

ROCHESTER CITY COUNCIL

REGULAR MEETING

January 15, 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.

**Retirement:**

**DES:**

- \*Charles A. Crudele
- \*Damian J. Vaudo
- \*Harold E. Wilson

**FIN:**

- \*Bethzaida Rodriguez-Colon

**NBD:**

Armanda Vazquez

**RFD:**

- \*James A. Bauch
- \*John P. De Lorenzo
- \*John Schreiber

**RPD:**

- \*Sam Genovese
- \*Murray Hooper
- \*Albert Joseph

**RPL:**

- \*Carolyn T. Block

\*Did not attend

**APPROVAL OF THE MINUTES**

By Councilmember Gruber

RESOLVED, that the minutes of the Regular Meeting of December 18, 2018 be approved as published in the official sheets of the Proceedings.

Adopted unanimously.

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

The Mayor submits the following:

- Quarterly Reports – Professional services agreements – December 31, 2018. -4298-19
- Quarterly Reports – Delinquent Receivables – December 31, 2018. -4299-19

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

REPORTS OF STANDING COMMITTEES  
AND ACTION THEREON

By Vice President McFadden  
January 15, 2019

To the Council:

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

- Int. No. 1           Appropriating Firefighters' Insurance Funds
- Int. No. 2           Authorizing an amendatory agreement with Legal Med, LLC for expert witness services for the Law Department
- Int. No. 3           Authorizing an agreement with Bruckner, Tillet & Rossi, Inc. for appraisal and real estate services for the Law Department

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

Received, filed and published.

TO THE COUNCIL  
Ladies and Gentlemen:

Ordinance No. 2019-1  
Re: Firefighters' Insurance Fund  
Council Priority: Public Safety

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Transmitted herewith for your approval is legislation authorizing expenditures from the Firefighters' Insurance Fund ("Two Percent Fund") as per the Settlement Agreement between the Rochester Firefighters, Inc., Local 1071, IAFF, AFL-CIO and the City of Rochester dated August 7, 2012. The legislation will:

1. Appropriate a total of \$441,675 from the Firefighters Insurance Fund at the request of the Rochester Firefighters Two Percent Committee ("TPC") to benefit City firefighters.
2. Appropriate a total of \$175,406.19 from the Firefighters' Insurance Fund for uses nominated by the City to benefit City firefighters.

The firefighters' Insurance Fund is the City Fund established to collect and distribute monies received from the State pursuant to Sections 9104 and 9105 of the Insurance Law, and is under the custody of the City Treasurer.

Ordinance No. 2012-313 authorized the settlement agreement resulting from litigation brought by Rochester Firefighters Local 1071. These funds must be used in a manner that is consistent with the Court Order and with the provisions of Insurance Law Sections 9104 and 9105. Fund expenditures must be for the benefit of firefighters as provided in statutory law, case law, administrative rules and regulations, and the New York State Comptroller's Opinions.

In accordance with the Settlement Agreement the firefighters have formed a not-for-profit corporation named the Rochester Firefighters Two Percent Committee ("TPC") to be the firefighters' representative for purposes of the Fund. Items to be paid from the Fund may be nominated by the firefighters or by the City.

The following are firefighter nominated items submitted by the TPC to be appropriated from the Firefighters' Insurance Fund:

- 1) Fire house items set forth in Section 1G of the original agreement (\$99,000).
- 2) Construction of Pavilion / Parking Lot Top Coat (\$140,000).
- 3) Legal and Accounting expenses (\$47,000).
- 4) Fire house cable and internet expenses (\$38,400).
- 5) RFBA Firefighters Ball (\$15,000).
- 6) Building Expenses for 2019 (\$100,000).
- 7) Audit of the Two Percent Fund held by the City of Rochester and the Two Percent Committee (\$2,275).

The following are City nominated items submitted by the TPC to be appropriated from the Firefighters' Insurance fund:

- 1) Snow plow services for apparatus bay driveways at firehouses (\$50,310).
- 2) Linen and laundry expense (\$80,000).
- 3) Small equipment and minor firehouse renovations (\$44,121.19).
- 4) Audit of the Two Percent Fund held by the City of Rochester and the Two Percent Committee (\$975).

The City of Rochester has engaged Freed Maxick to conduct an audit of the Two Percent Fund held by the City of Rochester and the Two Percent Committee ("TPC"). The cost of the audit is estimated at \$3,250, of which the City will pay 30% and the

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Two Percent Committee (“TPC”) will pay 70% of the auditing fee, as per Section 1J of the agreement. The cost of the audit will be funded from the respective Two Percent Fund accounts controlled by the City of Rochester.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Ordinance No. 2019-1  
(Int. No. 1)

### **Appropriating Firefighters’ Insurance Funds**

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

Section 1. The following funds are hereby appropriated from the Firefighters’ Insurance Fund (“Two Percent Fund”) for the following purposes to benefit the firefighters of the City in accordance with the terms of the settlement agreement with Rochester Firefighters Local 1071 dated August 7, 2012 (“Agreement”) that was authorized in Ordinance No. 2012-313:

A. Firefighter Nominated Items. A total of \$441,675 at the request of the Rochester Firefighters Two Percent Committee as follows:

- 1) Firehouse items set forth in Section 1G of the Agreement (\$99,000);
- 2) Construction of Pavilion/Parking Lot Top Coat (\$140,000);
- 3) Legal and accounting expenses (\$47,000);
- 4) Firehouse cable and internet expenses (\$38,400);
- 5) Rochester Firefighters’ Benevolent Association Firefighters Ball (\$15,000);
- 6) Building Expenses for 2019 (\$100,000); and
- 7) Audit of the Two Percent Fund held by the City of Rochester and the Two Percent Committee (\$2,275).

B. City Nominated Items. A total of \$175,406.19 for uses nominated by the City of Rochester as follows:

- 1) Snow plow services for apparatus bay driveways at firehouses (\$50,310);
- 2) Linen and laundry expense (\$80,000);
- 3) Small equipment and minor firehouse renovations (\$44,121.19); and
- 4) Audit of the Two Percent Fund held by the City of Rochester and the Two Percent Committee (\$975).

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Section 2. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL

Ladies and Gentlemen:

Ordinance No. 2019-2

Re: Amendatory Agreement – Expert  
Witness Services

Transmitted herewith for your approval is legislation authorizing an amendatory professional services agreement with Legal Med, LLC (General Manager, Christine Wintringer) to continue to provide expert witness services necessary to defend the City in lawsuits involving personal injury claims. The original agreement was authorized in April 2018 (Ordinance No. 2018-82). This amendment will increase the maximum compensation by \$30,000 to a new total of \$70,000. Said amount shall be funded from the 2018-19 Budget of the Law Department.

This amendatory agreement will allow the Law Department to obtain the services of expert physicians to review treatment and therapy records and examine and report on the physical and psychological condition of personal injury plaintiffs. The City lawyers have more than 12 years of experience with the professionals provided by Legal Med, including under a previous professional services agreement in the amount of \$40,000 authorized in Ordinance No. 2016-264, as amended by Ordinance No. 2016-255. Legal Med has provided highly credentialed, practicing physicians in the relevant medical disciplines, including an orthopedic surgery, neurology and psychology, who also excel at explaining the facts on the witness stand.

This amendment is necessary because Law Department anticipates that it may require up to \$70,000 for the experts' services for scheduled trials and pending lawsuits if they proceed through to trials and verdicts. The term of the agreement may extend until completion of those lawsuits.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Ordinance No. 2019-2  
(Int. No. 2)

**Authorizing an amendatory agreement with Legal Med, LLC for expert witness services for the Law Department**

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 Legal Med, LLC to provide additional expert witness services for the Law Department. The amendment shall increase the maximum compensation of the original agreement, which was authorized by

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Ordinance No. 2018-82, by \$30,000 to a total amount of \$70,000. The amendatory compensation amount shall be funded from the 2018-19 Budget of the Law Department.

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.

TO THE COUNCIL  
Ladies and Gentlemen:

Re: Ordinance No. 2019-3  
Agreement – Bruckner, Tillet & Rossi,  
Inc. Appraisal and Real Estate Services

Transmitted herewith for your approval is legislation establishing a maximum compensation of \$20,000 for an agreement with Bruckner, Tillet & Rossi, Inc. for appraisal and real estate services as needed by the Law Department. The agreement shall be funded from the 2018-19 Budget of the Law Department and have a term of one year or until completion of the cases for which the services are contracted.

The Law Department requires appraisals and real estate services for litigation cases such as those involving challenges to property tax assessments, as well as certain other transactions. The chosen firm was recently one of two selected by the Department of Neighborhood and Business Development (NBD) through a request for qualifications (RFQ) process issued May 5, 2018 which was led by NBD with participation by the Law Department.

The services of Bruckner, Tillet & Rossi, Inc. have been selected by the Law Department based on the firms' experience with the type of matters that the Law Department anticipates handling for this term. Similar agreements were approved by Council in July 2015 via Ordinance No. 2015-218 and July 2016 via Ordinance No. 2016-220. A justification for not issuing an RFP is attached.

Respectfully submitted,  
Lovely Warren  
Mayor

Attachment No. AS-1

Ordinance No. 2019-3  
(Int. No. 3)

**Authorizing an agreement with Bruckner, Tillet & Rossi, Inc. for appraisal and real estate services for the Law Department**

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

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Section 1. The Mayor is hereby authorized to enter into a professional services agreement with Bruckner, Tillet & Rossi, Inc. in the maximum amount of \$20,000 for appraisal and other real estate services as needed by the Law Department. The agreement shall have a term of one year and said amount shall be funded from the 2018-19 Budget of the Law Department.

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.

