

BIRMINGHAM CITY COMMISSION MINUTES
APRIL 08, 2019
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Patty Bordman called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL: Present: Mayor Bordman
Mayor Pro Tem Boutros
Commissioner DeWeese
Commissioner Harris
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman

Absent: none

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Ballard, City Attorney Kucharek, Police Chief Clemence, Planning Director Ecker, Deputy Treasurer Klobucar, City Engineer O'Meara, City Clerk Mynsberge, DPS Director Wood

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS

04-080-19 ANNOUNCEMENTS

Mayor Bordman announced:

- On Thursday, April 11 at 7:00 PM, the jointly sponsored Spring Lecture Series of the Birmingham Museum and Baldwin Public Library will return with the theme, "Birmingham, Then and Now." The second presentation of the series will focus on Birmingham's neighborhoods and their stories, presented by local historians Pam De Weese and George Gestchman.
- The DPS Open House will be held on May 4th, from 10:00 a.m. until 2:00 p.m., not on May 11th as printed on the City Calendar
- City Offices will be closed on Good Friday, April 19th.
- April 3, 2019 was the anniversary of the incorporation of the City Charter in 1933.

04-081-19 APPOINTMENT TO THE ARCHITECTURAL REVIEW COMMITTEE

Current member Christopher Longe was not present.

MOTION: Motion by Mayor Pro Tem Boutros:

To appoint Christopher Longe as a regular member to the Architectural Review Committee to serve a three-year term to expire April 11, 2022.

VOTE: Yeas, 7
 Nays, 0

City Manager Valentine announced he was removing Unfinished Business Item 5A from the agenda in order to provide the City Commission with additional information at a later date.

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

04-082-19 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Hoff Item B, Approval of the Special City Commission meeting minutes of March 26, 2019.
- Item E, Special Event Permit for 2019 Birmingham in Stitches
- Item H, Barnum Park Arch Landscape Enhancements

Commissioner DeWeese and Commissioner Harris noted they would abstain from voting on Items 4A and 4B because they were absent from the meetings of March 25, and March 26, 2019.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Boutros: To approve the Consent Agenda, with the exception of Items B, E, and H, and noting the abstentions of Commissioner DeWeese and Commissioner Harris from Items A and B.

ROLL CALL VOTE: Ayes: Mayor Bordman
 Mayor Pro Tem Boutros
 Commissioner DeWeese
 Commissioner Harris
 Commissioner Hoff
 Commissioner Nickita
 Commissioner Sherman

Nays: None

- A. Resolution approving the Regular City Commission meeting minutes of March 25, 2019.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated March 27, 2019 in the amount of \$533,099.76.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated April 3, 2019 in the amount of \$740,176.41.
- F. Resolution accepting the resignation of Dominick Pulis from the Parks and Recreation Board as an Alternate Member, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.
- G. Resolution approving the purchase of Larvicide material from Clarke Mosquito Control in an amount not to exceed \$9,454.08. Further, waiving the normal bidding requirements

based on the government regulated pricing for this type of material. Funds for this purchase will come from the Sewer Fund-Operating Supplies Account #590-536.002-729.0000.

- I. Resolution awarding the Bowers Street Water Main Replacement Project, Contract #2-19(W) to FDM Contracting, Inc., in the amount of \$727,291.25, to be charged to the following accounts:

Sewer Fund	590-536.001-981.0100
Water Fund	591-537.004-981.0100
Local Streets Fund	203-449.001-981.0100
Major Streets Fund	202-449.001-981.0100

contingent upon execution of the agreement and meeting all insurance requirements, and further approving the appropriation and amendment to the fiscal year 2018-2019 Major Streets Fund and Water Fund budget as follows:

Major Streets Fund

Revenues:

202-000.000-400.0000	Draw from Fund Balance (Credit)	\$(77,554)
202-000.000-583.0005	Oakland County Grant	<u>\$91,782</u>
Total Revenue		<u>\$14,228</u>

Expenditures:

202-449.001-981.0100	Capital Outlay – Engineering and Construction of Roads and Bridges	<u>\$14,228</u>
Total Expenditures		<u>\$14,228</u>

