

BIRMINGHAM CITY COMMISSION AGENDA
MAY 6, 2019
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Patty Bordman, Mayor

II. ROLL CALL

J. Cherilynn Mynsberge, City Clerk

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

Announcements:

- On Wednesday, May 8 at 7:00 p.m., the Baldwin Public Library is hosting a lecture on Frank Lloyd Wright Homes of Southeast Michigan. Dr. Dale Gyure will speak about various Wright homes, including the Affleck, Smith, Turkel, Wall, and Goddard houses.
- On Thursday, May 9th at 7 pm, the jointly sponsored Spring Lecture Series of the Birmingham Museum and Baldwin Public Library will feature its final program. The presentation will explore the past and present of Birmingham's renowned downtown and how it has evolved, co-presented by Museum Director Leslie Pielack and Birmingham Shopping District Executive Director, Ingrid Tighe.
- The 3rd Annual Quarton Lake Garlic Mustard Pull is on Saturday, May 11th from 1 until 3 pm. Volunteers should meet at Pine & Lake Park. Long pants and long sleeves are recommended. Call DPS for more details at 248.530.1700.
- The public engagement program for gathering input on "The Birmingham Plan: A Citywide Master Plan for 2040" is underway. The centerpiece of the program is a week-long Charrette from May 14th through the 21st. The event will include public presentations, meetings focused on specific topics, targeted stakeholder meetings, and other methods of engaging residents and property owners. Charrettes are periods of intense design and public engagement, during which future plans are developed with stakeholder input and review. For more information visit www.TheBirminghamPlan.com.
- Don't miss the Celebrate Birmingham Hometown Parade at 1:00 p.m. on Sunday, May 19. Family fun continues afterward at the Party in Shain Park. Visit www.bhamgov.org for more information.

Appointments:

- A. Interviews for Martha Baldwin Park Board
 1. Linda Forrester
 2. Andrew Linovitz
- B. Appointments to the Martha Baldwin Park Board
To appoint _____, as a regular member to the Martha Baldwin Park Board to serve a four-year term to expire May 1, 2023.

To appoint _____, as a regular member to the Martha Baldwin Park Board to serve a four-year term to expire May 1, 2023.

C. Interviews for Brownfield Redevelopment Authority

1. Harry Awdey
2. Dani Torcolacci

D. Appointments to the Brownfield Redevelopment Authority

To concur with the Mayor's appointment of _____, as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2022.

To concur with the Mayor's appointment of _____, as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2022.

E. Administration of Oath of Office to Appointee

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.

- A. Resolution approving the Regular City Commission meeting minutes of April 22, 2019.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated April 24, 2019 in the amount of \$262,116.29.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated May 1, 2019 in the amount of \$959,444.42.
- D. Resolution approving the reimbursement for the maximum allotment of \$2,648.39 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program.
- E. Resolution approving the Program Year 2019 High Intensity Drug Trafficking Area (HIDTA) Sub recipient agreement between the County of Oakland and the City of Birmingham. Further, authorizing the Mayor and the City Manager to sign the agreement on behalf of the City.
- F. Resolution approving a special event permit as requested by the City of Birmingham Public Arts Board to hold Art in the Alley in the public areas of Willits Alley on Thursday, June 20, 2019 from 2:00 PM – 9:00 PM, with set-up and tear-down on the same day, 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.
- G. Resolution approving the purchase of two (2) 2020 Ford Explorer Police Interceptors from Gorno Ford, through the Oakland County extendable purchasing contract #4944 in the amount of \$70,249 from account #641-441.006.971.0100.
- H. Resolution setting Monday, June 3, 2019 at 7:30 PM for a Public Hearing to consider a Special Land Use Permit Amendment for 203 Pierce – Toast, to reflect an ownership change and change in the hours of operation.

AND

Resolution authorizing the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and approving the liquor license request of Toast Birmingham, LLC that requests a

transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) and SDM License with Outdoor Service (1 Area) located at 203 Pierce, 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 Toast Birmingham, LLC approving the liquor license transfer request of Toast Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service (1 Area) located at 203 Pierce, Birmingham, Oakland County, MI 48009.

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

- A. Public Hearing to consider confirmation of SAD Roll No. 890-Quarton Lake Sub Water Laterals
 - 1. Resolution ratifying and confirming Special Assessment Roll No. 890, and instructing the City Clerk to endorse said roll, showing the date of confirmation thereof, and certifying said assessment roll to the City Treasurer for collection at or near the time of construction of the improvement. Further, 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 a half percent (6.5%) on all unpaid installments.
- B. Public Hearing to consider confirmation of SAD Roll No. 891-Quarton Lake Sub Sewer Laterals
 - 1. Resolution ratifying and confirming Special Assessment Roll No. 891, and instructing the City Clerk to endorse said roll, showing the date of confirmation thereof, and certifying said assessment roll to the City Treasurer for collection at or near the time of construction of the improvement. Further, 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 a half percent (6.5%) on all unpaid installments.
- C. Public Hearing to consider the proposed lot combination of 411 Hanna Street and 425 Hanna Street
 - 1. Resolution approving the proposed lot combination of 411 Hanna Street, Parcel #1936182005 and 425 Hanna Street, Parcel #1936182004.
OR
 - 2. Resolution denying the proposed lot combination of 411 Hanna Street, Parcel #1936182005 and 425 Hanna Street, Parcel #1936182004.
- D. Public Hearing to consider amendments to Chapter 126 of the Zoning Ordinance
 - 1. Resolution amending Chapter 126, Zoning, of the Code of the City of Birmingham to clarify the board review process for the renovation and new construction of buildings:
 - A. Article 7, Processes, Permits and Fees, Section 7.08, Design Review Requirements and;
 - B. Article 7, Processes, Permits and Fees, Section 7.25; Site Plan Review.
- E. Public Hearing to consider amendments to Chapter 126 of the Zoning Ordinance
 - 1. Resolution amending Article 4, Section 4.74 SS-01 of Chapter 126, Zoning, of the Code of the City of Birmingham to establish standards regulating projections in the public right-of-way.

- F. Resolution approving the Authorizing Resolution for the parking structure bond proposal and ballot language for the August 6, 2019 referendum in the amount of \$57,400,000.
- G. Resolution scheduling a hearing of the Teamsters Local 214 DPS Union grievance of February 8, 2019 on a mutually agreeable hearing date. Further, designating City Counsel Tim Currier to chair the hearing for procedural matters.

OR

Resolution waiving consideration of the Teamsters Local 214 DPS Union grievance of February 8, 2019.

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

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

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of intent to appoint four regular members to the Historic District Study Committee on June 3, 2019.
 - 2. Notice of intent to appoint one regular member to the Board of Ethics on June 3, 2019.
 - 3. Notice of intent to appoint a Hearing Officer on June 3, 2019.
 - 4. Notice of intent to appoint two regular members to the Board of Zoning Appeals on June 3, 2019.
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. 3rd Quarter Financial Report, submitted by Finance Director Gerber.
 - 2. 3rd Quarter Investment Report, submitted by Finance Director Gerber.

XI. ADJOURN

PLEASE NOTE: Due to building security, public entrance during non-business hours is through the Police Department – Pierce St. entrance only.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:248-530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).



NOTICE OF INTENTION TO APPOINT TO THE MARTHA BALDWIN PARK BOARD

At the regular meeting of Monday, May 6, 2019 the Birmingham City Commission intends to appoint two regular members to the Martha Baldwin Park Board to serve four-year terms to expire May 1, 2023. Members must be electors of the City of Birmingham.

Interested citizens may submit an application available at the city clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the city clerk's office on or before noon on Wednesday, May 1, 2019. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Applicants must be electors in the City of Birmingham.
Linda Forrester	Registered Voter at 1252 S. Bates St.
Andrew Linovitz	Registered Voter at 911 Henrietta

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED ACTION:

To appoint _____, as a regular member to the Martha Baldwin Park Board to serve a four-year term to expire May 1, 2023.

To appoint _____, as a regular member to the Martha Baldwin Park Board to serve a four-year term to expire May 1, 2023.



MARTHA BALDWIN PARK BOARD

Chapter 78 - Section 78-56 Ordinance No. 65, Adopted May 10, 1915

Term: four years

Appointed by the City Commission

Qualifications: The board shall consist of four persons who shall be electors of the city.

Duties: The control and management of the Martha Baldwin Park shall be vested in the Martha Baldwin Park Board. (Section 78-56)

Last Name Home Address	First Name	Home Business Fax E-Mail	Appointed	Term Expires
Forrester 1252 S. Bates	Linda	(248) 761-2367 <i>linozfor@att.net</i>	7/9/2012	5/1/2019
Kenning 1700 Villa	Robert	(248) 642-6161 <i>rskandsek@aol.com</i>	6/8/1992	5/1/2020
Linovitz 911 Henrietta	Andrew	(248) 506-2296 <i>ajlino@gmail.com</i>	8/14/2017	5/1/2019
McKee 392 Ferndale	Jane	(248) 644-1029 <i>janecmckee@gmail.com</i>	7/10/2000	5/1/2020

CITY OF BIRMINGHAM
Martha Baldwin Park Board
ATTENDANCE

2016

MEMBER NAME	5/12/2016	Total Mtg. Attended	Total Absent	% Attended
Ron Buchanan	P	1	0	100%
Linda Forrester	P	1	0	100%
Robert Kenning	P	1	0	100%
Jane McKee	P	1	0	100%
Present or Available				

KEY:

A=Absent

P= Present

NA=Member not appointed at that time

CITY OF BIRMINGHAM
Martha Baldwin Park Board
ATTENDANCE

2017

MEMBER NAME	1/24/2017	4/20/2017	9/26/2017	Total Mtg. Attended	Total Absent	% Attended
Ron Buchanan	A	A		0	2	0%
Linda Forrester	P	P	P	3	0	100%
Robert Kenning	P	P	P	3	0	100%
Andrew Linovitz	NA	NA	P	1	0	100%
Jane McKee	P	P	P	3	0	100%

KEY:

A=Absent

P= Present

NA=Member not appointed at that time

CITY OF BIRMINGHAM
Martha Baldwin Park Board
ATTENDANCE

2018

MEMBER NAME	4/9/2018	Total Mtg. Attended	Total Absent	% Attended
Linda Forrester	P	1	0	100%
Robert Kenning	P	1	0	100%
Andrew Linovitz	P	1	0	100%
Jane McKee	P	1	0	100%

KEY:

A=Absent

P= Present

NA=Member not appointed at that time

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest MARTHA BALDWIN PARK BOARD

Specific Category/Vacancy on Board _____

Name LINDA FORRESTER

Phone 248.761.2367

Residential Address 1252 S. BATES ST.

Email linozfor@att.net

Residential City, Zip BIRMINGHAM 48009

Length of Residence 28 yrs.

Business Address —

Occupation retired

Business City, Zip —

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied My husband + I initially planned + planted this park and have participated in all subsequent plans for improvement to this park.

List your related employment experience _____

List your related community activities I have led volunteer activities in this park, Booth + Linden parks, removing invasives for many years. Past garden volunteer @ Det.

List your related educational experience Zoo, & Gleaners. Now a vice president of Troy Garden Club (B'ham doesn't have a garden club). Just purchased

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: _____

NO

Do you currently have a relative serving on the board/committee to which you have applied? NO

Are you an elector (registered voter) in the City of Birmingham? YES

Linda Forrester
Signature of Applicant

4/29/19
Date

3A1

and applied to certify Martha Baldwin as a MONARCH WAYS STATION.



OFFICE USE ONLY
Meets Requirements? Yes No
Will Attend Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

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(Please print clearly)

Board/Committee of Interest Martha Baldwin Park Board

Specific Category/Vacancy on Board Regular Member

Name Andrew Linovitz

Phone 248 506-2296

Residential Address 911 Henrietta

Email ajlino@gmail.com

Residential City, Zip Birmingham, 48009

Length of Residence 12 years

Business Address W Beaumont Hospital

Occupation Physician

Business City, Zip Royal Oak

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____

I'd like to help out where I can. My wife and I have been raising our two sons in Birmingham for over a decade. I have many skills that may be of use. I am proficient in most of the major design software. I have some working knowledge of computer coding, web design and am very good with spreadsheets/data review.

List your related employment experience Emergency Physician

List your related community activities _____

List your related educational experience University of Michigan. I am faculty at Oakland University.

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: _____

No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? yes

Andrew Linovitz

Signature of Applicant

5/1/2019

Date

3A2



**NOTICE OF INTENTION TO APPOINT TO THE
CITY OF BIRMINGHAM
BROWNFIELD REDEVELOPMENT AUTHORITY**

At the regular meeting of Monday, May 6, 2019 the Birmingham City Commission intends to appoint two regular members to the City of Birmingham Brownfield Redevelopment Authority to serve three-year terms to expire May 23, 2022.

The authority shall have the powers and duties to the full extent as provided by and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the state of Michigan of 1996, as amended. Among other matters, in the exercise of its powers, the Board may prepare Brownfield plans pursuant to Section 13 of the Act and submit the plans to the Commission for consideration pursuant to Section 13 and 14 of the Act.

Members shall be appointed by the Mayor, subject to approval by the City Commission.

Interested citizens may submit an application available at the city clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the city clerk's office on or before noon on Wednesday, May 1, 2019. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Applicants shall, in so far as possible, be residents of the City of Birmingham.
Harry Awdey	Resident – 1633 Graefield Rd.
Dani Torolacci	Resident – 2047 Windemere

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED ACTION:

To concur with the Mayor's appointment of _____, as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2022.

To concur with the Mayor's appointment of _____, as a regular member to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2022.



BROWNFIELD REDEVELOPMENT AUTHORITY

Resolution # 04-123-05

5 members, three-year terms, appointed by the mayor subject to approval of the commission.

The authority shall have the powers and duties to the full extent as provided by and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the state of Michigan of 1996, as amended. Among other matters, in the exercise of its powers, the Board may prepare Brownfield plans pursuant to Section 13 of the Act and submit the plans to the Commission for consideration pursuant to Section 13 and 14 of the Act.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Awdey 1633 Graefield	Harry	(586) 453-4677 <i>hawdey@gmail.com</i>	9/25/2017	5/23/2019
Gotthelf 363 Catalpa	Beth	(248) 227.6920 <i>gotthelf@butzel.com</i>	5/9/2005	5/23/2020
Runco 1556 Lakeside	Robert	(248) 388-8100 <i>rrunco@runcowaste.com</i>	5/9/2005	5/23/2020
Torcolacci 2849 Buckingham	Daniella	248-217-4805 <i>dtorcolacci@gmail.com</i>	10/27/2014	5/23/2019
Zabriskie 587 Watkins	Wendy	(248) 646-7543 (248) 743-6046 <i>jwzab@comcast.net</i>	5/9/2005	5/23/2021

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Brownfield Development Authority**

Year: **2017**

Members Required for Quorum:

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Beth Gotthelf	NM	NM	A	NM	NM	P	P	NM	NM	NM	NM	NM			2	1	67%
Paul Robertson, Jr.	NM	NM	P	NM	NM	NA	NA	NA	NA	NA	NA	NA			1	0	100%
Robert Runco	NM	NM	P	NM	NM	P	P	NM	NM	NM	NM	NM			3	0	100%
Danielle Torcolacci	NM	NM	P	NM	NM	P	P	NM	NM	NM	NM	NM			3	0	100%
Wendy Zabriskie	NM	NM	P	NM	NM	A	A	NM	NM	NM	NM	NM			1	2	33%
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
ALTERNATES																	
Member 1															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
Present or Available	0	0	4	0	0	3	3	0	0	0	0	0	0	0	0	0	

KEY:

- A** = Member absent
- P** = Member present or available
- CP** = Member available, but meeting canceled for lack of quorum
- CA** = Member not available and meeting was canceled for lack of quorum
- NA** = Member not appointed at that time
- NM** = No meeting scheduled that month
- CM** = Meeting canceled for lack of business items



 Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Brownfield Redevelopment Authority** Year: **2018**

Members Required for Quorum:

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Harry Audey	NM	NM	NM	NM	NM	P	NM	NM	P	NM	NM	NM			2	0	100%
Beth Gotthelf	NM	NM	NM	NM	NM	P	NM	NM	A	NM	NM	NM			1	1	50%
Robert Runco	NM	NM	NM	NM	NM	A	NM	NM	P	NM	NM	NM			1	1	50%
Daniella Torcolaci	NM	NM	NM	NM	NM	P	NM	NM	P	NM	NM	NM			2	0	100%
Wendy Zabriskie	NM	NM	NM	NM	NM	P	NM	NM	P	NM	NM	NM			2	0	100%
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
ALTERNATES																	
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
Present or Available	0	0	0	0	0	4	0	0	4	0	0	0	0	0	0	0	

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 Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Brownfield Redevelopment Authority** Year: **2019**

Members Required for Quorum:

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Harry Audey	NM	NM	NM	NM											0	0	#DIV/0!
Beth Gotthelf	NM	NM	NM	NM											0	0	#DIV/0!
Robert Runco	NM	NM	NM	NM											0	0	#DIV/0!
Daniella Torcolaci	NM	NM	NM	NM											0	0	#DIV/0!
Wendy Zabriskie	NM	NM	NM	NM											0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
ALTERNATES																	
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
Present or Available	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	#DIV/0!

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 Department Head Signature



OFFICE USE ONLY
Meets Requirements? Yes No
Will Attend / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

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(Please print clearly)

Board/Committee of Interest Brownfield

Specific Category/Vacancy on Board Reappointment

Name Harry Awdey

Phone 586-453-4677

Residential Address 1633 Graefield Rd

Email hawdey@gmail.com

Residential City, Zip Birmingham

Length of Residence 2 Years

Business Address 550 West Merrill

Occupation Insurance Underwriter

Business City, Zip Birmingham

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____

Seeking reappointment for 2019 Served on Planning Commission and Board of Review in
a different municipality. Attended MML training.

List your related employment experience underwriter


List your related community activities Member of the Players

List your related educational experience B.A. in Economics

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: _____

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes


Signature of Applicant

4-29-19
Date



OFFICE USE ONLY	
Meets Requirements?	<u>Yes</u> No
Will Attend /	<u>Unable to Attend</u>

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(Please print clearly)

Board/Committee of Interest Brownfield Redevelopment Authority

Specific Category/Vacancy on Board member

Name Dani Torcalacci

Phone 248-217-4805

Residential Address 2041 Windemere

Email dtorcalacci@gmail.com

Residential City, Zip Birmingham 48009

Length of Residence 4 yrs.

Business Address _____

Occupation renewable energy development

Business City, Zip _____

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied

My background in development and permitting and experience as a sitting member of the board will continue to assist in the board making decisions + setting precedents for how these projects will be addressed in the City.

List your related employment experience VP Permitting (Teichs Energy)

Project Manager (Hurricane Wind) Project Manager (Ridgeline)

List your related community activities Current member Brownfield Board

List your related educational experience B.A. Sustainable development - University of Michigan, LEED AP

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: _____

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

[Signature]
Signature of Applicant

4/29/19
Date

3C2

BIRMINGHAM CITY COMMISSION MINUTES
APRIL 22, 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 Currier, Communications Director Byrnes, Police Chief Clemence, Planning Director Ecker, DPS Manager Filipski, Finance Director Gerber, 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

04-097-19 UPDATE ON CITYWIDE MASTER PLAN PROCESS

Matthew Lambert, DPZ Partners, LLC, provided an update on the Master Plan process:

- The first two meetings were held today with neighborhoods in the northwest section of the City. Approximately 12 people attended.
- The first of three online and hard copy surveys will be released next week.
- The weeklong Charrette will be May 14-21 at 255 S. Old Woodward.
- Special "Meet-Ups" will be held April 23, 27 and 30 in various locations for residents to drop in and give input.
- The Master Plan website is www.thebirminghamplan.com.

Commissioner Hoff said the advertising for the Master Plan process has been very effective. She also expressed concern about the Charrette being held in a downtown commercial building because it might give the impression it is a downtown plan.

Mr. Lambert said the team was unable to find adequate space in the neighborhoods. He said the team could look for different locations for the presentations.

Commissioner Nickita stressed the process will focus on the City's neighborhoods.

Mayor Bordman encouraged all residents to participate in the process.

04-098-19 ANNOUNCEMENTS

Mayor Bordman announced:

- The Friends of the Baldwin Public Library semi-annual Used Book Sale is Saturday, May 4 through Monday, May 6. Proceeds support programs, services, and the annual summer reading program at the Baldwin Public Library.
- 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
- The Birmingham Farmers Market will kick off its 17th season on Sunday, May 5th in Public Parking Lot 6 on North Old Woodward. The market will be open from 9:00 a.m. until 2:00 p.m. every Sunday from May through October. Throughout Opening Day shoppers will enjoy farmers market bags, balloons, kids activities, music and more.

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.

04-099-19 APPROVAL OF CONSENT AGENDA

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Harris:
To approve the Consent Agenda as submitted.

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 April 8, 2019.
- B. Resolution approving the Special City Commission meeting minutes of April 15, 2019.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated April 10, 2019 in the amount of \$396,950.80.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated April 17, 2019 in the amount of \$844,663.81.
- E. Resolution transferring and reassessing the listing of unpaid and delinquent special assessments and invoices, including interest and penalty, to the 2019 City tax roll with an additional 15% penalty and authorization given to remove from the list any bills paid after commission approval. *Complete resolution appended to these minutes as Attachment A.*
- F. Resolution transferring the properties with unpaid and delinquent water/sewage accounts listed in the report dated April 11, 2019, including interest and penalty, be transferred and reassessed to the 2019 city tax roll and authorizing the removal from

the list any bills paid or a payment plan agreement signed after commission approval.
Complete resolution appended to these minutes as Attachment B.

- G. Resolution approving the project for Natural Areas Maintenance with Cardno for a total cost not to exceed \$20,650.00. In addition, waiving the normal bidding requirements based on the Oakland County cooperative agreement for this purchase. Funds are available from the General Fund-Parks Other Contractual Services account #101-751.000-811.0000 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
- H. Resolution approving a three-year contract between the City and Oakland County for assessing services for the period of July 1, 2019 through June 30, 2022 and authorizing the mayor to sign the agreement on behalf of the City.
- I. Resolution approving the Software as a Service Agreement between Sensus USA, Inc. and the City of Birmingham, Michigan; further, directing the City Manager to sign the agreement on behalf of the City.
- J. Resolution approving a special event permit as requested by Temple Beth El to hold the Havdalah in the Park event on Saturday, July 27, 2019 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.
- K. Resolution approving the crack repair and painting project at St. James and Quarton to Tennis Courts Unlimited for a total project cost not to exceed \$28,475.00. Funds are available from the Parks Capital Project Fund account #401-751.001-981.0100 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

V. UNFINISHED BUSINESS

04-100-19 CONTINUATION OF PUBLIC HEARING TO CONSIDER NECESSITY FOR REPLACEMENT OF SEWER/WATER LATERALS IN QUARTON LAKE SUBDIVISION PAVING PROJECT AREA

Mayor Bordman continued the public hearing at 7:46 p.m.

City Manager Valentine stated for the record that this public hearing was opened at the April 8, 2019 City Commission meeting. The City Commission voted to continue public hearing to the April 22, 2019 meeting in order to allow City staff time to review the State's newly revised lead and copper rules.

City Engineer O'Meara presented the item.

Mayor Bordman closed the public hearing at 7:47 p.m.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:

WHEREAS, The City Commission has established a policy requiring the replacement of undersized or lead water lateral lines and sewer laterals in excess of fifty years old when the City street is open for repairs or reconstruction; and

WHEREAS, The City Commission is of the opinion that replacement of water and sewer laterals not meeting current criteria as a part of the planned road paving project

is declared a necessity; and

WHEREAS, formal bids have been received and the actual cost per foot for replacement of the water and sewer laterals has been determined.

RESOLVED, that all sewer and water laterals not meeting current criteria located within the limits of the following streets shall be replaced as a part of the Quarton Lake Subdivision Paving Project (Contract #1-19(P)):

N. Glenhurst Dr. – Raynale St. to Oak St.

Raynale St. – N. Glenhurst Dr. to Chesterfield Ave.

Brookwood – N. Glenhurst Dr. to Raynale St.

Kenwood Ct. – N. Glenhurst Dr. to 220 ft. east.

RESOLVED, that at such time as the Assessor is directed to prepare the assessment roll, of which 100% of the contractor's charge to replace water and sewer lateral (calculated at the rate of \$55.00 per foot for water laterals and \$70.00 per foot for sewer laterals) shall be charged to the adjoining property owners benefiting from the said laterals,

RESOLVED, that there be a special assessment district created and special assessments levied in accordance with benefits against the properties within such assessment district, said special assessment district shall be all properties, within the following district:

"Harrowgate"

Lots 78-82 inclusive, the westerly 52.5 ft. of lot 85, lots 86-88 inclusive, the northerly 47 ft. of lot 89, lot 91, unplatted parcel tax I.D. #19-26-179-013, lots 92-94 inclusive, lot 96, lots 143-146 inclusive, the southerly 35 ft. of lot 147, lots 149-152 inclusive, the southerly 40 ft. of lot 153, lots 174 & 175, the northerly 50 ft. of lot 176, lots 180-183 inclusive, lots 185-187 inclusive, lots 207 & 208.

RESOLVED, that the Commission shall meet on Monday, May 6, 2019, at 7:30 P.M., for the purpose of conducting a public hearing to confirm the roll for the replacement of water and sewer laterals within the Quarton Lake Subdivision Paving Project.

City Engineer O'Meara reported that affected residents have not expressed opposition to the project.

Commissioner Hoff reminded the public that the Foundation for Birmingham Senior Residents can help income-qualified senior residents with the cost on a no-interest loan. Interested parties may contact NEXT for further information.

VOTE: Yeas, 7
 Nays, 0

VI. NEW BUSINESS

04-101-19 2019 INITIAL SCREENING FOR BISTRO APPLICANTS

Planning Director Ecker presented the item.

Luciano DelSignore, of Pernoi, made a brief presentation of the concept:

- Pernoi will be an upscale French, Italian and Japanese restaurant.

- The bistro will be operated by two award-winning Chefs, he and Takashi Yagihashi.
- Takashi is well known for Tribute in Farmingham Hills which he opened more than 20 years ago.
- Mr. DelSignore's flagship restaurant is Bacco Ristorante in Southfield. He also created the Bigalora Wood Fired Cucinas restaurants in Royal Oak, Rochester Hills, Southfield, Plymouth and Ann Arbor.
- The focus will be on global contemporary cuisine.

Patrick Howe, representing Brooklyn Pizza and its owner Sam Abdelfatah (existing restaurant with expansion into former Birmingham Geek) made a brief presentation of the concept:

- Maintaining its identity as a family establishment while expanding its menu offerings and growing its footprint to attract more on-premises dining.
- The restaurant's traditional by the slice and take out operations will remain intact in the existing footprint.
- The existing restaurant will connect to the neighboring space currently occupied by Birmingham Geek Computer Repair and offer a small bar with no more than 10 bar stools and additional indoor seating not to exceed 65 seats.
- September 1, 2019 is the anticipated construction start date with the opening slated for November of this year.
- Birmingham Geek has a lease through 2020 but is willing to have Brooklyn Pizza assume the lease.

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner DeWeese:

To direct the following bistro applications, in the priority order below, to the Planning Board for full site plan and design review and Special Land Use Permit review:

1. Pernoi
2. Brooklyn Pizza

Planning Director Ecker clarified for Commissioner Hoff that Pernoi will not allowed to use isinglass in any of its structures, including the outdoor structures.

Commissioner Sherman pointed out it is unnecessary to rank the applications because one of them, Brooklyn Pizza, is an existing restaurant.

MOTION TO AMEND: Motion by Mayor Pro Tem Boutros, seconded by Commissioner DeWeese:

To amend the motion to remove the language "in the priority order below".

VOTE: Yeas, 7
 Nays, 0

MOTION AS AMENDED:

To direct the bistro applications for Pernoi and Brooklyn Pizza to the Planning Board for full site plan and design review and Special Land Use Permit review.

VOTE: Yeas, 7
 Nays, 0

04-102-19

DEVELOPMENT AGREEMENT WITH WOODWARD BATES PARTNERS, LLC FOR THE N. OLD WOODWARD PARKING STRUCTURE AND BATES STREET EXTENSION PROJECT

Assistant City Manager Gunter presented the timeline of events for the project.

Joseph Fazio, Miller Canfield, the City's development counsel, outlined the purpose of the development agreement and reviewed the amendments made in accordance with the City Commission's comments provided at the April 15, 2019 Special Workshop Meeting. He noted that "Project" now refers to Phase One (Projects 1A, 1B, 2 & 3).

Mr. Fazio told Commissioner Sherman that "commencement of construction" can be made more definitive. For the Bates Street extension specifically, Mr. Fazio suggested the threshold be the pouring of curbs, and for the private components of Phase Two he suggested the threshold be the commencement of on-site development activities.

Commissioner Sherman said he would like further clarity, since even "on-site development activities" could mean many different activities.

Mr. Fazio suggested it could be the raising of the structure of the building.

Commissioner Sherman confirmed he would like that level of detail included so as to avoid potential issues of interpretation in the future.

Mr. Fazio said:

- Ninety days after the Phase Two milestone is reached the developer is able to provide notice to the City of the developer's intent to start negotiations with the City.
- After that notice is given by the developer, both parties have an additional 180 days to fully negotiate the terms of Projects Four and Five. If both parties do not reach an agreement, Phase Two would not proceed. Construction cannot begin until those terms are finalized and all requisite site plans have been approved.
- The timing of the Bates Street Extension will be determined as part of the Project Phasing Plan for Phase One.
- In Section 2.3.4, "private component" will be changed to "Phase 2 private component".
- On page two, "premises" will be changed to "promises".
- In the definition of "Project", Project 1C will be added to the list of covered projects.

Mayor Bordman asked for public comment.

Neil Sakwa asked whether Phase Two would move forward if the bond vote fails. He also asked whether the City intends to pay back the developer for any monies furnished by the developer for Site Three.

Mr. Fazio explained that if the bond vote does not pass, both phases of the project will be terminated.

Cathy Frank said she was glad Phase One and Phase Two were separated. She asked when Phase Two would be further discussed.

City Manager Valentine explained the timing of notices and negotiations is based on when the determined milestones are met. The developer has 90 days to provide notice to the City of the developer's intent to start negotiations with the City. After that notice is given by the developer, both parties have an additional 180 days to fully negotiate the terms of Phase Two.

Clinton Baller said the plans seemed to have no cohesion. He stated that the planned sizes of Buildings Four and Five have been reduced in size and expressed concern that he did not hear those changes addressed. Mr. Baller opined that Birmingham residents would vote no on the bond in order to stop the project from moving forward.

Paul Reagan said that the Commission clearly aims to do good. He continued that brick-and-mortar retail is no longer a viable business model, and that there are almost no aspects of the project which stand to benefit the public. He stated that Mr. Baller's comments on the lack of a cohesive plan were well taken. He said that Buildings Four and Five are superfluous, and that he would be advising other residents to vote "no" on the bond in August 2019.

David Bloom said that the parking deck plans include enough space for both the public and for the planned private Buildings of this project. He said that if Phase Two does not move forward the excess parking will have been a waste. Mr. Bloom added that the process of constructing the private buildings will severely damage the Bates Street extension, and the City will have to fix the street. He suggested that the lease of the property should be added to the ballot, and that as it stands it would not pass.

Linda Taubman noted her consistent past opposition to development at Woodward and Bates. She reported that the development team has heard her concerns and agreed to lower the height of Building Five by a full floor. She continued that the development team has met with other neighbors, changed development plans to alleviate other neighbors' concerns, and even improved the drop-off and pick-up process for the Gateway Montessori School, located next door to the project. She acknowledged that the neighbors are relying on the developers' word at this point. She said she considers the City lucky to have accommodating developers and a Commission invested in this project.

Richard Astrein gave examples of various planning changes the City has undergone in his forty-six year residence. He said the Commission has done an amazing job over the years, and has made changes which allow a viable downtown. Mr. Astrein said all the comments he has heard in his shop have been supportive of the project. He said independent brick-and-mortar retail is experiencing resurgence. He said he believes that the project is critical and must move forward.

Commissioner DeWeese outlined his concerns as follows:

- The timetable is too rushed. The bond vote is likely to fail if it is held in August 2019. The City is losing the opportunity to create excitement over the project, given the speed with which all aspects are occurring.
- He wants the City to envision the possibilities, gather all relevant information, and to really consider whether the project yields the best benefit relative to the cost.
- Residents have indicated a desire for the parking garage and little interest in the other aspects of the project. Too few details on the project as a whole have been provided either to the Commission or to the City as of yet.

- The guaranteed maximum price (GMP) will be announced on May 6, 2019, and at the same time the Commission is tasked with passing a resolution to have the bond election in August 2019. These dates occur in prohibitively quick succession.

Commissioner DeWeese concluded that he is open to the Project in general, but would not be voting in favor of the resolution tonight. He would like to see more of his and the citizens' concerns resolved.

Commissioner Nickita said he had been involved with this project since the 2016 Plan was developed twenty-five years ago. He noted that the City went through a thorough study and planning process to determine what was right for this area of the City, including finishing the Bates Street extension and providing more retail in the area. All new buildings or redevelopments in the downtown since 1996 have been developed in line with the 2016 Plan's recommendation of four-to-six story buildings. Commissioner Nickita noted that the Planning Board walked the Woodward-Bates site with developers in 2005 to review the City's options. In 2014 the City invited urban planner Andrés Duany to review the implementation of the City's 2016 Plan. Mr. Duany said the 2016 Plan was well-implemented, and asked why the Bates Street Plan had not been completed. This project is the last step of the 2016 Plan to be actualized, and is as close to what was envisioned twenty-five years ago as possible.

Commissioner Hoff said the public-private partnership in the project is weighted to benefit the private developers more than the public. She said the development team is gaining many advantages, including leasing valuable property in downtown Birmingham, building on top of a foundation paid for by the City, and an implied commitment within the development agreement to proceeding with Buildings Four and Five. Commissioner Hoff continued:

- All monies that will come in through the parking fund over the term of the bond, should it be approved, will go towards repaying the bond. She asked what the City would do to finance repairs on other parking structures without the revenue from the parking fund during that period.
- There will be at least three to four other five-story buildings being constructed downtown at the same time as this project will be underway. Attention must be paid to how much disruption this project will create in the downtown when considered cumulatively with other buildings being constructed.
- The City has additional bonding needs, including updates to parks and expansion of the Senior Center. None of the City's additional future bonding needs have been mentioned as part of this conversation.
- The project plans should not be carried out without sufficient consideration of other present and future circumstances within the City, even though they are beautiful.
- A previous Commission did not approve plans for the Bates Street extension.

Commissioner Harris underscored what he saw as the principal public benefits of the Project: finishing the implementation of the 2016 Plan, and the alleviation of the City's parking concerns. He agreed with Commissioner Nickita's comments that the project had been subject to immense amounts of study. Commissioner Harris continued:

- The parking structure is from 1966, and needs to be updated for public welfare and safety.

- The development team has demonstrated its ability to be a cooperative and considerate partner in this process. Buildings Four and Five have been changed through discussions between the neighbors of the Project and the development team.
- Mr. Fazio of Miller Canfield has included numerous contingencies in the agreement to protect the City throughout the process.
- Staff has said there is adequate time in the predevelopment process to protect the City.
- Tax dollars will not be spent on any part of the project.
- Residents he has spoken with seem excited and supportive of the project.

Commissioner Sherman stated the current matter before the Commission is exclusively approval or disapproval of the non-binding development agreement. While acknowledging other concerns expressed may be important, he noted that they are not part of this evening's agenda. He emphasized the development agreement does not commit the City or the developer to anything more than continuing negotiations. Commissioner Sherman suggested that the continuing negotiations allow for the possibility that the various concerns raised could be addressed to the satisfaction of the Commission, the developer, and the residents of the City.

Mayor Pro Tem Boutros said the concerns of his fellow Commissioners were well-taken. He told Commissioner Hoff that the Bates Street extension plan denied by a previous Commission was not likely the plan before this Commission tonight. He reiterated Commissioner Sherman's point that the development agreement is non-binding. He also commended the development team and City staff on all of their hard work. Mayor Pro Tem Boutros noted that the architect is a Birmingham resident and has met City expectations of responsiveness to the residents and neighbors. Mayor Pro Tem Boutros said he would be voting in favor of the resolution for these reasons.

Commissioner Hoff said she does not minimize the efforts of either the development team or Staff, which have been outstanding.

Commissioner DeWeese said he was supportive of continuing the conversation, but that the development agreement as written leaves the City no alternative if the bond vote fails in August 2019. All the documentation to be voted on tonight assumes an August 2019 vote, which he does not agree with. Commissioner DeWeese expressed concern that if the August 2019 bond vote fails residents would be more inclined to vote against future bonding needs.

City Manager Valentine commented:

- The scale of the private aspect of the project is still an ongoing discussion.
- Costs of the project will be discussed once the GMP is presented, and options to reduce cost are also an ongoing discussion.
- Additional funding options for the Senior Center and City parks are being explored.

MOTION: Motion by Commissioner Harris, seconded by Mayor Pro Tem Boutros: To approve the Development Agreement as revised by Commissioner Sherman's comment about the definition of "commencement of construction" between the City and Woodward Bates Partners, LLC, and further, to authorize the Mayor and Clerk to sign the agreement on behalf of the City.

VOTE: Yeas, 5

Nays, 2 (DeWeese, Hoff)

04-103-19 REQUEST FOR CLOSED SESSION

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese: Resolution to meet in closed session to (1) 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, and (2) to discuss an Attorney/Client communication pursuant to Section 8(h) of the Open Meetings Act.