By Councilmember Patterson  
January 15, 2019

To the Council:

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

- Int. No. 4            Authorizing the sale of real estate
- Int. No. 6            Authorizing the acquisition by negotiation ~~or condemnation~~ of properties for a new Goodman Section office for the Rochester Police Department and a new Southeast Quadrant Neighborhood Service Center, **as amended**
- Int. No. 7            Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$500,000 Bonds of said City to finance costs of the acquisition of properties and demolition of structures to establish a site for a Goodman Section office for the Rochester Police Department and Southeast Quadrant Neighborhood Service Center

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

- 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**

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Received, filed and published.

TO THE COUNCIL  
Ladies and Gentlemen:

Ordinance No. 2019-4  
Re: Sale of Real Estate

Council Priority: Rebuilding and  
Strengthening Neighborhood Housing

Transmitted herewith for your approval is legislation approving the sale of two properties. 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 first property was sold to the respective highest bidder at a surplus auction. The purchaser will be required to demolish the structure and combine this property with her adjoining property within 12 months of City Council approval.

The next property is an unbuildable vacant lot, being sold for \$1.00 (as per City policy) to the adjacent owner who will combine the lot with his existing property.

The first year projected tax revenue for these two properties, assuming full taxation, current assessed valuations and current tax rates, is estimated to be \$456.

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..

Respectfully submitted,  
Lovely A. Warren  
Mayor

Attachment No. AS-2

Ordinance No. 2019-4  
(Int. No. 4)

**Authorizing the sale of real estate**



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

Section 1. The Council hereby approves the sale of the following parcel of improved property by regular auction:

<b>Address</b>	<b>SBL#</b>	<b>Lot Size</b>	<b>Use</b>	<b>Price</b>	<b>Purchaser</b>
1485 North Street	091.65-3-16	33x77	Single	\$10,500	Chickenhead, LLC

Section 2. The Council hereby approves the negotiated sale of the following parcel of unbuildable vacant land for the sum of \$1.00:

<b>Address</b>	<b>SBL#</b>	<b>Lot Size</b>	<b>Sq. Ft.</b>	<b>Purchaser</b>
12 Arnett Blvd	120.67-1-59	34x104	3658	Fatima Houston

Section 3. City taxes and other City charges, except water charges, against said properties are 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 properties free of City tax liens and other charges or because these charges have been included in the purchase price.

Section 4. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL  
Ladies and Gentlemen:

Introductory No. 5  
Ordinance No. 2019-5  
Ordinance No. 2019-6  
Re: Real Estate Acquisitions

Council Priority: Rebuilding and  
Strengthening Neighborhoods

Transmitted herewith for your approval is legislation approving the acquisition of real property by negotiation or condemnation of ten (10) properties on East Main Street and Laura Street and the issuance of bonds in the amount of \$500,000 related to these property acquisitions. The properties being acquired will be used for the site assembly and construction of the Goodman Section RPD office and the SE-NSC Office.

The ten property addresses are noted below with the appraised values, property use and zoning. The appraised values were determined by Stephen Ferrara of Midland Appraisal Associates as of April 2018. The prices do not include any consideration of environmental or geo-tech conditions and assume environmentally clean sites.

<b><u>Address</u></b>	<b><u>Appraised Value</u></b>	<b><u>Property Use</u></b>	<b><u>Zoning</u></b>
10 Laura Street	\$35,000	Single Family	R-1
1-5 Laura Street	\$50,000	2-Family	R-1

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7-9 Laura Street	\$60,000	2-Family	R-1
8-8.5 Laura Street	\$65,000	2-Family	R-1
11-15 Laura Street	\$65,000	2-Family	R-1
1228-1230 E. Main Street	\$40,000	2-Family	C-2
4-6 Laura Street	\$85,000	4-Family	R-1
1252 E. Main Street	\$7,000	Vacant Lot	R-2
1222 E. Main Street	\$8,000	Vacant Lot	C-2
1214-1216 E. Main Street	\$8,000	Vacant Lot	C-2

Occupants of each unit will be provided with a \$1,000 allowance to cover moving expenses if the units are occupied at the time of acquisition. At the time of this submission, all units are occupied. No monies are provided to owners of vacant lots. City staff will assist the occupants with the identification of suitable replacement housing, if needed.

Site preparation is anticipated to begin following the demolition of the existing structures, likely in the Spring of 2019. The new RPD facility will be situated on approx. 2.42 acres and will include the City owned parcels at 1200 East Main St, 1240 East Main Street and 2 Laura Street as well as a partial abandonment of the Laura Street ROW. A property project map is attached.

The new facility will be approximately 18,000 SF and will house the Goodman Section of the RPD as well as the SE-NSC Office. The total acquisition costs are estimated at an amount not to exceed \$500,000 which includes acquisition, legal costs and title work funded via city debt. The demolition costs are estimated at an amount not to exceed \$300,000 and relocation expenses are a fixed amount of \$1,000 per unit, or \$15,000. The acquisitions will be funded through the issuance of bonds and the demolition costs and moving expense monies will be funded through 2018-19 Cash Capital.

Pursuant to the requirements of the New York State Environmental Quality Review Act (SEQRA), a determination regarding the environmental significance of this project will be made prior to City Council approval.

All City taxes and other current-year charges against each said parcels shall be canceled from the date of acquisition closing forward. If the present owner has paid any taxes or other current-year charges attributable to the period after the closing, such charges shall be credited to such owner at closing, and may, if appropriate, be refunded. Any taxes levied after the date of closing while the City owns a parcel, shall also be canceled.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Attachment No. AS-3

Ordinance No. 2019-5  
(Int. No. 6, as amended)

**Authorizing the acquisition by negotiation or condemnation of properties for a new Goodman Section office for the Rochester Police Department and a new Southeast Quadrant Neighborhood Service Center**

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

Section 1. The Council hereby approves the acquisition of the following parcels (the “Acquisition Parcels”) for the maximum acquisition amounts indicated for use as part of the site for a new Goodman Section office for the Rochester Police Department (“RPD”) and a new Neighborhood Service Center (“NSC”) for the City’s Southeast Quadrant (collectively, the “Project”):

Address	Reputed Owner	SBL#	Type	Maximum Acquisition Amount
1-5 Laura St.	Michael/Ellen Johnson	106.76-1-40	2 Family	\$50,000
4-6 Laura St.	John M. Fleming	107.69-1-93	4 Family	\$85,000
7-9 Laura St.	John M. Fleming	106.76-1-39	2 Family	\$60,000
8-8½ Laura St.	Garth LLC	107.69-1-94	2 Family	\$65,000
10 Laura St.	John M. Fleming	107.69-1-95	1 Family	\$35,000
11-15 Laura St.	Eyal/Sharon Ronder	106.76-1-38	2 Family	\$65,000
1214-1216 E. Main St.	1214-1216 East Main Street LLC	106.76-1-43	vacant land	\$ 8,000
1222 E. Main St.	1214-1216 East Main Street LLC	106.76-1-42	vacant land	\$ 8,000
1228-1230 E. Main St.	John M. Fleming	106.76-1-41	2 Family	\$40,000
1252 E. Main St.	ROC Group Capital LLC	107.69-1-89	vacant land	\$ 7,000

The acquisition amounts set forth herein plus associated costs for legal fees and title review, up to a total maximum sum of \$500,000, shall be funded from the proceeds of bonds to be authorized for the purpose.

Section 2. City taxes and other current-year charges against each said parcel shall be canceled from the date of acquisition closing forward. If the present owner has paid any taxes or other current-year charges attributable to the period after the closing, such charges shall be credited to such owner at closing, and may, if appropriate, be refunded. Any taxes levied after the date of closing, while the City owns a parcel, shall also be canceled.

~~Section 3. In the event that any of said Properties cannot be acquired by negotiation, the Corporation Counsel is hereby authorized to commence condemnation proceedings to acquire said parcel. In the event of condemnation, the amount set forth herein for the acquisition shall be the amount of the offer. Nothing in this ordinance shall be deemed to limit in any way the liability of the City for further claims arising from the acquisition of said parcel pursuant to the Eminent Domain Procedure Law.~~

~~Section 4.3.~~ In accordance with the City’s rules and regulations for relocation benefits approved in Resolution No. 2002-25, the Council hereby authorizes City staff to provide the present occupants of the Acquisition Parcels with fair notice and provide a \$1,000 moving allowance for each dwelling unit. In addition, for those occupants who request it, City staff shall assist them to find comparable replacement housing before they are required to vacate. The amount of \$15,000, or so much thereof as may be necessary for moving allowances, shall be funded from 2018-19 Cash Capital.

~~Section 5.4.~~ The Council hereby authorizes the expenditure of \$300,000, or so much thereof as may be necessary, from 2018-19 Cash Capital to demolish structures located on the Acquisition Parcels.

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Section-~~6~~5. This ordinance shall take effect immediately.

Strikeout indicates deleted text, new text is underlined.

Passed unanimously.

Ordinance No. 2019-6  
(Int. No. 7)

**Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$500,000 Bonds of said City to finance costs of the acquisition of properties and demolition of structures to establish a site for a Goodman Section office for the Rochester Police Department and Southeast Quadrant Neighborhood Service Center**

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 acquisition of 10 properties at the locations shown in Exhibit A and the demolition of the existing structures thereon, to establish a site for a new Goodman Section office for the Rochester Police Department and Southeast Quadrant Neighborhood Service Center (the Project). The estimated maximum cost of said class of objects or purposes, including preliminary costs and costs incidental thereto and the financing thereof, is \$815,000. The plan of financing includes the issuance of \$500,000 bonds of the City which are hereby appropriated to said Project; \$315,000 in 2018-19 Cash Capital 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 \$500,000 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 \$500,000. 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. 21 of the Law, is 30 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.

