compel the attendance of witnesses, RPD employees, and/or persons, and require the production of records and other materials, including records of the RPD, other persons or other agencies. A copy of any subpoena served upon an RPD employee shall also be delivered to the Chief. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules. The Chief will use the authority granted by Article VIIIA, Section 8A-1 of the City Charter, to promulgate new rules or utilize existing rules regarding discipline and administration of RPD employees to ensure compliance with Board procedure and applicable law. RPD employees shall be notified of their rights against self-incrimination under *Garrity v. New Jersey*, 385 U.S. 493 (1967), before any testimony is taken from them.
- 4) Upon receipt of a complaint, within the timeframe allotted in accordance with the police bargaining agreement, PSS shall provide to the Board its entire investigative case file related to the complaint. Thereafter, PSS shall send any newly acquired evidence to the Board within five (5) business days of the acquisition of the evidence. If PSS makes any findings with respect to the complaint, they shall send all such findings to the Board within five (5) business days.
- 5) A complainant may, at any time, decline to have their complaint investigated and reviewed by the Board. Such declination must be made in writing by the complainant, and shall be forwarded to the Chief by the Board.
- 6) Statements made by complainants, RPD employees, or witnesses are subject to the panel's determinations of weight and credibility. Participation or lack of participation in the hearing

process may be considered by the Board as one factor in their determination of credibility.

- 7) The Chief shall take no action on a complaint, whether received directly by the RPD or by the Board, until receipt of the Board findings and decision, or notice that the Board has determined no disciplinary action is appropriate. Nonetheless, the Chief shall retain the authority to suspend an RPD employee during the investigation and adjudication of a complaint against the RPD employee.

H. Reasonable Cause Determination

- 1) Upon completion of the review of the material from the PSS investigation and/or the Board investigation, the Executive Director shall present a report and recommendation to Board members as to whether there is reasonable cause to proceed to a Board hearing on the allegations of misconduct in a complaint.
- 2) Upon review of the report and recommendations from the Executive Director, the Board members may either affirm or reverse the recommendation as to whether or not there is reasonable cause to proceed to a hearing. If there is reasonable cause to proceed, the Board shall direct the Executive Director to schedule a hearing and notify the complainant and the Chief. If there is not reasonable cause, the Executive Director shall notify the complainant and the Chief of this determination.

I. Hearing Process

- 1) As described in Section 1-6 (A)(3), the Board Chairperson shall establish a rotation of Board members to serve on hearing panels composed of three (3) members. Each panel shall include one (1) Alliance-appointed member, but shall not include more than two (2) Alliance- appointed members. Each panel shall select its own Chairperson on a case-by-case basis.
- 2) As described in Section 1-5 (G) (3), subpoenas may be issued during the hearing process.
- 3) Upon a majority vote of the Board membership in a duly published open meeting, the Board may determine to go into Executive Session so that the panel may conduct its hearing.
- 4) Panel hearings shall be recorded and transcribed by the Board. No other recordings or transcriptions are permitted.
- 5) Decisions made by the hearing panel will be documented in a Notice of Panel Decision delineating the findings of fact, and reasoning of the panel. If a panel member dissents from the majority's decision, the dissenter shall provide a written delineation of their findings of fact and reasoning.
- 6) Notice of Panel Decisions shall be provided to all parties with any confidential information redacted, pursuant to all local, state, and federal law.
- 7) Both complainant(s) and RPD employee(s) subject to a hearing shall have the right to obtain counsel or other representation and call witnesses on their own behalf. All due process rights delineated in NYS Civil Service Law Section 75 shall apply.
- 8) Complainants and RPD employees subject to hearings may be questioned by the panel at the panel's discretion; relevant evidence pertaining to the case before the panel may also be entered into the hearing.