(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

No items were removed from the Consent Agenda.

VIII. COMMUNICATIONS

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

X. REPORTS

04-104-19 COMMISSIONER COMMENTS

Mayor Bordman has been observing the continuous low use of the surface lot at Woodward and Maple. She suggested surveying current permit holders as to why they are not utilizing the lot, and issuing more permits.

Commissioner Nickita recommended the Commission read *Neighborhood* by Emily Talen to inform their perspectives on the Master Plan process. He said Ms. Talen is a talented urban planner, a friend of Commissioner Nickita's, and presents information relevant to the Master Plan process in an accessible way.

04-105-19 CITY STAFF

Greenwood Cemetery Advisory Board Annual Report submitted by City Clerk Mynsberge.

Commissioner Hoff recognized the GCAB for the three new trees to be planted in the Cemetery and for the seal coating of the Cemetery roads.

Mayor Bordman said she was happy to see the GCAB making progress on various issues raised by the Commission.

XI. ADJOURN

Mayor Bordman announced no action is anticipated following the closed session and adjourned the meeting to closed session at 9:59 p.m.

Mayor Bordman reconvened the regular meeting at 10:30 p.m. and, there being no further business, adjourned the meeting at 10:30 p.m.

J. Cherilynn Mynsberge, City Clerk

**Resolution No. 04-099-19
TRANSFERRING AND REASSESSING UNPAID AND DELINQUENT SPECIAL
ASSESSMENTS AND INVOICES TO THE 2019 CITY TAX ROLL**

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Harris:
To adopt the following resolution directing the Treasurer to transfer the following unpaid and delinquent special assessment and invoices, including interest and penalty, to the 2019 City tax roll and to authorize removal from the list any bills paid after City Commission approval.

WHEREAS, the City Treasurer, in accordance with the provisions in the City Code has reported certain special assessments and invoices, including interest and penalty, unpaid and delinquent on May 1, 2019; and

WHEREAS, the City Code provides that these delinquent special assessments and invoices shall be carried to the next annual City tax roll.

NOW THEREFORE BE IT RESOLVED, that the submitted listing of unpaid and delinquent special assessments and invoices, including interest and penalty, be transferred and reassessed to the 2019 City tax roll with an additional 15% penalty and authorization be given to remove from the list any bills paid after commission approval.

**Resolution No. 04-099-19
TRANSFERRING AND REASSESSING UNPAID AND DELINQUENT WATER/SEWAGE
CHARGES TO THE 2019 CITY TAX ROLL**

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Harris:
To adopt the following resolution directing the Treasurer to transfer the following unpaid and delinquent water/sewage bills of the properties listed in this report to the 2019 city tax roll and to authorize removal from the list any bills paid or a payment plan agreement signed after City Commission approval.

WHEREAS, The City Treasurer, in accordance with Chapter 114, Section 114-303, of the city code has reported certain water/sewage accounts, including interest and penalty, unpaid and delinquent on May 1, 2019, and

WHEREAS, Chapter 114, Section 114-303, of the city code provides that these payments shall be carried to the next annual city tax roll,

NOW, THEREFORE, BE IT RESOLVED, that the properties with unpaid and delinquent water/sewage accounts listed in the report dated April 11, 2019, including interest and penalty, be transferred and reassessed to the 2019 city tax roll and authorization be given to remove from the list any bills paid or a payment plan agreement signed after commission approval.

City of Birmingham
Warrant List Dated 04/24/2019

Meeting of 05/06/2019

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
265779	*	000855	48TH DISTRICT COURT	85.00
265780	*	000855	48TH DISTRICT COURT	100.00
265781	*	000855	48TH DISTRICT COURT	100.00
265782	*	000855	48TH DISTRICT COURT	100.00
265783	*	000855	48TH DISTRICT COURT	200.00
265784	*	000855	48TH DISTRICT COURT	100.00
265785	*	000855	48TH DISTRICT COURT	100.00
265786	*	000855	48TH DISTRICT COURT	100.00
265787	*	000855	48TH DISTRICT COURT	100.00
265788	*	000855	48TH DISTRICT COURT	100.00
265789	*	000855	48TH DISTRICT COURT	100.00
265790	*	000855	48TH DISTRICT COURT	100.00
265791	*	007266	AETNA BEHAVIORAL HEALTH LLC	469.43
265792		000143	AM-DYN-IC FLUID POWER INC	368.77
265793		MISC	AMERICAN STANDARD ROOFING	100.00
265794		003946	ARAMARK	40.97
265795		000500	ARTECH PRINTING INC	419.00
265796		007479	ASB DISTRIBUTORS	33.00
265797	*	006759	AT&T	80.18
265798	*	006759	AT&T	67.78
265799	*	006759	AT&T	161.64
265800		MISC	AVER SIGN COMPANY	100.00
265801		MISC	BABI CONSTRUCTION INC	100.00
265802	*	003839	MATTHEW J. BARTALINO	158.71
265803		003012	BATTERIES PLUS	107.95
265804		MISC	BEYOND THE OFFICE DOOR	611.78
265805		002231	BILLINGS LAWN EQUIPMENT INC.	187.18
265806	*	001086	CITY OF BIRMINGHAM	926.78
265807		003526	BOUND TREE MEDICAL, LLC	67.77
265808		MISC	BREN-MAR CONSTRUCTION CO	100.00
265809		006966	BRIDGESTONE GOLF, INC	627.42
265810	*	006177	BULLSEYE TELECOM INC	118.13
265811	*	005289	BUSINESS CARD	156.00
265812		003907	CADILLAC ASPHALT, LLC	5,847.66
265813		008385	CALLAWAY GOLF	608.46
265815	*	008067	CAREERBUILDER GOVERNMENT SOLUTIONS	1,775.00
265816		008959	CASS COLLISION CLAWSON	2,338.30
265817		MISC	CEDAR ROOF DESIGN	100.00
265818		000605	CINTAS CORPORATION	242.80
265819		MISC	CLAYTON CUSTOM CARPENTRY	100.00
265820	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,362.56
265821		001318	CLOVERDALE EQUIPMENT CO	2,748.33

City of Birmingham
Warrant List Dated 04/24/2019

Meeting of 05/06/2019

Check Number	Early Release	Vendor #	Vendor	Amount
265822		004188	COFFEE BREAK SERVICE, INC.	245.60
265823	*	008955	COMCAST	125.95
265824		000979	COMERICA BANK	15,188.39
265825	*	000627	CONSUMERS ENERGY	7,391.20
265826		002668	CONTRACTORS CLOTHING CO	120.49
265827		001367	CONTRACTORS CONNECTION INC	144.10
265828		008512	COOL THREADS EMBROIDERY	1,500.00
265829		008582	CORE & MAIN LP	923.24
265830		MISC	DANIEL JOSEPH LYNCH	900.00
265831		008005	DE LAGE LANDEN FINANCIAL SVCS INC	173.75
265832	*	008982	DEAF COMMUNITY ADVOCACY NETWORK INC	106.00
265833	*	007980	CURTIS DAVID DICHO	738.00
265834		MISC	DJL3 LLC	300.00
265835	*	000179	DTE ENERGY	17,512.94
265836		007702	EASY PICKER GOLF PRODUCTS, INC	280.87
265837		007136	FERGUSON ENTERPRISES, INC.	143.23
265838		MISC	FRERICKS, HOYT	2,500.00
265839		000223	GASOW VETERINARY	410.70
265840	*	004604	GORDON FOOD	327.03
265841		004983	GREAT AMERICAN BUSINESS PRODUCTS	358.20
265842		MISC	GREGORY JAY TITTLE	100.00
265845		MISC	HOME DEPOT USA INC	100.00
265846		MISC	HOMES WITH DISTINCTION LLC	100.00
265847	*	003824	THOMAS I. HUGHES	17.97
265848		MISC	ISC SERVICES INC.	100.00
265849		MISC	JAMAICAN POOL	200.00
265850		MISC	JEANNINE M KRAUSE	100.00
265851		MISC	JOHN D OTT	500.00
265852		000155	JOHNSON CONTROLS SECURITY SOLUTIONS	443.76
265853	*	007002	SHON JONES	93.61
265854		MISC	KEARNS BROTHERS INC	100.00
265855		MISC	KELLETT CONSTRUCTION COMPANY	100.00
265856	*	000352	JILL KOLAITIS	2,301.00
265857		004085	KONE INC	2,020.20
265858	*	002466	MIKE LABRIOLA	109.54
265859		MISC	LAKEPOINTE CONSTRUCTION	200.00
265860	*	006127	LANDSCAPE FORMS, INC	1,000.00
265861		MISC	LARRY BONGIOVANI	100.00
265862		MISC	LEVINE & SONS INC	550.00
265863		008998	LINCOLN OF TROY	180.00
265864		MISC	LIVE WELL CUSTOM HOME LLC	2,500.00
265865		MISC	LMB PROPERTIES LLC	3,107.84
265867		MISC	LYNCH CUSTOM HOMES	2,500.00

City of Birmingham
Warrant List Dated 04/24/2019

Meeting of 05/06/2019

Check Number	Early Release	Vendor #	Vendor	Amount
265868	*	003945	SANDRA LYONS	806.00
265869	*	009046	M. SHAPIRO MANAGEMENT COMPANY LLC	39,362.29
265870		MISC	MAPLE LAND LLC	500.00
265871	*	008763	MARYKO HOSPITALITY, LLC	7,500.00
265872		MISC	MCINTYRE, MICHAEL R	957.39
265873	*	008723	BRADLEY MCNAB	75.00
265874		MISC	MICHAEL SCHECTER	80.00
265875		MISC	MICHIGAN BASEMENTS	100.00
265876		001660	MICHIGAN CAT	106.87
265877		007765	MICHIGAN INDEPENDENT DOOR CO.	127.50
265878		MISC	MICHIGAN SOLAR SOLUTIONS	200.00
265879		000230	MIKE SAVOIE CHEVROLET INC	193.27
265881		001950	MILLER CANFIELD PADDOCK AND	9,965.43
265882		006952	MITCHELL1	2,355.88
265883		007163	MOBILE HEALTH RESOURCES	1,302.40
265885		MISC	NBS CONSTRUCTION SOLUTIONS	500.00
265886		005431	NILFISK, INC.	274.50
265887	*	000477	OAKLAND COUNTY	7,544.75
265888	*	004370	OCCUPATIONAL HEALTH CENTERS	50.00
265889	*	000481	OFFICE DEPOT INC	577.55
265890		MISC	OLDE WORLD HOMES LLC	200.00
265891		MISC	PAUL PIPITONE	100.00
265892		009045	PUREFIT INC	180.00
265893		009038	QUANTUM EMS LLC	814.00
265894		002566	REYNOLDS WATER	426.35
265895		MISC	ROBERT J SOWLES	2,500.00
265896		MISC	RONNISCH CONSTRUCTION GROUP	1,000.00
265897		MISC	ROOFING SOLUTIONS LLC	200.00
265898		MISC	ROYAL OAK AWNING	100.00
265899	*	008983	BRENNA SANDLES	414.00
265900		MISC	SCOTT DRUMM	50.00
265901		008602	SEIZERT CAPITAL PARTNERS	10,728.00
265902		MISC	SINGLETON CONSTRUCTION	200.00
265903	*	008073	SITEONE LANDSCAPE SUPPLY, INC	332.61
265904		MISC	SOULLIERE DECORATIVE STONE INC	100.00
265906		MISC	STERN, JOEL D	400.00
265907		000256	SUBURBAN BUICK GMC INC	2,023.95
265909		008159	TORTOISE CREDIT STRATEGIES, LLC	6,980.25
265910	*	000158	VERIZON WIRELESS	90.12
265911		MISC	WALLSIDE INC	500.00
265912		002171	WEISSMAN'S COSTUMES	11.65
265914		009048	WOLVERINE PAINTING & DECORATING INC	1,400.00
265915	*	003890	LAUREN WOOD	525.00

City of Birmingham
Warrant List Dated 04/24/2019

Meeting of 05/06/2019

Check Number	Early Release	Vendor #	Vendor	Amount
265916		MISC	ZAREMBA & COMPANY	1,000.00
SUBTOTAL PAPER CHECK				\$190,178.97
<u>EFT TRANSFER</u>				
		MISC	BRYCER LLC	60.00
		008730	FACEBOOK HEADQUARTERS	108.09
		MISC	GODADDY	569.98
		MISC	ICHAT	10.00
		008187	MISSION POINT RESORT	612.90
		008118	OAKLAND COUNTY	50.00
		002589	SHANTY CREEK RESORTS	(162.00)
		MISC	STATE OF MICHIGAN- LARA	300.00
		008734	SURVEYMONKEY	300.00
		000619	THE COMMUNITY HOUSE	80.00
		MISC	WUFOO	169.00
SUBTOTAL EFT TRANSFER				\$2,097.97
<u>ACH TRANSACTION</u>				
	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	35,348.15
		002284	ABEL ELECTRONICS INC	1,465.00
		007345	BEVERLY HILLS ACE	178.86
		007624	BIRMINGHAM OIL CHANGE CENTER, LLC	57.96
		000565	DORNBOS SIGN & SAFETY INC	1,281.50
		000243	GRAINGER	88.83
		003870	GREAT LAKES TURF, LLC	94.87
		001672	HAYES PRECISION INC	30.50
	*	007465	IN-HOUSE VALET INC	4,500.00
		000261	J.H. HART URBAN FORESTRY	11,662.50
		003458	JOE'S AUTO PARTS, INC.	499.93
		008479	MD SOLUTIONS, INC	150.00
	*	003554	RKA PETROLEUM	3,261.68
	*	003785	SIGNS-N-DESIGNS INC	384.00
	*	007374	WESTWOOD TRUST	10,835.57
SUBTOTAL ACH TRANSACTION				\$69,839.35

City of Birmingham
Warrant List Dated 04/24/2019

Meeting of 05/06/2019

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$262,116.29

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber
Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.

City of Birmingham
Warrant List Dated 05/01/2019

Meeting of 05/06/2019

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
265917		MISC	4 WAY CEMENT	100.00
265918	*	000855	48TH DISTRICT COURT	100.00
265919	*	000855	48TH DISTRICT COURT	300.00
265920	*	000855	48TH DISTRICT COURT	100.00
265921	*	000855	48TH DISTRICT COURT	100.00
265922	*	005358	AARON'S EXCAVATING INC	1,850.00
265923		008106	ACUSHNET COMPANY	1,291.40
265924		MISC	AFFORDABLE EXCAVATING AND LANDSCAPI	1,000.00
265926		MISC	ARMANDO GIUSEPPE INC	2,500.00
265927	*	001357	ART/DESIGN GROUP LTD	565.00
265928		007479	ASB DISTRIBUTORS	46.60
265929		MISC	ASSOCIATION OF MIDWEST MUSEUMS	375.00
265930	*	006759	AT&T	180.83
265932	*	006759	AT&T	181.96
265933	*	006759	AT&T	165.99
265934	*	006759	AT&T	140.68
265935	*	007216	AT&T	97.61
265936		003012	BATTERIES PLUS	62.65
265937		002231	BILLINGS LAWN EQUIPMENT INC.	14.16
265938		007540	BIO SYSTEMS, INC.	817.25
265939	*	008992	CITY OF BIRMINGHAM #237	5,894.15
265940		000524	BIRMINGHAM LOCKSMITH	20.00
265941		009004	BOBO'S OAT BARS	196.78
265942		MISC	BRICK BUZZ	100.00
265943		008385	CALLAWAY GOLF	436.20
265944		008959	CASS COLLISION CLAWSON	3,820.74
265946	*	000444	CDW GOVERNMENT INC	4,854.54
265947		000605	CINTAS CORPORATION	123.04
265948	*	008955	COMCAST	492.07
265949	*	007774	COMCAST BUSINESS	1,233.70
265950		000621	COMSOURCE INC	35.00
265951		008582	CORE & MAIN LP	777.10
265952		MISC	CRYDERMAN & ASSOCIATES	200.00
265953		MISC	DIAMOND CREEK HOMES INC	100.00
265954	*	007980	CURTIS DAVID DICHO	144.00
265955		008641	DINGES FIRE COMPANY	1,052.44
265956	*	003807	DOETSCH INDUSTRIAL SVCS INC	46,247.39
265957	*	000179	DTE ENERGY	13,849.17
265958	*	005322	DTE ENERGY COMPANY	22,682.43
265959		007702	EASY PICKER GOLF PRODUCTS, INC	687.80
265960		006876	ENFORCEMENT PRODUCTS INC	3,111.00
265962		008666	F J LAFONTAINE & SONS	5,961.00

City of Birmingham
Warrant List Dated 05/01/2019

Meeting of 05/06/2019

Check Number	Early Release	Vendor #	Vendor	Amount
265964	*	008281	AUSTIN FLETCHER	344.52
265965		MISC	FOUNDATION SYSTEMS OF MICHIGAN INC.	100.00
265966		MISC	FOUR SEASONS SUNROO	300.00
265967	*	008868	JULIA FRYKMAN	131.25
265968		002510	GAMCO INVESTORS INC	23,066.00
265969		007172	GARY KNUREK INC	412.53
265970		000920	GLOBAL EQUIPMENT COMPANY INC	539.90
265971		MISC	GOBLE, RONALD	300.00
265972	*	004604	GORDON FOOD	810.10
265975		001531	GUNNERS METER & PARTS INC	2,445.00
265976	*	006799	NATALIA HAASE	546.00
265977		MISC	HIGHER GROUND LANDSCAPING SERVICES	27.20
265978		007466	HOME BUILDERS ASSOC. OF SE MI	600.00
265979	*	001956	HOME DEPOT CREDIT SERVICES	3,851.67
265980		001040	HOOR MEDIA LLC	3,565.00
265981		000342	IBS OF SE MICHIGAN	596.70
265982		002407	J & B MEDICAL SUPPLY	865.34
265983	*	002576	JAX KAR WASH	320.00
265984		MISC	JODY MENDELSON	100.00
265985	*	003366	JOE'S ARMY NAVY	87.29
265986		MISC	JOSEPH MISIAK	135.11
265987		004088	KGM DISTRIBUTORS INC	109.00
265988		001406	KIPLINGER LETTER	89.00
265989	*	000352	JILL KOLAITIS	156.00
265990		004085	KONE INC	125.58
265991		MISC	KOVALICK ROOFING	100.00
265992	*	000362	KROGER COMPANY	48.91
265993		MISC	LAVANWAY SIGN CO.INC	500.00
265994		008998	LINCOLN OF TROY	181.99
265995	*	008754	LITTLE CONDUCTORS LLC	335.00
265996		007200	MACOMB RESTAURANT SUPPLY	3,161.76
265997		002631	METRO PARENT PUBLISHING GROUP	1,499.00
265998		007378	MIDAS AUTO SERVICE CENTER	220.94
265999		008319	MKSK INC	5,330.14
266000		001194	NELSON BROTHERS SEWER	185.00
266001		007755	NETWORK SERVICES COMPANY	509.33
266002		004110	OAKLAND COMMUNITY COLLEGE	1,185.00
266003	*	000477	OAKLAND COUNTY	1,164.19
266004		008214	OAKLAND COUNTY WATER DEPARTMENT	5,588.74
266005	*	000481	OFFICE DEPOT INC	257.64
266006		002767	OSCAR W. LARSON CO.	198.77
266007	*	001341	PIFER GOLF CARS INC	5,850.00
266008	*	003352	JAMIE CATHERINE PILLOW	3,051.50

City of Birmingham
Warrant List Dated 05/01/2019

Meeting of 05/06/2019

Check Number	Early Release	Vendor #	Vendor	Amount
266009		000801	POSTMASTER	235.00
266010		007658	PRIORITY DISPATCH	147.00
266011		MISC	PRM CUSTOM BUILDERS LLC	2,000.00
266012		005660	PUBLIC AGENCY TRAINING COUNCIL	1,050.00
266013		007463	PUBLIC RUBBER & SUPPLY CO., INC.	803.32
266014		004137	R & R FIRE TRUCK REPAIR INC	884.00
266015	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
266016		MISC	RAVES CONSTRUCTION	200.00
266017		007252	RAY WIEGAND'S NURSERY INC.	3,718.00
266018		005344	RESERVE ACCOUNT	8,000.00
266020		000218	ROYAL OAK P.D.Q. LLC	159.00
266021		000221	RUSSELL HARDWARE COMPANY	106.86
266022		000758	SCHOOLCRAFT COLLEGE	325.00
266023		007142	SHERWIN-WILLIAMS COMPANY	148.25
266024		MISC	SINGLE PLY INTERNATIONAL OF MI	100.00
266025	*	008073	SITEONE LANDSCAPE SUPPLY, INC	1,422.30
266026		000260	SPARTAN DISTRIBUTORS INC	700.72
266027		001104	STATE OF MICHIGAN	961.00
266028		006783	STATE OF MICHIGAN	60.00
266029		005364	STATE OF MICHIGAN-MDOT	663.44
266030	*	008507	SUPERFLEET MASTERCARD PROGRAM	265.94
266031		000275	TIRE WHOLESALERS CO INC	132.08
266032		004887	TRUCK & TRAILER SPECIALTIES INC	239.00
266033		007226	VALLEY CITY LINEN	27.20
266034	*	000158	VERIZON WIRELESS	652.37
266035	*	000158	VERIZON WIRELESS	838.64
266036	*	000158	VERIZON WIRELESS	126.17
266037	*	000158	VERIZON WIRELESS	50.62
266038		MISC	VITAL SIGNS	200.00
266039	*	009039	WALBRIDGE ALDINGER LLC	563,109.29
266041		MISC	WALLSIDE INC	71.25
266042		003925	WIZBANG PRODUCTS CO	773.71
SUBTOTAL PAPER CHECK				\$779,198.79

ACH TRANSACTION

*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	57,389.61
	002284	ABEL ELECTRONICS INC	255.00
	002909	ACOM SOLUTIONS, INC.	360.00
	003243	AMERICAN PRINTING SERVICES INC	1,990.00
	002702	B & B GREASE TRAP & DRAIN	95.00
	007345	BEVERLY HILLS ACE	33.19
*	000565	DORNBOS SIGN & SAFETY INC	145.84
	000207	EZELL SUPPLY CORPORATION	150.60
	007314	FLEIS AND VANDENBRINK ENG. INC	2,598.21

City of Birmingham
Warrant List Dated 05/01/2019

Meeting of 05/06/2019

Check Number	Early Release	Vendor #	Vendor	Amount
		000217	FOUR SEASON RADIATOR SERVICE INC	75.00
		000243	GRAINGER	69.78
		001672	HAYES PRECISION INC	42.50
		000331	HUBBELL ROTH & CLARK INC	12,033.58
	*	007465	IN-HOUSE VALET INC	3,000.00
		008851	INSIGHT INVESTMENT	4,392.44
		000261	J.H. HART URBAN FORESTRY	9,488.00
	*	005550	LEE & ASSOCIATES CO., INC.	3,667.65
		006359	NYE UNIFORM COMPANY	1,264.80
		007215	PDQ.COM CORPORATION	450.00
	*	005688	PEGASUS ENTERTAINMENT	1,450.00
		007305	REFRIGERATION SERVICE PLUS	48.00
	*	003554	RKA PETROLEUM	12,085.00
		000478	ROAD COMM FOR OAKLAND CO	2,499.82
		000254	SOCRRA	64,056.00
		008056	SPINA ELECTRIC	1,180.00
	*	001255	TEKNICOLORS INC	689.34
		002037	TOTAL ARMORED CAR SERVICE, INC.	736.27
SUBTOTAL ACH TRANSACTION				\$180,245.63
GRAND TOTAL				\$959,444.42

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber
Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.



MEMORANDUM

Department of Public Services

DATE: April 25, 2019

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Oakland County West Nile Expense Reimbursement Request

INTRODUCTION:

Upon recommendation of the Oakland County Executive, the Oakland County Board of Commissioners continues to establish a West Nile Virus Fund Program to assist cities, villages and townships (CVT) in addressing mosquito control activities.

Oakland County's West Nile Virus Fund Program authorizes Oakland County CVT to apply for reimbursement of eligible expenses incurred in connection with personal mosquito protection measures/activity, mosquito habitat eradication, mosquito larviciding or focused adult mosquito insecticide spraying in designated community green areas.

The amount designated for the City of Birmingham is \$2,648.39. Birmingham must apply for reimbursement and our project must meet the eligibility requirements as determined by the Oakland County Health Division. This is the fifteenth year for this reimbursement program.

BACKGROUND

We have been treating the catch basins, approximately 2300, over the past fifteen seasons. The City of Birmingham incurs expenses in connection with mosquito control activities. We currently purchase the mosquito control material from Clarke Mosquito Control. We have been pleased with the treatment plan of the citywide catch basins and continue to stay current on best practices for mosquito control. Community education has also been an integral part of this program each year. Reimbursement from Oakland County for the program this year is \$2,648.39, which has been the same amount the past three years.

LEGAL REVIEW:

There has been no legal review in the past for this annual Oakland County West Nile Reimbursement Program.

FISCAL IMPACT:

The reimbursement amount of \$2,648.39 will offset the total expenditure amount of \$9,454.08 from the Sewer Fund-Operating Supplies Account #590-536.002-729.0000.

SUMMARY:

We spend approximately \$9,500 in Larvicide material to administer our mosquito control program each season. The program includes treating the local catch basins throughout the community, once during the season. This activity is eligible for reimbursement under Oakland County's West Nile Virus Fund Program.

ATTACHMENTS:

Include the Resolution requesting reimbursement for the maximum allotment of \$2,648.39 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program.

SUGGESTED RESOLUTION:

To approve the attached resolution requesting reimbursement for the maximum allotment of \$2,648.39 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program.

**CITY OF BIRMINGHAM RESOLUTION AUTHORIZING WEST
NILE VIRUS FUND EXPENSE REIMBURSEMENT REQUEST**

WHEREAS, upon recommendation of the Oakland County Executive, the Oakland County Board of Commissioners has established a West Nile Virus Fund Program to assist Oakland County cities, villages and townships in addressing mosquito control activities; and

WHEREAS, Oakland County's West Nile Virus Fund Program authorizes Oakland County cities, villages and townships to apply for reimbursement of eligible expenses incurred in connection with personal mosquito protection measures/activity, mosquito habitat eradication, mosquito larviciding or focused adult mosquito insecticide spraying in designated community green areas; and

WHEREAS, the City of Birmingham, Oakland County, Michigan has incurred expenses in connection with mosquito control activities believed to be eligible for reimbursement under Oakland County's West Nile Virus Fund Program.

NOW THEREFORE BE IT RESOLVED that the Birmingham City Commission authorizes and directs its Director of Public Services, as agent for the City of Birmingham, in the manner and to the extent provided under Oakland County Board of Commissioners, to request reimbursement of eligible mosquito control activity under Oakland County's West Nile Virus Fund Program.

DATED

SIGNED

CERTIFIED



MEMORANDUM

Police Department

DATE: April 18, 2019

TO: Joseph A. Valentine, City Manager

FROM: Christopher Busen, Investigative Commander

APPROVED: Mark H Clemence, Chief of Police

REFERENCE: Program Year 2019 High Intensity Drug Trafficking Area (HIDTA) sub recipient agreement between the County of Oakland and the City of Birmingham (Data Universal Numbering System ((DUNS)) #: 074239450)

INTRODUCTION:

The police department is a member of the Oakland County Sheriff's Office Narcotic Enforcement Team (NET) by an approved inter-local agreement between the City and Oakland County. In addition to Birmingham, there are fourteen other communities that are also members of NET by the inter-local agreement.

BACKGROUND:

In 2019, with the permission and cooperation of all fifteen member agencies, the Oakland County Sheriff's Office applied for a grant through the Executive Board for Michigan High Intensity Drug Trafficking Area (HIDTA) requesting the United States Office of Drug Control Policy (ONDCP) grant NET an award of \$115,000 for the program year 2019 (January 1, 2019 to December 31, 2019). The grant award will allow partial funding for overtime reimbursement of NET investigators for drug investigations. Oakland County will reimburse the City up to \$4,600.00 for qualifying NET related overtime.

LEGAL REVIEW:

Legal Counsel reviewed the inter-local agreement and no issues were found to exist.

FISCAL IMPACT:

Non-applicable

SUMMARY:

In order to receive funds from the grant, the City of Birmingham is required to enter into a sub recipient agreement with Oakland County. The purpose of the agreement is to delineate the relationship and responsibilities regarding the County's use of grant funds to reimburse municipalities for overtime incurred as it relates to participation in the Oakland County Narcotic Enforcement Team (NET).

ATTACHMENTS:

Program Year 2019 High Intensity Drug Trafficking Area (HIDTA) sub recipient agreement between the County of Oakland and the City of Birmingham.

SUGGESTED RESOLUTION:

To approve the Program Year 2019 High Intensity Drug Trafficking Area (HIDTA) Sub recipient agreement between the County of Oakland and the City of Birmingham. Further, to authorize the Mayor and the City Manager to sign the agreement on behalf of the City.

**PROGRAM YEAR 2019
HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)
SUBRECIPIENT AGREEMENT BETWEEN
THE COUNTY OF OAKLAND AND CITY OF BIRMINGHAM
Data Universal Numbering System (DUNS) #: 074239450**

This Agreement is made between Oakland County, a Constitutional Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 ("County") and City of Birmingham, 1551 Martin St., Birmingham, MI 48009, a Michigan Municipal Corporation ("Municipality"). The County and Municipality shall be collectively referred to as the "Parties."

PURPOSE OF AGREEMENT.

The Parties enter into this Agreement for the purpose of delineating their relationship and responsibilities regarding the County's use of Grant funds (defined below) to reimburse the Municipality for overtime expenses that it incurred related to its participation in the Oakland County Narcotic Enforcement Team ("N.E.T."), a multijurisdictional drug enforcement task force under the direction and supervision of the Oakland County Sheriff's Office ("OCSO").

Under the Parties' separate N.E.T. agreement, the Municipality is responsible for providing a full-time employee for participation in N.E.T. and for all costs associated with that employment, including overtime.

The County, as the legal entity that administers N.E.T., submitted an Initiative Description and Budget Proposal (Exhibit A) to the Executive Board for Michigan HIDTA requesting the United States Office of National Drug Control Policy ("ONDCP") to grant N.E.T. an award of \$115,000.00 for program year (PY) 2019 to reimburse N.E.T. participating agencies for eligible law enforcement officer overtime. PY 2019 begins January 1, 2019 and ends December 31, 2019.

If ONDCP grants N.E.T. an award for PY 2019, the ONDCP disburses the HIDTA grant funds to the Michigan State Police ("MSP"). To receive the Grant funds for overtime costs, N.E.T. must submit requests for reimbursement with the required supporting documentation to Michigan HIDTA. If Michigan HIDTA approves the N.E.T. overtime reimbursement requests, the MSP should distribute the Grant funds to County on behalf of N.E.T. The County has the authority to allocate a portion of the Grant funds to reimburse the Municipality for qualifying overtime costs subject to the terms and conditions of this Agreement.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

- 1. DEFINITIONS.** The following terms, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows.

- 1.1. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Municipality, or the County's or Municipality's agents or employees, whether such claim is brought in law or equity, tort, contract, or otherwise.
- 1.2. **Grant funds** mean the funds that may be awarded to the County and the other participating agencies in N.E.T. pursuant to Michigan HIDTA Initiative Description and Budget Proposal Version 2019 (Exhibit A) submitted to Michigan HIDTA by County on behalf of itself and the other participating agencies in N.E.T.

2. EXHIBITS. The Exhibits listed below are incorporated and are part of this Agreement.

- 2.1. **Exhibit A** – Michigan HIDTA Initiative Description and Budget Proposal Version 2019.
- 2.2. **Exhibit B** - Template Request for HIDTA Overtime Reimbursement (Locals to County).
- 2.3. **Exhibit C** – Sample letter regarding notification of current overtime pay rate.
- 2.4. **Exhibit D** – Sample overtime slip, signed by the officer's supervisor that supports each Request for HIDTA Overtime Reimbursement.
- 2.5. **Exhibit E** – Sample paystub or payroll report that supports each Request for HIDTA Overtime Reimbursement.

3. FEDERAL AWARD PROJECT DESCRIPTION.

- 3.1. Catalog of Federal Domestic Assistance ("CFDA") #: 95.001
- 3.2. Federal Awarding Agency: United States Office of National Drug Control Policy ("ONDCP")
- 3.3. Program: High Intensity Drug Trafficking Areas (HIDTA)
 - 3.3.1. HIDTA Objective: To reduce drug trafficking and drug production in the United States by: (A) facilitating cooperation among Federal, State, local, and tribal law enforcement agencies to share information and implement coordinated enforcement activities; (B) enhancing law enforcement intelligence sharing among Federal, State, local, and tribal law enforcement agencies; (C) providing reliable law enforcement intelligence to law enforcement agencies needed to design effective enforcement strategies and operations; and (D) supporting coordinated law enforcement strategies which maximize use of available resources to reduce the supply of illegal drugs in designated areas and in the United States as a whole.
- 3.4. Period of Performance: January 1, 2019 through December 31, 2019.

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- 3.5. The Federal Award Identification Number (FAIN) is provided in the HIDTA Grant Agreement between ONDCP and MSP, which is incorporated into this Agreement by reference.

4. USE OF HIDTA FUNDS.

- 4.1. The total amount of the federal award for overtime costs committed to the Municipality and obligated by this action by the County to the Municipality is not to exceed **\$4,600.00** for each participating law enforcement officer. That amount is based on the number of N.E.T participating agencies and eligible law enforcement officers at the time this Agreement was executed by both Parties. If the number of N.E.T participating agencies and/or eligible law enforcement officers changes during the term of this Agreement, the total amount of the federal award for overtime costs committed to the Municipality and obligated by this action by the County to the Municipality amount may change as funds are available on a pro rata basis. Such commitment and obligation for overtime costs is contingent upon the ONDCP awarding the Grant funds to N.E.T and the MSP reimbursing the County.
- 4.2. The County will reimburse the Municipality up to **\$4,600.00** for each participating law enforcement officer for qualifying N.E.T.-related overtime. That amount is based on the number of N.E.T participating agencies and eligible law enforcement officers at the time this Agreement was executed by both Parties. If the number of N.E.T participating agencies and/or eligible law enforcement officers changes during the term of this Agreement, the maximum reimbursement amount may change as funds are available on a pro rata basis. Such reimbursement shall only be made after the supporting documentation is submitted by the Municipality and approved by the County, as described in Paragraph 5.1. Such reimbursement is contingent upon the ONDCP awarding the grant funds to N.E.T and the MSP reimbursing the County.
- 4.2.1. HIDTA funds shall be used to pay overtime only if the overtime was performed in support of a HIDTA-designated Enforcement initiative or Intelligence and information Sharing Initiative. HIDTA funds shall not be used to pay overtime related to training attendance, financial management, drug treatment, drug demand reduction or prevention, or non-investigative related administrative work.
- 4.2.2. No HIDTA funds shall be used to supplant the Municipality's funds that would otherwise be made available for the same purposes.
- 4.3. There is no research and development performed pursuant to this Agreement.
- 4.4. No indirect costs shall be charged or reimbursed under performance of this Agreement.

5. REIMBURSEMENT OF ELIGIBLE NET OVERTIME.

- 5.1. To request reimbursement for eligible N.E.T. overtime costs, the Municipality shall submit to the County the documentation described in the following subparagraphs no later than thirty (30) days after PY 2019 has expired. If the County, in its sole discretion, determines that the

documentation submitted by the Municipality does not reconcile, then the Municipality shall provide any additional documentation requested by the County in order to process payment.

- 5.1.1. A fully completed and signed Request for HIDTA Overtime Reimbursement attached as Exhibit B.
- 5.1.2. A letter substantively similar to the sample letter regarding notification of current overtime pay rate attached as Exhibit C.
- 5.1.3. Overtime slips, signed by the officer's supervisor, that support each Request for HIDTA Overtime Reimbursement. The overtime slips shall be substantively similar to the sample overtime slip attached as Exhibit D.
- 5.1.4. The paystub or payroll report that supports each Request for HIDTA Overtime Reimbursement. The paystub or payroll report shall be substantively similar to the sample paystub attached as Exhibit E.
- 5.2. County will only reimburse Municipality for approved overtime costs after County has received the Grant funds from MSP for that particular reimbursement request.

6. GENERAL COMPLIANCE.

- 6.1. The Municipality shall comply with to 28 C.F.R. Part 69 (New Restrictions on Lobbying) and 2 C.F.R. Part 25 (Universal Identifier and System of Award Management).
- 6.2. The Municipality shall comply with the Government-wide Suspension and Debarment provision set forth at 2 CFR Part 180.
- 6.3. The Municipality shall perform all activities in accordance with The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 (the "Part 200 Uniform Requirements"), as adopted and implemented by the Office of National Drug Control Policy (ONDCP) in 2 C.F.R. Part 3603. For this award, the Part 200 Uniform Requirements supersede, among other things, the provisions of 28 C.F.R. Parts 66 and 70, as well as those of 2 C.F.R. Parts 215, 220, 225, and 230.
- 6.4. The Municipality shall comply with ONDCP's HIDTA Program Policy and Budget Guidance, all other applicable Federal, state, and local laws and regulations, and the terms and conditions contained in this Agreement.
- 6.5. The Municipality shall comply with all applicable requirements for subrecipients that are provided in the HIDTA Grant Agreement between ONDCP and MSP. The HIDTA Grant Agreement between ONDCP and MSP will be provided to the Municipality within a reasonable time after the County receives a copy of it.
- 6.6. As specified in the HIDTA Program Policy and Budget Guidance, the Municipality must:

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- 6.6.1. Establish and maintain effective internal controls over the Federal award that provides reasonable assurance that Federal award funds are managed in compliance with Federal statutes, regulations and award terms and conditions. These internal controls should be in compliance with the guidance in “Standards for Internal Control in the Federal Government,” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- 6.6.2. Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- 6.6.3. Evaluate and monitor compliance with applicable statute and regulations, and the terms and conditions of the Federal award.
- 6.6.4. Take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.
- 6.6.5. Take reasonable measures to safeguard protected personally identified information (PII) and other information ONDCP or the Municipality designates consistent with applicable Federal, state, and local laws regarding privacy and obligations of confidentiality.