## **Exhibit A**

<b>Property Addresses</b>
1-5 Laura Street
4-6 Laura Street
7-9 Laura Street
8-8½ Laura Street
10 Laura Street
11-15 Laura Street
1214-1216 East Main Street
1222 East Main Street
1228-1230 East Main Street
1252 East Main Street

Passed unanimously.

INTRODUCTORY 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.

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- 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.

HELD IN COMMITTEE

By Councilmember Evans  
January 15, 2019

To the Council:

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

- |             |   |
|-------------|---|
| Int. No. 8  | Appropriating funds for the 2017 Preventive Maintenance Group #4 Project  |
| Int. No. 9  | Authorizing an amendatory agreement for the 2016 Preventive Maintenance Group #2 project  |
| Int. No. 11 | Authorizing a reimbursement agreement with Rochester District Heating Cooperative, Inc. for the Rundel Library Structural Terrace Improvements Phase IV Project                           |
| Int. No. 12 | Authorizing an agreement for the Blue Cross Arena at the War Memorial Roof Restoration  |
| Int. No. 13 | Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$573,000 Bonds of said City to finance the Blue Cross Arena at the War Memorial’s roof restoration Project |
| Int. No. 14 | Authorizing an agreement for Geographic Information System capability upgrades  |
| Int. No. 15 | Authorizing agreements and funding for a ROC the Riverway Management Entity Study   |
| Int. No. 16 | Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$1,050,000 Bonds of said City to finance a portion of the City’s 2019 Water                                |



January 15, 2019

Main Cleaning and Cement Lining Project of the Distribution System Water Main Renewal Program, **as amended**

- Int. No. 17      Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$607,000 Bonds of said City to finance a portion of the City's 2019 Cured in Place Pipe Project of the Distribution System Water Main Renewal Program
- Int. No. 18      Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$1,250,000 Bonds of said City to finance water main extensions for the City's 2019 Water Main Extensions and Improvements Project of the Distribution System Water Main Renewal Program

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

- Int. No. 10      Approving geometric changes related to the Atlantic Avenue/Merriman Street Safety Improvements Project
- Int. No. 20      Amending the Municipal Code with regard to the telecommunications facilities in the right-of-way

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

Received, filed and published.

TO THE COUNCIL  
Ladies and Gentlemen:

Ordinance No. 2019-7  
Re:      Appropriate Additional Federal and  
            State Aid – 2017 Preventive  
            Maintenance Group #4 Project

Transmitted herewith for your approval is legislation related to the 2017 Preventive Maintenance Group #4 Project. This legislation will:

1. Appropriate \$101,220 in FHWA to fund a portion of the construction services for the 2017 Preventive Maintenance Group 4 Project; and to
2. Appropriate \$18,979 in New York State (NYS) Marchiselli Aid to fund a portion of the construction phase for the 2017 Preventive Maintenance Group 4 Project;

This federal aid project, administered by the City under agreement with the NYS Department of Transportation (DOT) includes five locations:

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- Browncroft Boulevard (Merchants Road- East City Line)
- Merchants Road (Browncroft Boulevard - Culver Road)
- Central Park (Portland Avenue- North Goodman Street)
- Cleveland Street (Hudson Avenue- North Street)
- Draper Street (North Street- Portland Avenue)

The project began construction in summer 2017 and is substantially complete.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Ordinance No. 2019-7  
(Int. No. 8)

**Appropriating funds for the 2017 Preventive Maintenance Group #4 Project**

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

Section 1. The sum of \$101,220 in anticipated reimbursements from the Federal Highway Administration (FHWA) is hereby appropriated to fund construction services for the 2017 Preventive Maintenance Group #4 Project (Project).

Section 2. The sum of \$18,979 in anticipated reimbursements from the Marchiselli Aid Program is hereby appropriated to fund Project construction.

Section 3. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL  
Ladies and Gentlemen:

Ordinance No. 2019-8  
Re: Amendatory Agreement – Hunt  
Engineers, 2016 Preventive  
Maintenance Ames/Buffalo/West Project  
Council Priority: Jobs and Economic  
Development

Transmitted herewith for your approval is legislation related to the project. This legislation will:

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1. Establish \$42,000 in funding for an amendatory agreement with Hunt Engineers, Architects & Land Surveyors, PC (Daniel C. Bower, President & Chief Executive Officer) Rochester, NY for additional construction phase design and resident project representation services (RPR) required for the 2016 Preventive Maintenance Ames/Buffalo/West Project.
2. Appropriate \$3,600 in New York State (NYS) Marchiselli Aid to fund a portion of the design services for the 2016 Preventive Maintenance Ames/Buffalo/West Project; and to
3. Appropriate \$22,390 in New York State (NYS) Marchiselli Aid to fund a portion of the construction phase for the 2016 Preventive Maintenance Ames/Buffalo/West Project.

This amendment will increase total compensation to \$304,000 and will be funded from bond authorized for this project (Ordinance 2016-197).

Below is a summary of related legislative actions for the agreement:

<u>Ord. No.</u>	<u>Purpose</u>
2014-392	authorize agreements/appropriate funds
2015-333	appropriate Marchiselli Aid
2016-196	authorize RPR agreement
2016-197	authorize project bonds
2017-174	amend ordinance/appropriate funds

The proposed amendatory agreement with Hunt Engineers is to compensate for work completed for RPR and construction phase design services on the Asphalt M&R 2016 TIP Ames/Buffalo/West project. Work that was added to the original contract included installation of compliant ADA ramps at intersections within the project limits and additional roadway repairs for Ames Street. The additional work required RPR staffing for the extended construction duration.

- o Original estimated construction cost for the project was \$1,038,527.40
- o Actual construction cost to date for the project was \$1,313,913.66.

This amendment results in the creation and/or retention of the equivalent of .5 full-time jobs.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Attachment No. AS-4

Ordinance No. 2019-8  
(Int. No. 9)

**Authorizing an amendatory agreement for the 2016 Preventive Maintenance Group #2 project**

January 15, 2019

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 Hunt Engineers, Architects & Land Surveyors, P.C. for additional construction phase design and resident project representation services for the 2016 Preventive Maintenance Group #2 project (the Project). The amendment shall increase the maximum compensation of the original agreement, which was authorized by Ordinance No. 2016-196, by \$42,000 to a total amount of \$304,000. The amendatory compensation amount shall be funded from bonds appropriated for the Project in Ordinance No. 2016-197.

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

Section 3. The sum of \$3,600 in anticipated reimbursements from the Marchiselli Aid Program is hereby appropriated to fund a portion of the design services for the Project.

Section 4. The sum of \$22,390 in anticipated reimbursements from the Marchiselli Aid Program is hereby appropriated to fund a portion of the construction phase of the Project.

Section 5. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL

Ladies and Gentlemen:

Ordinance No. 2019-9  
Re: Reimbursement Agreement –  
Rochester District Heating Cooperative,  
Inc.

Transmitted herewith for your approval is legislation establishing \$35,000 as maximum compensation for a reimbursement agreement with Rochester District Heating Cooperative, Inc. (Dan DiLoreto, President), located at 150 State Street, Suite 110, Rochester, NY, for a portion of the costs of the relocation of existing steam pipe in preparation for the Rundel Library Structural Terrace Improvements Phase IV Project. The work includes the installation/relocation of new steam pipe. The cost of the agreement will be financed from bonds authorized by Ordinance No. 2016-344 and the term will be one year.

The Rundel Library Structural Terrace Improvements Phase IV Project will reconstruct the closed north riverfront terrace and elevated east sidewalk and create a more vibrant public space that celebrates the Library and the history of the aqueduct and Erie Canal. The estimated overall cost of the project is \$7.8 million. \$1.5 million of this project will be funded by ROC the Riverway awarded by the Honorable Governor Andrew Cuomo.

Construction is anticipated to begin in spring 2019 with completion in fall 2020.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Ordinance No. 2019-9  
(Int. No. 11)

**Authorizing a reimbursement agreement with Rochester District Heating Cooperative, Inc. for the Rundel Library Structural Terrace Improvements Phase IV Project**

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

Section 1. The Mayor is hereby authorized to enter into a reimbursement agreement with Rochester District Heating Cooperative, Inc. for a portion of the costs of the relocation of an existing steam pipe in preparation for the Rundel Library Structural Terrace Improvements Phase IV Project (the Project). The agreement shall have a term of one year and a maximum compensation of \$35,000, which amount shall be funded from bonds appropriated for the Project in Ordinance No. 2016-344.

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. 2019-10  
Ordinance No. 2019-11  
Re: Agreement – Passero Associates,  
Engineering, Architecture & Surveying,  
D.P.C. Blue Cross Arena Roof  
Restoration

Council Priority: Jobs and Economic  
Development and Creating and Sustaining  
a Culture of Vibrancy

Transmitted herewith for your approval is legislation related to Blue Cross Arena Roof Restoration. This legislation will:

1. Establish \$88,000 as maximum compensation for a professional services agreement with Passero Associates, Engineering, Architecture & Surveying, D.P.C. (John Caruso, PE, President), 242 West Main Street Suite 100, Rochester, NY for resident project representation (RPR) services. The cost of the agreement will be financed from bonds to be issued herein, and
2. Authorize the issuance of bonds totaling \$573,000 and the appropriation of the proceeds thereof to finance the Project.