- 9) Statements made by complainants, RPD employees, or witnesses are subject to the panel's determination of weight and credibility. Participation or lack of participation in the hearing process may be considered by the Board as one factor in their determination of credibility.
- 10) Decisions of the panel shall be made by a majority vote pursuant to the substantial evidence standard of proof. Deliberations of the panel shall be confidential and confined to the panel members assigned to that particular hearing, and their legal advisor(s). The decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD employee(s) pursuant to the disciplinary matrix described in Section 1- 5 (B).
 - a) If the panel finds that the RPD employee(s) may have engaged in criminal conduct, it shall refer the matter to the Monroe County District Attorney's Office or the New York State Attorney General's Office and request that their office initiate an investigation.
 - b) The Board shall notify the complainant, the RPD employee(s) who were the subject(s) of the complaint, and the Chief, in writing within five (5) business days of the panel's findings and decision.
 - c) If a Notice of Panel Decision contains a dissenting opinion, the complainant may appeal to the Board for review of the panel's findings. The complainant's appeal requesting Board review must be in writing and received by the Board no more than 30 days after the Notice of Panel Decision was sent to the complainant. To adjudicate the appeal, all Board members shall review all evidence in the record, including the hearing transcript, and shall determine, by majority vote, whether the majority opinion in the Notice of Panel Decision shall be:
 - (i) Reversed, if the Board decides that the Decision of the panel was wrong, the Board vacates (cancels) the Decision of the panel; or
 - (ii) Modified, if the Board changes part of the panel's Decisions, e.g., the Board decides that the appropriate sanction shall be termination rather than suspension; or
 - (iii) Affirmed, if the Board decides that the panel made the right Decision; the panel Decision remains in effect.
 - d) If there is an appeal by the complainant, the Board shall provide a written Notice of Board Decision to the complainant, RPD employee(s) who were the subject(s) of the complaint, and the Chief. The Notice of Board Decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD employee(s) pursuant to the disciplinary matrix described in Section 1-5 (B).
 - e) RPD employees shall have the right to appeal pursuant to Section 76 of NYS Civil Service Law.
 - f) Panel Decisions may include disciplinary sanctions including but not limited to counseling, reprimand, retraining, suspension, demotion, or dismissal.
- 11) The panel shall report its findings and decisions to the Board at its next scheduled meeting.

12) The actions of the Board shall not preclude action by the criminal or civil justice system.

13) Responses from the Chief of Police

Within thirty (30) days of the receipt of a Notice of Panel Decision or Notice of Board Decision, the Chief shall provide the Board with a written explanation of the exact discipline imposed in accordance with the matrix.

J. Discipline

- 1) Before conducting any hearings, the Board shall establish a disciplinary matrix per Section 1-5 (B).
- 2) This Article shall not limit the Chief's ability to impose any additional discipline for an RPD employee above and beyond that recommended by the Board.
- 3) After the Board receives a written response from the Chief, or after thirty (30) days, whichever comes first, the Board shall make a final decision of discipline per the disciplinary matrix described in Section 1-5 (B).
- 4) The Board shall notify the complainant, the RPD employee(s) who were the subject(s) of the complaint, and the Chief, in writing within five (5) business days of the Board's final decision of discipline.
- 5) The Board's final determination of discipline shall be binding on the Chief, who shall be compelled to impose the discipline determined by the Board within five (5) days of receipt of the Board's final determination of discipline. The Chief will provide with a written explanation of the exact discipline imposed in accordance with the matrix within thirty (30) days.
- 6) The disciplinary matrix shall determine a range of sanctions within which the Board shall determine the specific sanction to impose on the RPD employee(s). The Board may consider mitigating and aggravating circumstances when making a final determination of discipline.

K) Policy Assessment

- 1) At least annually, the Board shall review and assess RPD policies, procedures, patterns and practices and recommend changes with input from the community.
- 2) The Board shall send its policy recommendations to the Chief, the Mayor, and City Council. The Board shall publish its policy recommendations on the Board website.
- 3) The Board's recommendations may address, but are not limited to: conduct and policies exhibiting bias against individuals based on race, gender, sexual orientation, perceived sexual orientation, gender identity, disability and perceived disability; use of force both lethal and non-lethal; de-escalation policies; vehicle and foot pursuits; use of canines; failure to acknowledge and/or accommodate the needs of people with disabilities including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities, traumatic brain injuries; and human rights issues.
- 4) Within thirty (30) days of receiving the recommendations, the Chief shall provide the Board, the Mayor, and Council with a written explanation of why the Chief agrees or disagrees with the policy recommendations.
- 5) If the Chief agrees with the policy recommendation(s), then the Chief shall provide a timeline

to the Board indicating implementation of each recommendation.

- 6) The Board shall publish on its website whether or not the policy recommendation(s) have been implemented.

§ 18-6. Officers and Staff.