7. FINANCIAL ACCOUNTABILITY AND AUDIT REQUIREMENTS.

- 7.1. The Municipality shall maintain standards of financial accountability that conform to 2 C.F.R. §200.302 (Financial Management) and 2 C.F.R. §200.303 (Internal Controls).
- 7.2. The Municipality shall comply with audit requirements contained in 2 C.F.R. Part 200, Subpart F, which requires the Municipality to have an annual audit conducted within nine (9) months of the end of their fiscal year, if the Municipality has an aggregate expenditure of more than \$750,000 in federal funds in a fiscal year. Any deficiencies noted in audit reports must be fully cleared by the Municipality within thirty (30) days after receipt of same. The Grant funds spent by the County on behalf of the Municipality for training expenses shall be included on the Schedule of Expenditures of Federal Awards if the Municipality is required to have a single audit performed. Municipalities that are exempt from the Single Audit requirements that receive less than \$750,000 of total Federal funding must submit a Financial Statement Audit prepared in accordance with Generally Accepted Auditing Standards (“GAAS”) if the audit includes disclosures that may negatively impact the HIDTA program including, but not limited to fraud, financial misstatements, and violations of any contract or grant provisions. The County shall have the right to review and audit all records of the Municipality pertaining to any payment by the County.

8. CONFLICT OF INTEREST.

- 8.1. The Municipality shall comply with the following ONDCP conflict of interest policies:

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- 8.1.1. As a non-Federal entity, you must maintain written standards of conduct covering conflicts of interest and governing the performance of your employees engaged in the selection, award, and administration of subawards and contracts.
- 8.1.2. None of your employees may participate in the selection, award, or administration of a subaward or contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an organization considered for a sub-award or contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or contractors or parties to subawards or contracts.
- 8.1.3. If you have a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, you must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, you are unable or appear to be unable to be impartial in conducting a sub-award or procurement action involving a related organization.

9. MANDATORY DISCLOSURE.

- 9.1. As a non-Federal entity, the Municipality must disclose, in a timely manner, in writing to ONDCP all violations of Federal criminal law involving fraud, bribery or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award that includes the term and condition outlined in 200 CFR Part 200, Appendix XII “Award Term and Condition for Recipient Integrity and Performance Matters,” are required to report certain civil, criminal, or administrative proceedings to System for Award Management (SAM). Failure to make required disclosures can result in remedies such as: temporary withholding of payments pending correction of the deficiency, disallowance of all or part of the costs associated with noncompliance, suspension, termination of award, debarment, or other legally available remedies outlined in 2 CFR 200.338 “Remedies for Noncompliance”.

10. RECORD RETENTION.

- 10.1. The Municipality shall comply with the record retention provisions of 2 C.F.R. 200.333 (Retention requirements for records).
- 10.2. The Municipality should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper in accordance with 2 C.F.R. 200.335 (Methods for collection, transmission and storage of information).

11. ACCESS TO RECORDS.

- 11.1. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the County, or any of their authorized representatives, have the right of access to any documents, papers, or other records of the Municipal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Municipality's personnel for the purpose of interview and discussion related to such documents. The right of access to the Municipality's records is not limited to the required retention period but last as long as the records are retained.
- 11.2. The Municipality shall permit the County and auditors to have access to the Municipality's records and financial statements as necessary for the County to meet the requirements of 2 C.F.R. Part 200.

12. TERM.

- 12.1. This Agreement and any amendments hereto shall be effective when executed by both Parties with concurrent resolutions passed by the governing bodies of each Party, and when the Agreement is filed according to MCL 124.510. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party. This Agreement shall end on December 31, 2019.

13. ASSURANCES.

- 13.1. Each Party shall be responsible for its own acts and the acts of its employees and agents, the costs associated with those acts, and the defense of those acts.
- 13.2. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 13.3. Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, laws, and requirements applicable to its activities performed under this Agreement.

14. TERMINATION OF AGREEMENT.

- 14.1. This Agreement may be terminated in whole or in part as follows:
 - 14.1.1. by the County, if the Municipality fails to comply with the terms and conditions of this Agreement;
 - 14.1.2. by the County for cause;

14.1.3. by the County with the consent of the Municipality, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

14.1.4. by the Municipality upon sending to the County written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the County determines in the case of partial termination that the reduced or modified portion of the subaward will not accomplish the purpose for which this Agreement was made, the County may terminate the Agreement in its entirety.

14.2. The County must provide to the Municipality a notice of termination. Written suspension or notice of termination will be sent to the Municipality's business address. If this Agreement is terminated or partially terminated, both the County and the Municipality remain responsible for compliance with the requirements at 2 CFR 200.343 Closeout and 2 CFR 200.344 Post-closeout Adjustments and Continuing Responsibilities.

15. CLOSEOUT.

15.1. The County shall close-out this Agreement when it determines that all applicable administrative actions and all required work under this Agreement have been completed by Municipality.

15.2. The Municipality shall comply with the closeout provisions of 2 C.F.R. 200.343 (Closeout).

16. POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES.

16.1. The closeout of this Agreement does not affect any of the following:

16.1.1. The right of County to disallow costs and recover funds on the basis of a later audit or other review. The County must make any cost disallowance determination and notify the Municipality within the record retention period;

16.1.2. The obligation of the Municipality to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments;

16.1.3. Audit requirements in Subpart F—Audit Requirements of 2 C.F.R. Part 200.

16.1.4. Records retention as required in Subpart D—Post Federal Award Requirements of this part, §200.333 Retention requirements for records through §200.337 Restrictions on public access to records.

17. REMEDIES FOR NONCOMPLIANCE.

17.1. If the Municipality fails to comply with federal statutes, regulations, or the terms and conditions of this Agreement, the County may impose additional conditions, as described in 2 CFR §200.207 Specific Conditions. If the County determines that noncompliance cannot be

remedied by imposing additional conditions, the County may take one or more of the following actions, as appropriate in the circumstances:

- 17.1.1. temporarily withhold cash payments pending correction of the deficiency by the Municipality or more severe enforcement action by the County;
- 17.1.2. disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
- 17.1.3. wholly or partly suspend or terminate the Agreement;
- 17.1.4. recommend that the Federal awarding agency initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and Federal awarding agency regulations;
- 17.1.5. withhold further funds for the project or program;
- 17.1.6. take other remedies that may be legally available.

18. NO THIRD-PARTY BENEFICIARIES. Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right, in favor of any other person or entity.

19. DISCRIMINATION. The Parties shall not discriminate against their employees, agents, applicants for employment, or another persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.

20. PERMITS AND LICENSES. Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations necessary to carry out its obligations and duties pursuant to this Agreement.

21. RESERVATION OF RIGHTS. This Agreement does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.

22. DELEGATION/SUBCONTRACT/ASSIGNMENT. Neither Party shall delegate, subcontract, and/or assign any obligations or rights under this Agreement without the prior written consent of the other Party.

23. NO IMPLIED WAIVER. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement.

No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

24. SEVERABILITY. If a court of competent jurisdiction finds a term, or condition, of this Agreement to be illegal or invalid, then the term, or condition, shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.

25. CAPTIONS. The section and subsection numbers and captions in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers and captions shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.

26. NOTICES. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

26.1. If Notice is sent to the County, it shall be addressed and sent to: Oakland County Board of Commissioners Chairperson, 1200 North Telegraph, Pontiac, Michigan 48341, with a copy to Oakland County Sheriff's Office, Sheriff Fiscal Officer, 1200 N. Telegraph, Bldg. 38E, Pontiac, Michigan 48341.

26.2. If Notice is sent to the Political Subdivision, it shall be addressed to: City of Birmingham.

26.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.

27. CONTACT INFORMATION.

<u>County of Oakland</u>	<u>City of Birmingham</u>
Lieutenant Brent Miles Investigative & Forensic Services Division Narcotics Enforcement Team Office: 248-858-1722 Fax: 248-858-1754 Email: milesbr@oakgov.com	

28. GOVERNING LAW. This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan, without regard to Michigan's conflict of laws provisions.

29. AGREEMENT MODIFICATIONS OR AMENDMENTS. Any modifications, amendments, rescissions, waivers, or releases to this Agreement must be in writing and executed by both Parties.

30. ENTIRE AGREEMENT. This Agreement represents the entire agreement and understanding between the Parties. This Agreement supersedes all other oral or written agreements between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, David T. Woodward, Chairperson, Oakland County Board of Commissioners, acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement, and hereby accepts and binds the County to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____

David T. Woodward, Chairperson
Oakland County Board of Commissioners

WITNESSED: _____ DATE: _____

Printed Name:
Title:

IN WITNESS WHEREOF, _____, acknowledges that he/she has been authorized by a resolution of the Municipality's governing body, a certified copy of which is attached, to execute this Agreement, and hereby accepts and binds the Municipality to the terms and conditions of this Agreement.

EXECUTED: _____ DATE: _____

Printed Name:
Title:

WITNESSED: _____ DATE: _____

Printed Name:
Title:



MEMORANDUM

Clerk's Office

DATE: March 29, 2019
TO: Joseph A. Valentine, City Manager
FROM: J. Cherilynn Mynsberge, City Clerk
SUBJECT: Art in the Alley

INTRODUCTION:

The Birmingham Public Arts Board has submitted a Special Event application for a new event, Art in the Alley, to be held in the public area of Willits Alley on Thursday, June 20, 2019 from 2:00 PM – 9:00 PM. Seaholm High School and local art galleries will also be involved to showcase art projects while hosting live music and a crafts station. Set-up hours are 10 AM-2 PM. Tear-down will be from 9 PM-12 AM. The attached memo from City Planner Brooks Cowan includes additional details about the proposed event and the involvement of Seaholm H.S. students.

BACKGROUND:

Prior to application submission the Police Department reviewed the proposed event details for street closures and the need for safety personnel and approved the details. DPS, Planning, Building, Police, Fire, and Engineering have indicated their approval. SP+ Parking has been notified of the event for planning purposes.

The following events occur in June in Birmingham and do not pose a conflict for this event:

Farmers Market	Sundays	Lot 6
Lungevity 5K	Saturday, June 1	Booth Park
Parkinson's Walk	Saturday, June 8	Seaholm & neighborhood
In the Park concerts	Friday, June 14, Saturday, June 19, 26	Shain Park
Movies in Booth Park	June 14	Booth Park
Yoga in the Park	June 22	Shain Park

LEGAL REVIEW:

n/a

FISCAL IMPACT:

n/a

SUMMARY

The City Commission is being asked to approve a special event permit for Art in the Alley to be held on Thursday, June 20th, with set-up and tear-down on the same day.

ATTACHMENTS:

1. Special Event application
2. Notification letter with map of event area distributed to residents/businesses within 300 feet of the event area on April 4, 2019. Notification addresses are on file in the Clerk's Office.
3. Department Approval page with comments and estimated costs

SUGGESTED RESOLUTION:

To approve a special event permit as requested by the City of Birmingham Public Arts Board to hold Art in the Alley in the public areas of Willits Alley on Thursday, June 20, 2019 from 2:00 PM – 9:00 PM, with set-up and tear-down on the same day, 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.



MEMORANDUM

Planning Division

DATE: April 22nd, 2019

TO: Cherilynn Mynsberge, City Clerk

FROM: Brooks Cowan, City Planner

SUBJECT: Art in the Alley

The Public Arts Board student representatives Cole Wohlfiel and Amelia Berry have been working on organizing the Art in the Alley event for Thursday June 20th, 2019 from 2pm to 9pm. Creating more interactive art events with the City such as art shows and musical events was one of their main goals in joining the Public Arts Board. They have been working with fellow Board Members Rabbi Cohen and Jason Eddleston throughout the year to host this event.

For visual art, the applicants intend on displaying paintings, drawings, photography, and ceramics from local High School artists. High school volunteers from groups such as National Honors Society will be assisting with set-up and take-down of the event materials. The participants wish to decorate the alley with string lights and hand out promotional posters for Birmingham Art in Public Spaces as well.

For performance art, the applicant intends on having multiple 15-30 minute performances throughout the day. The applicants can supply their own PA system, but will need a power source provided by the City. Intended musical performances are from local jazz ensembles, rock bands, and solo artists who play guitar and piano. Performers will bring their own equipment, though one drum set will stay all day.

For interactive art, there will be an arts and crafts table led by students from Seaholm Art & Soul Club. The club is experienced in going to local elementary schools and doing crafts events with the children. The Public Arts Board has allocated funding and materials for such crafts events for children.

The applicant also intends to organize a group of High School students for the advertising and communications aspect of the event. They intend on creating graphic designs for the event to be used on posters, and also to integrate their designs onto social media.

Please see below for the recruitment description the student representatives have put together to incorporate more volunteers from local schools.

Recruitment Description:

The Public Arts Board is hosting an "Art in the Alleyway" event Thursday, June 20th, in the Willits Alley in downtown Birmingham from 2pm-9pm. This event is primarily aimed at attracting Birmingham youth into participating. We want to showcase local youth art to the Birmingham community as well as include live music and an Arts and Crafts area for younger kids.

Here are some ways to get involved here and a few things you can do:

1. If you are an artist, you can bring art for us to showcase. This art can be photography, drawings, paintings, or ceramics. We would like a brief bio of who you are, what you'll be presenting and what equipment you'll need (display tables or easels).
2. If you are a performer, we are looking for people to play live music throughout the day. We want individuals or groups that can put on a 10-25 minute show. We want bands and solo acts of varying genres. Submit a brief bio of your music act and let us know what equipment and set up help you'll need (we will have a sound system but most likely you'll have to bring your own amps and instruments).
3. If you want to help with advertising. We need people to help create graphic art designs to post on snapchat and instagram as well as create flyers to put up around downtown Birmingham in various establishments. Whoever wants to volunteer for this please talk to Cole directly because he wants to get you in touch with the Public Arts Board advertising team so they can look at your work as well, one thing they definitely want is for us to trend the hashtag #bhampublicart. This job is SUPER IMPORTANT and we will be able to get you community service hours for it.
4. If you want to help with the arts and crafts, we need older students who want to help younger kids do guided crafts or just oversee them work on coloring books. We plan to have two sessions of "guided crafts" for the kids that whoever is on this committee can help create. Between crafts this will just be a drawing table where kids can free draw or work in coloring books, we will still need older students to watch kids at this point too, just not as many
5. If you want to just volunteer at the event here's other things you can help with:
 - a. Snack table: Oversee the snack table, make sure it is clean and well stocked with water, chips, etc.
 - b. Roady Work: Help take down and set up between performances, also help control sound and intermission music.
 - c. Set up crew: Help decorate and set up tables before the event starts! This is a pretty important job and we need to do extra planning to add some more flair to decorations
 - d. Clean up crew: Stay after for a half an hour to pack everything up
 - e. Security: Oversee the art displays and make sure there's no vandalism, also be able to answer questions about the PAB and pass out sculpture maps and other promotional material.

19-00011531

**CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES**

IMPORTANT: EVENTS UTILIZING CITY SIDEWALKS AND/OR STREETS MUST MEET WITH POLICE DEPARTMENT SPECIAL EVENT OFFICER TO REVIEW PROPOSED EVENT DETAILS PRIOR TO SUBMITTING APPLICATION.

Police Department acknowledgement: _____

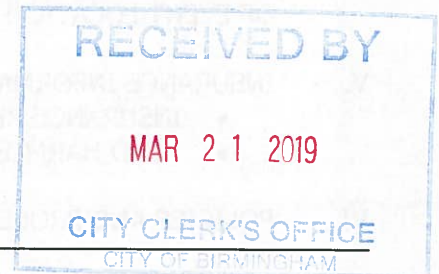
I. EVENT DETAILS

- Incomplete applications will not be accepted.
- Changes in this information must be submitted to the City Clerk, in writing, at least three weeks prior to the event

FEES: **FIRST TIME EVENT:** \$200.00
 ANNUAL APPLICATION FEE: \$165.00

(Please print clearly or type)

Date of Application 3/21/2019



Name of Event Art in the Alley

Detailed Description of Event (attach additional sheet if necessary) The Birmingham Public Arts Board
will be coordinating with Seaholm High School and local art galleries to showcase art projects
while hosting live music and a crafts station.

Location Publicly owned section of Willits Alley

Date(s) of Event June 21 June 20 Hours of Event 4pm-9pm 2pm-9pm

Date(s) of Set-up June 21 June 20 Hours of Set-up 12pm-4pm 10am-2pm

NOTE: No set-up to begin before 7:00 AM, per City ordinance.

Date(s) of Tear-down June 20 Hours of Tear-down 9pm-12am

Organization Sponsoring Event Birmingham Public Arts Board

Organization Address 151 Martin

Organization Phone (248) 530-1846

Contact Person Brooks Cowan

Contact Phone (248) 530-1846

Contact Email BCowan@bhamgov.org

II. EVENT INFORMATION

1. Organization Type City Organization
(city, non-profit, community group, etc.)
2. Additional Sponsors or Participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.) Cultural Council of Birmingham Bloomfield

3. Is the event a fundraiser? YES ☐ NO ☒
List beneficiary _____
List expected income _____
Attach information about the beneficiary.
4. First time event in Birmingham? YES ☒ NO ☐
If no, describe _____

5. Total number of people expected to attend per day 100
6. The event will be held on the following City property: (Please list)
☒ Street(s) Willits Alley

☐ Sidewalk(s) _____

☐ Park(s) _____

7. Will street closures be required? YES ☒ NO ☐
(Police Department acknowledgement prior to submission of application is required) (initial here) [Signature]
8. What parking arrangements will be necessary to accommodate attendance? N/A

9. Will staff be provided to assist with safety, security and maintenance? YES ☒ NO ☐

If yes, please provide number of staff to be provided and any specialized training received.

Describe Arts Board members and Volunteers will assist with setup and teardown

10. Will the event require safety personnel (police, fire, paramedics)? YES ☐ NO ☒

(Police Department acknowledgement prior to submission of application is required.) (initial here) 

Describe _____

11. Will alcoholic beverages be served? YES ☐ NO ☒

If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.

12. Will music be provided? YES ☒ NO ☐

☒ Live ☐ Amplification ☐ Recorded ☐ Loudspeakers

Time music will begin 6PM

Time music will end 9PM

Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.

13. Will there be signage in the area of the event? YES ☒ NO ☐

Number of signs/banners 4

Size of signs/banners 4 SF PER SIDE

Submit a photo/drawing of the sign(s). **A sign permit is required.**

14. Will food/beverages/merchandise be sold? YES ☐ NO ☒

- Peddler/vendor permits must be submitted to the Clerk's Office, **at least two weeks prior to the event.**
- You must obtain approval from the Oakland County Health Department for all food/beverage sales/donations. Contact ehclerk@oakgov.com or 248-535-9612 to obtain Health Department approval.
- There is a \$50.00 application fee for all vendors and peddlers, in addition to the \$10.00 daily fee, per location.

LIST OF VENDORS/PEDDLERS

(attach additional sheet if necessary)

VENDOR NAME	GOODS TO BE SOLD	WATER HOOK-UP REQUIRED?	ELECTRIC REQUIRED?
TBD			

III. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment?
(show location of each on map)

EQUIPMENT	QUANTITY	COST	NOTES
Picnic Tables		6 for \$500.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles		\$6.00 each includes 1 bag. For additional bags, the cost is \$32/per case.	Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.
Dumpsters		\$350.00/per dumpster per day.	Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.
Utilities (electric)	# of vendors requiring utilities	Varies	Charges according to final requirements of event.
Water/Fire Hydrant		\$224.75/per hydrant. Includes the use of 5,000 gallons of water. Any additional water usage will be billed.	Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.
Audio System	X	\$200.00 per day	Must meet with City representative.
Meter Bags / Traffic Cones / Barricades	# to be determined by the Police Department.		

2. Will the following be constructed or located in the area of the event? YES NO
(show location of each on map) NOTE: Stakes are not allowed.

TYPE	QUANTITY	SIZE
Tents/Canopies/Awnings (A permit is required for tents over 120 sq ft)		
Portable Toilets		
Rides		
Displays		
Vendors		
Temporary Structure (must attach a photo)		
Other (describe)		

SIGNATURE OF APPLICANT REQUIRED

EVENT NAME Art in the Alley

EVENT DATE Friday June 21st

The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.



Signature

3-20-2019

Date

IV. SAMPLE LETTER TO NOTIFY ANY AFFECTED PROPERTY/BUSINESS OWNERS

- Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission. (*Sample letter attached to this application.*)
- Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk's Office. The letter must be distributed at least two weeks prior to the Commission meeting.
- A copy of the letter and the distribution list must be submitted to the Clerk's Office at least two weeks prior to the Commission meeting.
- If street closures are necessary, a map must be included with the letter to the affected property/business owners.



Band Stage



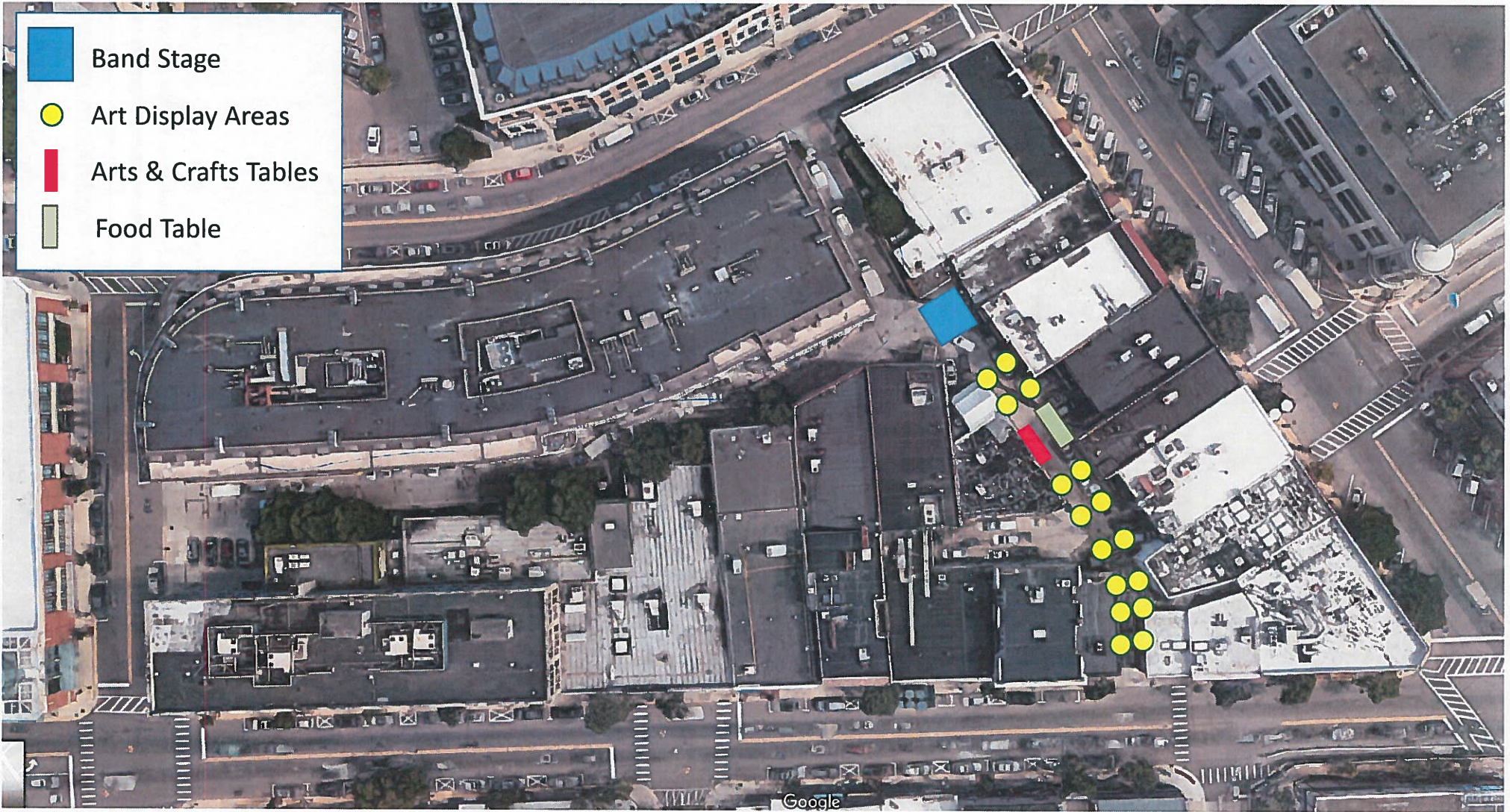
Art Display Areas



Arts & Crafts Tables



Food Table





SPECIAL EVENT NOTIFICATION

TO ALL PROPERTY/BUSINESS OWNERS

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City Commission will consider our request so that an opportunity exists for comments prior to this approval.

NAME OF EVENT: Art in the Alley
LOCATION: Publicly owned section of Willits Alley (see attached map)
DATES/TIMES: Thursday, June 20, 2019 – 2 PM-9 PM

- set up: June 20, 2019 – 10 AM-2 PM
- take-down: June 20, 2019 – 9 PM-12 AM

DATE/TIME OF CITY COMMISSION MEETING: Monday, May 6, 2019, 7:30PM
The city commission meets in room 205 of the Municipal Building at 151 Martin. A complete copy of the application to hold this special event is available for your review at the city clerk's office (248/530.1880).

EVENT ORGANIZER: City of Birmingham, Public Arts Board
City Staff Contact: Brooks Cowan, 248.530.1846, bcowan@bhamgov.org

TO MANAGERS OF BUILDINGS CONTAINING MORE THAN ONE UNIT: PLEASE POST THIS NOTICE AT THE MAIN ENTRANCE TO YOUR BUILDING.



SPECIAL EVENT NOTIFICATION

TO ALL PROPERTY/BUSINESS OWNERS

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City Commission will consider our request so that an opportunity exists for comments prior to this approval.

NAME OF EVENT: Art in the Alley
LOCATION: Publicly owned section of Willits Alley (see attached map)
DATES/TIMES: Saturday, June 20, 2019 – 2 PM-9 PM

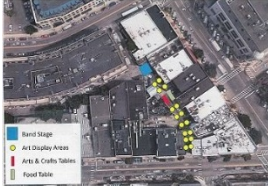
- set up: June 20, 2019 – 10 AM-2 PM
- take-down: June 20, 2019 – 9 PM-12 AM

DATE/TIME OF CITY COMMISSION MEETING: Monday, May 6, 7:30PM
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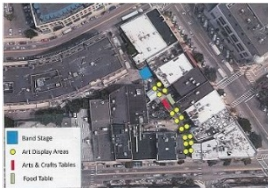
EVENT ORGANIZER: City of Birmingham, Public Arts Board
City Staff Contact: Brooks Cowan, 248.530.1846, bcowan@bhamgov.org

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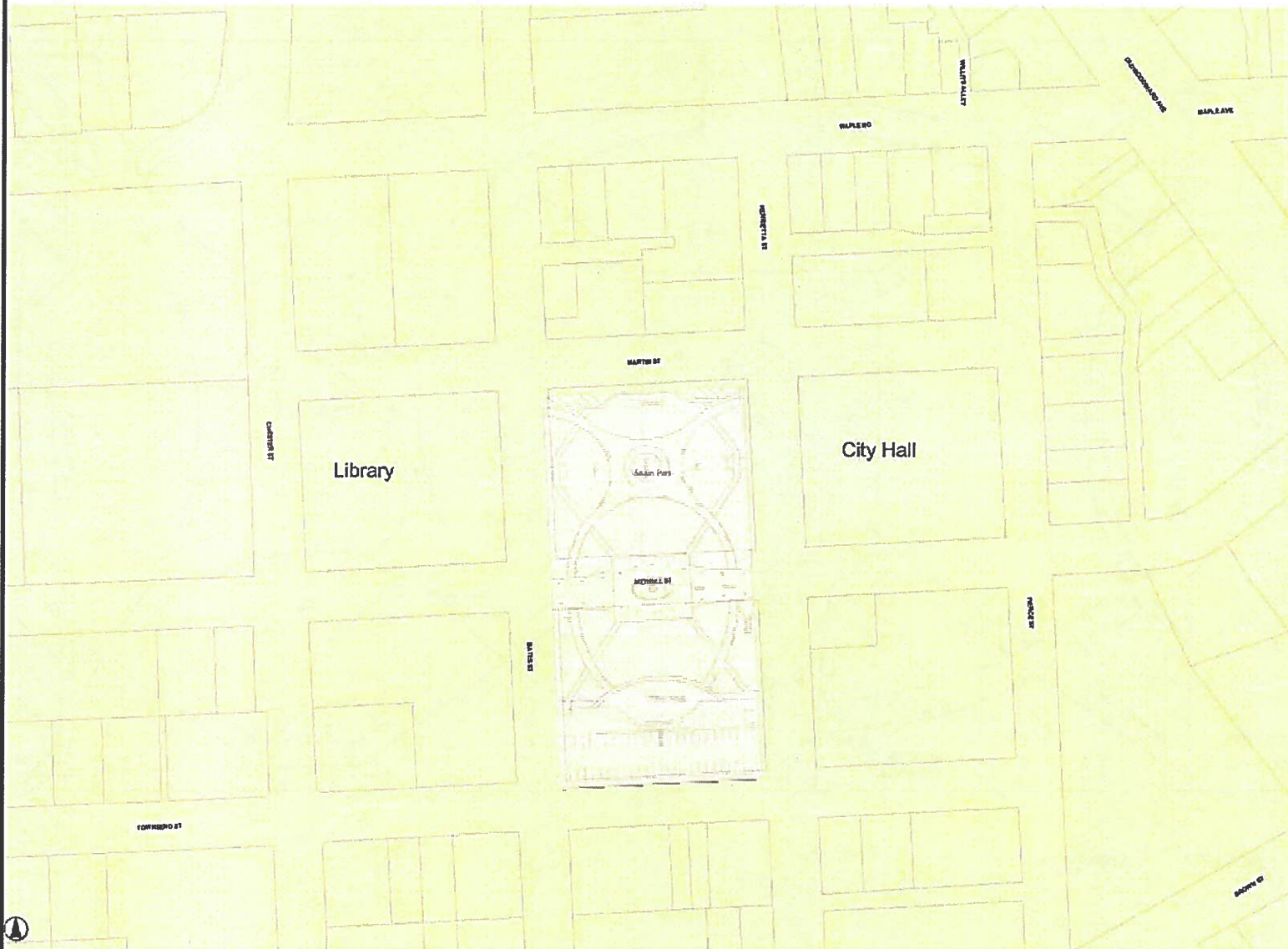
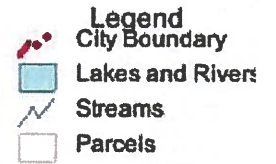
City Clerk's Office
City of Birmingham
151 Martin
Birmingham, MI 48009



City Clerk's Office
City of Birmingham
151 Martin
Birmingham, MI 48009



Birmingham Map



DISCLAIMER.

The information provided on this site is for convenience only and is compiled from recorded deeds, plats, tax maps, surveys, and other public records and data. Much of the data was not compiled or created by the City of Birmingham. In the preparation of this report, extensive efforts have been made to offer the most current, correct, and clearly expressed information possible. However, inadvertent errors, inaccuracies, and omissions can occur. Official versions should be used as a primary information source for verification of the information provided on these pages. Users are advised that their use of any of this information is at their own risk. The City of Birmingham, its consultants and data providers, do not assume, and hereby disclaim, legal responsibility for the information contained herein which is provided "as is" with no warranties of any kind whether such errors, inaccuracies or omissions result from negligence, accident or any other cause.

DEPARTMENT APPROVALS

EVENT NAME ART IN THE ALLEY

LICENSE NUMBER #19-00011531

COMMISSION HEARING DATE: APRIL 8, 2019

NOTE TO STAFF: Please submit approval by **MARCH 25, 2019**

DATE OF EVENT: JUNE 20, 2019

DEPARTMENT	APPROVED	COMMENTS	PERMITS REQUIRED (Must be obtained directly from individual departments)	ESTIMATED COSTS (Must be paid two weeks prior to the event. License will not be issued if unpaid.)	ACTUAL COSTS (Event will be invoiced by the Clerk's office after the event)
PLANNING 101-000.000-634.0005 248.530.1855	BC	No Cost No Comment		\$0	
BUILDING 101-000.000.634.0005 248.530.1850	MJM	No Building department involvement		\$0	
FIRE 101-000.000-634.0004 248.530.1900	JMC			\$0	
POLICE 101-000.000.634.0003 248.530.1870	SG	On duty personnel to provide extra patrol.		\$0	\$0
PUBLIC SERVICES 101-000.000-634.0002 248.530.1642	CL	Department is recommending (2) trash receptacles to be used. Audio System is not available for event.		\$50	
ENGINEERING 101-000.000.634.0002 248.530.1839	A.F.	Place barricades at both ends of the event area to prohibit traffic and protect pedestrians. Barricades shall be placed in such a way as to not obstruct sidewalk on W. Maple or traffic flow at the north end of the alley.	NONE	\$0	\$0

SP+ PARKING					
INSURANCE 248.530.1807	CA	CITY EVENT	NONE	\$0	\$0
CLERK 101-000.000-614.0000 248.530.1803		Notification letters mailed by applicant on 4/4/19. Notification addresses on file in the Clerk's Office. Evidence of required insurance must be on file with the Clerk's Office no later than N/A	Applications for vendors license must be submitted no later than 6/6/19.	\$165 (CITY EVENT)	
				TOTAL DEPOSIT REQUIRED \$50.00	ACTUAL COST

FOR CLERK'S OFFICE USE

Deposit paid _____

Actual Cost _____

Due/Refund_____



MEMORANDUM

Department of Public Services

DATE: April 25, 2019

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services
Aaron J. Filipski, Public Services Manager

SUBJECT: Vehicle #565 & #506 Replacements

INTRODUCTION:

City vehicle #565, a 2013 Chevrolet Caprice police patrol vehicle, was recently involved in a collision and determined to be total loss by the City's insurance provider. City vehicle #506 is a 2009 Ford Escape, also assigned to the Police Department. Due to the condition of each, the Department of Public Services recommends replacement of both.

BACKGROUND:

Vehicle #565 was scheduled for replacement during the 19-20 fiscal year, but now requires priority replacement as a result of the aforementioned collision damage. Vehicle #506 – listed in the current vehicle replacement schedule – qualifies for replacement based on the replacement evaluation score, illustrated below:

Vehicle #506 – 2009 Ford Escape

FACTOR	DESCRIPTION	POINTS
Age	1 point each year of age	10
Miles/Hours	1 point each 10,000 miles of usage	12.5
Type of Service	Type 5 – Police, fire, and rescue service vehicles	5
Reliability	Level 3 – In shop more than twice within one month period; no major breakdowns or road calls	3
M & R Costs	Level 2 – Maintenance costs are 21-40% of replacement cost	2
Condition	Level 5 – Previous accident damage, poor paint, bad interior, drivetrain that is damaged or inoperative, and major damage from add-on equipment	5
TOTAL POINTS 28+, POOR - needs priority replacement		37.5

The Department of Public Services recommends replacing these vehicles with two (2) new 2020 Ford Explorer Police Interceptors through the Oakland County extendable purchasing contract #4944 – awarded to Gorno Ford, located in Woodhaven, Michigan.

LEGAL REVIEW:

No legal review is required for this item.

FISCAL IMPACT:

The combined expenditure for both vehicles totals \$70,249. A pending insurance payment is expected to offset the total cost of vehicle #565's replacement – resulting in a net expenditure

of \$35,169. Funds for this purchase are available in the Auto Equipment Fund, account #641-441.006-971.0100.

SUMMARY:

The Department of Public Services recommends approving the purchase of two (2) 2020 Ford Explorer Police Interceptors from Gorno Ford, using funds from the Auto Equipment Fund #641-441.006.971.0100 for a total expenditure of \$70,249.

ATTACHMENTS:

There are no attachments included with this report.

SUGGESTED RESOLUTION:

To approve the purchase of two (2) 2020 Ford Explorer Police Interceptors from Gorno Ford, through the Oakland County extendable purchasing contract #4944 in the amount of \$70,249 from account #641-441.006.971.0100.

DATE: April 29, 2019

TO: Joseph A. Valentine, City Manager

FROM: Jana Ecker, Planning Director
Mark H. Clemence, Chief of Police

SUBJECT: Set Public Hearing for SLUP Amendment – 203 Pierce – Toast

INTRODUCTION:

Toast, an existing bistro located at 203 Pierce in Downtown Birmingham, is requesting to amend the current Special Land Use Permit (SLUP) to reflect a change in ownership and to request a change in the hours of operation. The restaurant's design, menu and functions will not be altered as a result of this ownership change or change in the hours of operation.

BACKGROUND:

The applicant is proposing a change to the ownership of the bistro and the corresponding liquor license, and is also requesting a change in the hours of operation, and thus an amendment to the SLUP is required.