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The project includes the restoration of Blue Cross Arena’s existing roofing system. A new two ply modified bitumen roofing membrane system will be installed over the existing system to provide a thirty year warranty. The estimated total cost of the project including construction, contingency and RPR services is \$2,291,546 and will be funded as follows:

Estimate:	RPR services:	Construction:	Contingency:	Total:
2017-18 Bond issued herein	\$88,000.00	\$370,830.96	\$114,169.04	\$573,000.00
2010-11 War Memorial Cash Capital	\$0	\$36,291.43	\$0	\$36,291.43
2011-12 War Memorial Cash Capital	\$0	\$121,476.63	\$0	\$121,476.63
2012-13 War Memorial Cash Capital	\$0	\$170,000.00	\$0	\$170,000.00
2013-14 War Memorial Cash Capital	\$0	\$130,000.00	\$0	\$130,000.00
2014-15 War Memorial Cash Capital	\$0	\$130,777.48	\$0	\$130,777.48
2015-16 War Memorial Cash Capital	\$0	\$130,000.00	\$0	\$130,000.00
2016-17 War Memorial Cash Capital	\$0	\$750,000.50	\$0	\$750,000.50
2017-18 War Memorial Cash Capital	\$0	\$250,000.00	\$0	\$250,000.00
<b>Total:</b>	<b>\$88,000.00</b>	<b>\$2,089,377.00</b>	<b>\$114,169.04</b>	<b>\$2,291,546.04</b>

Passero Associates, Engineering, Architecture & Surveying, D.P.C. was selected for resident project representation services through a request for proposal process, which is described in the attached summary. The agreement shall extend until three (3) months after completion of a two (2) year guarantee inspection of the project.

Construction and consultant RPR phase services will begin in spring 2019 with scheduled completion in fall 2019. The project will result in the creation and/or retention of the equivalent of 24.9 full-time jobs.

Respectfully submitted,  
 Lovely A. Warren  
 Mayor

Attachment No. AS-5

Ordinance No. 2019-10  
 (Int. No. 12)

**Authorizing an agreement for the Blue Cross Arena at the War Memorial Roof Restoration**

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

January 15, 2019

Section 1. The Mayor is hereby authorized to enter into a professional services agreement with Passero Associates, Engineering, Architecture & Surveying, D.P.C. in the maximum amount of \$88,000 for resident project representation services for the Blue Cross Arena at the War Memorial Roof Restoration (the Project). Said amount shall be funded from bonds to be appropriated for this purpose. The term of the agreement shall be 3 months after completion and acceptance of a two year guarantee inspection of the Project.

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.

Ordinance No. 2019-11  
(Int. No. 13)

**Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$573,000 Bonds of said City to finance the Blue Cross Arena at the War Memorial's roof restoration 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 cost of restoring the Blue Cross Arena at the War Memorial's existing roofing system (the "Project"). The estimated maximum cost of said class of objects or purposes, including preliminary costs and costs incidental thereto and the financing thereof, is \$2,291,546, and said amount is hereby appropriated therefor. The plan of financing includes the issuance of \$573,000 bonds of the City to finance a portion of said appropriation, \$36,291.43 in 2010-11 Cash Capital, \$121,476.63 in 2011-12 Cash Capital, \$170,000 in 2012-13 Cash Capital, \$130,000 in 2013-14 Cash Capital, \$130,777.48 in 2014-15 Cash Capital, \$130,000 in 2015-16 Cash Capital, \$750,000.50 in 2016-17 Cash Capital, and \$250,000 in 2017-18 Cash Capital 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 \$573,000 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 \$573,000. 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. 11 (b) of the Law, is twenty five (25) years.

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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:



January 15, 2019

Ordinance No. 2019-12  
Re: Agreement – Bergmann Associates,  
Architects, Engineers, Landscape  
Architects & Surveyors, DPC GIS  
Capability Upgrades

Council Priority: Jobs and Economic  
Development and Creating and Sustaining  
a Culture of Vibrancy

Transmitted herewith for your approval is legislation related to the GIS Capability Upgrades project. This legislation will establish \$150,000 as maximum compensation for a professional services agreement with Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, DPC (Pietro Giovenco, P.E., President and CEO) Rochester, NY for GIS web application development services. The cost of the agreement will be financed from Cash Capital.

The GIS Capability Upgrades project's objective is to consolidate data from both City and external sources, and create GIS web applications for the management of construction within the Right-of-Way. The project includes development of GIS web applications for street construction projects, inspection/maintenance of utility appurtenances, and the City's Right-of-Way permit management system.

The cost of the agreement will be financed as follows:

<u>Source</u>	<u>Amount</u>
2011-12 Cash Capital	\$ 21,992.31
2013-14 Cash Capital	3,927.56
2015-16 Cash Capital	74,080.13
2015-16 Cash Capital	<u>50,000.00</u>
Total	\$150,000.00

Bergmann Associates was selected professional services through a request for proposal process, which is described in the attached summary. The agreement shall extend until three (3) months after completion of contracted professional services.

The project will begin spring of 2019 and will be complete summer 2019. The project will result in the creation and/or retention of the equivalent of 1.6 full-time jobs.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Attachment No. AS-6

Ordinance No. 2019-12  
(Int. No. 14)

**Authorizing an agreement for Geographic Information System capability upgrades**

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 Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C. in the maximum amount of \$150,000 for Geographic Information System web application development services. Said amount shall be funded from 2011-12 Cash Capital (\$21,992.31), 2013-14 Cash Capital (\$3,927.56), and 2015-16 Cash Capital (\$124,080.13). The term of the agreement shall be 3 months after completion and acceptance of a two year guarantee inspection of the Project.

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. 2019-13

Re: Agreement – James A. Cloar, Roc the Riverway Management Entity Study

Council Priority: Jobs and Economic Development and Creating and Sustaining a Culture of Vibrancy

Transmitted herewith for your approval is legislation related to the Roc the Riverway Management Entity Study. This legislation will:

1. Authorize the Mayor to enter into agreements with Empire State Development necessary to participate in and administer the project; and,
2. Amend the 2018-19 Budget of Undistributed for the receipt and use of \$20,000 in anticipated reimbursements from Empire State Development to finance a portion of the Project, and;
3. Establish \$40,000 as maximum compensation for a professional services agreement with James A. Cloar (371 Channelside Walk Way, #904, Tampa, FL 33602) for urban management advisory services related to the project.

The Roc the Riverway Management Entity Study will consist of two phases. The first phase will evaluate and recommend a preferred organizational structure for a management entity that will, at a minimum, oversee maintenance and programming of the new or enhanced public spaces along the Genesee riverfront that are

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included in the Roc the Riverway initiative. The second phase will assist the City and project partners with the establishment and activation of the Management Entity.

The Roc the Riverway initiative is a bold and progressive plan to revitalize the City's Genesee Riverfront. It represents years of planning and community engagement involving many riverfront projects, culminating in a cohesive vision for improving our City's most important natural asset. In February 2018, Governor Cuomo announced an initial commitment of \$50,000,000 to implement the first phase of this vision. The Management Entity Study is one of the first projects funded through the first phase.

James A. Cloar was selected to provide the necessary urban management advisory services through a sole source procurement, justification for which is described in the attached summary. The term of the agreement shall terminate six (6) months after successful completion of the project scope.

The cost of the agreement will be financed from the 2018-19 Undistributed Budget as amended herein. The project will begin in late January 2019, with completion in May 2019.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Attachment No. AS-7

Ordinance No. 2019-13  
(Ord. No. 15)

### **Authorizing agreements and funding for a ROC the Riverway Management Entity Study**

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 Urban Development Corporation, doing business as Empire State Development ("ESD"), for the receipt and use of a grant of \$20,000, which is hereby appropriated to conduct a Management Entity Study to evaluate and recommend a preferred organizational structure for managing the maintenance and programming of the new or enhanced public spaces to be included in the ROC the Riverway initiative (the "Study"). The term of the agreement shall continue until 6 months after the completion of the Study scope.

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 for Undistributed Expense by \$20,000 to reflect the receipt of the ESD Study grant appropriated in Section 1 herein.

Section 3. The Mayor is hereby authorized to enter into a professional services agreement in the amount of \$40,000 with James A. Cloar of Tampa, Florida to provide urban management advisory services for the Study. The agreement shall be funded from the 2018-19 Undistributed Expense Budget, as amended in Section 2 herein. The term of the agreement shall continue until 6 months after the completion of the Study scope.

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

Section 5. This ordinance shall take effect immediately.

Passed by the following vote:

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

Nays: Councilmember Clifford -1.

TO THE COUNCIL

Ladies and Gentlemen:

Ordinance No. 2019-14  
Re: Bond Authorization - 2019 Water Main  
Cleaning and Cement Lining Project of  
the Distribution System Water Main  
Renewal Program

Transmitted herewith for your approval is legislation authorizing the issuance of bonds totaling \$1,050,000 and appropriating the proceeds thereof to fund a portion of the 2019 Water Main Cleaning and Cement Lining Project.

The project will rehabilitate approximately 4.5 miles of City water mains. This rehabilitation method consists of mechanically cleaning the interior of the existing water mains and installing a corrosion-resistant cement lining to restore hydraulic capacity, improve available fire flows and water quality and to extend the useful life of the mains. The cost to rehabilitate a water main by cement lining is approximately 20% of the cost required to replace a water main.

The total cost of the project is estimated to be \$2,000,000. The balance of funding will be \$450,000 from 2017-18 Cash Capital and \$500,000 from 2018-19 Cash Capital.

A list of the affected streets and a map of the area are attached. Construction is scheduled to begin this spring and be completed by the fall. Project inspection will be performed by Water Bureau personnel.