- A. At the initial Board's first meeting, the Board shall elect a Chairperson and Vice-Chairperson, by majority vote. Subsequently, the Board shall elect a Chairperson and Vice-Chairperson by majority vote, at the first meeting after July 1 of each year. Each Chairperson and Vice-Chairperson shall serve until the June 30 following their election. No Board member shall serve as Chairperson or Vice-Chairperson for more than three (3) consecutive years. The initial Board shall convene a search committee for an Executive Director and a committee to establish rules of procedure not provided for herein. The search for a new Executive Director shall take place in the first year and whenever there is a vacancy. The Chairperson will also be responsible to:
 - 1) facilitate and preside over meetings of the Board;
 - 2) establish committees of Board members as needed; and
 - 3) establish a regular rotation of Board members to serve on hearing panels.
- B. A quorum of five (5) Board members must be present to conduct Board business, regardless of vacancies. No business shall be transacted by the Board without a quorum being present. Board action shall be decided by a simple majority of Board members present.
- C. Police Accountability Board Executive Director
 - 1) The PAB shall conduct a search process to hire a full-time Police Accountability Board Executive Director in accordance with the City of Rochester hiring practices. The Executive Director is subject to a Council Confirmation. The Executive Director will report to the Board and shall serve at the discretion of the Board.
 - 2) The Executive Director shall be a resident of the City within twelve (12) months of hiring and shall remain a City resident for the duration of their tenure.
 - 3) The Executive Director shall not be currently or formerly employed by the RPD or any other local, state, or federal law enforcement agency, nor shall any of their immediate family be employed by the RPD. Neither shall the Executive Director be a member of the immediate family of any incumbent elected official of the City, or have litigation pending against the City involving a claim of police misconduct, or be a member of the immediate family of a person, or be an attorney representing a person with such pending litigation.
 - 4) The Council, through the annual budgetary process as set forth in Article VI of the City Charter, as amended, shall provide for the compensation and benefits of the Executive Director.
 - 5) The Board shall conduct an annual review of the performance of the Executive Director and may remove the Executive Director for good cause.
 - 6) The Board shall be responsible, through the Executive Director and staff, for the daily administrative work of the Board.
 - 7) The Executive Director shall be responsible for hiring and supervising staff in

accordance with the City Charter and the Municipal Code. All such persons and their immediate family shall be free of any conflict of interest, including but not limited to current or former employment with the RPD or any other local, state, or federal law enforcement agency.

§ 18-7. Training and Outreach.

A. Board and Executive Director Training

The Board and staff shall seek and participate in a broad range of training annually. Training resources will be selected by the Board and may include individuals and organizations such as law enforcement entities, attorneys, and any national, state, or local resources with expertise and experience in civilian complaints, investigation, police policies, auditing/monitoring, and other appropriate skills and knowledge. The Board and staff orientation and ongoing training shall include but not be limited to, the following:

- 1) All relevant local, state, and federal law
- 2) implicit bias and anti-racism;
- 3) gender identity and sexuality;
- 4) disability rights, including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities and traumatic brain injuries;
- 5) classism, poverty and homelessness;
- 6) trauma-informed policing and crisis intervention, including RPD employee well-being;
- 7) patterns, practices, policies, and procedures of the RPD;
- 8) Police Accountability Board Local Law;
- 9) civilian oversight history, models, trends, theories, standards and best practices;
- 10) how to conduct independent and objective civilian complaint investigations, e.g. interviewing, collection and preservation of evidence;
- 11) community outreach to inform how the Police Accountability Board functions and serves the community and public reporting;
- 12) discipline and remediation, education-based discipline, early warning systems, processes of arbitration/grievance

B) Community Outreach

- 1) The Board shall conduct outreach to community members, groups, and nonprofit organizations. The Board shall provide language access for limited and non-English proficient individuals. The Board shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities.
- 2) Complaint forms and instructions shall be made available by RPD employees and at the Board office, at Board meetings, libraries, recreation centers, PSS office, police stations, public safety building, courts, and all other government buildings, and on the City, RPD, and Board websites.
- 3) In addition to regular monthly business meetings that include review of complaints, the Board shall hold public meetings in each City district a minimum of at least once annually, to invite public input or comment, and to provide information education about the Board process and its work.

- 4) The Board shall, through a standing Board committee, be dedicated to youth and community engagement, establish and pursue ways to interact with and solicit input from youth, present educational programs designed to promote public awareness of the Board process, give the public information about their rights and responsibilities regarding encounters with law enforcement employees, and publicize the procedure for filing a complaint with the Board.
- 5) The City shall provide the Board with a website on which the Board shall post information, including but not limited to: educational materials, links, videos, reports, and forms related to the operation of the Board and its mission.
- 6) The Board shall survey complainants and the public to assess satisfaction and identify concerns with the Board's investigative and adjudicative processes.