Water Fund

Revenues:

591-000.000-400.0000	Draw from Fund Balance	<u>\$136,390</u>
Total Revenue		<u>\$136,390</u>

Expenses:

591-537.004-981.0100	Public Improvement – Water Mains	<u>\$136,390</u>
Total Expenses		<u>\$136,390</u>

- J. Resolution authorizing the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and approving the liquor license request of The Morrie, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B), and request for a new SDM License with new Outdoor Service (1 Area), New Sunday Sales (AM and PM) and New Dance/Entertainment Permits located at 260 N Old Woodward, Birmingham, Oakland County, MI 48009.

Furthermore, pursuant to Birmingham City Ordinance, authorizing the City Clerk to complete the Local Approval Notice at the request of The Morrie, LLC approving the liquor license transfer request of The Morrie, LLC that requested a Class C License to be issued under MCL 436.1521(A)(1)(B), and request for a new SDM License with new

Outdoor Service (1 Area), New Sunday Sales (AM and PM) and New Dance/Entertainment Permits located at 260 N Old Woodward, Birmingham, Oakland County, MI 48009.

04-083-19 ITEM B. APPROVAL OF THE SPECIAL CITY COMMISSION MEETING MINUTES OF MARCH 26, 2019

Commissioner Hoff noted, in Attachment A, the slide titled "Ad Hoc Parking Development Committee (AHPDC)" contained an incorrect listing of the members of the AHPDC.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To approve the Special City Commission meeting minutes of March 26, 2019, as corrected.

VOTE: Yeas, 5
 Nays, 0
 Abstained, 2 (DeWeese, Harris)

04-084-19 ITEM E. SPECIAL EVENT PERMIT FOR 2019 BIRMINGHAM IN STITCHES

Planning Director Ecker explained the Public Arts Board meant to have the knitted pieces of Birmingham In Stitches displayed at the same time as Common Ground's Birmingham Street Art Fair (Art Fair). The project is meant to utilize the higher foot traffic generated by the Art Fair to increase public exposure to public works of art around Birmingham. The knitted pieces will remain up around the City through October 2019.

City Clerk Mynsberge reported that the Public Arts Board would be installing the knitted pieces on September 12, 2019 and September 13, 2019. The Art Fair will only be setting up in Shain Park on September 13, 2019, which allows the Public Arts Board to install their knitted pieces in Shain Park on September 12.

Commissioner Hoff said the Public Arts Board and the volunteers who knit the pieces are to be commended for their work.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:
To approve a request from the City of Birmingham Public Arts Board for a special event permit to hold the 2019 Birmingham in Stitches in Shain Park and on surrounding streetscapes, benches, parking meters, and trees from September 14th through October 5th, 2019, with setup on September 12th and 13th, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

VOTE: Yeas, 7
 Nays, 0

04-085-19 ITEM H. BARNUM PARK ARCH LANDSCAPE ENHANCEMENTS

Mayor Bordman thanked Jeffrey and Laurie Baker for their contribution towards the enhancement of Barnum Park.

DPS Director Wood explained that the first three sketches were from the original 2017 concept. The fourth plan was the one that was ultimately put out to bid, and the two alternate plans yielded bids that were too high in cost to pursue at this time. The planned benches will be the traditional green Birmingham benches. The planter boxes adjacent to the benches will be constructed from Barnum bricks. Brixnstone, LLC will be building the planter boxes.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese:
To approve the purchase and installation of Barnum Park Brick Planters project from Brixnstone, LLC, as described in Attachment A, in an amount not to exceed \$20,450.00, to be located at Barnum Park Arch, as part of the Barnum Park Arch Landscape Enhancements. Funds are available from the Barnum Park Donations account #401-751.000-674.0004 in the amount of \$12,000.00 and Parks Other Contractual Services account #101.751.000-811.0000 in the amount of \$8,450.00 for these services. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

VOTE: Yeas, 7
 Nays, 0

V. UNFINISHED BUSINESS

04-086-19 E. MAPLE RD. & ETON RD. INTERSECTION – MULTI-MODAL TRANSPORTATION BOARD RECOMMENDATIONS

Planning Director Ecker presented the item, noting for the South Eton Rd. intersection (west of CN Railroad) the Multi-Modal Transportation Board (MMTB) recommends pedestrian improvement Option 1, including widening of the west side S. Eton Rd. sidewalk from Maple Rd. to Yosemite Blvd., installation of a splitter island for the south side of the intersection, and sidewalk enhancements at the southwest corner.