This project results in the creation and/or retention of the equivalent of 21 full-time jobs.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Ordinance No. 2019-14  
(Int. No. 16, as amended)

**Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$1,050,000 Bonds of said City to finance a portion of the City's 2019 Water Main Cleaning and Cement Lining Project of the Distribution System Water Main Renewal Program**

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 cost of rehabilitating, mechanically cleaning and installing an anti-corrosion lining for approximately 4.5 miles of water mains through the City's 2019 Water Main Cleaning and Cement Lining Project of the Distribution System Water Main Renewal Program, including the mains beneath portions of those streets designated on the attached Schedule A (the "Project"). The estimated maximum cost of said class of objects or purposes, including preliminary costs and costs incidental thereto and the financing thereof, is \$2,000,000. The plan of financing includes the issuance of \$1,050,000 bonds of the City, which amount is hereby appropriated for the Project, \$450,000 in 2017-18 Cash Capital, \$500,000 in 2018-19 Cash Capital 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 \$1,050,000 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 \$1,050,000. 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. 1. of the Law, is forty (40) 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.

Schedule A

2019 Proposed Cleaning and Lining Streets					
Water Main	From	To	Size (IN)	Length (LF)	Year
Alameda St.	Lake Av.	Raines Pk.	6	1482	1896
Alameda St.	Raines Pk.	Dewey Av.	8	633	1910
Astor St.	Ridgeway Av.	Flower City Pk.	6	318	1902
Birr St.	Lake Av.	Raines Pk.	6	790	1889
Bizz St.	Raines Pk.	Dewey Av.	6	970	1891
Bryan St.	Pierpont St.	Dewey Av.	6	490	1883
Burke Ter.	Augustine St.	Birr St.	6	250	1889
Daisy St.	Flower City Pk.	North	6	318	1908
Eldorado Pl.	Pierpont St.	Lake View Ter.	8	310	1811
Electric Av.	Dewey Av.	Lily St.	8	2553	1910
Electric Av.	Raines Pk.	Dewey Av.	6	1270	1898
Fairview Hgts	Lake View Pk.	Birr St.	6	876	1899
Flower City Park	Primrose St.	Lily St.	8	1680	1899
Kislingbury St.	Pierpont St.	Dewey Av.	6	485	1896
Lake View Pk. (North main)	Lake Av.	Pierpont St.	6	1333	1887
Lake View Pk. (South main)	Lake Av.	Pierpont St.	6	1362	1886
Lake View Pk. (South main)	Pierpont St.	Dewey Av.	8	490	1886
Lakeview Ter.	Lake View Pk.	Eldorado Pl.	6	680	1907
Magee Av.	Lake Av.	Dewey Av.	6	2390	1899
Marigold St.	Ridgeway Av.	Flower City Pk.	8	336	1910
Pierpont St.	Driving Park Av.	Augustine St.	6	1877	1887
Raines Pk.	Flower City Pk.	Clay Av.	8	384	1911
Selye Ter.	Lake Av.	Pierpont St.	6	1370	1887
<b>TOTAL FOOTAGE</b>				<b>25050</b>	

Totals (LF)	
6"	16261
8"	8789
	25050

<b>2019 Proposed Cleaning and Lining Streets</b>					
<u>Water Main</u>	<u>From</u>	<u>To</u>	<u>Size (IN)</u>	<u>Length (LF)</u>	<u>Year</u>
<u>Alameda St.</u>	<u>Lake Av.</u>	<u>Raines Pk.</u>	<u>6</u>	<u>1482</u>	<u>1896</u>
<u>Alameda St.</u>	<u>Raines Pk.</u>	<u>Dewey Av.</u>	<u>8</u>	<u>633</u>	<u>1910</u>
<u>Aster St.</u>	<u>Ridgeway Av.</u>	<u>Flower City Pk.</u>	<u>6</u>	<u>318</u>	<u>1902</u>
<u>Birr St.</u>	<u>Lake Av.</u>	<u>Raines Pk.</u>	<u>6</u>	<u>790</u>	<u>1889</u>
<u>Birr St.</u>	<u>Raines Pk.</u>	<u>Dewey Av.</u>	<u>6</u>	<u>970</u>	<u>1891</u>
<u>Bryan St.</u>	<u>Pierpont St.</u>	<u>Dewey Av.</u>	<u>6</u>	<u>490</u>	<u>1883</u>
<u>Burke Ter.</u>	<u>Augustine St.</u>	<u>Birr St.</u>	<u>6</u>	<u>250</u>	<u>1889</u>
<u>Daisy St.</u>	<u>Flower City Pk.</u>	<u>Ridgeway Av.</u>	<u>6</u>	<u>318</u>	<u>1908</u>
<u>Eldorado Pl.</u>	<u>Pierpont St.</u>	<u>Lakeview Ter.</u>	<u>8</u>	<u>310</u>	<u>1811</u>
<u>Electric Av.</u>	<u>Dewey Av.</u>	<u>Lily St.</u>	<u>8</u>	<u>2553</u>	<u>1910</u>
<u>Electric Av.</u>	<u>Raines Pk.</u>	<u>Dewey Av.</u>	<u>6</u>	<u>1270</u>	<u>1898</u>
<u>Fairview Hgts</u>	<u>Lake View Pk.</u>	<u>Birr St.</u>	<u>6</u>	<u>876</u>	<u>1899</u>
<u>Flower City Park</u>	<u>Primrose St.</u>	<u>Lily St.</u>	<u>8</u>	<u>4080</u>	<u>1899</u>
<u>Kislingbury St.</u>	<u>Pierpont St.</u>	<u>Dewey Av.</u>	<u>6</u>	<u>485</u>	<u>1896</u>
<u>Lake View Pk. (North main)</u>	<u>Lake Av.</u>	<u>Pierpont St.</u>	<u>6</u>	<u>1333</u>	<u>1887</u>
<u>Lake View Pk. (South main)</u>	<u>Lake Av.</u>	<u>Pierpont St.</u>	<u>6</u>	<u>1362</u>	<u>1886</u>
<u>Lake View Pk. (South main)</u>	<u>Pierpont St.</u>	<u>Dewey Av.</u>	<u>8</u>	<u>490</u>	<u>1886</u>
<u>Lakeview Ter.</u>	<u>Lake View Pk.</u>	<u>Eldorado Pl</u>	<u>6</u>	<u>680</u>	<u>1907</u>
<u>Magee Av.</u>	<u>Lake Av.</u>	<u>Dewey Av.</u>	<u>6</u>	<u>2390</u>	<u>1899</u>
<u>Marigold St.</u>	<u>Ridgeway Av.</u>	<u>Flower City Pk.</u>	<u>8</u>	<u>339</u>	<u>1910</u>
<u>Pierpont St.</u>	<u>Driving Park Av.</u>	<u>Augustine St.</u>	<u>6</u>	<u>1877</u>	<u>1887</u>
<u>Raines Pk.</u>	<u>Flower City Pk.</u>	<u>Clay Av.</u>	<u>8</u>	<u>384</u>	<u>1911</u>
<u>Selye Ter.</u>	<u>Lake Av.</u>	<u>Pierpont St.</u>	<u>6</u>	<u>1805</u>	<u>1887</u>
<b><u>TOTAL FOOTAGE</u></b>	-	-	-	<b><u>25485</u></b>	-

<u>Totals (LF)</u>	
<u>6"</u>	<u>16696</u>
<u>8"</u>	<u>8789</u>

25485

Strikeout indicates deleted text, new text is underlined.

Passed unanimously.



January 15, 2019

TO THE COUNCIL  
Ladies and Gentlemen:

Ordinance No. 2019-15  
Re: Bond Authorization - 2019 Water  
Main Cured In Place Pipe Project of  
the Distribution System Water Main  
Renewal Program

Transmitted herewith for your approval is legislation authorizing the issuance of bonds totaling \$607,000 and appropriating the proceeds thereof to fund a portion of the 2019 Cured In Place Pipe (CIPP) Project.

The CIPP project will structurally rehabilitate 0.9 miles of deteriorated water mains on the following streets:

<b>Street Name</b>	<b>Limits</b>	<b>Rehabilitation Reason</b>
Lexington Ave	Mt Read Blvd to 1500' E/ Mt Read Blvd	7 Water Main Breaks Years: 1983 - 2018
Mt Read Blvd - East Outer Drive	Lexington Ave to Dead End South	5 Water Main Breaks Years: 1989 - 2014
Perinton Street	Ridgeway Ave to Wheatland St	5 Water Main Breaks Years: 2000 - 2017
Chestnut Street (H)	Court St to James St	6 Water Main Breaks Years: 2004 - 2018
Aqueduct Street (H)	E. Main St to Broad St	3 Water Main Breaks Years: 2008 - 2009

This is a trenchless rehabilitation process where a certified installer inserts a felt tube impregnated with a polymer resin into the existing water main. After the material has cured it forms a fully structural close fitting liner pipe within the existing water main, thus extending its useful life.

The total cost of this project is estimated to be \$1,200,000. The balance of funding will be \$300,000 from 2017-18 Cash Capital and \$293,000 from 2018-19 Cash Capital.

Construction is scheduled to begin this spring and be completed by the fall.

This project results in the creation and/or retention of the equivalent of 13 full-time jobs.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Attachment No. AS-8

Ordinance No. 2019-15  
(Int. No. 17)

**Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$607,000 Bonds of said City to finance a portion of the City's 2019 Cured in Place Pipe Project of the Distribution System Water Main Renewal Program**

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 cost of structural rehabilitation of approximately 0.9 miles of deteriorated water mains through the City's 2019 Cured in Place Pipe Project of the Distribution System Water Main Renewal Program, including mains beneath the portions of those streets designated on the attached Schedule A (the "Project"). The estimated maximum cost of said class of objects or purposes, including preliminary costs and costs incidental thereto and the financing thereof, is \$1,200,000. The plan of financing includes the issuance of \$607,000 bonds of the City, which amount is hereby appropriated for the Project, \$300,000 in 2017-18 Cash Capital, \$293,000 in 2018-19 Cash Capital 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 \$607,000 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 \$607,000. 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. 1. of the Law, is forty (40) 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.