The Police Department received the request from the Law Offices of Adkison, Need, Allen, and Rentrop regarding a transfer of membership interest from Regan Bloom and Thomas Bloom, who were husband and wife when Toast was originally licensed by the MLDD in 2008. Pursuant to a Divorce Settlement Agreement, Thomas Bloom assigned his 50% interest in Toast Birmingham to Regan Bloom. Following this transfer, Regan Bloom took on additional investors and ultimately created Toast Holdings, LLC, to which the license was ultimately transferred. Please see attached letter dated March 21, 2019 for a detailed outline of the complete transfer process. The Police Department received the initial fee of \$1,500 for a business that serves alcoholic beverages for consumption on the premises per section 7.33 of the Birmingham City Code.

The Police Department conducted a background check on all new investors who became members of Toast Holdings, LLC, which include Omar Ammori, Saber Ammori, and Kevin Denha. Omar Ammori, Saber Ammori, and Kevin Denha were checked using the Law Enforcement Information Network (LEIN), the Court's Law Enforcement Management Information System (CLEMIS) and the Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (MAGLOCLLEN). Omar Ammori, Saber Ammori and Kevin Denha have no criminal convictions.

The Planning Division received a SLUP Amendment application from Toast requesting approval of the ownership transfer, as well as a change in the hours of operation for the bistro. Please see attached letter dated April 18, 2019 outlining the requested change in the hours of operation. On April 24, 2019, the Planning Board reviewed the SLUP Amendment and corresponding site plan review, and voted to recommend approval to the City Commission for both.

LEGAL REVIEW:

The City Attorney has reviewed the documentation and has no concerns.

FISCAL IMPACT:

The SLUP amendment has no fiscal impact on the City.

SUMMARY:

Toast, an existing bistro located at 203 Pierce in Downtown Birmingham, is requesting approval to amend the current Special Land Use Permit (SLUP) to reflect a change in ownership and to change the hours of operation. The restaurant's design, menu and functions will not be altered as a result of this ownership change.

ATTACHMENTS:

- Executed Special Land Use Permit Application
- Letters – Adkinson, Need, Allen, & Rentrop
- Supporting Documentation to Application
- Existing Toast Menu
- Site Plans & Photos
- Planning Board Staff Report
- City Commission Memorandum – Police Department
- Organizational Chart for Toast Birmingham, LLC

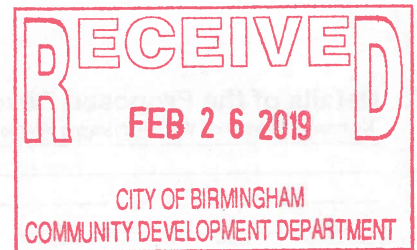
SUGGESTED RESOLUTION:

To set a public hearing on June 3, 2019 to consider a Special Land Use Permit Amendment for 203 Pierce – Toast, to reflect an ownership change and change in the hours of operation.

AND

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Toast Birmingham, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) and SDM License with Outdoor Service (1 Area) located at 203 Pierce, Birmingham, Oakland County, MI 48009.

Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of Toast Birmingham, LLC approving the liquor license transfer request of Toast Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service (1 Area) located at 203 Pierce, Birmingham, Oakland County, MI 48009.



Special Land Use Permit Application – Bistro Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Toast Birmingham, LLC
Address: 203 Pierce Street
Birmingham, MI 48009
Phone Number: 248-258-6278
Fax Number: 248-479-1800
Email address: finance@eatattoast.com

3. Applicant's Attorney/Contact Person

Name: Anthony Minicilli (Contact Person)
Address: 23150 Woodward Ave
Ferdale, MI 48220
Phone Number: 734-716-4405
Fax Number: 248-479-1800
Email address: finance@eatattoast.com

2. Property Owner

Name: Maple-Pierce Properties
Address: 700 N. Old Woodward Ave., Suite 300
Birmingham, MI 48009
Phone Number: 248-865-1515
Fax Number: _____
Email address: msarafa@visiongrowthpartners.com

4. Project Designer/Developer

Name: Krieger Associates
Address: 2120 E. Eleven Mile Rd.
Royal Oak, MI 48067
Phone Number: 248-414-9270
Fax Number: _____
Email address: _____

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
 - i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
 - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - iii. A certified Land Survey;

- iv. Interior floor plans;
 - v. A Landscape Plan;
 - vi. A Photometric Plan;
 - vii. Colored elevation drawings for each building elevation;
- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: 203 Pierce Street
Birmingham, MI 48220
Name of development: Toast: A Neighborhood Joint
Sidwell #: _____
Current Use: Restaurant/Bar A-2
Proposed Use: Same
Area of Site in Acres: .08
Current zoning: D-4
Is the property located in the floodplain? No
Name of Historic District Site is Located in: Shane Park
Date of Historic District Commission Approval: 3/28/2008

Date of Application for Preliminary Site Plan: _____
Date of Preliminary Site Plan Approval: _____
Date of Application for Final Site Plan: _____
Date of Final Site Plan Approval: _____
Date of Application for Revised Final Site Plan: _____
Date of Revised Final Site Plan Approval: _____
Date of Design Review Board Approval: _____
Is there a current SLUP in effect for this site? _____
Date of Application for SLUP: _____
Date of SLUP Approval: _____
Date of Last SLUP Amendment: _____

CITY OF BIRMINGHAM
Date 02/26/2019 12:53:39 PM
Ref 00156850
Receipt 471036
Amount \$2,700.00
And 100.00
SIS Fund

7. Details of the Proposed Development (attach separate sheet if necessary)

No new development. We are changing ours to Monday through Friday: 7am - 3pm and Saturday and Sunday: 8am - 4pm

8. Buildings and Structures

Number of Buildings on Site: 1
Height of Buildings & # of Stories: 2 Stories

Use of Buildings: 1 Floor: Restaurant 2nd Floor: offices
Height of Rooftop Mechanical Equipment: _____

9. Floor Use and Area (in Square Feet)

Structures:

Restaurant Space: 3,298 sq ft
Office Space: 2nd level approximately the same
Retail Space: None

Number of Residential Units: None
Rental or Condominium? None
Total Floor Area: 3,298 sq ft

10. Proposed Bistro Operation

Number of Indoor Seats: 65
Number of Outdoor Seats: 52
Entertainment Proposed: None
Previous LCC Complaints? None
Number of Tables along Street Façade: 6 on sidewalk; 16 on platform
Type of Cuisine: America

Bar Area? Yes; 168 sq feet
Number of Seats at Bar: 9 seats
Full Service Kitchen? Yes
Percentage of Glazing Proposed: Existing
Years of Experience in Birmingham: 11
Years of Experience Outside Birmingham: 18 years

11. Required and Proposed Setbacks

Required Front Setback: _____
Required Rear Setback: _____
Required Total Side Setback: _____

Proposed Front Setback: _____
Proposed Rear Setback: _____
Proposed Total Side Setback: _____

12. Outdoor Dining Facility

Location (sidewalk right-of-way or on-street parking space): Both
Hours of Operation: M-F: 7am - 3pm S & S: 8am-4pm
Width of unobstructed sidewalk between door and café? (5 ft. required): 5ft
Platform Proposed: Yes
Trash Receptacles: Existing Public

Number of Tables/Chairs: 22 Tables; 52 seats
Material of Tables/Chairs: Metal
Tables Umbrellas Height & Material: 7' canvas
Number and Location of Parking Spaces Utilized: Two
Screenwall Material: N/A
Enclosure Material: N/A

13. Required and Proposed Parking

Required number of parking spaces: _____
Location of parking on site: _____
Screenwall material: _____

Shared Parking Agreement? _____
Location of parking off site: _____
Height of screenwall: _____

14. Landscaping

Location of landscape areas: _____

Proposed landscape material: _____

15. Streetscape

Sidewalk width: 12' 8"
Number of benches: None
Number of planters: None
Number of existing street trees: One
Number of proposed street trees: None
Streetscape plan submitted? On File

Description of benches or planters: N/A

Species of existing trees: Unknown

Species of proposed trees: N/A

16. Loading

Required number of loading spaces: 1
Typical angle of loading spaces: Ally
Screenwall material: N/A
Location of loading spaces on site: Rear Ally

Proposed number of loading spaces: None

Typical size of loading spaces: N/A

Height of screenwall: N/A

Typical time loading spaces are used: Ally: 7am - 3pm

17. Exterior Waste Receptacles

Required number of waste receptacles: 0
Location of waste receptacles: N/A
Screenwall material: N/A

Proposed number of waste receptacles: 0

Size of waste receptacles: N/A

Height of screenwall: N/A

18. Mechanical Equipment

Utilities and Transformers:

Number of ground mounted transformers: 0
Size of transformers (L•W•H): N/A
Number of utility easements: 0
Screenwall material: N/A

Location of all utilities & easements: N/A

Height of screenwall: N/A

Ground Mounted Mechanical Equipment:

Number of ground mounted units: None (Basement)
Size of ground mounted units (L•W•H): N/A
Screenwall material: N/A

Location of all ground mounted units: None

Height of screenwall: N/A

Rooftop Mechanical Equipment:

Number of rooftop units: Existing
Type of rooftop units: Exsiting
Screenwall material: N/A
Location of screenwall: Units no visible from street

Location of all rooftop units: On roof

Size of rooftop units (L•W•H): Exsiting

Percentage of rooftop covered by mechanical units: Exsiting

Height of screenwall: N/A

Distance from rooftop units to all screenwalls: N/A

19. Accessory Buildings

Number of accessory buildings: 0
Location of accessory buildings: N/A

Size of accessory buildings: N/A

Height of accessory buildings: N/A

20. Building Lighting

Number of light standards on building: 4
Size of light fixtures (L•W•H): Exsiting
Maximum wattage per fixture: 50w
Light level at each property line: Low

Type of light standards on building: Exsiting

Height from grade: 7' 0"

Proposed wattage per fixture: _____

21. Site Lighting

Number of light fixtures: N/A
Size of light fixtures (L•W•H): N/A
Maximum wattage per fixture: N/A
Light level at each property line: N/A

Type of light fixtures: N/A

Height from grade: N/A

Proposed wattage per fixture: N/A

Holiday tree lighting receptacles: N/A

22. Adjacent Properties

Number of properties within 200 ft.: 2

Property #1

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #2

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #3

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #4

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #5

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

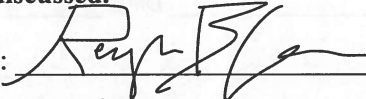
Property #6

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

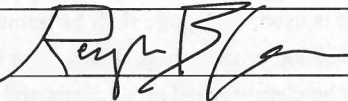
Property Description: _____

North, south, east or west of property? _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

Signature of Owner:  Date: 02/21/19

Print Name: Regan K Bloom

Signature of Applicant:  Date: 02/21/19

Print Name: Regan K Bloom

Signature of Architect: _____ Date: _____

Print Name: _____

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
KELLY A. ALLEN
ROBERT M. GOLDMAN
JESSICA A. HALLMARK
GREGORY K. NEED
G. HANS RENTROP

39572 Woodward, Suite 222
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

KEVIN M. CHUDLER
LINDA S. MAYER
KATHERINE A. TOMASIK

March 21, 2019

VIA HAND DELIVERY

Commander Chris Busen
Birmingham Police Department
151 Martin
Birmingham, Michigan 48012

**Re: Transfer of Membership Interests
Toast Birmingham, LLC**

Dear Commander Busen:

We represent Toast Birmingham, LLC ("Toast Birmingham"), which has been approved for a three-step membership transfer by the Michigan Liquor Control Commission ("MLCC"). The MLCC approvals were issued on February 12, 2019.

Toast Birmingham was originally licensed by the MLCC in 2008 with two equal members, Regan Bloom and Thomas Bloom, who were, at that time, husband and wife.

STEP 1

In November 2016, pursuant to a Divorce Settlement Agreement, Thomas Bloom assigned his 50% interest in Toast Birmingham to Regan Bloom. As of Step 1, the sole member of Toast Birmingham was Regan Bloom.

STEP 2

In February 6, 2017, an investment group was formed called Vision Toast, LLC ("Vision Toast"). Vision Toast entered into an agreement with Regan Bloom to acquire 49% of the interest in Toast Birmingham (which also included buying into Toast Ferndale, which holds a liquor license, and the Toast Ferndale Property). The cost for Vision Toast's interest in Toast Birmingham was [REDACTED]. The funds came from the members of Vision Toast's savings and earnings. As of Step 2, the members in Toast Birmingham were 51% Regan Bloom and 49% Vision Toast.

The members of Vision Toast are as follows: S Michael Holding, LLC (members Omar Ammori, Sean Ammori, Samantha Ammori, Matthew Ammori and Morgan Ammori); Michael Sarafa, Kevin Denha, Saber Ammori and Denha Cast, LLC (Mark Denha Trust and Nesreen Denha Trust).

STEP 3

Simultaneously with the Step 2 transfer, Regan Bloom and Vision Toast assigned their interest in Toast Birmingham to Toast Holdings, LLC. As of Step 3, the sole member of Toast Birmingham is Toast Holdings, LLC.

The members of Vision Toast will not have any role in the day to day operations of the business. Toast Birmingham will continue to do business as Toast, with the same great food and service. Regan Bloom and her director of Operations, Anthony Minicilli, will oversee the day-to-day operation of the business.

Several of the members of Vision Toast have held liquor licenses in the past, but none of them are currently licensed. As noted above, this acquisition also included the Toast Ferndale liquor license. An entity related to the Vision Toast Group purchased the building in Birmingham.

Enclosed for your review are the following:


- Organization chart with dates of birth for all members;
- City of Birmingham Application, Release and Driver's License for members over 10% of Toast Birmingham, Regan Bloom, Omar Ammori, Kevin Denha, and Saber Ammori;
- List of liquor licenses and printout of current license;
- Affidavit regarding financing; and
- Floor plan.

There is a SLUP application pending with regarding to a change in Toast's hours, to eliminate dinner service from the approved SLUP. These membership changes will also be included in the request to amend the SLUP.

Finally, enclosed is a check payable to the City of Birmingham for \$1,500.00 for the application fees. If you have any questions whatsoever, please do not hesitate to call me or my legal assistant, Laura Peters. I appreciate your assistance on this matter.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC


Kelly A. Allen

/lp
Enclosures



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
KELLY A. ALLEN
ROBERT M. GOLDMAN
JESSICA A. HALLMARK
GREGORY K. NEED
G. HANS RENTROP

39572 Woodward, Suite 222
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

KEVIN M. CHUDLER
LINDA S. MAYER
KATHERINE A. TOMASIK

April 18, 2019

Via Electronic Mail

Jana Ecker, Planning Director
Nicholas Dupuis, City Planner
City of Birmingham
151 Martin Street
Birmingham, MI 48012

**Re: Toast Birmingham, LLC
Special Land Use Amendment**

Dear Ms. Ecker and Mr. Dupuis:

As you know, Toast has a SLUP amendment application pending. The purpose of the SLUP amendment is twofold:

1. To change the ownership within the licensed entity, which is Toast Birmingham, LLC; and
2. To change the hours of operation.

CHANGE IN OWNERSHIP OF MEMBERS

The request for approval to change the ownership of Toast Birmingham, LLC has been filed with the Police Department. Attached to this letter is a copy of the letter to Commander Busen which sets forth the membership changes. Please consider this letter as Toast's formal request to amend the previous SLUP amendment application to include the request for approval of the ownership change.

CHANGE IN HOURS OF OPERATION

In 2008 the City Commission approved a SLUP for Toast, which included specific hours of operation. The SLUP stated:

“The applicant must maintain nighttime hours, Monday-Wednesday 7am – 9pm; Thursday – Saturday & Sunday 7am – midnight; Sunday 7am – 5pm.”

In December of 2018 the City notified Toast that the posted “Fall Hours” for Toast were not in compliance with the approved SLUP. Shortly thereafter, Toast appeared before the Planning Board for an informal presentation regarding reducing Toast’s hours of operation to eliminate the dinner service.

Subsequently, Toast appeared at the City Commission Meeting on March 25 because a public hearing was set to discuss the renewal of the liquor license.

It should be noted that when Toast was approved for the Bistro license in 2008, the City had concerns about approving a breakfast-only concept because of the City’s desire to activate the street. This was one of the main goals of the Bistro ordinance. However, there are now four Bistros in operation on Pierce Street, including Toast, Elie’s, Townhouse, and Streetside.

This is Toast’s proposal for hours of operation.

Approved Hours.....	Proposed Hours
Sunday: 7 a.m. – 5 p.m.	7 a.m.– 4 p.m.
Monday-Tuesday: 7 a.m. – 9 a.m.	7 a.m. – 3 p.m.
Wednesday: 7 a.m. – 9 p.m.....	7 a.m. – 8 p.m.
Thursday-Friday: 7 a.m. – midnight	7 a.m. – 8 p.m.
Saturday: 7 a.m. – midnight.....	8 a.m. – 9 p.m.

Toast intends to change its menu for the dinner hours. Attached is the proposed menu.

DOCUMENTS REQUIRED FOR SLUP AMENDMENT

The original SLUP amendment application was submitted by Toast without the assistance of counsel. The current checklist of required documents is set forth below, with Toast’s response:

I(i). A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines.

RESPONSE: Toast has retained John Tagle Associates, Inc., Architects & Planners who contracted with PEA, Inc., to provide the required “Existing Conditions Plan.” This document is attached.

I(ii). A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair.

RESPONSE: Enclosed is the interior floor plan prepared by Krieger & Klatt Architects and a hand drawing of the seating with accurate seating. There is no proposed construction or alteration to the space.

- I(iii). A Certified Land Survey.
- I(iv). Interior floor plans.
- I(v). A Landscape Plan.

RESPONSE: The Certified Land Survey is covered in the Existing Conditions Plan. Interior floor plans are enclosed. There is no change to the landscape; therefore, no landscape plans are being submitted.

- I(vi). A Photometric Plan.
- I(vii). Colored elevation drawings for each building elevation.

RESPONSE: There are no changes to the lighting and therefore no photometric plan is being submitted. There are no changes to the Elevations therefore drawings are not provided, but photographs are attached.

II. Specification sheets for all proposed materials, light fixtures and mechanical equipment.

RESPONSE: There is no change to any materials, light fixtures or mechanical equipment; therefore, no plans are being submitted.

III. Samples of all proposed materials.

RESPONSE: There are no changes to the materials; therefore, no samples are being submitted.

IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures.

RESPONSE: Attached.

V. Current aerial photographs of the site and surrounding properties.

RESPONSE: Attached.

VI. Warranty Deed, or Consent of Property Owner if the applicant is not the owner.

RESPONSE: The landlord entity is Maple Pierce, LLC. The manager of the Landlord entity is Kevin Denha. Please note that the warranty deed is in the name of 50935 Van Dyke,

LLC. After the closing on the building this entity' name was changed to Maple Pierce, LLC. A copy of the warranty deed and the name change are attached.

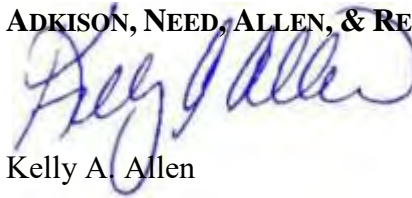
VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

RESPONSE: Attached is a proposed menu for the dinner hour service.

Please let us know if you require anything further. Thank you for your professional assistance in this matter.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Kelly A. Allen

/kjf
Enclosures

OAKLAND COUNTY TREASURERS CERTIFICATE

I HEREBY CERTIFY that there are no TAX LIENS or TITLES

held by the state or any individual against the within description

and all TAXES on same are paid for five years previous to the

date of this instrument as appears by the records in the office

except as stated.

Reviewed By: RC

Jan 23, 2018

5.00 E-FILE

Sec. 135, Act 206, 1893 as amended

ANDREW E. MEISNER, County Treasurer

Not Examined

LIBER 51496 PAGE 602

\$21.00 DEED - COMBINED

\$4.00 REMONUMENTATION

\$5.00 AUTOMATION

\$30,960.00 TRANSFER TX COMBINED

01/23/2018 05:09:49 PM RECEIPT# 8712

PAID RECORDED - Oakland County, MI

Lisa Brown, Clerk/Register of Deeds

STATE OF
MICHIGANOAKLAND
01/23/2018
8712REAL ESTATE
TRANSFER TAX\$3,960.00 CO
\$27,000.00 ST
001146359

WARRANTY DEED

Corporate(Platted/Condominium)

Drafted By:

Diana Sharer, Sole Member
Cedarcliff LLC
8855 Warwick Street
Beverly Hills, MI 48025

Return To:

50935 Van Dyke, LLC
40700 Woodward Avenue, Suite 125
Bloomfield Hills, MI 48304

Send Tax Bills To:

50935 Van Dyke, LLC
40700 Woodward Avenue, Suite 125
Bloomfield Hills, MI 48304

Recording Fee: \$30.00

File Number: 774840 - BH

State Transfer Tax:

\$27,000.00

County Transfer Tax:

\$3,960.00

Tax Parcel No.: 19-36-201-020

Know All Persons by These Presents: That **Cedarcliff LLC, a Michigan Limited Liability Company**
whose address is 8855 Warwick Street, Beverly Hills, MI 48025

Convey(s) and Warrant(s) to **50935 Van Dyke, LLC, a Michigan limited liability company**
whose address is 40700 Woodward Avenue, Suite 125, Bloomfield Hills, MI 48304

the following described premises situated in the City of **Birmingham**, County of **Oakland**, State of Michigan, to wit:

(SEE ATTACHED EXHIBIT A)

More commonly known as: **165 through 217 Pierce Street, Birmingham, MI 48009**

For the full consideration of: **three million six hundred thousand Dollars (\$3,600,000.00)**

Subject To:

See Attached Exhibit B - Permitted Exceptions



First American Title Insurance Company

First American Title

(Attached to and becoming a part of Warranty Deed dated: January 09, 2018 between Cedarcliff LLC, a Michigan Limited Liability Company, as Seller(s) and 50935 Van Dyke, LLC, a Michigan limited liability company, as Purchaser(s).)

Dated this January 09, 2018.

Seller(s):

Cedarcliff LLC, a Michigan limited liability company

By: Diana J. Sharer
 Name: Diana Sharer
 Title: Sole Member AKA Diana J. Sharer (CG)

State of Michigan
 County of Oakland

The foregoing instrument was acknowledged before me this January 09, 2018 by Diana Sharer, Sole Member of Cedarcliff LLC, a Michigan Limited Liability Company. AKA Diana J. Sharer (CG)



Notary Public:
 Notary County/State: /
 County Acting In:
 Commission Expires:

(Attached to and becoming a part of Warranty Deed dated: January 09, 2018 between Cedarcliff LLC, a Michigan Limited Liability Company, as Seller(s) and 50935 Van Dyke, LLC, a Michigan limited liability company, as Purchaser(s).)

EXHIBIT A

Land situated in the City of Birmingham, County of Oakland, State of Michigan, described as follows:

Part of Lots 15 and 16, ASSESSOR'S PLAT NO. 24, according to the recorded plat thereof, as recorded in Liber 54 of Plats, page 72, Oakland County Records, described as: Beginning at a point distant North 01 degree 52 minutes 25 seconds West 22 feet from the Southwest corner of Lot 16; thence North 87 degrees 60 minutes 00 seconds East 100.56 feet; thence North 05 degrees 21 minutes 50 seconds East 20.34 feet; thence North 35 degrees 22 minutes 05 seconds West 57.55 feet; thence North 11 degrees 52 minutes 30 seconds West 17.15 feet; thence South 54 degrees 26 minutes 10 seconds West 82.08 feet; thence South 01 degree 52 minutes 25 seconds East 41.48 feet to beginning; ALSO including the Southerly part of Lot 17, ASSESSOR'S PLAT NO. 24, according to the recorded plat thereof, as recorded in Liber 54 of Plats, page 72, Oakland County Records, measuring 3 feet on the Easterly lot line and 48.53 feet on the Westerly lot line.

Tax Parcel Number: 19-36-201-020

EXHIBIT B

(PERMITTED EXCEPTIONS)

Lien in favor of the City of Birmingham for Special Assessment, as disclosed by instrument dated July 2, 1984, recorded July 2, 1984, in Liber 8715, page 137.

Rights of adjoining land owners and Terms and Conditions set forth in Party Wall Agreement dated April 10, 1951, recorded April 23, 1951, in Liber 2730, page 310, as to part of subject property.

Rights of adjoining land owners and Terms and Conditions set forth in Party Wall Agreement dated January 25, 1947, recorded January 30, 1947, in Liber 2050, page 297.

Any claim that the Title is subject to a trust or lien created under The Perishable Agricultural Commodities Act (7 U.S.C. 499a, et seq.) or the Poultry and Stockyards Act (7 U.S.C. 181, et seq.) or under similar state laws.

Interest, if any, of the United States, State of Michigan, or any political subdivision thereof, in the oil, gas and minerals in and under and that may be produced from the captioned land.

Rights of tenants, if any, under any unrecorded leases.

The following matters as referenced by survey dated April 24, 2017, last revised April 26, 2017, prepared by Kern-Tec & Associates, being Job No. 17-01129:

- a. Light post/lamp post on property.
- b. Guardrail and electric meters encroach into Public Alley.

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

FILING ENDORSEMENT

This is to Certify that the CERTIFICATE OF AMENDMENT TO THE ARTICLES OF
ORGANIZATION

for

MAPLE PIERCE PROPERTIES, LLC

ID Number: 801712582

received by electronic transmission on January 10, 2018 ***, is hereby endorsed.***

Filed on January 10, 2018 ***, by the Administrator.***

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.



In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 10th day of January, 2018.

Julia Dale, Director

Corporations, Securities & Commercial Licensing Bureau

LARA Corporations
Online Filing System
Department of Licensing and Regulatory Affairs

Form Revision Date 07/2016

CERTIFICATE OF AMENDMENT TO THE ARTICLES OF ORGANIZATION
For use by DOMESTIC LIMITED LIABILITY COMPANY

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned executes the following Certificate of Amendment:

The identification number assigned by the Bureau is:

801712582

The name of the limited liability company is:

50935 VAN DYKE, LLC

The date of filing the original Articles of Organization was:

12/3/2013

Complete only those articles being amended.

Article I

The name of the limited liability company as amended, is:

MAPLE PIERCE PROPERTIES, LLC

Article III

The duration of the limited liability company if other than perpetual is:

PERPETUAL

The amendment was approved by unanimous vote of all the members entitled to vote.

This document must be signed by a member, manager, or an authorized agent:

Signed this 10th Day of January, 2018 by:

Signature	Title	Title if "Other" was selected
KEVIN DENHA	Member	

By selecting ACCEPT, I hereby acknowledge that this electronic document is being signed in accordance with the Act. I further certify that to the best of my knowledge the information provided is true, accurate, and in compliance with the Act.

☐ Decline ☒ Accept

Appetizer

Pan Seared Foie Gras

Brioche French Toast, Strawberry-Black Pepper Compote
14

P.E.I. Mussels

Garlic, White Wine, Leeks, Baguette
10

Crispy Crab Cake

Jumbo Lump Crab, Onion, Bell Pepper, Herbs, Panko Crust, Remoulade, Lemon
12

Wild Mushroom – Goat Cheese Roulade

Warm Lentil Salad, Sherry Vinaigrette
8

Raclette Grilled Cheese

Raclette, Apple-Arugula Salad, Cured Chorizo
8

Soup

Mushroom Soup

Forest Mushrooms, Rye Croutons
6

Tomato Soup

Goat Cheese Crostini
6

Salad

Apple Salad

Mixed Greens, Apple, Blue Cheese, Candied Pecans, Creamy Cider Vinaigrette
Small 7 - Large 12

Simple Salad

Mixed Greens, Radish, Carrots, Crunchy Croutons, Balsamic Vinaigrette
Small 5 - Large 9

Beet Salad

Roasted Beets, Shaved Fennel, Pickled Red Onion, Orange – Dill Vinaigrette, Toasted Almonds
Small 7 - Large 12

Plates du Jour

Steak Frites*

12oz. Peppercorn Crusted Skirt Steak, Crispy Truffle Fries, Red Wine Reduction
22

Chicken and Waffle

Fried Chicken, Waffle, Spiced Maple Drizzle, Mashed Potatoes
17

Shrimp & Grits

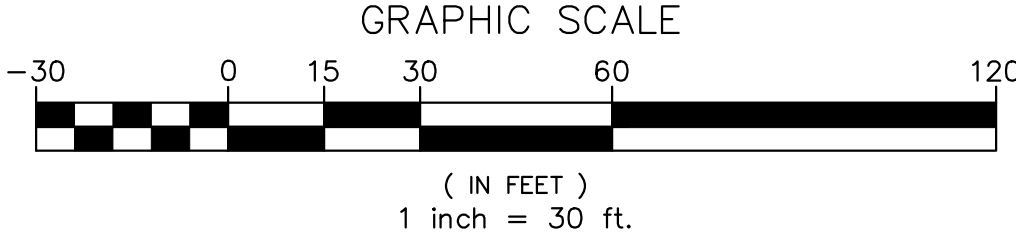
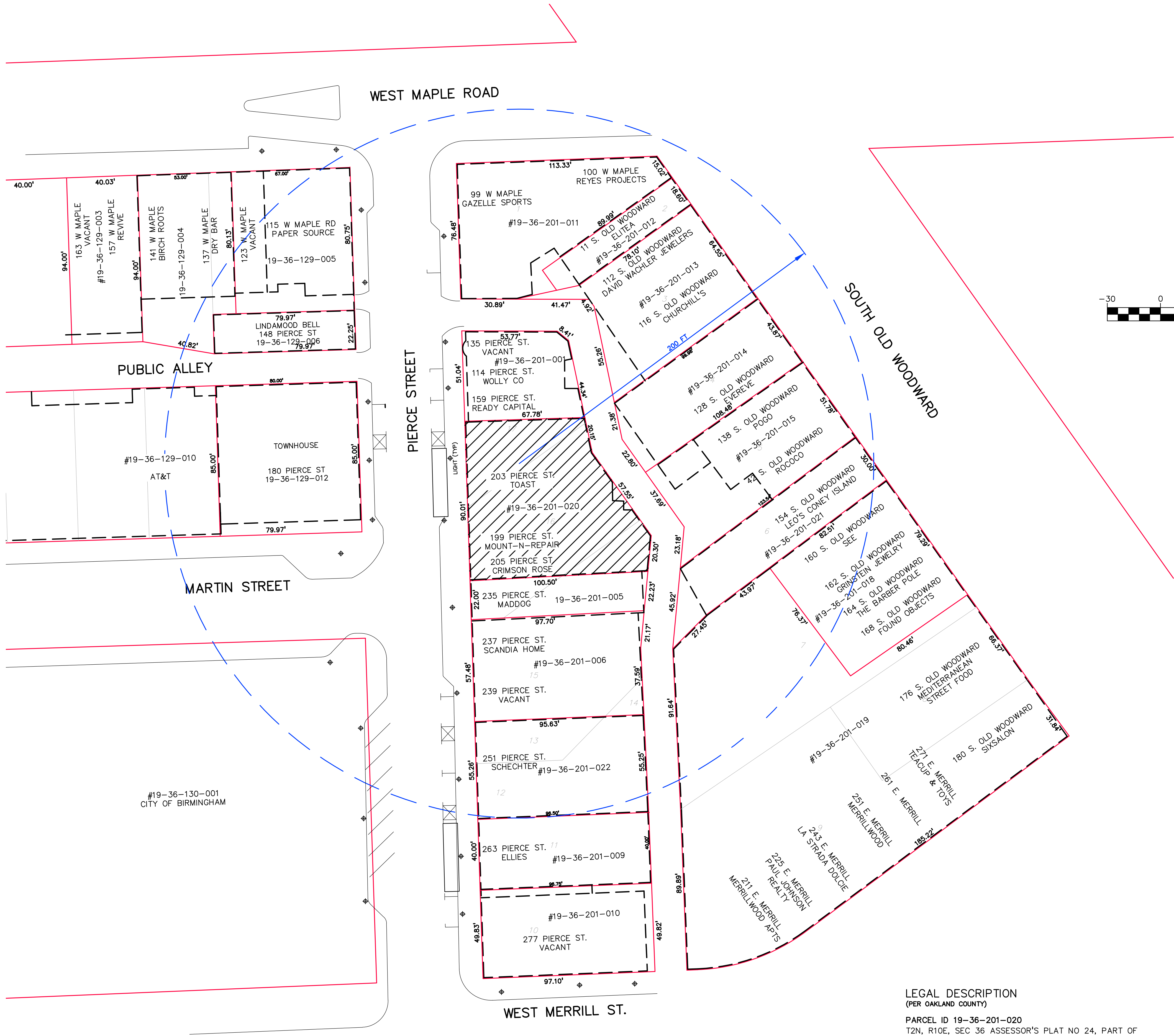
Spicy Sauce, Arugula Salad
20

Chicken and Waffle

Fried Chicken, Waffle, Spiced Maple Drizzle, Mashed Potatoes
18

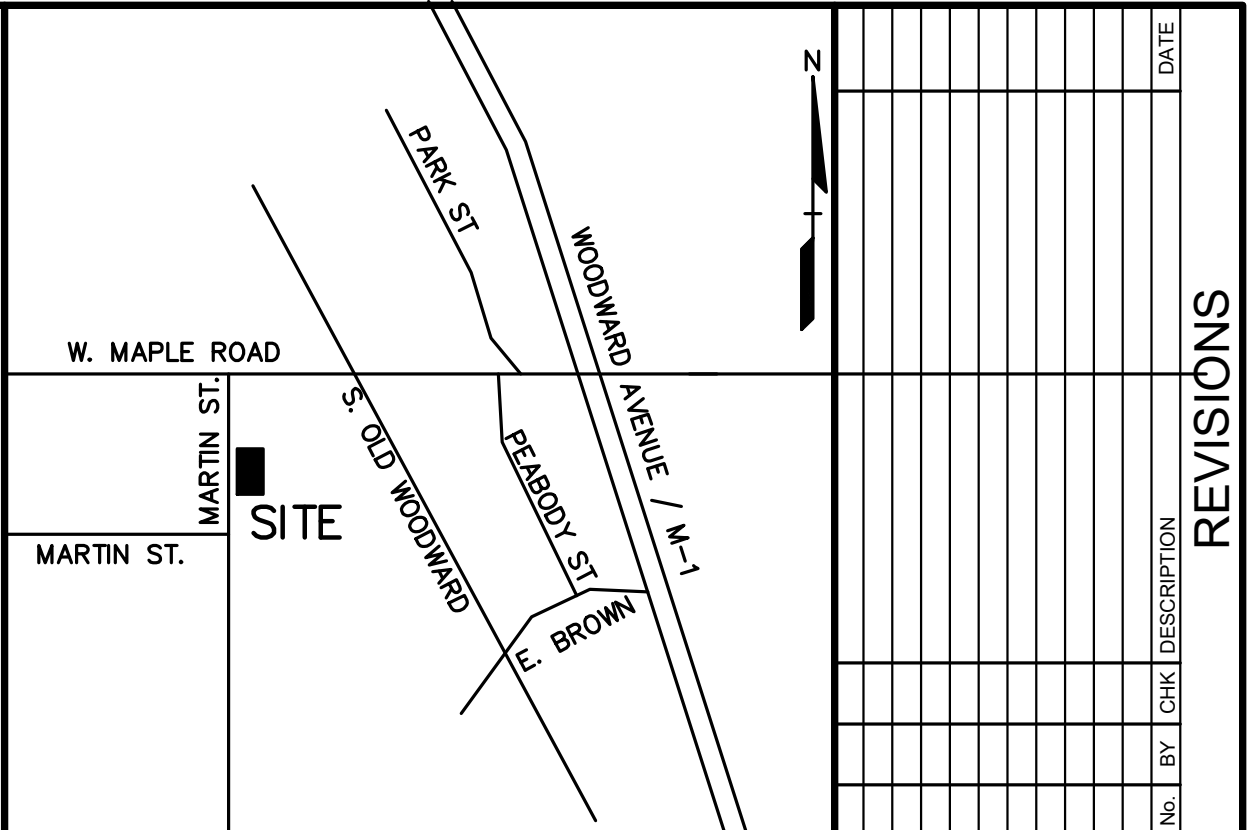
Whitefish Tosca

Rice Pilaf, Asparagus, Lemon Butter Sauce
19



- LEGEND
- BUILDING/INTERIOR SPACE
 - PARCEL LINE
 - CONC.
 - ASPH.
 - CONCRETE
 - ASPHALT

NOTE:
No site construction, alterations or repairs are proposed.
The site is zoned B-4 Business-Residential and D-4 Overlay



CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND DEPTHS PRIOR TO THE START OF CONSTRUCTION.
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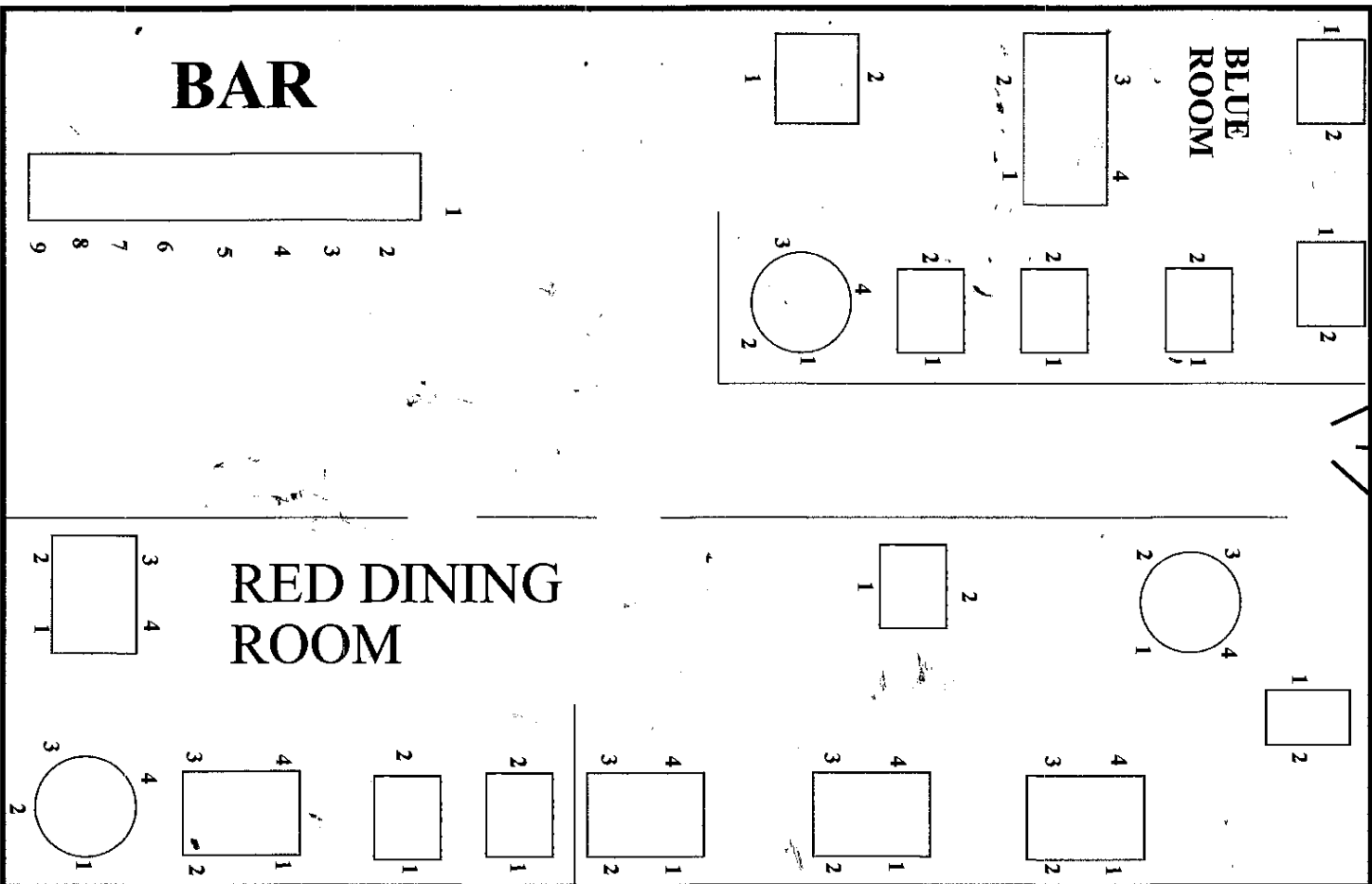
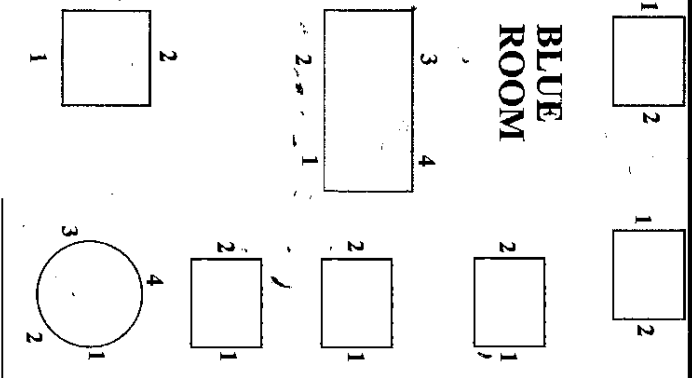
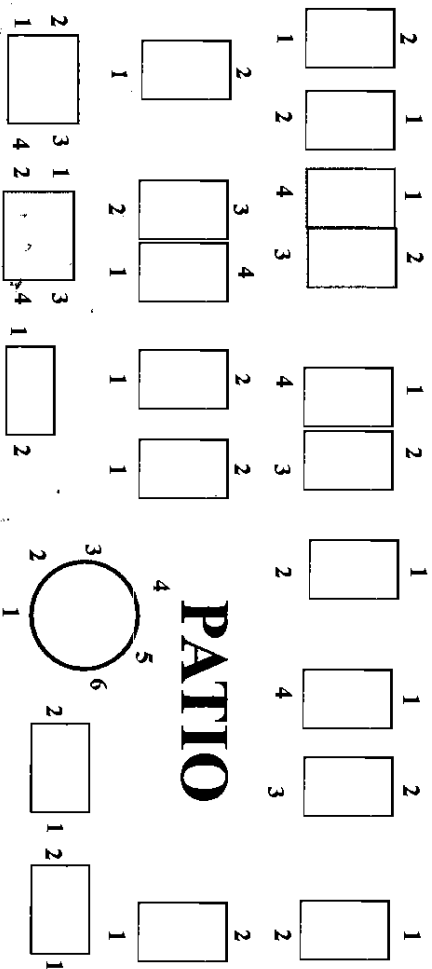
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PEA, Inc.
2430 Rochester Ct., Ste. 100
Troy, MI 48063-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

TOAST BIRMINGHAM, LLC 203 PIERCE STREET BIRMINGHAM, MICHIGAN 48009		SITE PLAN 203 PIERCE STREET PART OF THE NE 1/4 OF SECTION 36, T. 02 N., R. 10 E. CITY OF BIRMINGHAM, OKLAHOMA COUNTY, MICHIGAN	
DES.	XXX	DN.	GWC
SUR.	XXX	P.M.	JPB

ORIGINAL ISSUE DATE:
APRIL 12, 2019
PEA JOB NO. 2019-132
SCALE: 1" = 30'
DRAWING NUMBER:
1

LEGAL DESCRIPTION
(PER OKLAHOMA COUNTY)
PARCEL ID 19-36-201-020
T2N, R10E, SEC 36 ASSESSOR'S PLAT NO 24, PART OF LOTS 15 & 16 BEGINNING AT POINT DISTANCE N 01-52-25 W 22 FEET FROM SW CORNER OF LOT 16, THENCE N 87-60-00 E 100.56 FEET, THENCE N 05-21-50 E 20.34 FEET, THENCE N 35-22-05 W 57.55 FEET, THENCE N 11-52-30 W 17.15 FEET, THENCE S 54-26-10 W 82.08 FEET, THENCE S 01-52-25 E 41.48 FEET TO BEGINNING, ALSO SLY PART OF LOT 17 MEASURED 3 FEET ON ELY LOT LINE & 48.53 FEET ON WLY LOT LINE.





TOAST

TOAST
A RESTAURANT

TOAST
203

199

woolly
co.

2 hours
free parking
IN
all decks



199



TOAST

NEIGHBORHOOD BISTRO

WINE • COCKTAILS • BAR

199

MOUNT-N-REPAIR
STERLING SILVER JEWELRY

MOUNT-N-REPAIR



TOAST

199

TOAST
203

MOUNT-N-REPAIR
STERLING SILVER JEWELRY

MOUNT-N-REPAIR

Crimson Rose
Antique

MAC

tank



TOAST

woolly
co.

NEIGHBORHOOD BISTRO
wine • cocktails • beer
brunch • lunch • dinner

TOAST
203



TOAST OUTLINED IN YELLOW



Google

Google

42°32'40"N 83°12'53"W 416 m



MEMORANDUM

Planning Department

DATE: April 17th, 2019

TO: Jana Ecker, Planning Director

FROM: Nicholas Dupuis, City Planner

SUBJECT: 203 Pierce St. – Toast – Special Land Use Permit Amendment and Final Site Plan Review

Executive Summary

Article 7, Section 7.34 of the Zoning Ordinance states that once a permit for a Special Land Use has been granted as to any parcel of land, no change in that use may be made nor may any addition to or change in the building or improvements on the parcel of land take place until a new request for approval has been filed with the City Commission and the City Commission has approved the request for change.

On January 9th, 2019, the applicant went before the Planning Board for a pre-application discussion regarding a proposal to change their hours of operation to eliminate dinner hours and host special events in the evenings instead, such as cooking classes and private parties. During the meeting, Board members expressed positive responses to the proposals, as Toast Bistro is the only restaurant on Pierce open for breakfast, serves two meals (breakfast and lunch), and activates the street during the morning hours. The minutes from the meeting are attached for your review.

On February 25th, 2019, the restaurant went before the City Commission for a hearing regarding the 2018-2019 renewal of their Liquor License. During the meeting, the change in hours was discussed as a violation of their SLUP, a seat total overage was discussed, and it was discovered that a change in ownership had occurred without a SLUP Amendment. A Public Hearing was set for March 25th, 2019 to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the of the license for consumption of intoxicating liquor held by the owners/operators of Toast. The minutes from the meeting are attached for your review.

During the City Commission meeting on March 25th, 2019, the City Commission again discussed the outstanding issues of hours, seat counts, and ownership. After some discussion, the City Commission passed a motion to approve the liquor license held by Toast Birmingham for the 2019 licensing period. The minutes from the meeting are attached for your review.

Thus, the applicant at 203 Pierce St. is requesting a Special Land Use Permit Amendment to change the hours of operation from those approved in the Special Land Use Permit obtained in 2008. The approved hours of operation approved were: Monday-Wednesday 7 AM – 9 PM; Thursday-Saturday 7 AM – midnight; Sunday 7 AM – 5 PM. The applicant is proposing to eliminate

the dinner hours from the original approval, and proposes the following hours of operation: Monday-Friday 7 AM – 3 PM; and Saturday-Sunday 8 AM – 4 PM.

In addition, the applicant has submitted documents signifying a change in ownership of the restaurant. A Transfer of Membership Interests was submitted to the Police Department on March 21st, 2019. The letter describes the current sole member of Toast Birmingham as Toast Holdings, LLC. When the restaurant opened in 2008, Regan Bloom and Thomas Bloom were two equal owners. In 2016, Thomas Bloom assigned his 50% interest to Regan Bloom, making Regan bloom the sole owner. In 2017, the investment group Vision Toast, LLC entered into an agreement with Regan Bloom to acquire 49% of the interest in Toast Birmingham. Simultaneously during the 2017 ownership agreement, Regan Bloom and Vision Toast assigned their interest in Toast Birmingham to Toast Holdings, LLC.

Under the SLUP contract, the applicant was required to obtain approval from the City Commission for any change in ownership status.

1.0 Land Use and Zoning

- 1.1 Existing Land Use – The existing land use is commercial.
- 1.2 Existing Zoning – The property is currently zoned B-4, Business-Residential, and D-4 in the Downtown Overlay District. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.
- 1.3 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Commercial / Retail	Commercial / Retail	Commercial / Retail	Commercial / Retail / Residential
Existing Zoning District	B-4, Business-Residential	B-4, Business-Residential	B-4, Business-Residential	B-4, Business-Residential
Downtown Overlay Zoning District	D-4	D-4	D-4	D-4

2.0 Screening and Landscaping

2.1 Screening – No changes proposed.

2.2 Landscaping – No changes proposed.

3.0 Parking, Loading, Access, and Circulation

3.1 Parking – As the subject site is located within the Parking Assessment District, the applicant is not required to provide on-site parking.

3.2 Loading – No changes are proposed.

3.3 Vehicular Access & Circulation - Vehicular access to the building will not be altered.

3.4 Pedestrian Access & Circulation – No changes proposed.

3.5 Streetscape – No changes proposed.

4.0 Lighting

The applicant is not proposing any new lighting for the property.

5.0 Departmental Reports

5.1 Engineering Division –

5.2 Department of Public Services –

5.3 Fire Department – The Fire Department has no concerns at this time.

5.4 Police Department –

5.5 Building Department –

6.0 Design Review

The applicant is not proposing any exterior changes as a part of this Special Land Use Permit Amendment.

7.0 Downtown Birmingham 2016 Overlay District

The site is located within the D-4 zone of the DB 2016 Regulating Plan, within the Downtown Birmingham Overlay District. The Planning Division finds the proposed site plan to adequately enhance street life, thus promoting a pedestrian friendly environment.

8.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Approval Criteria for Special Land Use Permits

Article 07, section 7.34 of the Zoning Ordinance specifies the procedures and approval criteria for Special Land Use Permits. Use approval, site plan approval, and design review are the responsibilities of the City Commission. This section reads, in part:

Prior to its consideration of a special land use application (SLUP) for an initial permit or an amendment to a permit, the **City Commission shall refer the site plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the site plan and design of the buildings and uses proposed** for the site described in the application of amendment.

The City Commission's approval of any special land use application or amendment pursuant to this section shall constitute approval of the site plan and design.

10.0 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board recommend **APPROVAL** to the City Commission of the applicant's request for Special Land Use Permit Amendment and Final Site Plan Review for 203 Pierce – Toast.

11.0 Sample Motion Language

The Planning Board recommends **APPROVAL** to the City Commission of the Special Land Use Permit Amendment Final Site Plan Review for 203 Pierce – Toast.

OR

Motion to recommend **POSTPONEMENT** of the Special Land Use Permit Amendment and Final Site Plan Review for 203 Pierce – Toast, for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **DENIAL** of the Special Land Use Permit Amendment and Final Site Plan Review for 203 Pierce – Toast, for the following reasons:

1. _____
 2. _____
 3. _____
-

**Planning Board Minutes
January 9, 2019**

01-07-19

H. PRE-APPLICATION DISCUSSION

1. 203 Pierce St., Toast Birmingham

Mr. Tony Manicilli **Minicilli**, Director of Operations for Toast, was present with Mr. Chris Gadelka **Gadulka**, Executive Chef, and Ms. Reagan **Regan** Bloom with Toast. Mr. Manicilli said they are looking to change the required hours of their Special Land Use Permit ("SLUP") to 7 a.m. to 3 p.m. Monday through Friday and 8 a.m. to 4 p.m. on week-ends. They want to eliminate dinner and do special events in the evenings such as cooking classes and private parties.

Ms. Ecker advised they are required under their SLUP to serve breakfast, lunch, and dinner. To change that condition they would have to amend their SLUP. They can do one of two things to correct the violation:

- Start serving dinner again; or
- Go before the Planning Board and City Commission to get approval to strike the condition that they must serve dinner.

Ms. Ecker explained if they just wanted to have a restaurant with regular dining and no alcohol they would not need a SLUP. At the time this SLUP was approved the Planning Board and City Commission didn't feel a bistro license should be issued if the street would not be activated in the evenings. Mr. Manicilli **Minicilli** said on week-ends their customers generally have about an hour wait. During that wait, most people are in the City and walking around. Even if it is during the day and not at night they are adding to activity on the street.

Board members requested that in Toast's application for a change in their SLUP they include details on their special events and average customer count after 3 p.m. over the last six months or so.

Mr. Williams pointed out there are three other restaurants on Pierce and that are open at night and none are open for breakfast. So he would be inclined to go forward with this request.

Mr. Manicilli **Minicilli** responded for Ms. Whipple-Boyce that they have had 15 special events in the evening through December. He anticipates seeing an increase in pop-ups, cooking classes, or other events. He described a pop-up as an invitation for another chef to come in and set up a temporary restaurant with a different menu other than theirs for a one night event. The purpose is to receive an indication of whether to invest in opening a new restaurant.

Ms. Reagan **Regan** Bloom opined that increasing competition has had something to do with their declining dinner crowd.

Mr. Jeffares said these people have tried everything to get people in for dinner and it has been a valiant effort. They do quite a few events in the evening and he didn't think the board should try to force anybody to lose money.

**City Commission Minutes
February 25, 2019**

02-047-19 LIQUOR LICENSE REVIEW AND RENEWAL

Commissioner Nickita recused himself from discussing and voting on 220 Merrill and Toast due to business relationships with the owners of both establishments.

City Clerk Mynsberge presented the item.

Commissioner Hoff thanked staff for the clarity of the submitted reports.

Comments/Clarification

Planning Director Ecker explained:

- Elie's Mediterranean filled out their liquor license application incorrectly in regards to numbers, but upon the Planning Department on-site review it was clear that Elie's was actually in compliance

City Clerk Mynsberge confirmed:

- Rojo and Sidecar share an owner and together owe the City \$16,325 in taxes and water bills. The owner entered into a payment plan with the City for the water bills on February 25, 2019 by paying a portion and agreeing to continue making regular payments on the debt. The outstanding taxes for both establishments remain unpaid.

Mayor Bordman invited Stephen Simon, owner of Rojo and Sidecar, to speak to the Commission.

Mr. Simon explained both Rojo and Sidecar were purchased in bankruptcy court in June 2018. There are current talks with the City and Oakland County as to whether the July 2018 taxes are due from the current or previous owner. In addition, the company's accountant has indicated that the assets purchased were only about \$20,000, which would free the business from owing taxes.

City Attorney Currier said with respect to the delinquent taxes he was unsure because he was not familiar with the bankruptcy filing. He could not say whether that was a matter the bankruptcy court was taking into consideration, but that it would have some priority with respect to payment in the bankruptcy court. If the priority stays as-is, eventually the property will go to tax sale.

Commissioner Harris suggested setting a March 25, 2019 public hearing date to encourage a speedy resolution of the matter on the part of the previous owner and Mr. Simon.

Mayor Bordman concurred and advised Mr. Simon that the tax liability may fall to him if he intends to keep the restaurants. She said this was not legal advice, but that it seemed to her that if the previous owner were mandated to pay by the court that Mr. Simon would be reimbursed.

Commissioner DeWeese said Toast has been slow in addressing issues with the City, including the fact that Toast is in violation of its Special Land Use Permit (SLUP) because it is not currently operating in the evenings.

Planning Director Ecker explained:

- Toast had been subject to code enforcement for not providing dinner hours as per their SLUP. The owners then came to a pre-application meeting with the Planning Department to discuss either providing dinner hours or applying for a SLUP amendment.
- Toast ultimately submitted an application and attendant fee for a SLUP amendment earlier in the day on February 25, 2019, hoping not to provide regular dinner hours but to provide evening space for cooking classes and other activities instead.
- Toast would not likely receive a public hearing regarding their application with the Planning Board before the end of April 2019.

Toast representative Tony Minicilli came forward to address the Commission. He explained:

- Toast's hours were changed in October 2018, and they were unaware their SLUP was contingent on having dinner hours. He said that he believed Toast was the only restaurant that had a SLUP requiring evening hours.
- When Toast was made aware that they were in violation of their SLUP, Toast was advised to re-apply.
- He is the Director of Operations, and neither he nor the current owner were part of the SLUP process when it was originally granted to Toast by Birmingham. Toast was originally owned by married couple Thom and Regan Bloom, and they since divorced with Regan retaining ownership of the restaurant along with investors.

Mayor Bordman stated:

- SLUPs require any change in ownership be reviewed by the City Commission.
- Since Toast did not submit their change in ownership for review to the City Commission, the restaurant has now made the City aware of an additional violation of their SLUP.
- Given the major problems with the operation of the restaurant, she recommended setting a public hearing for Toast on March 25, 2019.

Commissioner Hoff noted there were several restaurants with discrepancies between the number of seats allowed and the number of seats the Planning Department found upon inspection. She added that as of the submission of the information to the City Commission, many of those discrepancies had not been resolved. She asked Mayor Bordman if the Commission could speak with representatives from the establishments in violation present this evening to see whether the discrepancies have since been resolved.

Mayor Bordman concurred, suggested reviewing the discrepancies one establishment at a time, and asked whether a representative from Bella Piatti was present.

Nino Cutraro introduced himself as the owner of Bella Piatti.

Mayor Bordman asked Mr. Cutraro why he had not responded to contact from the City regarding the issue with the number of seats in Bella Piatti.

Mr. Cutraro said he never saw any communication from the City regarding the matter.

Mayor Bordman invited Planning Director Ecker to confirm that attempts to contact Bella Piatti had occurred.

Planning Director Ecker confirmed that both a letter and an email were sent, and that City Planner Nicholas Dupuis also stopped by Bella Piatti in person.

Mr. Cutraro then said he did have the letter.

In response to Mayor Bordman's question, Planning Director Ecker explained Bella Piatti had been approved for 52 indoor seats plus 10 at the bar. Bella Piatti is in violation because at last inspection by the Planning Department the restaurant had 63 indoor seats plus 11 at the bar.

Mr. Cutraro said he eliminated two tables and the extra seat at the bar, and offered to show the Commission a photo as proof.

Addressing Mr. Cutraro and other establishment representatives, Mayor Bordman stated that the liquor licenses granted by the Commission are valuable to both the establishments and to Birmingham. She continued:

- Liquor licenses are one of the drivers to bring in guests to Birmingham.
- The Commission takes these liquor licenses very seriously, which includes the SLUPs the establishments agree to.
- Discovering that at least eight establishments in Birmingham have violated the allowable number of seats has been very disappointing.
- The Commission would be putting pressure on these establishments to come into compliance by setting public hearings to determine whether or not the City will object to the renewal of liquor licenses for the establishments currently in violation.

Commissioner Hoff noted that seat discrepancies are easy fixes. She suggested that the establishments come into compliance and then contact the Planning Department to set up an inspection for the purpose of confirming their compliance. Then, at the public hearing, the Planning Department can provide confirmation that each establishment is in compliance and the matter can be resolved more expeditiously.

Mayor Bordman commented that because these discrepancies are such an easy fix, these issues should have been resolved far in advance of tonight's meeting.

Planning Director Ecker clarified not all bistros have an allowance of 65 indoor seats and 10 at the bar. She explained seating allowances vary according to a number of different factors. She also confirmed that any bistros with over 65 indoor seats are indeed in violation.

Commissioner Nickita asked for clear data on the seating discrepancies, Class C license holders, and Bistro license holders for the March 25, 2019 so the Commission can best see where the discrepancies are. Mayor Bordman agreed and requested as much information as possible.

Commissioner Nickita said the fundamental question is what was agreed to as part of each establishment's Special Land Use Permit, and where each establishment is in violation.

Mr. Cutraro told the Commission is that he is currently in compliance. He asked whether he was allowed 52 people or 52 chairs.

Planning Director Ecker clarified that Bella Piatti is permitted 52 chairs. In addition, people are allowed to stand in a small bar area which was marked on the plans when they were approved. This means there could be 52 indoor seats, ten people seated at the bar, and three or four additional people standing in the defined bar area.

Mayor Bordman then went through each establishment listed as non-compliant in terms of seats as of the City's last inspection. If Planning Director Ecker confirmed non-compliance for a given establishment, Mayor Bordman asked that representatives plan to attend a public hearing on March 25, 2019.

Planning Director Ecker confirmed Bella Piatti, La Strada, Luxe, Mad Hatter, Salvatore Scallopini, Townhouse, Bistro Joe's, Forest Grill and Tallulah were non-compliant as of their last inspections by the City.

Planning Director Ecker confirmed Adachi is still non-compliant because they have not pulled permits for two A-frame signs on their sidewalk.

John Henke, Adachi representative, said the Adachi owners would be in on February 28, 2019 to pull permits for the two A-frame signs.

Planning Director Ecker stated that Cameron's Steakhouse may have a code violation vis-a-vis some unscreened dumpsters with contested ownership.

Planning Director Ecker confirmed Fleming's has a sign without a permit, that 220 Merrill has an outdoor propane storage unit which is a violation, and outdoor tables and chairs are being stored on the outdoor platform at Rojo which is a violation.

Mayor Bordman stated the City's ordinances promote the most appealing atmosphere in the City's establishments, and that compliance with the ordinances benefits both the establishments and the City.

Commissioner Nickita agreed with Mayor Bordman's point, adding that the bistro ordinance was formulated specifically to allow a different kind of establishment to have a liquor license without having to acquire a Class C license. In order to allow this, however, the parameters for a bistro license must be tightly monitored and tightly adhered to. This ensures that the legal relationships between various establishments and the City are fair and accomplishing what they were designed to do.

Mayor Bordman asked for public comment.

Mr. Henke suggested that establishments that come into compliance regarding seat discrepancies before March 25, 2019 could possibly be left off the public hearing list for that meeting.

Mayor Bordman said that any establishments non-compliant as of this meeting would have a public hearing set for March 25, 2019. If the establishment comes into compliance before then, then the public hearing will be expedited for the establishment.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Harris:

To approve the renewal for the 2019 licensing period, of all Class B, Class C, and microbrewery liquor licenses for which a current year application was received, except for the license(s) held by the following establishments for which a public hearing has been set:

220 Merrill Restaurant
Adachi restaurant Group LLC
Bella Piatti
Bistro Joe's
Cameron's Steakhouse
Fleming's Prime Steakhouse
Forest Grill 2, LLC
La Strada Caffè, LLC
Luxe Bar & Grill
Mad Hatter Bistro (Tea Parlor, Inc.)
Rojo Mexican Bistro
Salvatore Scallopini
Sidecar Slider Bar
Tallulah Wine Bar & Bistro
Toast Birmingham, LLC
Townhouse Kitchen and Bar, LLC

VOTE: Yeas, 6
 Nays, 0

220 Merrill Restaurant

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **220 Merrill Restaurant** pursuant to Sec. 10-40 (3)a of the Birmingham Code of Ordinances:

Licensee's maintenance of a nuisance upon or in connection with the licensed premises, including existing violations of building, electrical, mechanical, plumbing, zoning, health, fire or other applicable regulatory codes, specifically an outdoor propane display which is not allowed in the B-4 Zoning District;

Further, to direct the City Manager to notify the owners/operators of **220 Merrill Restaurant**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 5
 Nays, 0
 Recused, 1 (Nickita)

Adachi Restaurant Group LLC

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

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Adachi Restaurant Group LLC** pursuant to Sec. 10-40 (3)a of the Birmingham Code of Ordinances:

Licensee's maintenance of a nuisance upon or in connection with the licensed premises, including existing violations of building, electrical, mechanical, plumbing, zoning, health, fire or other applicable regulatory codes, specifically an outdoor A-frame sidewalk sign without a permit;

Further, to direct the City Manager to notify the owners/operators of **Adachi Restaurant Group LLC**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Bella Piatti

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

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Bella Piatti** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Bella Piatti**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Bistro Joe's

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner DeWeese:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for

consumption of intoxicating liquor on the premises currently held by the owners/operators of **Bistro Joe's** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Bistro Joe's**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Cameron's Steakhouse

MOTION: Motion by Commissioner Harris, seconded by Commissioner Hoff:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Cameron's Steakhouse** pursuant to Sec. 10-40 (3)c of the Birmingham Code of Ordinances:

Licensee's maintenance of a nuisance upon or in connection with the licensed premises, including failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited upon adjoining premises, specifically unscreened waste receptacles.

Further, to direct the City Manager to notify the owners/operators of **Cameron's Steakhouse**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Fleming's Prime Steakhouse

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner DeWeese:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Fleming's Prime Steakhouse** pursuant to Sec. 10-40 (3)a of the Birmingham Code of Ordinances:

Licensee's maintenance of a nuisance upon or in connection with the licensed premises, including existing violations of building, electrical, mechanical, plumbing, zoning, health,

fire or other applicable regulatory codes, specifically an outdoor sidewalk sign without a permit;

Further, to direct the City Manager to notify the owners/operators of **Fleming's Prime Steakhouse**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Forest Grill 2, LLC

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

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Forest Grill 2, LLC** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Forest Grill 2, LLC**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

La Strada Caffè, LLC

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

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **La Strada Caffè, LLC** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **La Strada Caffè, LLC**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person

at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Luxe Bar & Grill

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

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Luxe Bar & Grill** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Luxe Bar & Grill**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Mad Hatter Bistro

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Mad Hatter Bistro** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Mad Hatter Bistro**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Rojo Mexican Bistro

MOTION: Motion by Commissioner Harris, seconded by Mayor Pro Tem Boutros:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Rojo Mexican Bistro** pursuant to Sec. 10-40 of the Birmingham Code of Ordinances:

Sec. 10-40 (3)c: Licensee's maintenance of a nuisance upon or in connection with the licensed premises, including failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited upon adjoining premises, specifically outdoor dining chairs stored on dining platform in front of restaurant, which is not allowed. Chairs and tables must be stored indoors between November 16 and March 31; and

Sec. 10-40 (7) Licensee's failure to timely pay its taxes or other monies due the city, specifically personal property taxes.

Further, to direct the City Manager to notify the owners/operators of **Rojo Mexican Bistro**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Salvatore Scallopini

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Boutros:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Salvatore Scallopini** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Salvatore Scallopini**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Sidecar Slider Bar

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

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Sidecar Slider Bar** pursuant to Sec. 10-40 (7) of the Birmingham Code of Ordinances:

Licensee's failure to timely pay its taxes or other monies due the city, specifically personal property taxes.

Further, to direct the City Manager to notify the owners/operators of **Sidecar Slider Bar**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Tallulah Wine Bar & Bistro

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Hoff:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Tallulah Wine Bar & Bistro** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Tallulah Wine Bar & Bistro**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

Toast Birmingham, LLC

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

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Toast Birmingham, LLC** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans, and the hours of operation are in non-compliance with the Special Land Use Permit (SLUP), and a SLUP amendment is required for a change in ownership;

Further, to direct the City Manager to notify the owners/operators of **Toast Birmingham, LLC**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0
 Recused, 1 (Nickita)

Townhouse Kitchen and Bar, LLC

MOTION: Motion by Commissioner Nickita, seconded by Mayor Pro Tem Boutros:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Townhouse Kitchen and Bar, LLC** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Townhouse Kitchen and Bar, LLC**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
 Nays, 0

02-048-19 KENNING PARK BALLFIELD CONSTRUCTION AWARD

Commissioner Harris told the Commission that he volunteers with the Birmingham Little League. The City Manager and City Attorney advised Commissioner Harris that his volunteering is not grounds for recusal. Commissioner Harris stated he just wanted to disclose the relationship.

There were no objections to Commissioner Harris' participation.

DPS Director Wood presented the item.

City Commission Minutes
March 25, 2019

V. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

03-070-19 PUBLIC HEARINGS TO CONSIDER RENEWAL OF LIQUOR LICENSES FOR THE 2019 LICENSING PERIOD

Mayor Bordman noted:

- On February 25, 2019 the City Commission reviewed the results of the annual investigation of each establishment in the City which holds a Class B, Class C, or microbrewery liquor license. Sixteen establishments were found to be in violation of Chapter 10, Sec. 10-40 of the Birmingham Code of Ordinances and therefore public hearings were set for those 16 businesses.
- The establishments were given notice of the public hearings and informed if the violations were resolved prior to the March 25th hearing, the owner would not be required to attend.
- The violations at 15 of the 16 establishments have been resolved as verified by the Community Development Department and the Finance Department.
- The 16 public hearings, having been scheduled, must be held.

Commissioner Nickita recused himself from discussing and voting on 220 Merrill and Toast due to business relationships with the owners of both establishments.

220 Merrill Restaurant

The Mayor opened the public hearing for 220 Merrill Restaurant at 7:47 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 7:50 p.m.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Boutros:
To approve, for the 2019 licensing period, the liquor license held by 220 Merrill Restaurant.

VOTE: Yeas, 4
 Nays, 0
 Recused, 1 (Nickita)

Toast Birmingham, LLC

Mayor Bordman opened the public hearing for Toast Birmingham, LLC at 7:50 p.m. and noted the number of seats were not compliant with the site plans, the hours of operation were not compliant with the Special Land Use Permit, and a SLUP amendment is required for a change in ownership. All issues are violations of Sec. 10-40(5) of the Birmingham Code of Ordinances.

Planning Director Ecker confirmed the seating issue has been resolved and that Toast submitted a SLUP amendment request to remove dinner hours and address the change in ownership issue. The owners of Toast have also submitted the information to the Birmingham Police Department for a background check of the new owners, and submitted their documentation to the Planning Board to update and amend their SLUP. She added that the SLUP amendment documentation was submitted February 25, 2019 and was updated to include the ownership

change on March 21, 2019. The Planning Board will likely be hearing the petition from Toast on April 25, 2019.

City Manager Valentine advised the Commission that the present meeting would be the last opportunity to recommend approval or disapproval of Toast's liquor license before the MLCC's March 31, 2019 deadline.

Commissioner Sherman suggested recommending the renewal of the liquor license to the State, and then continuing to deal with the Commission's concerns around the restaurant's non-compliance. He noted that the change in hours is of particular concern, since they do not reflect the City's goals in issuing bistro licenses. He also said that if the issue were to continue, the Commission would have the option to have a hearing and revoke Toast's SLUP at a later date.

City Manager Valentine confirmed Toast cannot operate without its SLUP, as the agreement stipulates "the failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit".

Kelly Allen, attorney representing Toast, noted Tony Minicilli, General Manager, was also present and that the owner, Reagan Bloom, should be on her way shortly. Ms. Allen continued:

- Ms. Bloom had her hands full going through an intense divorce, during which time she also took ownership of Toast and brought on new partners. Ms. Bloom was not aware that removing the dinner hours would be in violation of the bistro license. Toast's model is most appropriately breakfast, brunch and lunch.
- Toast promptly went through the process of filing all change of ownership information with the MLCC. This was completed mid-February 2019.

Mayor Bordman said it was disappointing that Toast knew to address the ownership issue with the MLCC but ignored the City's requirements, and also noted disappointment that the City was unaware of Toast's additional partners until Ms. Allen spoke of them this evening.

Commissioner Sherman shared that the Commission had dealt exclusively with Thomas Bloom from the beginning of its relationship with Toast, and not with Ms. Bloom. He explained that this would be a plausible reason for Ms. Bloom's initial ignorance of the particularities of the SLUP requirements.

Ms. Allen confirmed Commissioner Sherman's statement. She added that the MLCC changed its policies to only require local approval for brand-new licenses. Birmingham was one of the first cities in 2012 to expand the notification requirements locally, but Ms. Allen explained that most lawyers who do not practice frequently in Birmingham would not be aware of that. While Ms. Bloom did her due diligence by having counsel for the MLCC issue, that counsel was not aware of Birmingham's specific requirements.

Mayor Pro Tem Boutros explained that any new business owner should know fully what the requirements are of running their business. SLUPs protect both the business and the City, and Birmingham takes them very seriously.

In reply to Commissioner Hoff, Ms. Allen explained that Mr. Minicilli was indeed in touch with the Planning Department regularly from January 2019, but that their correspondence had been

regarding the seating and the hours. She clarified that Mr. Minicilli had no awareness of the SLUP's requirements in regards to an ownership change.

Commissioner Hoff pointed out that the Planning Department had requested a new SLUP application in regards to the hours issue. She observed that if the application had been submitted in a timely manner the City would have become aware of the ownership issue at that time, and both issues could have been addressed before the liquor license renewal came before the Commission. In addition, Commissioner Hoff noted that it is an owner's responsibility to know their legal obligations.

Ms. Allen emphasized the effort Ms. Bloom is putting forth to resolve all the issues now that she is aware of them.

Mayor Bordman stated that Toast was notified about its SLUP violation regarding hours of operation on December 17, 2018.

Planning Director Ecker told the Commission that Mr. Minicilli attended a pre-application discussion with the Planning Board regarding the issue on January 9, 2019.

Ms. Allen confirmed for Mayor Bordman that Toast's intention is not to provide dinner service while the SLUP amendment is pending.

Mayor Bordman emphasized that the bistro licenses were in large part intended to activate the City streets at night. Since it is not Toast's intent to have dinner service, Mayor Bordman suggested Toast may be required to pursue another type of license in order to remain open only during daytime hours. She asked the other Commissioners for their opinions.

Commissioner Sherman concurred with Mayor Bordman. He recommended approving the liquor license for now, while also suggesting the Commission should put Toast on notice that the new SLUP application will not be approved without dinner service.

Ms. Allen clarified that the requirements of breakfast, lunch and dinner service as part of Toast's bistro license was because it was one of the first licenses issued. She noted that since then other bistro licenses have been issued without the requirement of evening hours, and that Toast does a service to Birmingham by being open in the mornings which brings shoppers into the downtown. She explained that it is not in Toast's best interest to offer dinner service, but that if it is a requirement in order to stay in business they likely will.

Mayor Pro Tem Boutros asked for clarification as to whether the bistro ordinance requires certain hours of operation. City Manager Valentine pointed out Toast's SLUP has specific provisions as to hours.

Commissioner Hoff said she wants Toast to stay open and sees it as an asset on Pierce. That said, she noted that Ms. Bloom, as the owner and responsible party, should be present at more of these meetings. She noted she would very much like Toast to work with the City and come into compliance on all fronts.

The Mayor closed the public hearing at 8:21 p.m.

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Sherman:
To approve, for the 2019 licensing period, the liquor license held by Toast Birmingham, LLC.

VOTE: Yeas, 4
 Nays, 0
 Recused, 1 (Nickita)

Adachi Restaurant Group LLC

The Mayor opened the public hearing for Adachi Restaurant Group LLC at 8:22 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:22 p.m.

Bella Piatti

The Mayor opened the public hearing for Bella Piatti at 8:22 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:22 p.m.

Bistro Joe's

The Mayor opened the public hearing for Bistro Joe's at 8:22 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:22 p.m.

Cameron's Steakhouse

The Mayor opened the public hearing for Cameron's Steakhouse at 8:23 p.m. Planning Director Ecker confirmed all issues have been resolved and noted the dumpster has been relocated within the building as originally approved.

Keith Kirkwood, Regional Vice President of Landry's, noted the dumpster location was corrected over the weekend. Landry's created a plan to build an enclosure for the dumpster but discovered it would not meet the City's needs. He added that Landry's acquired Cameron's in 2015, and the dumpster has been in the outdoor location since before the acquisition.

The Mayor closed the public hearing at 8:26 p.m.

Fleming's Prime Steakhouse

The Mayor opened the public hearing for Fleming's Prime Steakhouse at 8:26 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:26 p.m.

Forest Grill 2, LLC

The Mayor opened the public hearing for Forest Grill 2, LLC at 8:27 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:27 p.m.

La Strada Cafe, LLC

The Mayor opened the public hearing for La Strada Cafe, LLC at 8:27 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:27 p.m.