For the North Eton Intersection (east of CN Railroad) the MMTB recommends traffic signal modifications at the Maple Rd. and N. Eton Rd. intersection providing a protected phase for traffic exiting the northbound Whole Foods driveway, as well as associated traffic signal timing changes, which will reduce the ongoing conflict between northbound and southbound vehicles in this intersection. This includes the installation of an additional traffic signal for the northbound traffic within this intersection at an estimated cost of \$8,550.

The majority of the Commission was in favor of restricting left turns for large trucks from westbound Maple to southbound Eton, in contrast with the MMTB's recommendation to allow those turns. The majority of the Commission also was in favor of a larger pedestrian island and more curb space on the sidewalks at the pedestrian crosswalk.

Commissioners emphasized their concern for pedestrian safety.

Planning Director Ecker summarized the Commission's direction as follows:

- Eliminate the left turn of WB-65 westbound trucks.
- Redesign the whole area with the WB-50 and the next smaller sized truck in mind.
- Explore reducing the width of that right turn lane dependent on whether the lane could still accommodate medium-sized westbound trucks turning right.

- Add landscaping on the pedestrian island, explore the installation of rolling curbs on the pedestrian island if it would allow the island to be made larger, and explore the installation of rolling curbs on the sidewalks.

Commissioner Nickita requested that the next drawings include the vegetation on the pedestrian island so the Commission can see how it will be implemented.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Nickita: To direct staff to proceed with the traffic signal timing improvement at the Maple Rd. and N. Eton Rd. intersection Alternate 3, as recommended by the Multi-Modal Transportation Board, to provide a separate protected phase for northbound traffic entering this intersection, at an estimated cost of \$8,550, directing staff to proceed with the necessary changes through the Road Commission for Oakland County, and, further, approving the appropriation and amendment to the fiscal year 2018-2019 Major Streets Fund budget as follows:

Major Streets Fund

Revenues:

202-000.000-400.0000	Draw from Fund Balance	<u>\$8,550</u>
Total Revenue		<u>\$8,550</u>

Expenditures:

203-303.001-971.0100	Traffic Controls – Machinery & Equipment	<u>\$8,550</u>
Total Expenditures		<u>\$8,550</u>

Chief Clemence reported there has been no significant increase in accidents since Whole Foods opened.

VOTE: Yeas, 7
 Nays, 0

04-087-19 PIERCE ST. ALLEY PAVING – PIERCE ST. TO E. MERRILL ST. SPECIAL ASSESSMENT DISTRICT DESIGN MODIFICATIONS

City Engineer O'Meara presented the item.

Commissioner Nickita suggested the contractor should be asked to prepare samples of aggregate so the City is best equipped to select the appropriate aggregate composition.

City Engineer O'Meara confirmed that could be done.

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Nickita: To approve the conceptual design of the Pierce Alley Paving Project, dated March 29, 2019.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese: To amend the motion to add "and to direct staff to revise the scope of work requirement to have samples provided for review of color and texture."

VOTE ON AMENDMENT: Yeas, 7

Nays, 0

VOTE ON MOTION AS AMENDED:

To approve the conceptual design of the Pierce Alley Paving Project, dated March 29, 2019, and to direct staff to revise the scope of work requirement to have samples provided for review of color and texture.

VOTE: Yeas, 7
Nays, 0

VI. NEW BUSINESS

04-088-19 PUBLIC HEARING TO CONSIDER CONFIRMATION OF PIERCE STREET ALLEY SPECIAL ASSESSMENT DISTRICT

Mayor Bordman opened the public hearing at 9:12 p.m.

Deputy Treasurer Klobucar presented the item.