**Schedule A**

<b>Street Name</b>	<b>Limits</b>
Lexington Ave	Mt Read Blvd to 1500' E/ Mt Read Blvd
Mt Read Blvd - East Outer Drive	Lexington Ave to Dead End South
Perinton Street	Ridgeway Ave to Wheatland St
Chestnut Street (H)	Court St to James St
Aqueduct Street (H)	E. Main St to Broad St

Passed unanimously.

January 15, 2019

TO THE COUNCIL

Ladies and Gentlemen:

Ordinance No. 2019-16  
Re: Bond Authorization – 2019 Water Main  
Extensions and Improvements Project  
of the Distribution System Water Main  
Renewal Program

Transmitted herewith for your approval is legislation authorizing the issuance of bonds totaling \$1,250,000 and appropriating the proceeds thereof to fund a portion of the 2019 Water Main Extensions and Improvements Project.

This project will replace 6,400 feet of deteriorated and deficient water mains on the following streets:

<b>Street Name</b>	<b>Limits</b>	<b>Replacement Reason</b>
Castlebar Road	S. Winton Rd – Hillside Ave.	5 Water Main Breaks Years: 1999 - 2017
Westchester Avenue	Longview Terr. – Culver Road	4 Water Main Breaks Years: 1994 - 2015
Grand Avenue	Webster Ave. – Baldwin St.	4 Water Main Breaks Years: 1989 - 2010
Packard Street	E. Main St. – Maxson St.	3 Water Main Breaks Years: 1992 - 2015
Gorsline Street	Lake Ave. – Maplewood Dr.	3 Water Main Breaks Years: 1983 - 2012
Longview Terrace	Bay St. – Rocket St.	4 Water Main Breaks Years: 1982 - 2016

The total cost of the project is estimated to be \$2,400,000. The balance of funding will be \$550,000 from 2017-18 Cash Capital and \$600,000 from 2018-19 Cash Capital.

Construction is scheduled to begin this spring and be completed by the fall. Project inspection will be performed by Water Bureau personnel.

This project results in the creation and/or retention of the equivalent of 26 full-time jobs.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Attachment No. AS-9

Ordinance No. 2019-16  
(Int. No. 18)

**Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$1,250,000 Bonds of said City to finance water main extensions for the City's 2019 Water Main Extensions and Improvements Project of the Distribution System Water Main Renewal Program**

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 cost of replacing approximately 6,400 feet of City water main and lines, including mains and lines beneath the portions of those streets designated on the attached Schedule A (the "Project"). The estimated maximum cost of said class of objects or purposes, including preliminary costs and costs incidental thereto and the financing thereof, is \$2,400,000. The plan of financing includes the issuance of \$1,250,000 bonds of the City, which amount is hereby appropriated for the Project, \$550,000 from 2017-18 Cash Capital, \$600,000 from 2018-19 Cash Capital 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 \$1,250,000 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 \$1,250,000. 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. 1 of the Law, is forty (40) 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.

**Schedule A**

<b>Street Name</b>	<b>Limits</b>
Castlebar Road	S. Winton Rd – Hillside Ave.
Westchester Avenue	Longview Terr. – Culver Road
Grand Avenue	Webster Ave. – Baldwin St.
Packard Street	E. Main St. – Maxson St.
Gorsline Street	Lake Ave. – Maplewood Dr.
Longview Terrace	Bay St. – Rocket St.

Passed unanimously.

TO THE COUNCIL  
Ladies and Gentlemen:

INTRODUCTORY NO. 10  
Re: Pavement Width Changes- Atlantic Avenue at Merriman Street - Safety Improvements Project

Council Priority: Creating and Sustaining a Culture of Vibrancy

January 15, 2019

Transmitted herewith for your approval is legislation related to changes in pavement width required for the Atlantic Avenue at Merriman Street Safety Improvements Project. This legislation will:

1. Authorize a reduction in pavement width of six feet along the north side of Atlantic Avenue, beginning approximately 50 feet west of Merriman Street and extending to the intersection of Merriman Street; and
2. Authorize a reduction in pavement width of four feet along the north side of Atlantic Avenue, beginning at the intersection of Merriman Street and tapering east for approximately 90 feet to the existing curb line.

Residents of the neighborhood requested this change to improve pedestrian access to the playground located on the corner of Atlantic Avenue and Merriman Street. In addition to pavement width changes, this project includes new pavement markings, cross walks, drainage improvements, ADA accessible curb ramps, sidewalk improvements and lawn restoration. The project is being designed by the City's Department of Environmental Services, Bureau of Architecture and Engineering.

No additional right-of-way is required to accommodate the changes in pavement width.

A public meeting was held on March 29, 2017; the meeting minutes are attached. The pavement width changes were endorsed at the May 16, 2017 Traffic Control Board meeting.

It is anticipated the construction will be completed in summer 2019.

A public hearing on the pavement width changes is required.

Respectfully submitted,  
Lovely A. Warren  
Mayor

INTRODUCTORY 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.

HELD IN COMMITTEE.

TO THE COUNCIL

Ladies and Gentlemen:

INTRODUCTORY NO. 20

Re: Adoption of the City  
Telecommunications Code and  
Amendments to Chapter 104 of the  
City Code

Transmitted herewith for your approval is legislation enacting the Telecommunications Code and amendments to Chapter 104 of the City Code. This Code will establish procedures and requirements for telecommunications facilities installation to ensure compliance with federal telecommunications laws and regulations, ensure the safety of the right-of-way (ROW), encourage the deployment of innovative telecommunications infrastructure, protect against negative aesthetic impacts, and establish reasonable compensation rates for use of the right-of-way.

The provisions of this Telecommunications Code specifically:

- Establishes a clear, expedited procedure for approval of telecommunications facilities in the ROW
- Creates a registration requirement for all right-of-way participants which will provide valuable information about telecommunication facilities in the ROW
- Creates a Master Licensing Agreement (MLA) process for all telecommunications providers
- Establishes a uniform pricing regimen for telecommunications installations in the right-of-way
- Establishes the option of alternative or in-kind form of payments
- Establishes standard protections for the City in the form of required insurance, license and permit revocation provisions, security deposits, indemnification, penalties, and reimbursement of City costs

The Amendments to Chapter 104, of the City Code, Streets and Street Encroachments, Rules and Regulations for Work in the Right of Way (Ordinance # 82-56):

- Modernizes definitions and references
- Clarifies Legal Authority,
- Updates Policy Goals,
- Codifies applicability of Permit Requirements and Construction Guidelines.
- Establishes appropriate permit fees and levels of Financial Security.



January 15, 2019

Respectfully submitted,  
Lovely A. Warren  
Mayor

INTRODUCTORY NO. 20

**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 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 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 date that 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 date 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:

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, metrocells 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. 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 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. 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;
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 years with the option for 3 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 payments described above, provided that such payments result in an annual value substantially similar to the payments required by this section and that any such in-kind 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 Days from issuance of the notice of violation, to correct the violation or rebut the violation in writing to the City Engineer and request a hearing.

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.

**§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.**

Licenses 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 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~~<sup>640</sup>, and for additional tests the amount of ~~\$1,200~~<sup>850</sup>, 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~~ Wherever 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.
- D. 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.
- E. ~~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 1, 2019.

Strikeout indicates deleted text, new text is underlined.

HELD IN COMMITTEE.

January 15, 2019

By President Scott  
January 15, 2019

To the Council:

The **COMMITTEE OF THE WHOLE** recommends for **ADOPTION** the following entitled legislation:

Int. No. 21      Resolution confirming the appointment of the Fire Chief

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

Int. No. 19      Amending the City Charter with respect to the creation of a Police  
Accountability Board

Respectfully submitted,

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

**COMMITTEE OF THE WHOLE**  
Received, filed and published.

**TO THE COUNCIL**  
Ladies and Gentlemen:

Resolution No. 2019-1  
Re: Confirmation of the Chief, Rochester  
Fire Department

Transmitted herewith for your approval is legislation confirming, as required by the City Charter, the appointment of Willie A. Jackson as Chief, Rochester Fire Department.

Willie A. Jackson's resume is on file in the City Clerk's Office.



January 15, 2019

Respectfully submitted,  
Lovely A. Warren  
Mayor

Resolution No. 2019-1  
(Int. No. 21)

**Resolution confirming the appointment of the Fire Chief**

WHEREAS, the Mayor has appointed Willie A. Jackson to the position of Fire Chief, subject to confirmation by the City Council, and

WHEREAS, Council has reviewed the qualifications of the appointee and determined that he has the ability and qualifications to execute the duties and responsibilities of the office,

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Rochester hereby confirms the appointment of Willie A. Jackson as Fire Chief.

This resolution shall take effect immediately.

Passed unanimously.

TO THE COUNCIL  
Ladies and Gentlemen:

INTRODUCTORY NO. 19  
Re: Local Law to Create a Police  
Accountability Board

Transmitted herewith for your approval is legislation to amend the Charter of the City of Rochester with respect to creation of a Police Accountability Board "PAB".

The PAB is intended as a civilian-controlled process to review complaints of excessive force involving sworn members of the Rochester Police Department (RPD) while maintaining procedural due process safeguards to protect the rights of all parties involved. To accomplish this goal, the PAB shall have the power to investigate and review complaints of excessive force against RPD. The PAB may conduct a supplemental investigation and issue a recommendation of charges and discipline to the Chief of Police of RPD according to a disciplinary matrix established by the PAB.