Luxe Bar & Grill

The Mayor opened the public hearing for Luxe Bar & Grill at 8:27 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:27 p.m.

Mad Hatter Bistro (Tea Parlor, Inc.)

The Mayor opened the public hearing for Mad Hatter Bistro (Tea Parlor, Inc.) at 8:27 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:27 p.m.

Rojo Mexican Bistro

The Mayor opened the public hearing for Rojo Mexican Bistro at 8:27 p.m. Deputy Treasurer Klobucur confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:28 p.m.

Sidecar Slider Bar

The Mayor opened the public hearing for Sidecar Slider Bar at 8:28 p.m. Deputy Treasurer Klobucur confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:29 p.m.

Salvatore Scallopini

The Mayor opened the public hearing for Salvatore Scallopini at 8:29 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:29 p.m.

Tallulah Wine Bar & Bistro

The Mayor opened the public hearing for Tallulah Wine Bar & Bistro at 8:30 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:30 p.m.

Townhouse Kitchen and Bar, LLC

The Mayor opened the public hearing for Townhouse Kitchen and Bar, LLC at 8:30 p.m. Planning Director Ecker confirmed all issues have been resolved.

The Mayor closed the public hearing at 8:31 p.m.

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Nickita:
To approve, for the 2019 licensing period, the liquor licenses held by Adachi Restaurant Group LLC, Bella Piatti, Bistro Joe's, Cameron's Steakhouse, Fleming's Prime Steakhouse, Forest Grill 2, LLC, La Strada Café, LLC, Luxe Bar & Grill, Mad Hatter Bistro (Tea Parlor, Inc.), Rojo Mexican Bistro, Sidecar Slider Bar, Salvatore Scallopini, Tallulah Wine Bar & Bistro, and Townhouse Kitchen and Bar, LLC.

Commissioner Hoff said the onus for the maintenance of these issues is on both the business owners and the City. She said business owners should comply with the terms of their SLUP agreements, and the City should also be doing more routine checks to ensure compliance.

Mayor Bordman agreed and said monitoring is a code enforcement issue.

Commissioner Nickita noted that SLUP issues have been found by the City outside of the liquor license renewal process. He reiterated his comments from the prior Commission meeting that SLUPs are a binding legal agreement between business owners and the City which help protect the interests of the businesses, the community, and the City. He emphasized SLUPs should be treated by business owners as such.

VOTE: Yeas, 5
 Nays, 0

**03-071-19 PUBLIC HEARING OF NECESSITY FOR PIERCE STREET ALLEY
 SPECIAL ASSESSMENT DISTRICT**

Mayor Bordman opened the public hearing at 8:37 p.m.

City Engineer O'Meara presented the proposed project and special assessment district (SAD).

Clarifications/Comments

Commissioner Sherman said having the trash compactor at the terminating vista will mean that sanitation vehicles will routinely traverse the area. He shared concern about the likely negative impact this traffic will have on the cleanliness and the integrity of the exposed aggregate of the area.

City Engineer O'Meara acknowledged that the exposed aggregate could still be negatively impacted, and said he would work with the City's landscape architect to propose a suitable feature that could withstand the increased vehicular traffic.

Commissioner Nickita suggested the City should be looking to replicate the enhancements done in Willits Alley in the Pierce Alley plan, saying the enhancements took the appearance of the Alley from utilitarian to intentionally pedestrian-friendly. He continued:

- In Hamilton Alley, the exposed aggregate and the concrete largely blended together in color making the enhancements less noticeable and the Alley less obviously pedestrian-oriented.
- For Pierce Alley, the City should explore variations on aggregate coarseness, tinting, use of other materials, or other possibilities in order to make the enhancements more apparent. The articulations should also appear more frequently, because the proposed distance between them makes them seem visually disparate as opposed to a connected



MEMORANDUM

Police Department

DATE: March 22, 2019

TO: Joseph A. Valentine, City Manager
Jana Ecker, Planning Director

FROM: Chris Busen, Investigative Commander

APPROVED: Mark H. Clemence, Chief of Police

SUBJECT: Toast Birmingham, LLC ("Toast Birmingham") requests a transfer of membership interest in a Class C and SDM liquor licenses with Sunday sale (PM) and an Outdoor Service Permit located at 203 Pierce, Birmingham, Oakland County, Michigan, to be issued pursuant to MCL 436.1521(A)(1)(B).

INTRODUCTION:

The police department has received a request from the Law Offices of Adkison, Need, Allen, and Rentrop regarding a transfer of membership interest from Toast Birmingham, located at 203 Pierce, Birmingham, Oakland County, MI 48009. Toast Birmingham has paid the initial fee of \$1500 for a business that serves alcoholic beverages for consumption on the premises per section 7.33 of the Birmingham City Code.

BACKGROUND:

Toast Birmingham was originally issued a liquor license by the Michigan Liquor Control Commission ("MLCC") in 2008 with two equal members, Regan Bloom and Thomas Bloom, who were at the time, husband and wife. In November 2016, pursuant to a Divorce Settlement Agreement, Thomas Bloom assigned his 50% interest in Toast Birmingham to Regan Bloom. The sole member of Toast Birmingham was now Regan Bloom.

LEGAL REVIEW:

Non-applicable

FISCAL IMPACT:

Non-applicable

SUMMARY:

On February 6, 2017 an investment group was formed called Vision Toast, LLC ("Vision Toast") Vision Toast entered into an agreement with Regan Bloom to acquire 49% of the interest in Toast Birmingham (which also included buying into Toast Ferndale, which holds a liquor license, and the Toast Ferndale Property). The cost for Vision Toast's interest in Toast Birmingham was \$325,000. The funds came from the members of Vision Toast's savings and earnings. The members in Toast Birmingham are Regan Bloom and Vision Toast.

Toast Birmingham Members

Percentage of Interest

Regan Bloom.....	51%
Vision Toast	49%

The members of Vision Toast are as follows: S Michael Holding, LLC (members Omar Ammori, Sean Ammori, Samantha Ammori, Matthew Ammori, and Morgan Ammori); Michael Sarafa, Kevin Denha, Saber Ammori and Denha Cast, LLC (Mark Denha Trust and Nesreen Denha Trust). Simultaneously with the February 6, 2017 transfer, Regan Bloom and Vision Toast assigned their interest in Toast Birmingham to Toast Holdings, LLC. The sole member of Toast Birmingham is Toast Holdings, LLC. The members of Vision Toast will not have any role in the day-to-day operations of the business. Toast Birmingham will continue to do business as Toast, with the same food and service. Regan Bloom and the director of operations, Anthony Minicilli will still oversee the day-to-day operation of the business. The following members have a 10% or over interest in Toast Birmingham: Regan Bloom, Omar Ammori, Saber Ammori and Kevin Denha.

Several of the members of Vision Toast have held liquor licenses in the past.

Saber and Omar Ammori formally held the following liquor licenses:

Motor Street Deli
The Beverage House
Jakes Foods
Amore Co Inc
Bogarts, Inc
Casablanca, Inc
Roseville Ventures, Inc
Parkway Ventures, Inc

Kevin Denha formally held the following liquor licenses:

Grape vine wine shoppe
Skorz Liquor

There is a SLUP application pending with regarding a change in Toast's hours, to eliminate dinner service from the approved SLUP. These membership changes will also be included in the request to amend the SLUP.

A background check was conducted on Omar Ammori, Saber Ammori, and Kevin Denha. Omar Ammori, Saber Ammori, and Kevin Denha were checked using the Law Enforcement Information Network (LEIN), the Court's Law Enforcement Management Information System (CLEMIS) and the Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (MAGLOCLLEN). Omar Ammori, Saber Ammori and Kevin Denha have no criminal convictions.

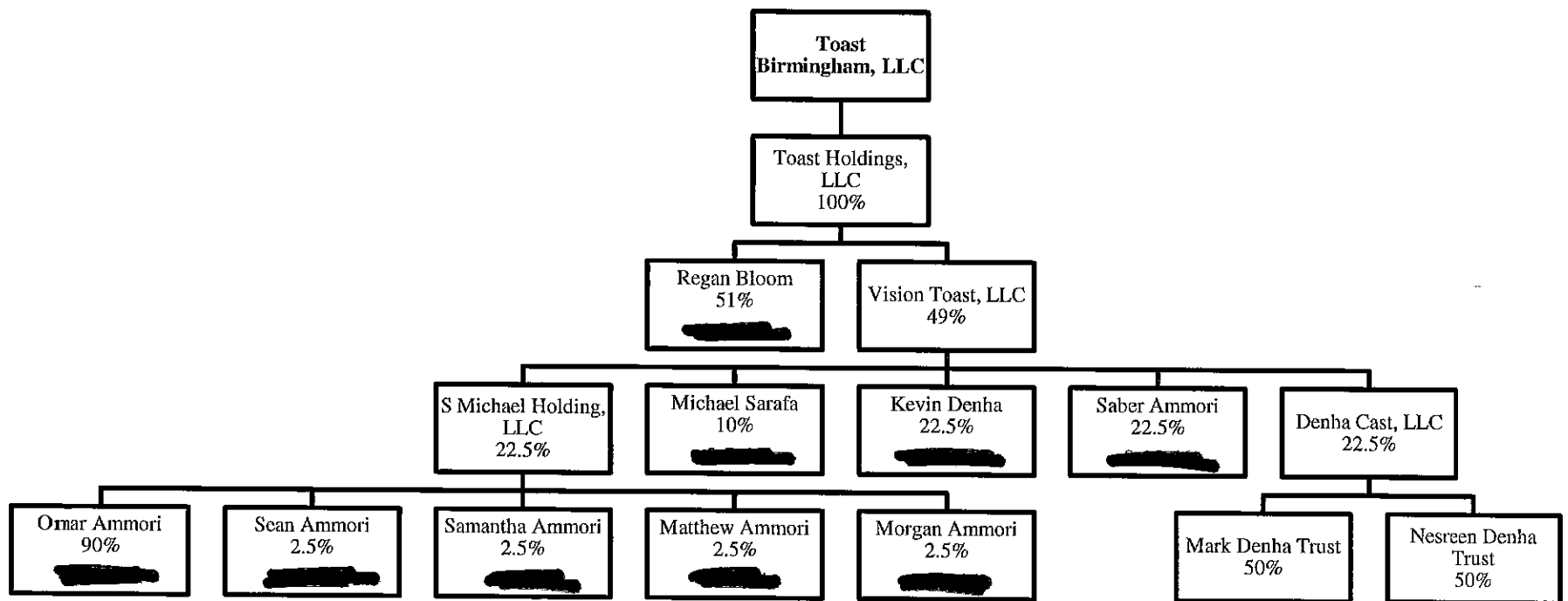
ATTACHMENTS:

Organizational chart for Toast Birmingham, LLC.

SUGGESTED RESOLUTION:

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Toast Birmingham, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) and SDM License with Outdoor Service (1 Area) located at 203 Pierce, Birmingham, Oakland County, MI 48009.

Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of Toast Birmingham, LLC approving the liquor license transfer request of Toast Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service (1 Area) located at 203 Pierce, Birmingham, Oakland County, MI 48009.



*Dates of birth are shown in blue.

HEARING DATE CHANGE
NOTICE OF PUBLIC HEARINGS
BIRMINGHAM CITY COMMISSION
PUBLIC HEARING OF NECESSITY
PUBLIC HEARING OF CONFIRMATION

Meeting Date, Time, Location:	HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT Monday, April 22, 2019, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Meeting Date, Time, Location:	HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT Monday, May 6, 2019, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Location:	Quarton Lake Reconstruction project area
Nature of Improvement:	Installation of sewer and water laterals within the Quarton Lake Reconstruction project area
City Staff Contact:	Paul O'Meara 248.530.1836 pomeara@bhamgov.org
Notice Requirements:	Mail to affected property owners Publish April 21st and April 28th, 2019
Approved minutes may be reviewed at:	City Clerk's Office

You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012.

The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at 248.530.1880 (voice) or 248.644.5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.



MEMORANDUM

Finance Department

DATE: April 24, 2019

TO: Joseph A. Valentine, City Manager

FROM: Teresa Klobucar, Deputy Treasurer
Mark Gerber, Finance Director/Treasurer

SUBJECT: Resolution for Confirming S.A.D. # 890 – Quarton Lake Subdivision Reconstruction - Phase 1 Water Laterals Special Assessment District

For purposes of installing new water laterals that would specially benefit properties within the limits of the Quarton Lake Subdivision Reconstruction, it is requested that the City Commission adopt the following resolution confirming S.A.D. No. 890 at the regular City Commission meeting of May 6, 2019. Comments during the hearing of confirmation are limited to those questions specifically addressing the assessment roll pursuant to Section 94-9 of the City Code. The hearing declaring the necessity of the Special Assessment District was held at the City Commission meeting of April 22, 2019.

SUGGESTED RESOLUTION:

To confirm Special Assessment Roll No. 890, to defray the cost of installing new water laterals in Phase 1 of the Quarton Lake Subdivision Reconstruction:

WHEREAS, Special Assessment Roll, designated Roll No. 890, 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 04-100-19 provided it would meet this 6th day of May 2019 for the sole purpose of reviewing the assessment roll, and

WHEREAS, at said hearing held this May 6, 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. 890 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 a half percent (6.5%) on all unpaid installments.

	SAD 890 Water Laterals	
	Quarton Lake Subdivision Paving Project	
Parcel Number	Property Address	Amount
19-26-179-031	920 N Glenhurst	\$1,100.00
19-26-179-029	966 N Glenhurst	\$1,100.00
Total		\$2,200.00

DATE: April 12, 2019

TO: Joseph A. Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: Quarton Lake Subdivision Reconstruction – Phase 1
Water & Sewer Lateral Special Assessment District
Public Hearing – Continued to April 22, 2019

INTRODUCTION:

At the Commission meeting of March 11, 2019, the City Commission set a date of April 8, 2019 to hold a public hearing of necessity for the replacement of water and sewer laterals located within the limits of the Quarton Lake Subdivision Paving Project. Also at that meeting, a confirmation hearing date of April 22, 2019 was set, should the assessment district be authorized. The hearing of necessity was later postponed to April 22, 2019, at the request of the City Attorney.

BACKGROUND:

All owners in the district have been sent the attached letter and public hearing notice. To date, our office has received a small number of calls asking for clarifications about the upcoming project, as well as queries about estimated costs. We are not aware of any objections at this time.

LEGAL REVIEW:

The suggested special assessment district is consistent with the City Charter, and past precedence, with the exception that the two homes that currently have lead water services will have them replaced all the way to the water meter at no charge, in accordance with the revised requirements of the Michigan Dept. of Environmental Quality (MDEQ). No legal review is required.

FISCAL IMPACT:

The costs being charged will cover the City's costs payable to the contractor relative to the pipe installation. As has been done traditionally, the City is subsidizing this program to a small degree in that inspection and restoration costs are covered by the City as a part of the overall cost of the project.

SUMMARY:

It is recommended that the City Commission conduct the public hearing, and authorize the special assessment district to defray the cost of the installation of new water and sewer laterals within the project area of the Quarton Lake Subdivision Paving Project, Contract #1-19(P).

ATTACHMENTS:

- Public Hearing notice from the City Clerk.
- Recently distributed letter of explanation prepared by the Engineering Dept.
- Memo of March 4, 2019, recommending the setting of a public hearing.
- Map of proposed assessment district.
- Proposed special assessment roll (sections of 4 streets).

SUGGESTED RESOLUTION:

WHEREAS, The City Commission has established a policy requiring the replacement of undersized or lead water lateral lines and sewer laterals in excess of fifty years old when the City street is open for repairs or reconstruction; and

WHEREAS, The City Commission is of the opinion that replacement of water and sewer laterals not meeting current criteria as a part of the planned road paving project is declared a necessity; and

WHEREAS, formal bids have been received and the actual cost per foot for replacement of the water and sewer laterals has been determined,

RESOLVED, that all sewer and water laterals not meeting current criteria located within the limits of the following streets shall be replaced as a part of the Quarton Lake Subdivision Paving Project (Contract #1-19(P)):

N. Glenhurst Dr. – Raynale St. to Oak St.
Raynale St. – N. Glenhurst Dr. to Chesterfield Ave.
Brookwood – N. Glenhurst Dr. to Raynale St.
Kenwood Ct. – N. Glenhurst Dr. to 220 ft. east.

RESOLVED, that at such time as the Assessor is directed to prepare the assessment roll, of which 100% of the contractor's charge to replace water and sewer lateral (calculated at the rate of \$55.00 per foot for water laterals and \$70.00 per foot for sewer laterals) shall be charged to the adjoining property owners benefiting from the said laterals,

RESOLVED, that there be a special assessment district created and special assessments levied in accordance with benefits against the properties within such assessment district, said special assessment district shall be all properties, within the following district:

"Harrowgate"

Lots 78-82 inclusive, the westerly 52.5 ft. of lot 85, lots 86-88 inclusive, the northerly 47 ft. of lot 89, lot 91, unplatted parcel tax I.D. #19-26-179-013, lots 92-94 inclusive, lot 96, lots 143-146 inclusive, the southerly 35 ft. of lot 147, lots 149-152 inclusive, the southerly 40 ft. of lot 153, lots 174 & 175, the northerly 50 ft. of lot 176, lots 180-183 inclusive, lots 185-187 inclusive, lots 207 & 208.

RESOLVED, that the Commission shall meet on Monday, May 6, 2019, at 7:30 P.M., for the purpose of conducting a public hearing to confirm the roll for the replacement of water and sewer laterals within the Quarton Lake Subdivision Paving Project.

HEARING DATE CHANGE
NOTICE OF PUBLIC HEARINGS
BIRMINGHAM CITY COMMISSION
PUBLIC HEARING OF NECESSITY
PUBLIC HEARING OF CONFIRMATION

Meeting Date, Time, Location:	HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT Monday, April 22, 2019, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Meeting Date, Time, Location:	HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT Monday, May 6, 2019, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Location:	Quarton Lake Reconstruction project area
Nature of Improvement:	Installation of sewer and water laterals within the Quarton Lake Reconstruction project area
City Staff Contact:	Paul O'Meara 248.530.1836 pomeara@bhamgov.org
Notice Requirements:	Mail to affected property owners Publish April 21st and April 28th, 2019
Approved minutes may be reviewed at:	City Clerk's Office

You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012.

The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at 248.530.1880 (voice) or 248.644.5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.



March 13, 2019

TO: Property Owners

RE: 2019 Quarton Lake Subdivision Reconstruction Project
Water & Sewer Lateral Replacement

The City of Birmingham has scheduled significant work on your street during the 2019 construction season. Upgrades to the water and sewer system, and complete street replacement are planned. More information relative to the project itself will be mailed to you at a later date.

Accompanying this letter is a public hearing notice regarding a meeting scheduled to occur on April 8, 2019. The public hearing is to consider a Special Assessment District for replacing the water and sewer laterals to each individual home. This letter is to help clarify what is being discussed.

As a part of all street paving projects, the City has found that significant savings can be attained both for the City and adjacent property owners when underground pipelines, such as the water and sewer systems, are repaired or replaced if needed when the pavement is removed. Traditionally, the City has taken advantage of these opportunities, and replaced public water mains and sewers during these projects, at significant savings to the ratepayers.

Each homeowner typically has one water service supplying fresh water to the house and one sewer lateral to drain wastewater extending from the front of the house, through the front yard, and into the public right-of-way to connect with the public water main and sanitary sewers. The distance from the property line, one foot off the sidewalk towards the house, to the City's sewer and water lines can vary between 15 and 45 feet, depending on their locations within the roadway. The water and sewer laterals were generally installed at the time the house was built, at the expense of the builder or owner. Since these services only benefit one property, they are not considered a part of the City's public system, and maintenance and repair of them is the responsibility of each individual property owner.

The majority of Birmingham's original homes are now over 50 years old. In a small number of homes, the water laterals built at that time no longer meet the current standard of being a minimum 1-inch diameter pipe. Similarly, the typical service life of a sewer lateral is 50 years. Many sewer laterals in Birmingham are nearing the end of their service life and should be replaced. Unexpected failures of sewer laterals can result in flooded basements and damage to personal property. Repair of a sewer lateral in such an emergency situation can often cost over \$8,000. Recent experience has shown that replacing the water and sewer laterals as a part of our paving projects can substantially reduce the cost. In addition, it is in the public's best interest to replace all of the existing old pipelines prior to replacing the pavement, so that additional cuts into the pavement can be reduced in the future, extending the service life of the road. With that in mind, City policy requires that all water and sewer laterals that do not meet current standards be replaced on such paving projects, at property owner expense.

If you are receiving this letter, our records indicate that your water and/or sewer laterals do not meet current standards, and it is our intent to have the lateral(s) within the City right-of-way only, removed

and replaced as a part of this project. The actual cost of replacing the water and/or sewer lateral will be charged to you, and will vary depending on the actual location of the City mains, and any other obstacles, such as trees, that are in the way. The unit rate that will be charged is \$55 per linear foot of 1-inch water pipe, and \$70 per linear foot of 6-inch sewer pipe installed by the contractor, for all homes along these blocks. If your home is newer, or if upgrades have been made previously, you will not be subject to these charges.

After the work is completed, the actual amount of pipe installed will be measured, and an invoice will be generated and sent to the property owner of record. Payment in full will be expected within 30 days of receipt. If you are not in a position to pay off the charge in one payment, it can be broken into as many as 10 annual payments. An annual interest charge on the remaining balance, currently about 5%, will apply. If you would like to know the actual amount estimated for your property, please contact our office at (248) 530-1850, and ask for the Engineering Dept. For those homes receiving only a new sewer lateral, as is the case for the majority of the homes affected by this project, it is expected that most owners will see a total charge of \$1,000 to \$3,00 each. If you were to have this work done on an independent basis, the cost would be approximately \$6,000 to \$8,000. Therefore, the opportunity to complete this work now represents a substantial improvement to each property at a significant discount.

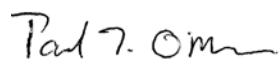
If you feel that the water or sewer lateral has been judged unfairly, you may submit an appeal in writing within 30 days of receipt of this letter. The appeal must have attached written invoices clarifying that replacement or repair has occurred which has renewed this pipe. If that is not available, submit an internal inspection videotape documenting the condition of the sewer pipe. The videotape will have to clarify that the pipe was constructed of PVC materials meeting current standards. Submittal of a videotape showing a sewer lateral in good working order, but made of outdated materials such as cast iron, orangeburg, or clay will not be sufficient. Due to the low prices being quoted above, all sewer laterals of this nature must be replaced, even if they are in good working order today. In the long run, saving the lateral will end up costing the property owner much more to replace later, not to mention the damage to the street.

You also have the right to comment directly to the City Commission about the policy in general, at the public hearing noticed on the attached announcement. Questions or concerns particular to your water or sewer lateral are best handled individually by the Engineering Department, rather than the City Commission.

Those homeowners struggling financially with respect to this issue should also contact our office, and we can review with you other programs that the City has available to ensure that you are able to maintain your home and get these needed improvements done as well.

Please contact our office at (248) 530-1850, if you have any questions.

Sincerely,



Paul T. O'Meara, P.E.
City Engineer

DATE: March 4, 2019

TO: Joseph A. Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: Quarton Lake Subdivision Reconstruction – Phase 1
Water & Sewer Lateral Special Assessment District

INTRODUCTION:

On March 1, the Engineering Dept. opened bids for Contract #1-19(P), which will reconstruct the water, sewer, and pavement on several street segments within the Quarton Lake Subdivision. In accordance with the City's policy, it is our intention to replace all water service laterals that are less than 1 inch diameter, as well as any sewer service laterals that are older than 50 years. The replacement of laterals is considered an improvement to the benefitting property owners, the cost of which may be special assessed. The City Commission will be asked to consider the creation of a special assessment district to defray the cost of these improvements.

BACKGROUND:

Contract #1-19(P) will renew the water and sewer systems on sections of N. Glenhurst Dr., Raynale St., Brookwood, and Kenwood Ct. As recommended under separate cover, it is anticipated that this construction contract will be awarded to DiPonio Contracting, Inc., with their low bid of \$2,124,010. In the past, the City has compared the low bidder's price for this work item with the other bidders, to ensure the price of this work, which will be assessed, reflects the actual value of the work. A list of the water and sewer lateral bid prices for all the bidders follows below:

CONTRACTOR (in order of lowest to highest bidder based on total price)	BID PRICE (PER FOOT) SEWER	BID PRICE (PER FOOT) WATER
DiPonio Contracting, Inc.	\$70.00	\$55.00
V.I.L. Construction, Inc.	\$75.00	\$33.00
FDM Contracting, Inc.	\$80.00	\$65.00
Angelo Iafrate Construction Co., Inc.	\$45.00	\$22.00
Verdeterre Contracting, Inc.	\$100.00	\$58.50
Pamar Enterprises, Inc.	\$51.00	\$45.00
Average Price Per Foot	\$70.17	\$46.42

Per the table, the low bidder's per foot price for a sewer lateral is very close to the average bid, while the water price per foot is \$8.58 higher than average. Interestingly, due to the tendency toward larger water services in this area, only two homes need a new water service replacement for a size upgrade. The average cost to a homeowner obtaining just a new sewer service is \$1,860. Only one homeowner will receive both a new

sewer and water lateral at a total estimated cost of \$3,340. Considering the cost of this type of work with a private contractor is typically approaching \$10,000, we feel that these costs are very reasonable, and add value to each property well in excess of the amount being charged.

LEGAL REVIEW:

The suggested special assessment district is consistent with the City Charter, and past precedence. No legal review is required.

New this year is the impact of the new Lead & Copper Rule being enforced by the Michigan Dept. of Environmental Quality (MDEQ). The new rule requires that the City replace all lead water services encountered on this project from the water main to the water meter in the house. Our records indicate that there are two such homes that will require a lead water service replacement within the project area. The City Attorney's office helped develop forms for our office to use when requesting permission to enter private property. The City has discussed the issue with both homeowners, and both have signed releases authorizing the work. Based on the prices bid, the cost of this work is estimated to total \$10,900.

One of the main concerns that water system agencies have expressed relative to the new rule is the requirement that the system cannot charge the owner of the property directly for these improvements. There are questions about the constitutionality of this requirement. Several agencies have combined together to file a lawsuit against the MDEQ asking for relief. The suit is currently awaiting a hearing to be scheduled. So as to not be in violation of the rule, the Engineering Dept. is prepared to replace these services as required by the current rule.

FISCAL IMPACT:

Similar to previous special assessment districts of this type, the City is charging 100% of the cost charged by the contractor for the sewer and water service installations to the benefitting property owners. There will be collateral expenses involved in this program, such as sidewalk restoration and extra inspection time spent overseeing this work. However, the City benefits in the long run by reduced cutting and patching of the new street pavement for many years to come.

As referenced in the section above, the two homes that have lead water services to be replaced are not being charged for the planned water service lateral replacement improvement, in accordance with requirements as stated by the MDEQ.

SUMMARY

It is recommended that the City Commission set a public hearing date of April 8, 2019 for a hearing of necessity to consider the creation of a special assessment district to defray the cost of sewer and water service laterals on Contract #1-19(P), at the unit rates of \$70.00 per foot for sewer lateral replacement, and \$55.00 per foot for water lateral replacement. Further, should the assessment district be approved, to set a public hearing date of April 22, 2019 to confirm the special assessment roll.

ATTACHMENTS:

- Map of proposed district.
- Proposed special assessment roll (sections of 4 streets).

SUGGESTED RESOLUTION:

RESOLVED, that the City Commission shall meet on Monday, April 8, 2019, at 7:30 P.M., for the purpose of conducting a public hearing of necessity for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area. Be it further

RESOLVED, that the City Commission shall meet on Monday, April 22, 2019, at 7:30 P.M. for the purpose of conducting a public hearing to confirm the roll for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area.

Quarton Lake Subdivision Reconstruction - Phase 1



Water or Sewer Lateral Special Assessment Districts



SEWER & WATER LATERAL CHART

2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

Material	Unit	Cost Per Unit
Sewer, 6" PVC	LF	\$ 70.00
Water, 1"	LF	\$ 55.00

N. Glenhurst - Oak to Raynale

WEST SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
917	N. Glenhurst	6" PVC	2002	N	0	\$0	1" Lead	N*	34	\$0*	\$0
945	N. Glenhurst	Unknown	---	Y	15	\$1,050	1" COPPER	N	0	\$0	\$1,050
967	N. Glenhurst	6" O.B.	1953	Y	23	\$1,610	1" COPPER	N	0	\$0	\$1,610
991	N. Glenhurst	Unknown	---	Y	30	\$2,100	1" COPPER	N	0	\$0	\$2,100
1011	N. Glenhurst	6" O.B.	1948	Y	25	\$1,750	1" COPPER	N	0	\$0	\$1,750
1025	N. Glenhurst	6" PVC	2016	N	0	\$0	1" COPPER	N	0	\$0	\$0
1043	N. Glenhurst	6" PVC	2013	N	0	\$0	1" COPPER	N	0	\$0	\$0
1065	N. Glenhurst	6" O.B.	1950	Y	14	\$980	1" COPPER	N	0	\$0	\$980
1087	N. Glenhurst	6" O.B.	1950	Y	15	\$1,050	1" COPPER	N	0	\$0	\$1,050
1099	N. Glenhurst	On Raynale	1947	N	0	\$0	1" COPPER	N	0	\$0	\$0
						\$8,540				\$0	\$8,540

EAST SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
920	N. Glenhurst	On Oak St.		N	0	\$0	3/4" COPPER	Y	20	\$1,100	\$1,100
940	N. Glenhurst	6" PVC	2012	N	0	\$0	1" COPPER	N	0	\$0	\$0
966	N. Glenhurst	6" O.B.	1952	Y	32	\$2,240	3/4" COPPER	Y	20	\$1,100	\$3,340
986	N. Glenhurst	Unknown	---	Y	23	\$1,610	1" COPPER	N	0	\$0	\$1,610
1010	N. Glenhurst	6" PVC	2011	N	0	\$0	1" COPPER	N	0	\$0	\$0
1030	N. Glenhurst	Unknown	---	Y	33	\$2,310	1" COPPER	N	0	\$0	\$2,310
1044	N. Glenhurst	Unknown	---	Y	35	\$2,450	1" COPPER	N	0	\$0	\$2,450
1060	N. Glenhurst	4" HDPE	2014	N	0	\$0	1" Lead	N*	0	\$0	\$0
1076	N. Glenhurst	Unknown	1941	Y	37	\$2,590	1" COPPER	N	0	\$0	\$2,590
1090	N. Glenhurst	Unknown	---	Y	20	\$1,400	1" COPPER	N	0	\$0	\$1,400
						\$12,600				\$2,200	\$14,800

RATIOS:

12 out of 20

60%

2 out of 20

10%

* CITY WILL PAY FOR LEAD SERVICE REPLACEMENT

2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

Material	Unit	Cost Per Unit
Sewer Service, 6" PVC	LF	\$ 70.00
Water Service Connection, 1"	LF	\$ 55.00

Raynale **- N. Glenhurst to Chesterfield**
NORTH SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
1120	N. Glenhurst	(On Glenhurst)	1951	N	0	\$0	(On Glenhurst)	N	0	\$0	\$0
1131	Lyonhurst	(On Lyonhurst)	---	N	0	\$0	(On Lyonhurst)	N	0	\$0	\$0
1120	Lyonhurst	6" O.B.	1949	Y	35	\$2,450	1" COPPER	N	0	\$0	\$2,450
1115	Brookwood	(On Brookwood)	---	N	0	\$0	(On Brookwood)	N	0	\$0	\$0
1122	Brookwood	(On Brookwood)	1946	N	0	\$0	(On Brookwood)	N	0	\$0	\$0
1125	Chesterfield	(On Chesterfield)	2016	N	0	\$0	(On Chesterfield)	N	0	\$0	\$0
						\$2,450				\$0	\$2,450

SOUTH SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
1973	Raynale	6" O.B.	1959	Y	22	\$1,540	1" COPPER	N	0	\$0	\$1,540
1935	Raynale	6" O.B.	1959	Y	22	\$1,540	1" COPPER	N	0	\$0	\$1,540
1851	Raynale	6" O.B.	1959	Y	20	\$1,400	1" COPPER	N	0	\$0	\$1,400
1787	Raynale	6" PVC	2016	N	0	\$0	1" PLASTIC	N	0	\$0	\$0
1097	Chesterfield	(On Chesterfield)	1953	N	0	\$0	(On Chesterfield)	N	0	\$0	\$0
						\$4,480				\$0	\$4,480

RATIOS:

4 out of 11

36%

0 out of 11

0%

2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

Material	Unit	Cost Per Unit
Sewer Service, 6" PVC	LF	\$ 70.00
Water Service Connection, 1"	LF	\$ 55.00

Brookwood - N. Glenhurst to Raynale
NORTH/WEST SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost	
911	Brookwood	4" PVC	1999	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0	
921	Brookwood	4" PVC	1999	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0	
977	Brookwood	Unknown	1939	Y	20	\$1,400	1" COPPER	N	0	\$0	\$1,400	
1001	Brookwood	6" Cast Iron	1940	Y	17	\$1,190	1" COPPER	N	0	\$0	\$1,190	
1069	Brookwood	Unknown	1939	Y	19	\$1,330	1" COPPER	N	0	\$0	\$1,330	
						\$3,920						\$3,920

SOUTH/EAST SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost	
900	Brookwood	Unknown	1939	Y	33	\$2,310	1" COPPER	N	0	\$0	\$2,310	
952	Brookwood	6" PVC	2009	N	0	\$0	2" COPPER	N	0	\$0	\$0	
998	Brookwood	4" CROCK	1944	Y	34	\$2,380	1-1/2" COPPER	N	0	\$0	\$2,380	
1004	Brookwood	6" Unknown	1941	Y	44	\$3,080	2" COPPER	N	0	\$0	\$3,080	
1020	Brookwood	Unknown	---	Y	44	\$3,080	1" COPPER	N	0	\$0	\$3,080	
1084	Brookwood	4" O.B.	1950	Y	27	\$1,890	1" COPPER	N	0	\$0	\$1,890	
						\$12,740						\$12,740

RATIOS:

8 out of 11

73%

0 out of 11

0%

2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

Material	Unit	Cost Per Unit
Sewer Service, 6" PVC	LF	\$ 70.00
Water Service Connection, 1"	LF	\$ 55.00

Kenwood Ct. - N. Glenhurst to cul-de-sac

NORTH SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
1906	Kenwood	6" CLAY	1940	Y	30	\$2,100	1" COPPER	N	0	\$0	\$2,100
1888	Kenwood	6" O.B.	1961	Y	25	\$1,750	1" COPPER	N	0	\$0	\$1,750
1886	Kenwood	6" PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
						\$3,850				\$0	\$3,850

SOUTH SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
1901	Kenwood	Unknown	1940	Y	25	\$1,750	1" COPPER	N	0	\$0	\$1,750
1895	Kenwood	PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
1885	Kenwood	PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
1881	Kenwood	PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
1791	Kenwood	PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
						\$1,750				\$0	\$1,750

RATIOS: 3 out of 8 38% 0 out of 8 0%

HEARING DATE CHANGE
NOTICE OF PUBLIC HEARINGS
BIRMINGHAM CITY COMMISSION
PUBLIC HEARING OF NECESSITY
PUBLIC HEARING OF CONFIRMATION

Meeting Date, Time, Location:	HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT Monday, April 22, 2019, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Meeting Date, Time, Location:	HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT Monday, May 6, 2019, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Location:	Quarton Lake Reconstruction project area
Nature of Improvement:	Installation of sewer and water laterals within the Quarton Lake Reconstruction project area
City Staff Contact:	Paul O'Meara 248.530.1836 pomeara@bhamgov.org
Notice Requirements:	Mail to affected property owners Publish April 21st and April 28th, 2019
Approved minutes may be reviewed at:	City Clerk's Office

You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012.

The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at 248.530.1880 (voice) or 248.644.5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.



MEMORANDUM

Finance Department

DATE: April 24, 2019

TO: Joseph A. Valentine, City Manager

FROM: Teresa Klobucar, Deputy Treasurer
Mark Gerber, Finance Director/Treasurer

SUBJECT: Resolution for Confirming S.A.D. # 891 – Quarton Lake Subdivision Reconstruction - Phase 1 Sewer Laterals Special Assessment District

For purposes of installing new sewer laterals that would specially benefit properties within the limits of the Quarton Lake Subdivision Reconstruction, it is requested that the City Commission adopt the following resolution confirming S.A.D. No. 891 at the regular City Commission meeting of May 6, 2019. Comments during the hearing of confirmation are limited to those questions specifically addressing the assessment roll pursuant to Section 94-9 of the City Code. The hearing declaring the necessity of the Special Assessment District was held at the City Commission meeting of April 22, 2019.

SUGGESTED RESOLUTION:

To confirm Special Assessment Roll No. 891 to defray the cost of installing new sewer laterals in Phase 1 of the Quarton Lake Subdivision Reconstruction:

WHEREAS, Special Assessment Roll, designated Roll No. 891, 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 04-100-19 provided it would meet this 6th day of May 2019 for the sole purpose of reviewing the assessment roll, and

WHEREAS, at said hearing held this May 6, 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. 891 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 a half percent (6.5%) on all unpaid installments.