§ 18-8. Retaliation Prohibited.

Retaliation by RPD employees against complainants, witnesses, the Board and its staff, and other RPD employees, shall be prohibited. Retaliation includes but is not limited to: harassment, intimidation, stalking, threats and assaults. If a complaint of retaliation is sustained by the Board, action will be taken based upon the disciplinary matrix. A formal complaint does not need to be filed with the Board for an investigation of retaliation to occur. The chief will also be notified of the misconduct.

§ 18-9. Conflict of Interest.

- A. No Board member or Board employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of their duties in the public interest. Any conflict of interest prohibited by Article 18 of the General Municipal Law or by the Code shall disqualify a member. A conflict of interest shall include, but is not limited to: if they have reason to believe or expect that they will derive a direct monetary gain or suffer a direct monetary loss, by reason of their official activity; or if any benefit or detriment accrues to them as a member of a business, profession, occupation, or group to a greater extent than any other member of the business, profession, occupation, or group. Board members may not represent a complainant or an RPD sworn member before PSS or the Board.
- B. If a Board member has a personal, business or other relationship or association with a party to or a witness in a matter before the Board, the member shall disclose the situation to the Chairperson, and shall recuse themselves from deliberations or action in connection with that case.
- C. Board members and employees shall be subject to the City of Rochester's Code of Ethics.

§ 18-10. Legal Representation.

- A. The Corporation Counsel shall advise and represent the Board as it would other public boards in accordance with the Law Department's duties under Article IX of the City Charter. Provided, however, that upon the determination by the Corporation Counsel that a conflict of interest exists, depending on the facts and circumstances of a particular matter, Corporation Counsel will advise the Board to obtain outside counsel if such counsel is deemed necessary by the Board. The Board may then seek and retain independent legal counsel, provided, however, that

compensation for such legal services shall be established through the City's annual budgetary process as set forth in Article VI of the Rochester City Charter.

- B. All contracts for outside services (legal or other) shall be procured in accordance with the City of Rochester purchasing requirements and are subject to City Council approval when over \$10,000 or the Police Accountability Board does not have adequate funds in their annual budget to cover the cost of an agreement less than \$10,000.

§ 18-11. Police Accountability Board Reports.

- A. The Board shall publish on its website monthly data on the receipt and dispositions of complaints.
- B. All complaints shall be issued a public tracking number, which shall be included in the quarterly and annual reports.
- C. The Board shall publish on its website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor public quarterly and annual reports that shall document:
 - 1) The total number and type of complaints and the City districts in which they happened;
 - 2) The categories of each complaint as defined in Section Three of the local law;
 - 3) The public tracking number of each complaint;
 - 4) Detailing information that legally available to the Board, including but not limited to: the date, time, and location of each incident, whether there is video of the incident or not, age, race, and gender of adult complainant(s), rank(s), gender(s), section(s), and race(s) of the RPD employee(s) and if there were witnesses, how many, and whether they are employed by any local, state, or federal law enforcement agency and which agency; the Board shall comply with local, state, and federal law and redact any information that may not be disclosed publicly. The number of previous complaints against the RPD employee(s) within ten (10) years of the incident and whether or not those complaints were sustained.
 - 5) The number of times and the types of use of force used per complaint and the total number of times and types of use of force used;
 - 6) The number of times pepper spray was deployed per complaint and the total number of times pepper spray was deployed;
 - 7) The number of times and types of pain compliance tactics used per complaint and the totals for each use of pain compliance tactic;
 - 8) The number of times and types of use where a Taser was deployed;
 - 9) Complaint and sustain rates for each RPD section;
 - 10) in the event where an RPD employee uses their firearm:
 - a) the type of weapon used (firearm, brand, type);
 - b) number of shots fired;
 - c) the range from which the firearm was fired;
 - d) injuries sustained by the complainant, animal(s), RPD employee(s), and/or any bystanders;
 - e) any medical care provided and what type; whether the person or animal was killed.
 - f) the number of cases where the panel's disciplinary decision was enforced by the chief