The new PAB is structured to ensure a fair process through the following:

The legislation abolishes the Civilian Review Board, which was established by Council Resolution 92-40 and expanded by Resolution 95-08.

The legislation establishes that the PAB shall consist of nine members who shall be residents of the City of Rochester, appointed as follows: Three of the members will be recommended to the Mayor by the Police Accountability Board Alliance,

January 15, 2019

three of the members will be recommended to the Mayor by City Council, and three of the members will be appointed directly by the Mayor. Except for the first nine members appointed, members shall serve staggered three year terms and may be appointed for another three year term, for a total of six years, after which they shall not be reappointed for at least three years. The initial board shall also convene a search committee for an executive director who shall be a City employee upon appointment, who is appointed by the PAB and whose appointment shall be subject to confirmation by City Council.

Complaints of excessive force against RPD can be received directly by the PAB or Professional Standards Section (PSS) who shall each timely provide complaints to the other.

Following completion of a PSS investigation into allegations of the use of excessive force, PSS will provide the PAB with a complete copy of its investigative file and findings report. The PAB shall have thirty days upon receipt of the PSS investigative file to conduct a supplemental investigation regarding matters not addressed in the PSS investigative case file or in the PSS findings report, if any. The PAB shall have the power to issue subpoenas to compel testimony and the production of evidence. The PAB shall have the power to recommend charges and discipline to the Chief. Unless, with regard to a specific complaint, the statute of limitations as set forth in Civil Service Law § 75 is set to expire, the Chief shall take no action on a complaint, whether received directly by RPD or by the Board, until receipt of the Board findings and recommendations, or notice that the Board has recommended that no charges or disciplinary action is appropriate.

The PAB's recommendation of discipline shall be based upon a disciplinary matrix created by the PAB with clearly delineated penalty levels with ranges of sanctions. The PAB will consult with the Chief and the President of the Rochester Police Locust Club with respect to the disciplinary matrix, but will ultimately decide on the final version itself.

In addition, the PAB shall review and assess RPD policies and procedures related to the use of force and recommend changes to City Council and RPD. The PAB shall publish monthly reports on the City's website that contain statistical information related to complaints, supplemental investigations, and recommendations made. The PAB shall also publish annual reports on the City's website that contain information summarizing the PAB's policy recommendations and their implementation, and a summary of complainant and public survey data with an assessment of how the PAB's own policies could change to accommodate concerns.

Respectfully submitted,  
Lovely A. Warren  
Mayor

Attachment No. AS-10

INTRODUCTORY NO. 19

**AMENDING THE CITY CHARTER WITH RESPECT TO THE CREATION OF A 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 to the end of Article XII, Part C, the following new section:

§ 12-43. Police Accountability Board.

A. General Provisions.

(1) Purpose

Rochester City Council hereby intends to establish a civilian-controlled process to fairly review complaints of excessive force involving sworn members of the Rochester Police Department while maintaining procedural due process safeguards to protect the rights of sworn members of the Rochester Police Department and the individuals who come in contact with them. The Police Accountability Board shall be a mechanism to investigate and recommend charges and discipline for excessive force complaints and to review and assess Rochester Police Department patterns, practices, policies, and procedures. The Police Accountability Board shall ensure public accountability of the Rochester Police Department while preserving the integrity of the agency.

(2) Definitions.

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

Alliance

The Police Accountability Board Alliance, a group of community organizations that recommends community members to be appointed to the Board. The list of members of the Alliance is attached hereto and made a part hereof as Appendix A.

Board

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

Chief

The Chief of Police of RPD.

City

The City of Rochester, New York.

Complaint

A written or oral report alleging RPD excessive force made by any individual or group of individuals.

Council

The Rochester City Council.

Day(s)

Sequential day(s) according to the calendar unless otherwise specified as “business day(s).”

**Disciplinary Matrix**

A written, consistent, progressive, and transparent tool or rubric to recommend discipline for excessive force.

**Executive Director**

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

**Immediate Family**

A spouse, sibling, parent, child, stepchild, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, half-brother, half-sister, first cousin, domestic partner, and partner to a civil union, whether by blood, marriage, or adoption.

**PSS**

Professional Standards Section, which is the internal affairs department of RPD.

**RPD**

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

**Sanction**

Disciplinary action for RPD sworn member excessive force.

**Use of They, Their, Them**

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

**(3) Establishment and Jurisdiction.**

- (a) The Civilian Review Board, established by Council Resolution 92-40 and expanded by Resolution 95-08, is hereby abolished.
- (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 RPD and other local, state, and federal law enforcement agencies.
- (c) The Board shall be independent of RPD and shall review Complaints of excessive force against RPD or any of its officers.
- (d) As a condition of appointment and/or employment with the Police Accountability Board, all potential Board members and employees shall be subject to a complete background investigation analogous to that required of RPD sworn members assigned to PSS.

- (e) PSS shall provide to the Board a complete copy of the investigative file and findings report for each investigation of an excessive force allegation that is completed by PSS. The Board shall have the power to conduct a supplemental investigation and investigate matters not addressed in the PSS investigative case file or in the PSS findings report. During its investigation, the Board shall have the power to issue subpoenas to compel testimony and the production of evidence, and the power to recommend to the Chief charges and discipline for an RPD sworn member(s).
- (f) The Board shall establish a Disciplinary Matrix.
- (g) The Board shall review and assess RPD policies, procedures, patterns, practices and training pertaining to the use of force, and recommend changes to Council and RPD.
- (h) The Board shall maintain the confidentiality of any RPD personnel files, other records and information that are subject to New York State Civil Rights Law § 50-a.

(4) Board Composition, Appointment, Vacancy, and Removal.

- (a) The Police Accountability Board shall consist of nine members.
- (b) Members of the Board shall serve terms of three years except for the initial Board, which shall serve staggered terms, pursuant to Subsection A(4)(i)(iii) herein.
- (c) Members of the Board shall be residents of the City of Rochester and must be able to show proof of residency in the City for at least twelve months prior to being appointed 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 former (within the immediately preceding three year period) employed by RPD or any other local, state, or federal law enforcement agency.
- (f) Board members shall not be current or former (within the immediately preceding

three year period) City elected officials, elected officials of Monroe County and of any town or village located within Monroe County, candidates for elected office within Monroe County, including any town or village located within Monroe County, or Immediate Family of any incumbent elected official.

- (g) No practicing attorney or their Immediate Family who represents or has represented a plaintiff or defendant in a police misconduct lawsuit against RPD, the Chief or the Rochester Police Locust Club within the immediately preceding three year period, shall be a member of the Board.
  
- (h) Appointments to the Board shall be made by the Mayor, subject to Council confirmation, as follows:
  - i. Three of the members shall be recommended to the Mayor by the Alliance. If the Mayor does not appoint or Council does not confirm any one or more of the Alliance-recommended members, the Alliance shall recommend additional members until three Alliance-recommended members are appointed and confirmed.
  
  - ii. Three of the members shall be recommended to the Mayor by Council. If the Mayor does not appoint any of the Council-recommended members, the Council shall recommend additional members until three Council-recommended members are appointed.
  
  - iii. Three of the members shall be appointed directly by the Mayor and confirmed by Council.
  
- (i) Terms.
  - i. The first term of the initial Board commences when all nine Board members are appointed and its first year ends on the following June 30th.
  
  - ii. Members shall serve staggered three year terms and may be reappointed for another three year term, for a total of six years, after which, the member shall not be reappointed for at least three years.
  
  - iii. Except for the initial year, 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 years, except the first nine members appointed. Of the first

nine members appointed:

1. One Alliance designee, one Council designee and one Mayoral designee shall be appointed for terms of one year;
2. One Alliance designee, one Council designee and one Mayoral designee shall be appointed for terms of two years; and
3. One Alliance designee, one Council designee and one Mayoral designee shall be appointed for terms of three years.

(j) Vacancies.

After the initial nine-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 designated, appointed and confirmed by the same parties and in the same manner by which it was initially filled.

(k) Removal.

- i. A Board member seeking public office shall resign their seat at the time they announce their intent to seek public office.
- ii. A Board member who no longer resides in the City shall resign immediately.
- iii. The Mayor may remove any board member in accordance with Subsection 3-3(G) of the City Charter.

(5) Powers and Duties.

- (a) Following completion of a PSS investigation into allegations of the use of excessive force, the Board shall have the power to investigate matters not addressed in the PSS investigative case file or in the PSS findings report, if any. In exercising this supplemental investigative authority, the Board shall have the power to issue subpoenas to compel testimony and the production of evidence, and the power to recommend charges and discipline to the Chief for RPD sworn members.
- (b) The Board shall establish its Disciplinary Matrix for the purpose of making recommendations to the Chief. 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 excessive force and the number of prior sustained excessive force allegations. 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 pertaining to the use of force, and recommend changes to Council and RPD.
- (d) The Board and the Chief shall establish a cooperative relationship to ensure the orderly and efficient flow of information.
- (e) The Board shall accommodate limited English proficiency persons and persons with disabilities.
- (f) Initiation of Complaints.
  - i. Complaints may be accepted directly by both PSS and the Board. Notice of any Complaint received by either entity shall timely be provided to the other entity.
  - ii. The Board shall accept Complaints by telephone, in person, by mail, email or webform, whether signed or anonymous.
  - iii. Professional standards of confidentiality with regard to the written release of information and informed consent shall 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 § 50-a.
  - iv. The Board may advise a complainant of 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.
  - v. Complainants shall be apprised by the Board of the procedure for filing a Notice of Claim with the Corporation Counsel.
- (g) The Board shall have the limited power to investigate any and all conduct, acts or omissions by any RPD sworn member related to an excessive use of force Complaint after the conclusion of an investigation conducted by PSS, as follows.