City Engineer O'Meara confirmed for Commissioner Hoff that the last four properties listed will also be assessed at \$310 per square foot, not the \$300 per square foot inadvertently indicated in the list.

City Manager Valentine noted these were estimates, not the final assessment amounts. The authorization allows for up to a 25% difference between the estimates and the final assessment amounts. Thus, the assessment rates for the last four properties listed will be adjusted appropriately, since the difference between \$300 per square foot and \$310 per square foot is within the allowed margin of difference.

City Manager Valentine advised the Commission that they could elect to pass the motion before them this evening since the authorization includes that leeway, with the understanding that Staff would return to the Commission should any final assessment amount exceed the estimated amount by over 25%.

Mayor Bordman closed the public hearing at 9:16 p.m.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Harris:
To confirm Special Assessment Roll No. 889, to defray the cost of construction of new concrete and exposed aggregate concrete pavement on Pierce Street Alley-Pierce Street to E Merrill Street:

WHEREAS, Special Assessment Roll, designated Roll No. 889, has been heretofore prepared for collection; and

WHEREAS, notice was given pursuant to Section 94-7 of the City Code, to each owner or party-in-interest of property to be assessed; and

WHEREAS, the Commission has deemed it practicable to cause payment of the cost thereof to be made at a date closer to the time of construction; and

Commission Resolution 03-071-19 provided it would meet this 8th day of April, 2019 for the sole purpose of reviewing the assessment roll; and

WHEREAS, at said hearing held this April 8, 2019, all those property owners or their representatives present have been given an opportunity to be heard specifically concerning costs appearing in said special assessment roll as determined in Section 94-9 of the Code of the City of Birmingham.

NOW, THEREFORE, BE IT RESOLVED, that Special Assessment Roll No. 889 be in all things ratified and confirmed, and that the City Clerk be and is hereby instructed to endorse said roll, showing the date of confirmation thereof, and to certify said assessment roll to the City Treasurer for collection at or near the time of construction of the improvement.

BE IT FURTHER RESOLVED, that special assessments shall be payable in ten (10) payments as provided in Section 94-10 of the Code of the City of Birmingham, with an annual interest rate of six and one half percent (6.5%) on all unpaid installments.

SAD 889 Assessment Roll		
Pierce Street Alley		
Parcel Number	Property Address	Amount
19-36-201-001	135 Pierce Street	\$ 37,825.48
19-36-201-020	165 Pierce Street	\$ 38,612.00
19-36-201-005	235 Pierce Street	\$ 7,948.58
19-36-201-006	237 Pierce Street	\$ 20,543.35
19-36-201-022	247 Pierce Street	\$ 11,243.80
19-36-201-009	263 Pierce Street	\$ 22,000.00
19-36-201-010	277 Pierce Street	\$ 15,447.30
19-36-201-011	100 S Old Woodward Ave	\$ 18,290.00
19-36-201-012	106 S Old Woodward Ave	\$ 5,859.00
19-36-201-013	114 S Old Woodward Ave	\$ 22,393.69
19-36-201-014	124 S Old Woodward Ave	\$ 13,254.00
19-26-201-015	138 S Old Woodward Ave	\$ 18,249.00
19-36-201-021	154 S Old Woodward Ave	\$ 12,000.00
19-36-201-019	251 E Merrill Street	\$ 54,927.00
		\$ 298,593.20

VOTE: Yeas, 7
 Nays, 0

**04-089-19 PUBLIC HEARING OF NECESSITY FOR QUARTON LAKE
 SUBDIVISION – PHASE I WATER & SEWER LATERAL SPECIAL
 ASSESSMENT DISTRICT**

Mayor Bordman opened the public hearing at 9:17 p.m.

City Manager Valentine reported City Attorney Currier advised that this item be continued to the Commission's April 22, 2019 meeting in order to allow City Staff time to review the State's newly revised lead and copper rules.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Nickita:

To continue the public hearing until April 22, 2019.