- g) the number of cases where the Chief disputed the disciplinary decision of the panel;
 - h) the type of sanctions imposed;
 - i) the type of sanctions decided upon;
 - j) the number of cases reviewed by the Board;
 - k) the number of complaints found not to have reasonable cause to be heard;
 - l) the number of complainants contacting the Board but not following through with a formal signed complaint;
 - m) the length of time each case was pending before the Board;
 - n) the number of complainants who filed a notice of claim against the City while their complaint was being considered by the Board.
- D. The annual report published on the Board's website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor and shall contain:
- 1) The recommendations related to changes in RPD patterns, practices, policies, and procedures;
 - 2) Whether the prior year's recommended changes have been implemented;
 - 3) A summary of complainant and public survey data with an assessment of if and how Board policies should change to accommodate concerns.
- E. Quarterly and annual reports shall be publicly available on the Board's website.
- F. Any video associated with the Complaint that can be made public, shall be made publicly available.
- G. The Board shall comply with all local, state, and federal law, including Civil Rights Law Section 50-a concerning the release of personnel information.

§ 18-12. Audit and Evaluation.

- A. The Board may, by majority vote, perform an audit, or direct that an audit be performed, to assess the investigation and adjudication of civilian complaints.
- B. An independent organization of Council's choosing shall conduct a formal annual evaluation of the functions, processes, and outcomes of the Police Accountability Board. The evaluator will make specific recommendations to the Council regarding changes to the Board's functions, processes and outcomes.

§ 18-13. Budget.

- A. The annual proposed budget of the Police Accountability Board shall provide for sufficient funding to carry out the powers and duties set forth in the Police Accountability Board Article, including the funding of staff and all necessary operating expenses for the purpose of resolving all complaints within ninety (90) days. The Board shall be funded through the budgetary process of the City, pursuant to Article VI of the City Charter. The Board budget shall be separate from, and independent of, the RPD budget.
- B. The Board shall annually prepare a budget in accordance with the Budget Allocation Level that it deemed appropriate from the Office of Management and Budget. The Board shall submit the proposed budget, along with appropriate financial documentation, to the Mayor and Council, during the City's annual budgetary process.
- C. The Board's first year budget shall include appropriate start-up costs, such as office furnishings,

equipment, training for all Board and staff, and a national search for the Executive Director.

§ 18-14. Severability.

The invalidity of any provision or provisions of this chapter shall not affect the validity of the remaining provisions thereof, but such remaining provisions shall continue in full force and effect.

Section 2. This local law shall take effect upon its filing in the Office of the Secretary of State as provided by Section 27 of the NYS Municipal Home Rule Law.

APPENDIX A

Police Accountability Board Supporting Organization **

19th Ward Community Association
Action for a Better Community
Action Together Rochester
African American Health Association & Latino Health Coalition
American Baptist Churches of the Rochester/Genesee Region
Antioch Missionary Baptist Church
Baber AME Church
Beechwood Neighborhood Association
Center for Disability Rights
Citizen Action of Western New York
Colgate Rochester Crozer Divinity School
Compeer
Delta Sigma Theta Sorority Alumna
Dimitri House
Empire Justice
Enough Is Enough
Facing Race, Embracing Equity (FR=EE)
First Unitarian Church
First Universalist Church
Flower City Noir
Flying Squirrel Community Space
Greater Rochester Community of Churches
Green Party of Monroe County
Ibero American Action League
Inner Faith Gospel Tabernacle
Justice For All

MK Gandhi Institute
National Lawyers Guild of Rochester
Native American Cultural Center
North East Area Development
Omega Psi Phi Fraternity Inc.
Open Arms Christian Fellowship
Out Alliance
Ministry
PLEX Neighborhood Association
Re-entry & Community Development Center
Roc/ACTS
Rochester Black Authors
Rochester Democratic Socialists of America
ROCitizen
Safer Monroe Area Reentry Team (SMART)
Shades of Sisterhood
Showing Up for Racial Justice (SURJ)
Sisters of Mercy
Social Welfare Action Alliance
South West Area Neighborhood Assoc.
Spiritus Christi Anti-Racism Coalition
St. Joseph's House of Hospitality
Table 23
Teen Empowerment
Trinity Emmanuel Presbyterian Church
Turning Points
Urban League of Rochester
Rochester Chapter of VOCAL-NY
**** Organization list is subject to change**

HELD IN COMMITTEE

The meeting was adjourned at 8:14 p.m.

HAZEL L. WASHINGTON
City Clerk

February 19, 2019