- i. Within five business days following completion of its investigation, 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 business days of the acquisition of the evidence. If PSS makes any findings with respect to the Complaint, it shall send all such findings to the Board within five (5) business days.
- ii. Following the receipt of the investigative case file and/or findings from PSS, the Board shall review the Complaint, the PSS investigative case file and, to the extent PSS made any findings, a PSS findings report.
- iii. The Board's investigative power is supplemental and limited to those matters that the Board determines are not addressed in the PSS investigative case file or in the PSS findings report.
- iv. The Board may issue subpoenas pertaining to a specific Complaint, as limited by Subsection A(5)(g)(iii) herein, at any time during its investigation of that Complaint. Such subpoenas may compel the attendance of witnesses, RPD officials and employees, and/or other persons, and require the production of records and other materials, including records of 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 shall be enforced in accordance with Article 23 of the New York State Civil Practice Law and Rules. RPD sworn members shall be notified of their rights in accordance with the U.S. Supreme Court decision in *Garrity v. New Jersey* (1967) before any testimony is taken from them.
- v. 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.
- vi. All sworn members of RPD shall retain their rights as set forth in that section of the collective bargaining agreement between the City and the Rochester Police Locust Club concerning Department Investigations.
- vii. Within thirty days of the receipt of the PSS investigative file, the Board shall complete its review of all materials, conduct its supplemental investigation, if any, and issue its findings and recommendations to the Chief.
- viii. Unless, with regard to a specific Complaint, the statute of limitations as set forth

in Civil Service Law § 75 is set to expire, the Chief shall take no action on a Complaint, whether received directly by RPD or by the Board, until receipt of the Board findings and recommendations, or notice that the Board has recommended that no charges or disciplinary action is appropriate. Nevertheless, the Chief shall retain the authority to suspend an RPD sworn member during the investigation and adjudication of a Complaint against RPD sworn member.

(h) Board Recommendations.

- i. Upon completion of the Board's review and supplementary investigation, if any, the Board shall make recommendations to the Chief as to charges and discipline, if any.
- ii. The Chief shall review the Board's recommendation of charges and discipline, and notify the Board, in writing, within ten business days as to whether or not the Chief is accepting and adopting the Board's recommendation. A copy of this written notice shall be provided to the Mayor and to Council. In the event the Chief does not accept the Board's recommendations, this notice shall set forth the rationale for rejecting the recommendation.

(i) Policy Assessment.

- i. At least annually, the Board shall review and assess RPD's policies, procedures, patterns and practices regarding use of force and recommend changes with input from the community.
- ii. The Board shall send its policy recommendations to the Chief, Council, and the Mayor and the Board shall publish them on the Board website.

(6) Officers and Staff.

- (a) At the initial Board's first meeting, the Board shall elect a Chairperson, by majority vote. Subsequently, the Board shall elect a Chairperson by majority vote, at the first meeting after July 1 of each year. No Board member shall serve as Chairperson for more than three consecutive years. The Chairperson shall be responsible to:
  - i. facilitate meetings of the Board; and
  - ii. establish committees of Board members as needed.

- (b) A quorum of seven Board members must be present to conduct Board business.
- (c) Board action shall be decided by a simple majority of all Board members.
- (d) 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.
- (e) Executive Director.
  - i. The Executive Director shall be a City employee upon appointment, who is appointed by the Board and whose appointment shall be subject to confirmation by Council.
  - ii. The Executive Director shall not be currently or formerly employed by RPD or any other local, state, or federal law enforcement agency, nor shall any of their Immediate Family be employed by 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 with such pending litigation, or be an attorney representing a person with such pending litigation.
  - iii. 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.
  - iv. The Board shall conduct an annual review of the performance of the Executive Director and may remove the Executive Director for good cause.
  - v. The Board shall be responsible, through the Executive Director and staff, for the daily administrative work of the Board.
  - vi. The Executive Director shall be responsible for hiring and supervising staff such as Investigators, Policy Analyst, Community Liaison, Administrative Assistant, and Transcriptionist. 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 RPD or any other local, state, or federal law enforcement agency.

(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:

- i. All relevant local, state, and federal laws;
- ii. implicit bias and anti-racism;
- iii. gender identity and sexuality;
- iv. disability rights, both physical and mental disabilities or illnesses;
- v. classism, poverty and homelessness;
- vi. trauma-informed policing and crisis intervention, including RPD employee well-being;
- vii. patterns, practices, policies, and procedures of RPD;
- viii. Police Accountability Board Law;
- ix. civilian oversight history, models, trends, theories, standards and best practices;
- x. how to conduct independent and objective civilian complaint investigations, e.g. interviewing, collection and preservation of evidence;
- xi. community outreach and public reporting;
- xii. discipline and remediation, education-based discipline, early warning systems, processes of arbitration/grievance.

(b) Community Outreach.

- i. The Board shall conduct outreach to community members, groups, and nonprofit organizations. The Board shall accommodate limited English proficiency persons and persons with disabilities.
- ii. 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 other government buildings, and on the City, RPD, and Board websites.
- iii. 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 about the Board process and its work.
- iv. 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 sworn members, and publicize the procedure for filing a Complaint with the Board.
- v. 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.
- vi. The Board shall survey complainants and the public to assess satisfaction and identify concerns with the Board's investigative and adjudicative processes.

(8) Retaliation Prohibited.

Retaliation against complainants, witnesses, the Board and its staff, and RPD employees, shall be prohibited. Retaliation includes but is not limited to: harassment, intimidation, stalking, threats and assaults.

(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. 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 this 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.

(10) Legal Representation.

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, as amended.

(11) Police Accountability Board Reports.

- (a) Findings of the Police Accountability Board shall be made available to the public on a monthly basis in statistical form related to three categories: Complaints, supplemental investigations, and recommendations made.
- (b) The Police Accountability Board shall not include in reports or otherwise release the names or other identifying information about complainants, victims, witnesses, RPD sworn members, or any other information that is subject to New York State Civil Rights Law § 50-a.
- (c) The Police Accountability Board shall publish an annual report that shall contain:
  - i. The recommendations related to changes in RPD patterns, practices, policies, and procedures;

- ii. Whether the prior year's recommended changes have been implemented; and
- iii. A summary of complainant and public survey data with an assessment of if and how Board policies should change to accommodate concerns.

(d) The monthly and annual reports shall be publicly available on the City's website.

(12) Audit and Evaluation.

- (a) The Board may, by majority vote, perform an audit, or direct that an audit be performed, to assess its investigation and adjudication of Complaints.
- (b) Every three years, an independent organization of Council's choosing shall conduct a formal 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.

(13) Budget.

- (a) The annual proposed budget of the Police Accountability Board shall provide for sufficient funding to carry out its powers and duties. The Board shall be funded through the budgetary process of the City, pursuant to Article VI of the Rochester City Charter, as amended. The Board budget shall be separate from, and independent of, the RPD budget.
- (b) 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.

(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.

- (15) The Mayor or Council may promulgate by-laws, rules, regulations, policies and procedures to carry out and give full effect to the provisions of this local law. Any such rules, regulations, policies and procedures shall be filed with the City Clerk.

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 Alliance Members

19th Ward Neighborhood Association  
Action for a Better Community  
Action Together Rochester  
African American Health Coalition  
American Baptist Churches of Rochester  
Antioch Missionary Baptist Church  
Baber AME Church  
Beechwood Neighborhood Association  
Black Student Leadership  
Catholic Family Center  
Changing of the Scenes Neighborhood Assn.  
Christians Witnessing for Palestine  
Church of the Assumption  
Church of the Epiphany  
Church Women United  
Citizen Action of New York  
Coalition for Police Reform  
Colgate Rochester Crozier Divinity School  
Dimitri House  
Downtown United Presbyterian Church  
DUPC Justice Team  
Empire Justice  
Enough Is Enough  
Facing Race, Embracing Equity  
First Unitarian Church  
First Universalist Church  
Flower City Parents Network  
Flying Squirrel Community Space  
Greater Rochester Community of Churches  
Hillside Children's Center  
Ibero American Action League  
Incarnate Word Lutheran Church  
Inner Faith Gospel Tabernacle  
International Socialists Organization  
Judicial Process Commission  
Latino Health Coalition  
Light the Way  
M.K. Gandhi Institute  
Metro Justice  
Mt. Hope Family Center  
Mt. Hope Neighborhood Association  
National Coalition Building Institute  
National Lawyers Guild of NJ/DE  
National Organization for Women, Rochester, NY



January 15, 2019

North East Area Development  
Partners in Restorative Initiatives  
Peace of Christ Parish  
Rochester ACTS  
Rochester Committee on Latin America  
Rochester Democratic Socialists of America  
Rochester Zen Center  
ROCitizen  
Rowe Photo  
Shades of Sisterhood  
Showing Up for Racial Justice  
Sisters of St. Joseph  
Sisters of Mercy  
Social Welfare Action Alliance  
South West Common Council  
Spiritus Christi Church  
St. Frances Xavier Cabrini Parish  
St. Joseph's House of Hospitality  
St. Monica's Church  
Sufi Order of Rochester  
Table 23  
Take Back the Land Teen Empowerment  
The Children's Agenda  
The Interfaith Alliance of Rochester  
Turning Points  
United Christian Leadership Ministry  
UR Students for a Democratic Society  
Urban League of Rochester  
Women's Initiative Supporting Healing

Any additional organization approved to join the Alliance by a duly adopted City Council Resolution; a list of such additional organizations shall be kept on file in the Office of the City Clerk

HELD IN COMMITTEE

The meeting was adjourned at 8:00 p.m.

HAZEL L. WASHINGTON  
City Clerk