	SAD 891 Sewer Laterals	
	Quarton Lake Subdivision Paving Project	
Parcel Number	Property Address	Amount
19-26-177-017	945 N Glenhurst	\$1,050.00
19-26-177-016	967 N Glenhurst	\$1,610.00
19-26-177-015	991 N Glenhurst	\$2,100.00
19-26-177-014	1011 N Glenhurst	\$1,750.00
19-26-177-011	1065 N Glenhurst	\$980.00
19-26-177-010	1087 N Glenhurst	\$1,050.00
19-26-179-029	966 N Glenhurst	\$2,240.00
19-26-179-028	986 N Glenhurst	\$1,610.00
19-26-179-010	1030 N Glenhurst	\$2,310.00
19-26-179-009	1044 N Glenhurst	\$2,450.00
19-26-178-003	1076 N Glenhurst	\$2,590.00
19-26-178-017	1090 N Glenhurst	\$1,400.00
19-26-179-012	1906 Kenwood	\$2,100.00
19-26-179-044	1888 Kenwood	\$1,750.00
19-26-179-027	1901 Kenwood	\$1,750.00
19-26-178-019	977 Brookwood	\$1,400.00
19-26-178-020	1001 Brookwood	\$1,190.00
19-26-178-010	1069 Brookwood	\$1,330.00
19-26-179-058	900 Brookwood	\$2,310.00
19-26-179-004	998 Brookwood	\$2,380.00
19-26-179-047	1004 Brookwood	\$3,080.00
19-26-179-002	1020 Brookwood	\$3,080.00
19-26-179-001	1084 Brookwood	\$1,890.00
19-26-130-007	1120 Lyonhurst	\$2,450.00
19-26-178-006	1973 Raynale	\$1,540.00
19-26-178-007	1935 Raynale	\$1,540.00
19-26-178-008	1851 Raynale	\$1,400.00
Total		\$50,330.00

DATE: April 12, 2019

TO: Joseph A. Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: Quarton Lake Subdivision Reconstruction – Phase 1
Water & Sewer Lateral Special Assessment District
Public Hearing – Continued to April 22, 2019

INTRODUCTION:

At the Commission meeting of March 11, 2019, the City Commission set a date of April 8, 2019 to hold a public hearing of necessity for the replacement of water and sewer laterals located within the limits of the Quarton Lake Subdivision Paving Project. Also at that meeting, a confirmation hearing date of April 22, 2019 was set, should the assessment district be authorized. The hearing of necessity was later postponed to April 22, 2019, at the request of the City Attorney.

BACKGROUND:

All owners in the district have been sent the attached letter and public hearing notice. To date, our office has received a small number of calls asking for clarifications about the upcoming project, as well as queries about estimated costs. We are not aware of any objections at this time.

LEGAL REVIEW:

The suggested special assessment district is consistent with the City Charter, and past precedence, with the exception that the two homes that currently have lead water services will have them replaced all the way to the water meter at no charge, in accordance with the revised requirements of the Michigan Dept. of Environmental Quality (MDEQ). No legal review is required.

FISCAL IMPACT:

The costs being charged will cover the City's costs payable to the contractor relative to the pipe installation. As has been done traditionally, the City is subsidizing this program to a small degree in that inspection and restoration costs are covered by the City as a part of the overall cost of the project.

SUMMARY:

It is recommended that the City Commission conduct the public hearing, and authorize the special assessment district to defray the cost of the installation of new water and sewer laterals within the project area of the Quarton Lake Subdivision Paving Project, Contract #1-19(P).

ATTACHMENTS:

- Public Hearing notice from the City Clerk.
- Recently distributed letter of explanation prepared by the Engineering Dept.
- Memo of March 4, 2019, recommending the setting of a public hearing.
- Map of proposed assessment district.
- Proposed special assessment roll (sections of 4 streets).

SUGGESTED RESOLUTION:

WHEREAS, The City Commission has established a policy requiring the replacement of undersized or lead water lateral lines and sewer laterals in excess of fifty years old when the City street is open for repairs or reconstruction; and

WHEREAS, The City Commission is of the opinion that replacement of water and sewer laterals not meeting current criteria as a part of the planned road paving project is declared a necessity; and

WHEREAS, formal bids have been received and the actual cost per foot for replacement of the water and sewer laterals has been determined,

RESOLVED, that all sewer and water laterals not meeting current criteria located within the limits of the following streets shall be replaced as a part of the Quarton Lake Subdivision Paving Project (Contract #1-19(P)):

N. Glenhurst Dr. – Raynale St. to Oak St.
Raynale St. – N. Glenhurst Dr. to Chesterfield Ave.
Brookwood – N. Glenhurst Dr. to Raynale St.
Kenwood Ct. – N. Glenhurst Dr. to 220 ft. east.

RESOLVED, that at such time as the Assessor is directed to prepare the assessment roll, of which 100% of the contractor's charge to replace water and sewer lateral (calculated at the rate of \$55.00 per foot for water laterals and \$70.00 per foot for sewer laterals) shall be charged to the adjoining property owners benefiting from the said laterals,

RESOLVED, that there be a special assessment district created and special assessments levied in accordance with benefits against the properties within such assessment district, said special assessment district shall be all properties, within the following district:

"Harrowgate"

Lots 78-82 inclusive, the westerly 52.5 ft. of lot 85, lots 86-88 inclusive, the northerly 47 ft. of lot 89, lot 91, unplatted parcel tax I.D. #19-26-179-013, lots 92-94 inclusive, lot 96, lots 143-146 inclusive, the southerly 35 ft. of lot 147, lots 149-152 inclusive, the southerly 40 ft. of lot 153, lots 174 & 175, the northerly 50 ft. of lot 176, lots 180-183 inclusive, lots 185-187 inclusive, lots 207 & 208.

RESOLVED, that the Commission shall meet on Monday, May 6, 2019, at 7:30 P.M., for the purpose of conducting a public hearing to confirm the roll for the replacement of water and sewer laterals within the Quarton Lake Subdivision Paving Project.

HEARING DATE CHANGE
NOTICE OF PUBLIC HEARINGS
BIRMINGHAM CITY COMMISSION
PUBLIC HEARING OF NECESSITY
PUBLIC HEARING OF CONFIRMATION

Meeting Date, Time, Location:	HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT Monday, April 22, 2019, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Meeting Date, Time, Location:	HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT Monday, May 6, 2019, 7:30 PM Municipal Building, 151 Martin, Birmingham, MI
Location:	Quarton Lake Reconstruction project area
Nature of Improvement:	Installation of sewer and water laterals within the Quarton Lake Reconstruction project area
City Staff Contact:	Paul O'Meara 248.530.1836 pomeara@bhamgov.org
Notice Requirements:	Mail to affected property owners Publish April 21st and April 28th, 2019
Approved minutes may be reviewed at:	City Clerk's Office

You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012.

The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at 248.530.1880 (voice) or 248.644.5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.



March 13, 2019

TO: Property Owners

RE: 2019 Quarton Lake Subdivision Reconstruction Project
Water & Sewer Lateral Replacement

The City of Birmingham has scheduled significant work on your street during the 2019 construction season. Upgrades to the water and sewer system, and complete street replacement are planned. More information relative to the project itself will be mailed to you at a later date.

Accompanying this letter is a public hearing notice regarding a meeting scheduled to occur on April 8, 2019. The public hearing is to consider a Special Assessment District for replacing the water and sewer laterals to each individual home. This letter is to help clarify what is being discussed.

As a part of all street paving projects, the City has found that significant savings can be attained both for the City and adjacent property owners when underground pipelines, such as the water and sewer systems, are repaired or replaced if needed when the pavement is removed. Traditionally, the City has taken advantage of these opportunities, and replaced public water mains and sewers during these projects, at significant savings to the ratepayers.

Each homeowner typically has one water service supplying fresh water to the house and one sewer lateral to drain wastewater extending from the front of the house, through the front yard, and into the public right-of-way to connect with the public water main and sanitary sewers. The distance from the property line, one foot off the sidewalk towards the house, to the City's sewer and water lines can vary between 15 and 45 feet, depending on their locations within the roadway. The water and sewer laterals were generally installed at the time the house was built, at the expense of the builder or owner. Since these services only benefit one property, they are not considered a part of the City's public system, and maintenance and repair of them is the responsibility of each individual property owner.

The majority of Birmingham's original homes are now over 50 years old. In a small number of homes, the water laterals built at that time no longer meet the current standard of being a minimum 1-inch diameter pipe. Similarly, the typical service life of a sewer lateral is 50 years. Many sewer laterals in Birmingham are nearing the end of their service life and should be replaced. Unexpected failures of sewer laterals can result in flooded basements and damage to personal property. Repair of a sewer lateral in such an emergency situation can often cost over \$8,000. Recent experience has shown that replacing the water and sewer laterals as a part of our paving projects can substantially reduce the cost. In addition, it is in the public's best interest to replace all of the existing old pipelines prior to replacing the pavement, so that additional cuts into the pavement can be reduced in the future, extending the service life of the road. With that in mind, City policy requires that all water and sewer laterals that do not meet current standards be replaced on such paving projects, at property owner expense.

If you are receiving this letter, our records indicate that your water and/or sewer laterals do not meet current standards, and it is our intent to have the lateral(s) within the City right-of-way only, removed

and replaced as a part of this project. The actual cost of replacing the water and/or sewer lateral will be charged to you, and will vary depending on the actual location of the City mains, and any other obstacles, such as trees, that are in the way. The unit rate that will be charged is \$55 per linear foot of 1-inch water pipe, and \$70 per linear foot of 6-inch sewer pipe installed by the contractor, for all homes along these blocks. If your home is newer, or if upgrades have been made previously, you will not be subject to these charges.

After the work is completed, the actual amount of pipe installed will be measured, and an invoice will be generated and sent to the property owner of record. Payment in full will be expected within 30 days of receipt. If you are not in a position to pay off the charge in one payment, it can be broken into as many as 10 annual payments. An annual interest charge on the remaining balance, currently about 5%, will apply. If you would like to know the actual amount estimated for your property, please contact our office at (248) 530-1850, and ask for the Engineering Dept. For those homes receiving only a new sewer lateral, as is the case for the majority of the homes affected by this project, it is expected that most owners will see a total charge of \$1,000 to \$3,00 each. If you were to have this work done on an independent basis, the cost would be approximately \$6,000 to \$8,000. Therefore, the opportunity to complete this work now represents a substantial improvement to each property at a significant discount.

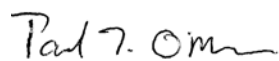
If you feel that the water or sewer lateral has been judged unfairly, you may submit an appeal in writing within 30 days of receipt of this letter. The appeal must have attached written invoices clarifying that replacement or repair has occurred which has renewed this pipe. If that is not available, submit an internal inspection videotape documenting the condition of the sewer pipe. The videotape will have to clarify that the pipe was constructed of PVC materials meeting current standards. Submittal of a videotape showing a sewer lateral in good working order, but made of outdated materials such as cast iron, orangeburg, or clay will not be sufficient. Due to the low prices being quoted above, all sewer laterals of this nature must be replaced, even if they are in good working order today. In the long run, saving the lateral will end up costing the property owner much more to replace later, not to mention the damage to the street.

You also have the right to comment directly to the City Commission about the policy in general, at the public hearing noticed on the attached announcement. Questions or concerns particular to your water or sewer lateral are best handled individually by the Engineering Department, rather than the City Commission.

Those homeowners struggling financially with respect to this issue should also contact our office, and we can review with you other programs that the City has available to ensure that you are able to maintain your home and get these needed improvements done as well.

Please contact our office at (248) 530-1850, if you have any questions.

Sincerely,



Paul T. O'Meara, P.E.
City Engineer

DATE: March 4, 2019

TO: Joseph A. Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: Quarton Lake Subdivision Reconstruction – Phase 1
Water & Sewer Lateral Special Assessment District

INTRODUCTION:

On March 1, the Engineering Dept. opened bids for Contract #1-19(P), which will reconstruct the water, sewer, and pavement on several street segments within the Quarton Lake Subdivision. In accordance with the City's policy, it is our intention to replace all water service laterals that are less than 1 inch diameter, as well as any sewer service laterals that are older than 50 years. The replacement of laterals is considered an improvement to the benefitting property owners, the cost of which may be special assessed. The City Commission will be asked to consider the creation of a special assessment district to defray the cost of these improvements.

BACKGROUND:

Contract #1-19(P) will renew the water and sewer systems on sections of N. Glenhurst Dr., Raynale St., Brookwood, and Kenwood Ct. As recommended under separate cover, it is anticipated that this construction contract will be awarded to DiPonio Contracting, Inc., with their low bid of \$2,124,010. In the past, the City has compared the low bidder's price for this work item with the other bidders, to ensure the price of this work, which will be assessed, reflects the actual value of the work. A list of the water and sewer lateral bid prices for all the bidders follows below:

CONTRACTOR (in order of lowest to highest bidder based on total price)	BID PRICE (PER FOOT) SEWER	BID PRICE (PER FOOT) WATER
DiPonio Contracting, Inc.	\$70.00	\$55.00
V.I.L. Construction, Inc.	\$75.00	\$33.00
FDM Contracting, Inc.	\$80.00	\$65.00
Angelo Iafrate Construction Co., Inc.	\$45.00	\$22.00
Verdeterre Contracting, Inc.	\$100.00	\$58.50
Pamar Enterprises, Inc.	\$51.00	\$45.00
Average Price Per Foot	\$70.17	\$46.42

Per the table, the low bidder's per foot price for a sewer lateral is very close to the average bid, while the water price per foot is \$8.58 higher than average. Interestingly, due to the tendency toward larger water services in this area, only two homes need a new water service replacement for a size upgrade. The average cost to a homeowner obtaining just a new sewer service is \$1,860. Only one homeowner will receive both a new

sewer and water lateral at a total estimated cost of \$3,340. Considering the cost of this type of work with a private contractor is typically approaching \$10,000, we feel that these costs are very reasonable, and add value to each property well in excess of the amount being charged.

LEGAL REVIEW:

The suggested special assessment district is consistent with the City Charter, and past precedence. No legal review is required.

New this year is the impact of the new Lead & Copper Rule being enforced by the Michigan Dept. of Environmental Quality (MDEQ). The new rule requires that the City replace all lead water services encountered on this project from the water main to the water meter in the house. Our records indicate that there are two such homes that will require a lead water service replacement within the project area. The City Attorney's office helped develop forms for our office to use when requesting permission to enter private property. The City has discussed the issue with both homeowners, and both have signed releases authorizing the work. Based on the prices bid, the cost of this work is estimated to total \$10,900.

One of the main concerns that water system agencies have expressed relative to the new rule is the requirement that the system cannot charge the owner of the property directly for these improvements. There are questions about the constitutionality of this requirement. Several agencies have combined together to file a lawsuit against the MDEQ asking for relief. The suit is currently awaiting a hearing to be scheduled. So as to not be in violation of the rule, the Engineering Dept. is prepared to replace these services as required by the current rule.

FISCAL IMPACT:

Similar to previous special assessment districts of this type, the City is charging 100% of the cost charged by the contractor for the sewer and water service installations to the benefitting property owners. There will be collateral expenses involved in this program, such as sidewalk restoration and extra inspection time spent overseeing this work. However, the City benefits in the long run by reduced cutting and patching of the new street pavement for many years to come.

As referenced in the section above, the two homes that have lead water services to be replaced are not being charged for the planned water service lateral replacement improvement, in accordance with requirements as stated by the MDEQ.

SUMMARY

It is recommended that the City Commission set a public hearing date of April 8, 2019 for a hearing of necessity to consider the creation of a special assessment district to defray the cost of sewer and water service laterals on Contract #1-19(P), at the unit rates of \$70.00 per foot for sewer lateral replacement, and \$55.00 per foot for water lateral replacement. Further, should the assessment district be approved, to set a public hearing date of April 22, 2019 to confirm the special assessment roll.

ATTACHMENTS:

- Map of proposed district.
- Proposed special assessment roll (sections of 4 streets).

SUGGESTED RESOLUTION:

RESOLVED, that the City Commission shall meet on Monday, April 8, 2019, at 7:30 P.M., for the purpose of conducting a public hearing of necessity for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area. Be it further

RESOLVED, that the City Commission shall meet on Monday, April 22, 2019, at 7:30 P.M. for the purpose of conducting a public hearing to confirm the roll for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area.

Quarton Lake Subdivision Reconstruction - Phase 1



Water or Sewer Lateral Special Assessment Districts



SEWER & WATER LATERAL CHART

2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

Material	Unit	Cost Per Unit
Sewer, 6" PVC	LF	\$ 70.00
Water, 1"	LF	\$ 55.00

N. Glenhurst - Oak to Raynale

WEST SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
917	N. Glenhurst	6" PVC	2002	N	0	\$0	1" Lead	N*	34	\$0*	\$0
945	N. Glenhurst	Unknown	---	Y	15	\$1,050	1" COPPER	N	0	\$0	\$1,050
967	N. Glenhurst	6" O.B.	1953	Y	23	\$1,610	1" COPPER	N	0	\$0	\$1,610
991	N. Glenhurst	Unknown	---	Y	30	\$2,100	1" COPPER	N	0	\$0	\$2,100
1011	N. Glenhurst	6" O.B.	1948	Y	25	\$1,750	1" COPPER	N	0	\$0	\$1,750
1025	N. Glenhurst	6" PVC	2016	N	0	\$0	1" COPPER	N	0	\$0	\$0
1043	N. Glenhurst	6" PVC	2013	N	0	\$0	1" COPPER	N	0	\$0	\$0
1065	N. Glenhurst	6" O.B.	1950	Y	14	\$980	1" COPPER	N	0	\$0	\$980
1087	N. Glenhurst	6" O.B.	1950	Y	15	\$1,050	1" COPPER	N	0	\$0	\$1,050
1099	N. Glenhurst	On Raynale	1947	N	0	\$0	1" COPPER	N	0	\$0	\$0
						\$8,540				\$0	\$8,540

EAST SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
920	N. Glenhurst	On Oak St.		N	0	\$0	3/4" COPPER	Y	20	\$1,100	\$1,100
940	N. Glenhurst	6" PVC	2012	N	0	\$0	1" COPPER	N	0	\$0	\$0
966	N. Glenhurst	6" O.B.	1952	Y	32	\$2,240	3/4" COPPER	Y	20	\$1,100	\$3,340
986	N. Glenhurst	Unknown	---	Y	23	\$1,610	1" COPPER	N	0	\$0	\$1,610
1010	N. Glenhurst	6" PVC	2011	N	0	\$0	1" COPPER	N	0	\$0	\$0
1030	N. Glenhurst	Unknown	---	Y	33	\$2,310	1" COPPER	N	0	\$0	\$2,310
1044	N. Glenhurst	Unknown	---	Y	35	\$2,450	1" COPPER	N	0	\$0	\$2,450
1060	N. Glenhurst	4" HDPE	2014	N	0	\$0	1" Lead	N*	0	\$0	\$0
1076	N. Glenhurst	Unknown	1941	Y	37	\$2,590	1" COPPER	N	0	\$0	\$2,590
1090	N. Glenhurst	Unknown	---	Y	20	\$1,400	1" COPPER	N	0	\$0	\$1,400
						\$12,600				\$2,200	\$14,800

RATIOS:

12 out of 20

60%

2 out of 20

10%

* CITY WILL PAY FOR LEAD SERVICE REPLACEMENT

2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

Material	Unit	Cost Per Unit
Sewer Service, 6" PVC	LF	\$ 70.00
Water Service Connection, 1"	LF	\$ 55.00

Raynale **- N. Glenhurst to Chesterfield**
NORTH SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
1120	N. Glenhurst	(On Glenhurst)	1951	N	0	\$0	(On Glenhurst)	N	0	\$0	\$0
1131	Lyonhurst	(On Lyonhurst)	---	N	0	\$0	(On Lyonhurst)	N	0	\$0	\$0
1120	Lyonhurst	6" O.B.	1949	Y	35	\$2,450	1" COPPER	N	0	\$0	\$2,450
1115	Brookwood	(On Brookwood)	---	N	0	\$0	(On Brookwood)	N	0	\$0	\$0
1122	Brookwood	(On Brookwood)	1946	N	0	\$0	(On Brookwood)	N	0	\$0	\$0
1125	Chesterfield	(On Chesterfield)	2016	N	0	\$0	(On Chesterfield)	N	0	\$0	\$0
						\$2,450				\$0	\$2,450

SOUTH SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
1973	Raynale	6" O.B.	1959	Y	22	\$1,540	1" COPPER	N	0	\$0	\$1,540
1935	Raynale	6" O.B.	1959	Y	22	\$1,540	1" COPPER	N	0	\$0	\$1,540
1851	Raynale	6" O.B.	1959	Y	20	\$1,400	1" COPPER	N	0	\$0	\$1,400
1787	Raynale	6" PVC	2016	N	0	\$0	1" PLASTIC	N	0	\$0	\$0
1097	Chesterfield	(On Chesterfield)	1953	N	0	\$0	(On Chesterfield)	N	0	\$0	\$0
						\$4,480				\$0	\$4,480

RATIOS:

4 out of 11

36%

0 out of 11

0%

2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

Material	Unit	Cost Per Unit
Sewer Service, 6" PVC	LF	\$ 70.00
Water Service Connection, 1"	LF	\$ 55.00

Brookwood - N. Glenhurst to Raynale
 NORTH/WEST SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
911	Brookwood	4" PVC	1999	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
921	Brookwood	4" PVC	1999	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
977	Brookwood	Unknown	1939	Y	20	\$1,400	1" COPPER	N	0	\$0	\$1,400
1001	Brookwood	6" Cast Iron	1940	Y	17	\$1,190	1" COPPER	N	0	\$0	\$1,190
1069	Brookwood	Unknown	1939	Y	19	\$1,330	1" COPPER	N	0	\$0	\$1,330
						\$3,920					\$3,920

SOUTH/EAST SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
900	Brookwood	Unknown	1939	Y	33	\$2,310	1" COPPER	N	0	\$0	\$2,310
952	Brookwood	6" PVC	2009	N	0	\$0	2" COPPER	N	0	\$0	\$0
998	Brookwood	4" CROCK	1944	Y	34	\$2,380	1-1/2" COPPER	N	0	\$0	\$2,380
1004	Brookwood	6" Unknown	1941	Y	44	\$3,080	2" COPPER	N	0	\$0	\$3,080
1020	Brookwood	Unknown	---	Y	44	\$3,080	1" COPPER	N	0	\$0	\$3,080
1084	Brookwood	4" O.B.	1950	Y	27	\$1,890	1" COPPER	N	0	\$0	\$1,890
						\$12,740					\$12,740

RATIOS:

8 out of 11

73%

0 out of 11

0%

2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

Material	Unit	Cost Per Unit
Sewer Service, 6" PVC	LF	\$ 70.00
Water Service Connection, 1"	LF	\$ 55.00

Kenwood Ct. - N. Glenhurst to cul-de-sac

NORTH SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
1906	Kenwood	6" CLAY	1940	Y	30	\$2,100	1" COPPER	N	0	\$0	\$2,100
1888	Kenwood	6" O.B.	1961	Y	25	\$1,750	1" COPPER	N	0	\$0	\$1,750
1886	Kenwood	6" PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
						\$3,850				\$0	\$3,850

SOUTH SIDE

Address	Street	Type of Pipe	Date	SAD?	Estd Feet	Estd Cost	Water	SAD?	Estd Feet	Estd Cost	Total Cost
1901	Kenwood	Unknown	1940	Y	25	\$1,750	1" COPPER	N	0	\$0	\$1,750
1895	Kenwood	PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
1885	Kenwood	PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
1881	Kenwood	PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
1791	Kenwood	PVC	1991	N	0	\$0	1-1/2" COPPER	N	0	\$0	\$0
						\$1,750				\$0	\$1,750

RATIOS: 3 out of 8 38% 0 out of 8 0%

NOTICE OF PUBLIC HEARING

BIRMINGHAM CITY COMMISSION
PROPOSED LOT REARRANGEMENT

Meeting Date, Time, Location:	Monday, May 6, 2019 7:30 PM Municipal Building, 151 Martin Birmingham, MI
Location of Request:	411 Hanna St., Parcel #1936182005 425 Hanna St., Parcel #1936182004
Nature of Hearing:	To consider the proposed lot combination of 411 Hanna St., Parcel #1936182005, T2N, R10E, SEC 26 CHAMBERLAIN SUB E 5 FT OF LOT 3 & ALL OF LOT 4, and 425 Hanna St., Parcel #1936182004, T2N, R10E, SEC 36 SCHLAACK BROS ADD LOT 20, ALSO N ½ OF VAC ALLEY ADJ TO SAME, into one lot.
City Staff Contact:	Jana Ecker 248.530.1841 jecker@bhamgov.org
Notice Requirements:	Mailed to all property owners within 300 feet of subject address.
Approved minutes may be reviewed at:	City Clerk's Office

Persons wishing to express their views may do so in person at the hearing or in writing addressed to City Clerk, City of Birmingham, 151 Martin, Birmingham, MI 48009.
Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice) or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

DATE: May 6th, 2019

TO: Joseph A. Valentine, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Public Hearing for a Lot Combination of 411 Hanna Street, Parcel # 1936182005 - T2N, R10E, SEC 36 CHAMBERLAIN SUB E 5 FT OF LOT 3 & ALL OF LOT 4 and 425 Hanna Street, Parcel # 1936182004 - T2N, R10E, SEC 36 CHAMBERLAIN SUB LOT 3 EXC E 5 FT

INTRODUCTION:

The owner of 411 and 425 Hanna Street is seeking approval for a lot combination of two parcels into one.

BACKGROUND:

The subject properties are located on the southwest corner of Hanna Street and Chester Street. The owner of both properties has applied to combine the two lots into one to then knock down both houses and construct a single new house.

The Combination of Land Parcels Ordinance (Chapter 102, Section 102-83) requires that the following standards be met for approval of a lot combination.

- (1) *The Combination will result in lots or parcels of land consistent with the character of the area where the property is located, Chapter 126 of this Code for the zone district in which the property is located, and all applicable master land use plans.*

The subject properties are zoned R3, Single Family Residential. In regards to lot size, the minimum lot area per unit in the R3 Zone is 4,500 SF. The applicant has proposed a lot combination that would total 14,580 SF of lot area which conforms to the Zoning Ordinance standards for minimum lot area. The maximum lot coverage for the R3 Zone is 30%, which would be 4,374 SF for the combination of the two proposed lots. The applicant has proposed a building envelope with a lot coverage of 4,365 SF which conforms to the Zoning Ordinance standards for lot coverage.

In regards to setbacks, the average front setback of homes within 200 feet is 29.9 feet. The applicant has proposed a front setback of 30 which conforms to the minimum front setback regulation of the Zoning Ordinance. The applicant has proposed a rear setback of 30 feet which conforms to the minimum rear setback requirement of the Zoning Ordinance. The applicant has proposed side yard setbacks of 17.2 feet to the west and 30 feet to the east, conforming to the Zoning Ordinance's minimum sideyard setback regulation of 25% of total lot width. In regards to the character of the area, the four buildings across the street from 364 to 466

Hanna Street have similar sized building footprints as the proposed building envelope. The proposed building envelope appears to be consistent with the character of the area where the property is located. **Accordingly, the proposal meets this requirement.**

- (2) *All residential lots formed as a result of a combination shall be a maximum width of no more than twice the average lot width of all lots in the same zone district within 300 feet on the same street.*

The average lot width of all lots in the same zone district within 300 feet on the same street is 62.6 feet, making the maximum lot width 125.2 feet. The applicant is proposing a lot width of 90 feet. **Accordingly, the proposal meets this requirement.**

- (3) *All residential lots formed as a result of a combination shall be a maximum area of no more than twice the average lot area of all lots in the same zone district within 300 feet on the same street.*

The average lot area of all lots in the same zone district within 300 feet on the same street is 9,034 square feet, making the maximum lot area 18,068 square feet. The applicant is proposing a combined lot area of 14,580 square feet. **Accordingly, the proposal meets this requirement.**

- (4) *The combination will result in building envelopes on the combined parcels that will allow for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.*

Based on the attached survey the proposed lot combination and building envelope appear to meet this requirement.

- (5) *Any due or unpaid taxes or special assessments upon the property have been paid in full.*

There are no outstanding taxes due on this property. **The proposal meets this requirement.**

- (6) *The combination will not adversely affect the interest of the public or the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:*

a.) The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use or appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.

Based on the attached survey the proposed lot combination and building envelope appear to meet this requirement.

b.) The effect of the proposed combination upon any floodplain areas, wetlands and other natural features and the ability of the applicant to develop a buildable site on the resulting parcel without unreasonable disturbances of such natural features.

The property is not located in a floodplain or wetlands, nor adjacent to a

floodplain or wetlands.

c.) The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.

The proposed lot combination does not appear to impact the supply of light and air to adjacent properties or the ability of the City to provide essential services.

LEGAL REVIEW:

The City Attorney has reviewed the application and has no concerns.

FISCAL IMPACT:

Not applicable.

SUMMARY:

The Planning Division recommends that the City Commission approve the application for the lot combination of 411 Hanna Street and 425 Hanna Street.

ATTACHMENTS:

- Application
- Proof of ownership
- Letter to the City
- Registered Land Survey

SUGGESTED ACTION:

To approve the proposed lot combination of 411 Hanna Street, Parcel # 1936182005 and 425 Hanna Street, Parcel # 1936182004.

OR

To deny the proposed lot combination of 411 Hanna Street, Parcel #1936182005 and 425 Hanna Street, Parcel # 1936182004.

Combination of Platted Lots Application

1. Applicant

Name: Michael Kelter on behalf of NFL Holdings LLC
 Address: 466 Hanna
Birmingham, MI, 48009
 Phone Number: 248-388-1188
 Fax Number: N/A
 Email Address: michaelkelter1@mac.com

2. Applicant's Attorney/Contact Person

Name: As above
 Address: _____

 Phone Number: _____
 Fax Number: _____
 Email Address: _____

3. Project Information

Address/Location of Property: 411 and 425 Hanna

 Sidwell #: 411: 08-19-36-182-005 and 425: 08-19-36-182-004
 Current Zoning: R-3

Property Owner

Name: NFL Holdings LLC
 Address: 33717 Woodward Ave, Suite 137
Birmingham, MI, 48009
 Phone Number: 248-388-1188
 Fax Number: N/A
 Email Address: michaelkelter1@mac.com

Survey Company

Name: Warren Avery/Urban Land Consultants
 Address: 8800 23 Mile Road
Shelby Twp, MI, 48316-4516
 Phone Number: 586-731-8030 x 300
 Fax Number: 586-731-2605
 Email Address: wavery@urban-land.com

Legal Description: 411: Lots 4 and the East 5 feet of Lot 3, CHAMBERLAIN SUBDIVISION, according to the recorded plat thereof, as recorded in Liber 10 of Plats, Page 39, Oakland County Records
425: Lot 3, EXCEPT the East 5 feet thereof, CHAMBERLAIN SUBDIVISION, according to the recorded plat thereof, as recorded in Liber 10 of Plats, Page 39, Oakland County Records

4. Attachments

- Proof of ownership
- Written statement of reasons for request
- A letter of authority or power of attorney in the event the application is made by a person other than the property owner
- Other data having a direct bearing on the request
- **Sketches of proposed development (optional)**
- One digital copy of plans
- Two (2) copies of a **registered** land survey showing:
 - All Existing and proposed platted lot lines
 - Legal descriptions of proposed lots
 - Locations of existing/surrounding structures for at least 500 feet in all directions
 - Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked.

(I), (We), the undersigned, do hereby request to combine lots of record in the City of Birmingham, Oakland County, Michigan. (I), (We), do hereby swear that all of the statements, signatures, and descriptions appearing on and with this request are in all respects true and accurate to the best of (my), (our), knowledge.

Signature of Property Owner: _____
 Print Name: Michael Kelter on behalf of NFL Holdings LLC
 Signature of Applicant: _____
 Print Name: Michael Kelter on behalf of NFL Holdings LLC

Date: 3-1-2019

Date: 3-1-2019

Fee: **\$200.00 per lot affected, minimum fee \$400**

Notice Signs - Rental Application Community Development

1. Applicant

Name: Michael Kelter on behalf of NFL Holdings LLC
 Address: 466 Hanna
Birmingham, MI, 48009
 Phone Number: 248-388-1188
 Fax Number: N/A

Property Owner

Name: NFL Holdings LLC
 Address: 33717 Woodward Ave, Suite 137
Birmingham, MI, 48009
 Phone Number: 248-388-1188
 Fax Number: N/A

2. Project Information

Address/Location of Property: 411 & 425 Hanna
 Name of Development: N/A
 Area in Acres: Less than one acre

Name of Historic District site is in, if any: N/A
 Current Use: Residential
 Current Zoning: R-3

3. Date of Board Review

Board of Building Trades Appeals: _____
 City Commission: _____
 Historic District Commission: _____
 Planning Board: _____

Board of Zoning Appeals: _____
 Design Review Board: _____
 Housing Board of Appeals: _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant: _____

Date: 3.1.19

Office Use Only

Application #: _____ Date Received: _____ Fee: _____
 Date of Approval: _____ Date of Denial: _____ Reviewed by: _____

FRASCO CAPONIGRO
WINEMAN SCHEIBLE HAUSER LUTTMANN
ATTORNEYS AND COUNSELLORS

HENRY WINEMAN

ALSO ADMITTED IN PENNSYLVANIA

February 28, 2019

City of Birmingham
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012

Re: *NFL Holdings, LLC and NFL Holdings III, LLC*

To Whom It May Concern:

Please be advised that the undersigned serves as legal counsel for Michael Kelter, sole owner of NFL Holdings, LLC, a Michigan limited liability company, and NFL Holdings III, LLC, a Michigan limited liability company. As the sole owner, Michael Kelter has sole decision making authority on behalf of both companies.

Should you need any further information, please do not hesitate to contact our office.

Very truly yours,

FRASCO CAPONIGRO WINEMAN
SCHEIBLE HAUSER & LUTTMANN, PLLC



Henry Wineman

HW/mel
cc: Client

1301 WEST LONG LAKE | SUITE 250 | TROY, MI 48098

O: 248.334.6767 | E: HW@FRASCAP.COM

WWW.FRASCAP.COM

NOTICE OF ASSESSMENT, TAXABLE VALUATION,
AND PROPERTY CLASSIFICATION

This form is issued under the authority of P.A. 206
of 1893, Sec. 211.24 (c) and 211.34 (c), as amended.
This is a model assessment notice to be used by the
local assessor.

Michigan Department of Treasury, STC
1019 (Rev. 12-03)

L-4400

FROM CITY OF BIRMINGHAM

PO BOX 3001
BIRMINGHAM MI 48012-3001

NAME AND ADDRESS OF OWNER OR PERSON NAMED ON ASSESSMENT ROLL:

NFL HOLDINGS LLC
33717 WOODWARD AVE STE 137
BIRMINGHAM MI 48009-0913

THIS IS NOT
A TAX BILL

PROPERTY IDENTIFICATION: (Parcel Code required. Property address
and legal description optional):

08-19-36-182-004

425 HANNA ST

SCHOOL DISTRICT: 030

THIS PROPERTY IS CLASSIFIED AS: 401 (401 RES IMP)

PRIOR YEAR'S CLASSIFICATION IF DIFFERENT:

Since 1995 your property taxes have been calculated on your Taxable Value (see line 1 below). The Taxable Value number entered in the "Change" column does not indicate a change in your taxes. This number indicates the change in the Taxable Value.

The State Equalized Value (see line 4 below) is the Assessed Value multiplied (see line 2 below) by the Equalization Factor, if any (see line 3 below). The State Equalized Value must be approximately 50% of the market value.

IF THERE WAS A TRANSFER OF OWNERSHIP on your property in 2018, your 2019 Taxable Value will be the same as your 2019 State Equalized Value. Please see line 5 below regarding Transfer of Ownership on your property.

IF THERE WAS NOT A TRANSFER OF OWNERSHIP on your property in 2018, your 2019 Taxable Value is calculated by multiplying your 2018 Taxable Value (see line 1 below) by 1.024 (which is the Inflation Rate Multiplier for the current year).

Physical changes in your property may also increase or decrease your Taxable Value. Your 2019 Taxable Value cannot be higher than your 2019 State Equalized Value.

*This change in Taxable Value will increase/decrease your 2019
tax bill by approximately: \$292.36 based on the 2018 tax rates.

	PRIOR AMOUNT YEAR: 2018	CURRENT AMOUNT YEAR: 2019	CHANGE
1. TAXABLE VALUE (Current amount is tentative):	230,880	236,420	5,540 *
2. ASSESSED VALUE:	230,880	241,680	10,800
3. TENTATIVE EQUALIZATION FACTOR: 1.000			
4. STATE EQUALIZED VALUE (Current amount is tentative):	230,880	241,680	10,800
There WAS/WAS NOT a transfer of ownership on this property in 2018: WAS NOT			

The Board of Review will meet at Springdale Golf Course (300 Strathmore Rd.) on Tuesday, March 5th for an Organizational Meeting from 9:00 am until Completion of Business. Appointments will begin on:

Monday, March 11th from 9:00 am until 12:00 noon and 1:30 pm until 4:30 pm.

Tuesday, March 12th from 9:00 am until 12:00 noon and 1:30 pm until 4:30 pm.

Thursday, March 14th from 1:30 pm until 4:30 pm and 6:00 pm until 9:00 pm.

Protests may be made by written appeal or in person. Petitioner agents must provide a written appeal with the ORIGINAL signature of the petitioner represented and current date. (Fax not accepted.) Written appeals must be received by 9:00 pm on Thursday, March 14th. NO FAX OR E-MAIL APPEALS WILL BE ACCEPTED. For an appointment IN ADVANCE, please contact Oakland County Equalization Division, PRIOR TO March 1st, Toll Free at 1-888-350-0900, Extension 81864 or (248) 858-1864.