VOTE: Yeas, 7
 Nays, 0

**04-090-19 CITY-OWNED FIBER OPTIC NETWORK LEASE AGREEMENT &
ORDINANCE, LEASE RATE STRUCTURE, AGREEMENT WITH
TELECOMMUNICATIONS CONSULTANT**

City Planner O'Meara presented the item.

City Attorney Kucharek confirmed that state and federal laws were considered in the ordinance.

The telecommunications provider pays the listed fees to the City on an annual basis. The businesses receiving the installation would be charged by the provider. Each property owner who requested a connection paid \$1,500 to the City for the conduit installation. Each microduct conduit can allow access for up to seven unique providers.

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Sherman:
To amend Chapter 30, Cable Communications, Article X, Telecommunications Rights-of- way, to add Section 308, Telecommunications Infrastructure: City Conduit System. (*Ordinance appended to these minutes as Attachment A.*)

AND

To approve the standard form Conduit Lease Agreement with future lessees of the fiber optic network system as now installed and to be expanded in the Central Business District.

AND

To approve modifications to the Fee Schedule under the Engineering section, as it pertains to rental fees and application fees for telecommunication systems wishing to use the City's new Fiber Optic Network.

AND

To approve the professional services agreement with Turnkey Network Solutions for services described in the letter of February 13, 2019 for a three-year period.

VOTE: Yeas, 7
 Nays, 0

**04-091-19 RESOLUTION TO MEET IN CLOSED SESSION PURSUANT TO
SECTION 8(E) OF THE OPEN MEETINGS ACT**

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
to meet in closed session to review pending litigation in the matter of Darakjian v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275.

(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)

ROLL CALL VOTE: Ayes: Mayor Bordman
 Mayor Pro Tem Boutros
 Commissioner DeWeese
 Commissioner Harris
 Commissioner Hoff
 Commissioner Nickita
 Commissioner Sherman

 Nays: None

VII. REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda were addressed earlier in the meeting.

VIII. COMMUNICATIONS

Letter from Michael Schneider regarding Greenwood Cemetery monuments in Section F North.

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

04-092-19 Michael Schneider

Michael Schneider addressed the Commission regarding the matter of above-ground monuments in Section F North of Greenwood Cemetery. Mr. Schneider previously addressed the Commission at their March 25, 2019 meeting in regards to the same matter.

Mr. Schneider spoke in response to a letter sent by City Clerk Mynsberge that detailed a survey conducted among people who owned plots in Section F North of the Cemetery. The letter explained that with eight owners responding, six were in favor of the change to allow above-ground monuments, and two were not.

Mr. Schneider suggested that the families of people buried in Section F North of the Cemetery would likely have preferred flush markers to above-ground markers since they chose plots in that section. He also suggested that since the City only has contact information for plot owners, and not the wider group of likely concerned family members, the City cannot have access to an accurate perspective of concerned parties' preferences in regards to flush versus above-ground markers.

Mr. Schneider reiterated his feeling that the sale of plots in Section F North of the Cemetery included an implicit promise from the City that the section would remain free of above-ground monuments since only flush markers were allowed at the time of sale.

City Manager Valentine told Mayor Bordman that the Greenwood Cemetery Advisory Board (GCAB) could be asked to review the policy and make a recommendation to the Commission.

Commissioner DeWeese said he saw no harm in asking the GCAB to study the issue.

Commissioner Hoff concurred but noted the City's options are limited.

Commissioner Harris concurred, and asked if there would be a way to survey a broader group of people who may be concerned with the policy.

Mayor Bordman said she was also supportive of sending the issue to the GCAB for study.

Mr. Schneider asked if it would be within the range of possible options to put a hold on above-ground monuments until a decision is made.

City Manager Valentine said the GCAB and Commission would need sufficient information before enacting a policy change.

Commissioner DeWeese said that Mr. Schneider could ask the GCAB to consider a temporary hold on above-ground monuments while the Board deliberates on the matter.

Mayor Bordman thanked Mr. Schneider. Mr. Schneider thanked the Commission.

X. REPORTS

04-093-19 COMMISSIONER REPORTS

The City Commission will appoint one alternate member to the Parks and Recreation Board on May 6, 2019.

The City Commission will appoint two regular members to the Martha Baldwin Park Board on May 6, 2019.

The City Commission will appoint three regular members to the Housing Board of Appeals on May 6, 2019.

The City Commission will appoint one regular member to the Board of Building Trades Appeals on May 6, 2019.

The City Commission will appoint two regular members to the Brownfield Redevelopment Authority on May 6, 2019.

04-094-19 COMMISSIONER COMMENTS

Commissioner Nickita, stating his opinion that the Willits/Old Woodward intersection is arguably the worst intersection in the City, asked when redesign would be considered. City Manager Valentine explained city staff has been involved in ongoing study of the intersection, gathering data on pedestrian counts and traffic flow, and a recommendation would be forthcoming.

04-095-19 CITY STAFF

Parking Utilization Report as submitted by Assistant City Manager Gunter.

Assistant City Manager Gunter explained that the decrease in parking demand is partially due to an employer who has approximately 100 employees no longer needing to park in the Chester and Park Street structures.

There is an increased interest in parking permits, and Staff is currently working on reviewing the most current Smarking data analytics to see if these are likely to be short- or long-term trends.

XI. ADJOURN

Mayor Bordman announced no action is anticipated following the closed session and adjourned the meeting to closed session at 9:41 p.m.

Mayor Bordman reconvened the regular meeting at 10:36 p.m. and, there being no further business, adjourned the meeting at 10:36 p.m.

J. Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM
ORDINANCE NO. 2318

AN ORDINANCE TO AMEND THE CITY CODE, CHAPTER 30. CABLE COMMUNICATIONS, ARTICLE X. TELECOMMUNICATIONS RIGHTS-OF-WAY, TO ADD SEC. 308. TELECOMMUNICATIONS INFRASTRUCTURE: CITY CONDUIT SYSTEM.

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Chapter 30. Cable Communications, Article X. Telecommunications Rights-of-Way, Sec 308. Telecommunications Infrastructure, City Conduit System shall read as follows:

Sec. 308. - Telecommunications Infrastructure, City Conduit System.

- a) *Definitions.* For the purposes of this chapter, the following definitions apply:

City means the City of Birmingham.

Conduit system refers to a collection of conduit, innerduct, manholes and hand holes, installed and owned by the City of Birmingham, designed for enclosing telecommunication wires, cables, and other applicable technology.

Rights-of-way means the areas in, upon, above, along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, rights-of-way, boulevards, buildings and any other public places owned by or subject to the control of the City as provided by Constitution, law or ordinance.

Telecommunications network means data, voice, video or other information provided for by a collection of wire, fiber optic cable or other technology, whether owned by the City or owned by others.

- b) *Use of city conduit requirement.* No person shall install a conduit system, or other similar underground system, in the rights-of-way without the City's permission. The City has installed a conduit system within certain rights-of-way within the City. Where such City owned conduit system exists, from the date of completion onward, it shall be the sole conduit system of use for underground telecommunications networks. All telecommunication wires, cables, and other applicable technology available to be placed underground shall be placed in the City owned conduit system, unless the City permits otherwise.
- c) *Lease agreement.* Within the rights-of-way wherein the City owned conduit system exists, no person shall install or operate, in whole or in part, telecommunications networks in the City conduit system in the rights-of-way without first agreeing to the City's terms and conditions as provided for in the

City's conduit system lease agreement. The City reserves to itself discretion in entering into any lease agreement as it determines to be in the best interest of the City and its citizens.

- d) *Technical standards and specifications.* Lessee shall comply with all technical standards and specifications provided for in the lease agreement.
- e) *Compliance with applicable law.* The City in reviewing and entering into a lease agreement, and the lessee, in the establishment and operation of any telecommunications networks, shall comply with all applicable federal and state laws.
- f) *Fees.* Lessee shall pay to the City all applicable fees in the amounts provided for in the lease agreement.

ORDAINED this 8th day of April, 2019 to become effective upon publication.

Patricia Bordman, Mayor
J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held April 8, 2019, and that a summary was published in the Observer & Eccentric Newspaper on April 21, 2019.

J. Cherilynn Mynsberge, City Clerk