% Exempt As "Principal Residence" or "Michigan Business Tax": 2019	.00%	Year End 2018 P. R. E.	.00%
% Exempt As "Qual. Agricultural / Qual. Forest Property":	.00%	% Exempt as "Development Property":	.00%

The denial of an exemption from the local school operating tax for "qualified agricultural properties" may be appealed to the local Board of Review. The denial of an exemption from the local school operating tax for a "homeowner's principal residence" may be appealed to the Michigan Tax Tribunal by the filing of a petition within 35 days of issuance of this notice. Michigan Tax Tribunal forms are available at www.michigan.gov/taxtrib.

Properties classified as Agricultural and Residential must protest at the Board of Review to protect the right to future appeals to the Michigan Tax Tribunal for valuation and exemption appeals and/or the State Tax Commission for classification appeals prior to July 31. Properties classified Commercial, Industrial or Developmental Real may be appealed to the March Board of Review or to the Michigan Tax Tribunal prior to May 31. Commercial, Industrial, or Utility Personal Property may be appealed to the March Board of Review or to the Michigan Tax Tribunal prior to May 31 if a Personal Property Statement was filed with the local unit prior to the commencement of the Board of Review as provided in MCL 211.19, except as otherwise provided by MCL 211.9m, MCL 211.9n and MCL 211.9o.

HOMEOWNER'S PRINCIPAL RESIDENCE AFFIDAVIT INFORMATION REQUIRED BY P.A. 114 of 2012. If you purchased your principal residence after May 1 last year, to claim the principal residence exemption, if you have not already done so, you are required to file an affidavit by June 1 for the immediately succeeding summer tax levy and all subsequent tax levies or by November 1 for the immediately succeeding winter tax levy and all subsequent tax levies.

NOTICE OF ASSESSMENT, TAXABLE VALUATION, AND PROPERTY CLASSIFICATION

This form is issued under the authority of P.A. 206 of 1893, Sec. 211.24 (c) and 211.34 (c), as amended. This is a model assessment notice to be used by the local assessor.

Michigan Department of Treasury, STC 1019 (Rev. 12-03)

L-4400

FROM CITY OF BIRMINGHAM

PO BOX 3001
BIRMINGHAM MI 48012-3001

THIS IS NOT
A TAX BILL

NAME AND ADDRESS OF OWNER OR PERSON NAMED ON ASSESSMENT ROLL:

NFL HOLDING III LLC
33717 WOODWARD AVE STE 137
BIRMINGHAM MI 48009-0913

PROPERTY IDENTIFICATION: (Parcel Code required. Property address and legal description optional.):

08-19-36-182-005

411 HANNA ST

SCHOOL DISTRICT: 030

THIS PROPERTY IS CLASSIFIED AS: 401 (401 RES IMP)

PRIOR YEAR'S CLASSIFICATION IF DIFFERENT:

Since 1995 your property taxes have been calculated on your Taxable Value (see line 1 below). The Taxable Value number entered in the "Change" column does not indicate a change in your taxes. This number indicates the change in the Taxable Value.

The State Equalized Value (see line 4 below) is the Assessed Value multiplied (see line 2 below) by the Equalization Factor, if any (see line 3 below). The State Equalized Value must be approximately 50% of the market value.

IF THERE WAS A TRANSFER OF OWNERSHIP on your property in 2018, your 2019 Taxable Value will be the same as your 2019 State Equalized Value. Please see line 5 below regarding Transfer of Ownership on your property.

IF THERE WAS NOT A TRANSFER OF OWNERSHIP on your property in 2018, your 2019 Taxable Value is calculated by multiplying your 2018 Taxable Value (see line 1 below) by 1.024 (which is the Inflation Rate Multiplier for the current year).

Physical changes in your property may also increase or decrease your Taxable Value. Your 2019 Taxable Value cannot be higher than your 2019 State Equalized Value.

***This change in Taxable Value will increase/decrease your 2019 tax bill by approximately: \$6,443.52 based on the 2018 tax rates.**

	PRIOR AMOUNT YEAR: 2018	CURRENT AMOUNT YEAR: 2019	CHANGE
1. TAXABLE VALUE (Current amount is tentative):	212,110	293,170	81,060 *
2. ASSESSED VALUE:	293,860	293,170	-690
3. TENTATIVE EQUALIZATION FACTOR: 1.000			
4. STATE EQUALIZED VALUE (Current amount is tentative):	293,860	293,170	-690
There WAS/WAS NOT a transfer of ownership on this property in 2018: WAS			

The Board of Review will meet at Springdale Golf Course (300 Strathmore Rd.) on Tuesday, March 5th for an Organizational Meeting from 9:00 am until Completion of Business. Appointments will begin on:

Monday, March 11th from 9:00 am until 12:00 noon and 1:30 pm until 4:30 pm.

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% Exempt As "Principal Residence" or "Michigan Business Tax": 2019	.00%	Year End 2018 P. R. E.	100.00%
% Exempt As "Qual. Agricultural / Qual. Forest Property":	.00%	% Exempt as "Development Property":	.00%

The denial of an exemption from the local school operating tax for "qualified agricultural properties" may be appealed to the local Board of Review. The denial of an exemption from the local school operating tax for a "homeowner's principal residence" may be appealed to the Michigan Tax Tribunal by the filing of a petition within 35 days of issuance of this notice. Michigan Tax Tribunal forms are available at www.michigan.gov/taxtrib.

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HOMEOWNER'S PRINCIPAL RESIDENCE AFFIDAVIT INFORMATION REQUIRED BY P.A. 114 of 2012. If you purchased your principal residence after May 1 last year, to claim the principal residence exemption, if you have not already done so, you are required to file an affidavit by June 1 for the immediately succeeding summer tax levy and all subsequent tax levies or by November 1 for the immediately succeeding winter tax levy and all subsequent tax levies.

March 1, 2019

City of Birmingham
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012

RE: 411/425 Hanna Lot Combination Application

To Whom It May Concern:

Attached and enclosed, please find two binders containing the hard copy application and required supplements, along with the requisite certified surveys. A digital copy of this entire submission is also being submitted simultaneously.

I have been a Birmingham resident since 1992; my wife Lizzie since 2001; and our two children their entire lives. We currently live at 466/492 Hanna. In 2016, I acquired 425 Hanna and in 2018 acquired 411 Hanna (currently vacant). These two properties are owned by NFL Holdings LLC and NFL Holdings III, LLC respectively, both of which I am the sole owner.

We respectfully request approval from the City to combine 411 and 425 Hanna into one lot, maintaining the R-3 zoning designation, for purposes of building a single-family residence for our family. We have lived in our existing house since 2011, when our children were four and newborn. Now that they are eleven and eight, our needs have changed and evolved, and it is our desire to build a house from the ground up that will serve our family for many years to come, and Lizzie and I well past the time our children leave home.

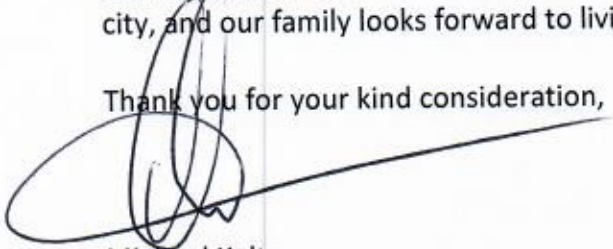
The combination of these two lots will result in a single lot which is well under the required threshold of no more than twice the width (90' vs 125.3') and twice the total area (14,580 vs 18,068) of the surrounding lots. There are many, many homes in the immediate neighborhood with lots of this size and significantly larger, including our existing home directly across the street from the proposed combination. In most instances, these homes occupy a much larger percentage of the total area than our new home will, as we do not intend to exceed the allowable 30% lot coverage – thus not only creating a beautiful new home in the city, but preserving quite a bit of open space, as this is a corner lot and requires substantial setbacks on both street-facing sides.

Immediately upon approval of this application, we will tear down 411 Hanna. Included herein is the accepted proposal from our demolition contractor, Milford Contracting (the timeline shown is simply to establish how long this will take and obviously does not have the actual start date). They will secure the necessary permits for this work and tear down the existing home immediately upon approval, and then we will begin finalizing our design and constructions plans for submission and issuance of those permits.

We do not anticipate requesting any variances for the construction. In fact, it is likely that our ultimate footprint will actually be smaller than what is allowed and shown on the attached survey (and please note that the footprint shown already results in less than the allowable 30% lot coverage due to the required setbacks). The house will be designed by the world-renowned and multiple award-winning architectural firm of Khanna-Schultz of Brooklyn. Landscape design and construction will be in partnership with Michael J. Dul & Associates of Birmingham.

In summary, we hope that the City finds this request reasonable and acceptable. The combined lot readily meets all requirements for a combination and no variances or special accommodations are requested. Our new home promises to be a major upgrade to this important corner of the city, and our family looks forward to living in it for many, many years to come.

Thank you for your kind consideration,

A handwritten signature in black ink, appearing to be 'Michael Kelter', with a long horizontal line extending to the right.

Michael Kelter

Milford Contracting
15271 Hawley Road
Holly, MI 48442
2489803512
tima@milfordcontracting.com



ESTIMATE

ADDRESS

Michael Kelter
C/O NFL Holdings LLC
33717 Woodward Ave Suite
137
Birmingham, MI 48009

ESTIMATE # 1122
DATE 01/21/2019

DATE	ACTIVITY	DESCRIPTION
01/21/2019	ASBESTOS SURVEY	Conduct asbestos survey of the property (does not include abatement)
01/21/2019	SITE FENCING	Install approximately 450 lineal foot site fencing
01/21/2019	SITE FENCING	Install 20' Gate
01/21/2019	SILT FENCE	Install approximately 450 lineal foot silt fencing
01/21/2019	MOBILIZATION	Mobilize equipment to site
01/21/2019	SITE WORK	Remove landscaping, bushes and patio (pavers) according to walk through
01/21/2019	RESIDENTIAL DEMOLITION	Residential demolition of existing structure, remove spoils from site
01/21/2019	GARAGE / OUT BUILDING DEMOLITION	Garage/Out Building demolition, remove spoils from site
01/21/2019	CONCRETE REMOVAL	Remove concrete driveway
01/21/2019	SITE WORK	Backfill open hole with clean fill ****

411 Hanna
Birmingham, MI

TOTAL

\$22,475.00

Optional fill material****Class 2 sand for backfill an
additional \$7500

Thank you for considering Milford Contracting!

Accepted By

Accepted Date

411 Hanna Project (Est)

Permission to Proceed
(Signed estimate)

Demolition Permit -
Timing Depends on City

Demolish Structures /
Concrete removal

Close Project

2/1/19

2/6/19

2/11/19

2/16/19

2/21/19

2/26/19

Permission to Proceed

Asbestos survey

Demolition Permit - Timing
Depends on City

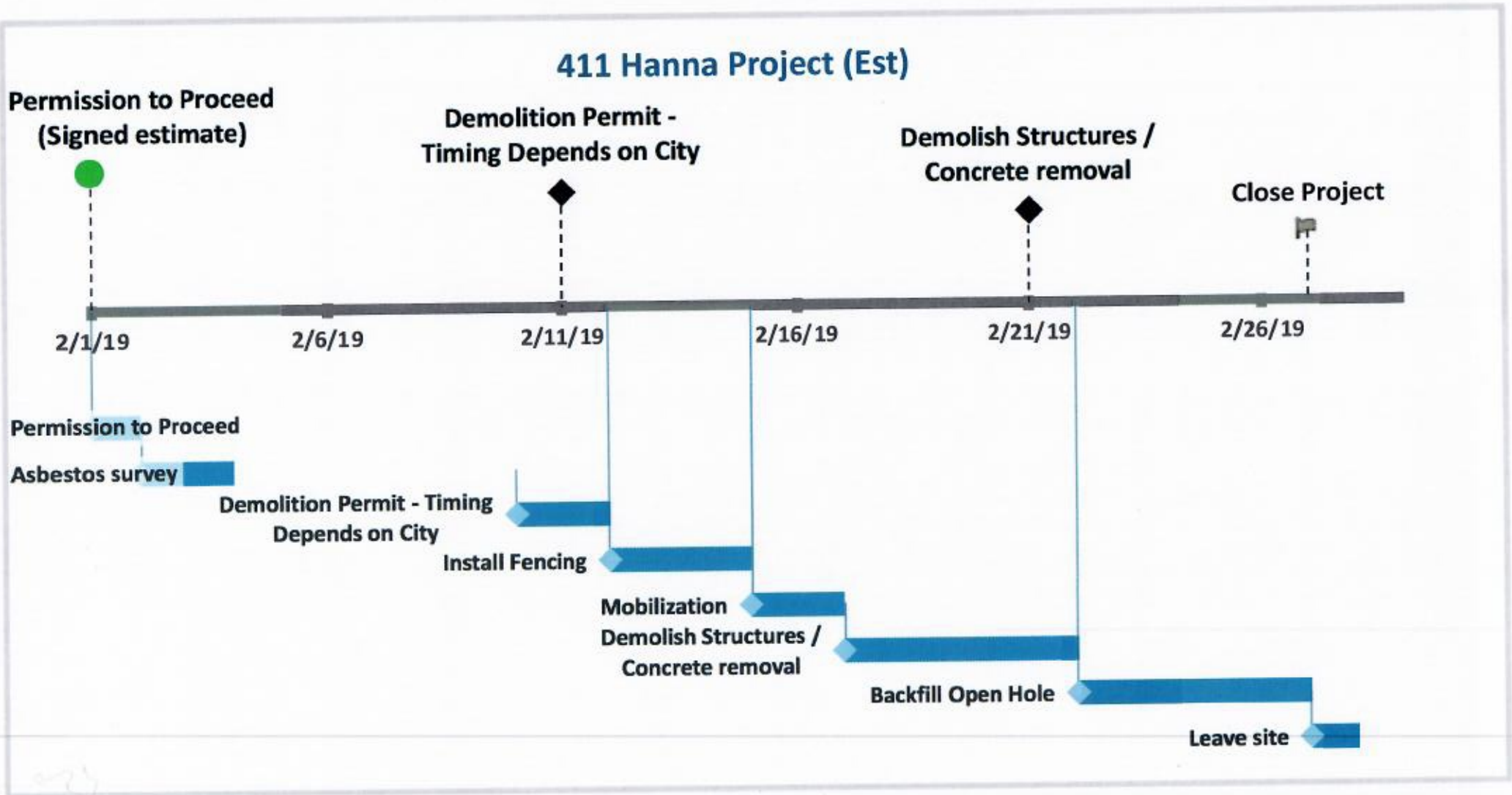
Install Fencing

Mobilization

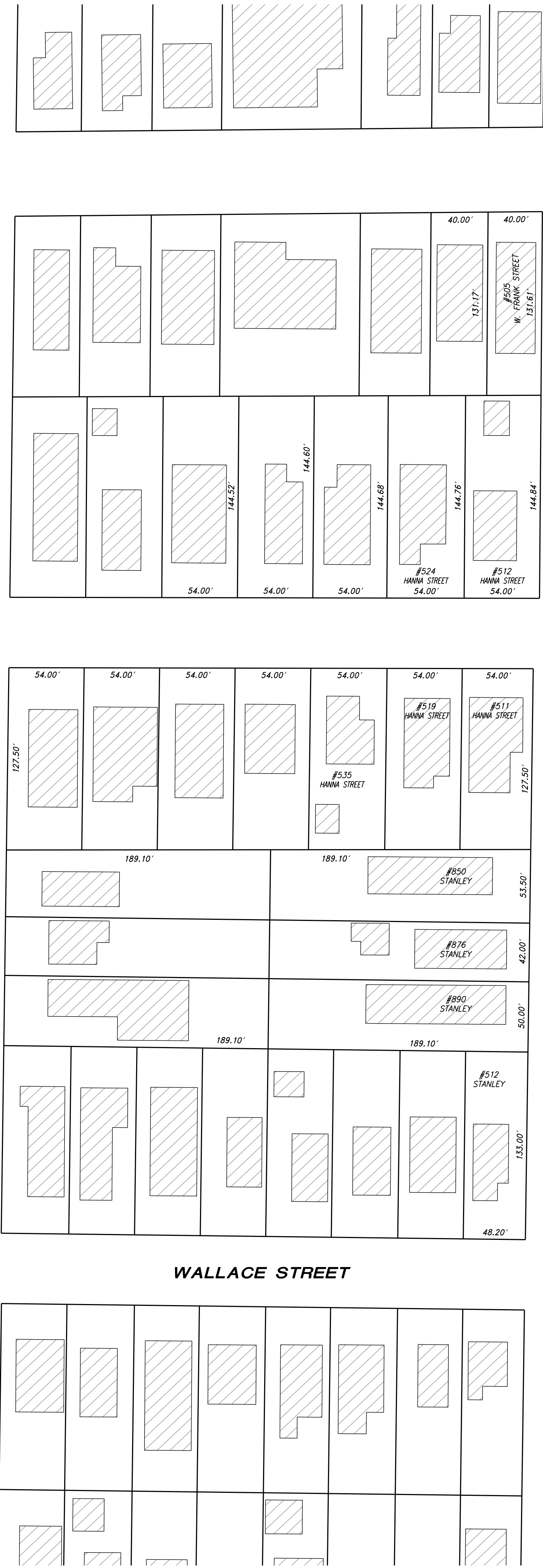
Demolish Structures /
Concrete removal

Backfill Open Hole

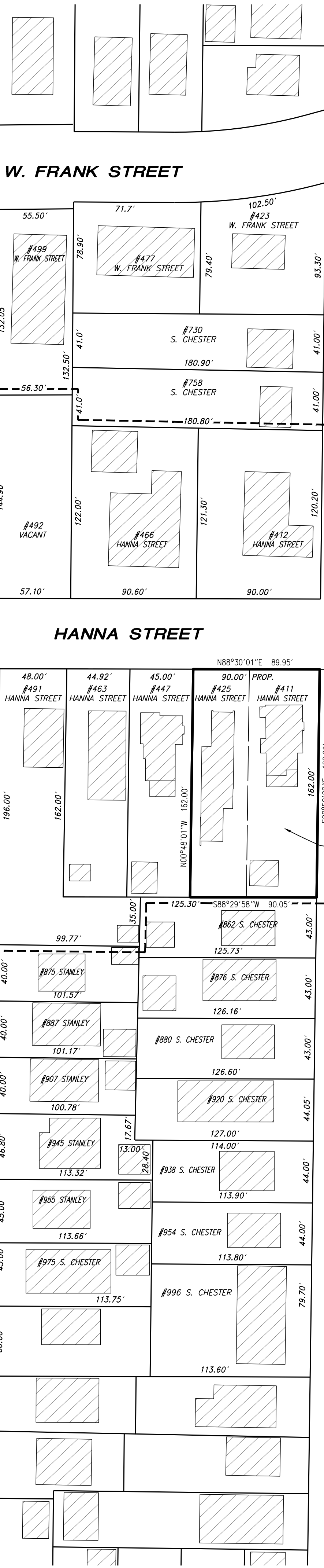
Leave site



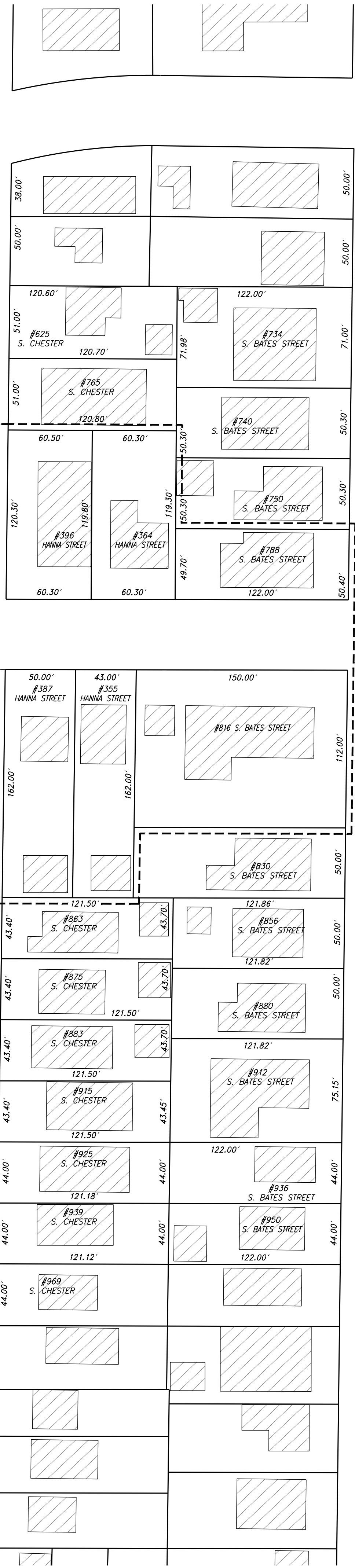
WATKINS STREET



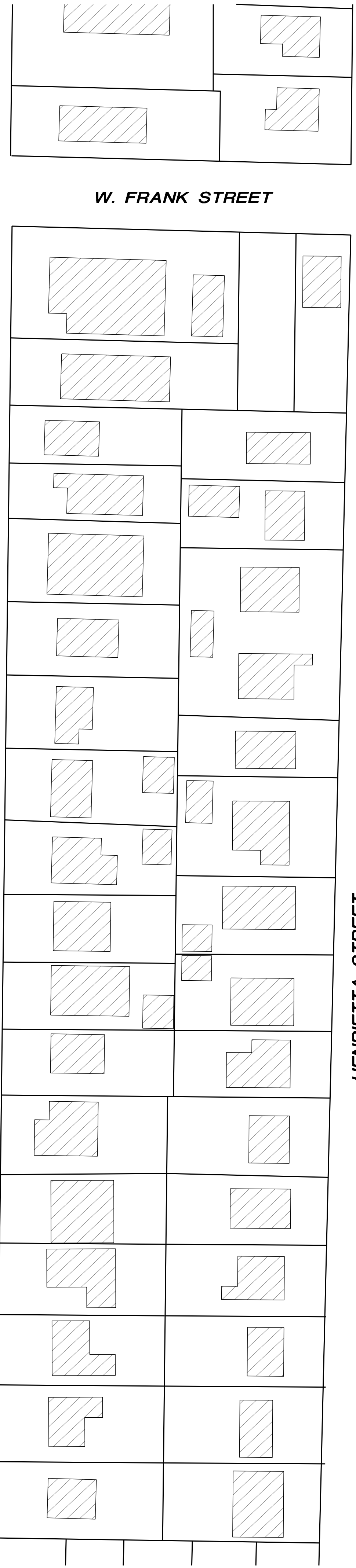
R-2 ZONING
R-3 ZONING



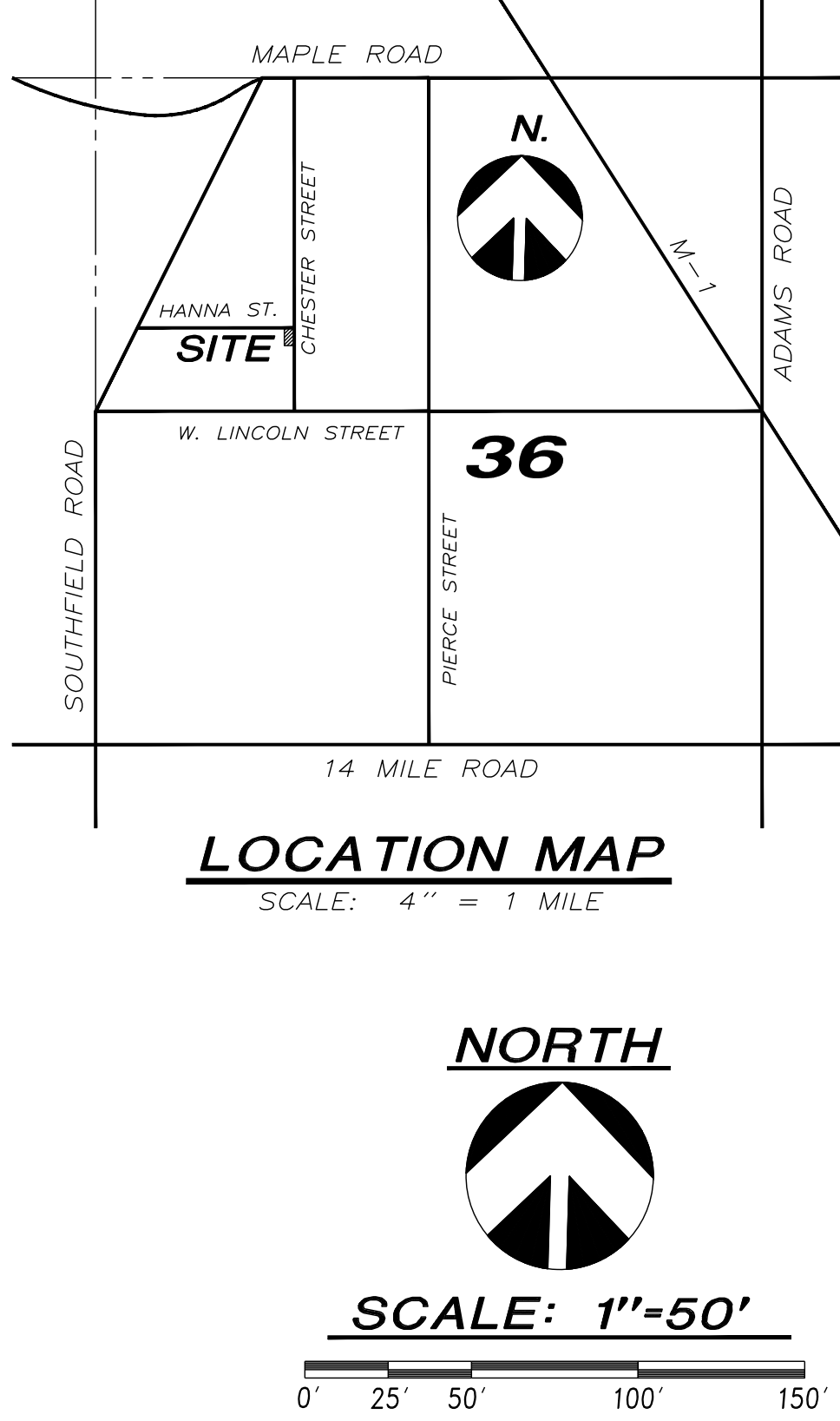
S. CHESTER STREET



S. BATES STREET



HENRIETTA STREET



PROPERTY DESCRIPTION

Property Description Parcel 19-36-182-004
Lot 3 except the East 5 feet of Lot 3 of "Chamberlain Subdivision", part of the South 1/2 of Lot 30 of "Torrey's Addition" to the Village of Birmingham, Now City of Birmingham, Oakland County, Michigan as recorded in Liber 10 Page 39 of plats in the Oakland County Records.

Property Description Parcel 19-36-182-005
Lot 4 and the East 5 feet of Lot 3 of "Chamberlain Subdivision", part of the South 1/2 of Lot 30 of "Torrey's Addition" to the Village of Birmingham, Now City of Birmingham, Oakland County, Michigan as recorded in Liber 10 Page 39 of plats in the Oakland County Records.

Total Combined
Lot 3 and Lot 4 "Chamberlain Subdivision", part of the South 1/2 of Lot 30 of "Torrey's Addition" to the Village of Birmingham, Now City of Birmingham, Oakland County, Michigan as recorded in Liber 10 Page 39 of plats in the Oakland County Records.

LOTS WITHIN 300' IN R-3 ZONING
AVG. LOT WIDTH = 62.6'
2 X 53.40' = 125.3'
PROPOSED = 90.0'
AVG. AREA = 9,034'
2 X 6,989 S.F. = 18,068 S.F.
PROPOSED = 14,580 S.F.

ADDRESS	WIDTH (FEET)	AREA (S.F.)
491 HANNA	48.0	11,268
463 HANNA	44.9	7,277
447 HANNA	45.0	7,290
387 HANNA	50.0	8,100
355 HANNA	43.0	6,966
364 HANNA	60.3	7,206
396 HANNA	60.3	7,239
412 HANNA	90.0	10,818
466 HANNA	90.6	11,021
492 HANNA	57.1	8,274
*425 HANNA	40.0	6,480
*411 HANNA	50.0	8,100
816 S. BATES	112.0	16,800
788 S. BATES	50.4	6,148
AVG.	62.6	9,034
2 X AVG.	125.3	18,068
PROPOSED LOT	90.0'	14,580

* EXISTING HOUSES TO BE REMOVED,
NOT INCLUDED IN AVERAGES

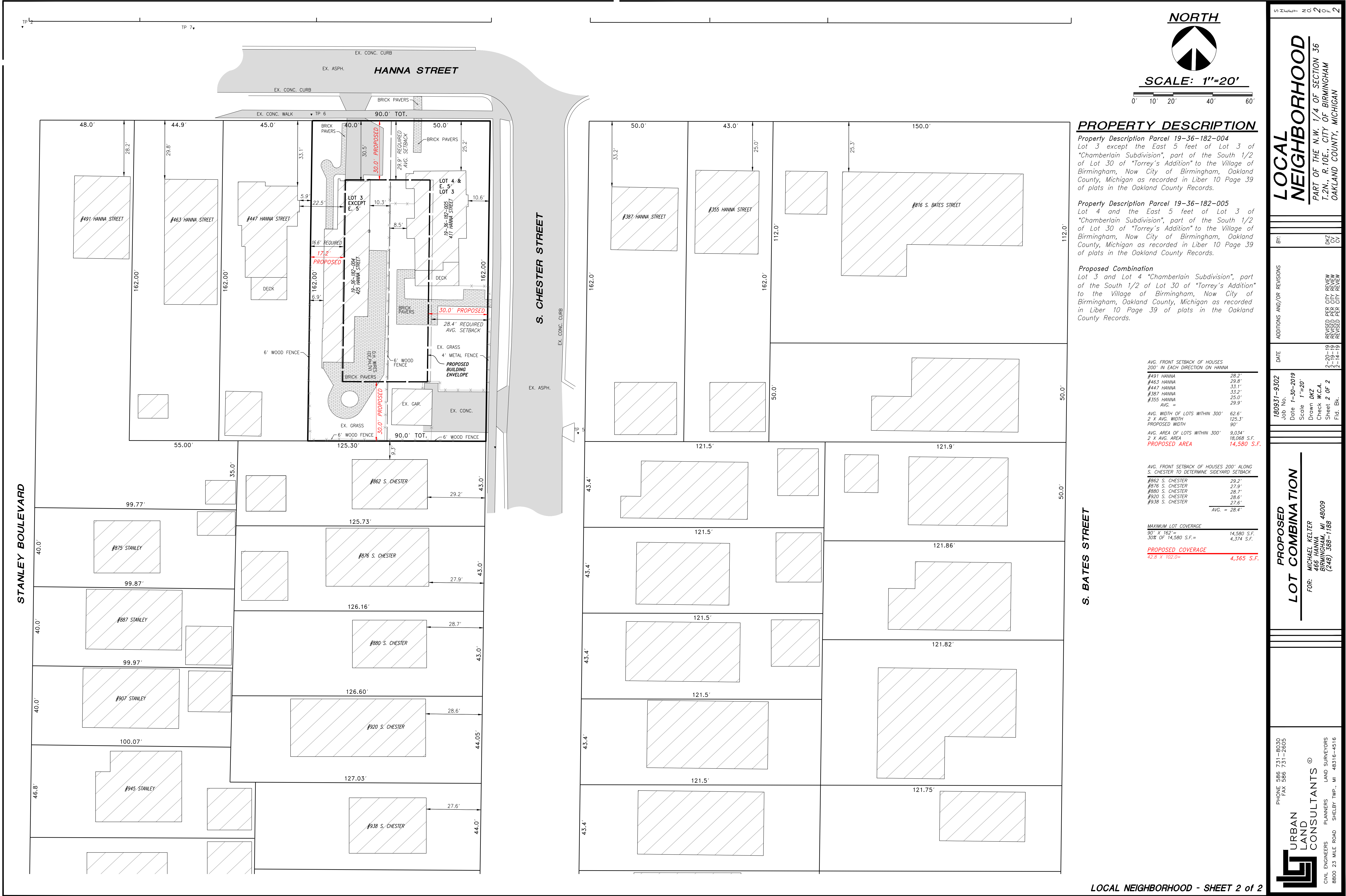
OVERALL
NEIGHBORHOOD
PART OF THE N.W. 1/4 OF SECTION 36
T.2N., R.10E., CITY OF BIRMINGHAM
OAKLAND COUNTY, MICHIGAN

DATE
180931-9302
JOB NO.
1-30-2019
DATE
1-30-2019
SCALE
1"=50'
DRAWN
DKZ
CHECK
W.C.A.
SHEET
1 OF 2
FILED
Bk.

PROPOSED
LOT COMBINATION

FOR: MICHAEL KETLER
466 HANNA
BIRMINGHAM, MI 48009
(248) 368-1188

PHONE 586 731-8930
FAX 586 731-2905
URBAN
LAND
CONSULTANTS ©
CIVIL ENGINEERS PLANNERS LAND SURVEYORS
8800 23 MILE ROAD SHELBY TWP., MI 48316-4516





MEMORANDUM

Planning Division

DATE: April 29, 2019

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public Hearing for Amendment to Article 7, Section 7.08 and Section 7.25 of the Zoning Ordinance

INTRODUCTION:

Article 7, section 7.25 requires site plan review for new development of all historic properties by the Historic District Commission and the Planning Board. It further establishes that site plan review for new development of non-historic properties is required by the Planning Board. Article 7, section 7.08 also states that all Special Land Use Permit reviews will be conducted by the City Commission, with recommendations from the Planning Board, and that the Design Review Board is responsible for conducting design reviews for the alteration of existing buildings when no site plan review is required. However, the Zoning Ordinance does not explicitly delineate when a design review is required or when a site plan review is required.

Current City policy has been to require proposals that add square footage to a building or make significant changes to a site to obtain site plan approval. Proposals that are limited to modifying the exterior of an existing building but do not expand the building or alter the site are required to obtain design review.

BACKGROUND:

On June 19, 2017, the City Commission and the Planning Board held a joint study session to discuss current planning issues in the City. When discussing the existing regulations regarding the renovation of existing buildings several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a site plan review as opposed to a design review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

Accordingly, the Planning Board has studied these issues over the past year, reviewed past projects and concerns that had been raised, and finalized draft ordinance language.

LEGAL REVIEW:

The City Attorney has reviewed the draft language and has no concerns.

FISCAL IMPACT:

There are no anticipated fiscal impacts of the proposed amendments.

SUMMARY:

On March 13, 2019, the Planning Board held a public hearing on the draft ordinance language to clarify the when design and / or site plan review is required, and to clarify which board(s) are required to complete the review. Board members voted unanimously to recommend approval of the amendments to Article 7, Section 7.08 and Section 7.25 of the Zoning Ordinance to clarify the review process.

ATTACHMENTS:

- Proposed ordinance language
- Planning Board report from March 13, 2019
- Relevant meeting minutes

SUGGESTED ACTION:

To approve the following amendments to Chapter 126, Zoning, of the Code of the City of Birmingham to clarify the board review process for the renovation and new construction of buildings:

1. Article 7, Processes, Permits and Fees, Section 7.08, Design Review Requirements and;
2. Article 7, Processes, Permits and Fees, Section 7.25; Site Plan Review.

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 07 PROCESSES, PERMITS AND FEES, SECTION 7.08,
REQUIREMENTS TO CLARIFY REQUIREMENTS FOR SITE PLAN REVIEW.

Article 07, Section 7.08 shall be amended as follows:

7.08 Requirements

All Design Review plans for new non-historic construction also requiring Site Plan Review will be submitted to and reviewed by the Planning Board. All plans, not requiring Site Plan Review or Historic District Review, for ~~new construction~~, the alteration or painting of the exterior of any building and/or the addition of any lighting, signs, equipment or other structures which substantially alter the exterior appearance as determined by the City Planner shall be submitted to the Design Review Board for review. All plans for additions or alterations to historic structures or structures within a historic district shall be submitted to the Historic District Commission in addition to any required Site Plan Review. For uses requiring a special land use permit, Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26. Those items not requiring Design Review by the Design Review Board are as follows:

- A. Single-family residential buildings and structures not located within a cluster development.
- B. Uses requiring a special land use permit. Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26.
- C. Items such as gutters, downspouts, door and window replacement when similar materials are used, antennas, roof vents and small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.

ORDAINED this _____ day of _____, 2019 to become effective 7 days after publication.

Patty Bordman, Mayor

Cherilynn Mynsberge, City Clerk

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 07 PROCESSES, PERMITS AND FEES, SECTION 7.25, REVIEW TO CLARIFY REQUIREMENTS FOR SITE PLAN REVIEW.

Article 07, Section 7.25 shall be amended as follows:

7.25 Review

1. Site Plan Reviews by the Planning Board are required for **all new construction of and additions to buildings for non-historic properties** and the following types of developments:
 - A. Single-family cluster developments.
 - B. Accessory building in all zoning district except single-family.
 - C. Attached Single-Family Residential (R8).
 - D. Two-Family Residential (R4).
 - E. Multiple-Family Residential (R5, R6, R7).
 - F. Neighborhood Business (B1).
 - G. General Business (B3, B2B, B2C).
 - H. Office/Residential (B3).
 - I. Business/Residential (B4).
 - J. Office (O1).
 - K. Office/Business (O2).
 - L. Parking (P) and all off-street parking facilities in any zoning district except in a district zoned single-family residential when the area thereof accommodates three or less vehicles.
 - M. Mixed Use (MX).
2. For properties located within historic districts designated under Chapter 62 of the Birmingham City Code, Site Plan Reviews will **also** be conducted by the Historic District Commission ~~and the Planning Board~~.
3. **Site Plan Reviews by the Planning Board are also required for all expansions and/or alterations of buildings as follows:**
 - a. **Where reconstruction of exterior walls of existing buildings exceeds 33.3% of the total exterior wall area; and / or**
 - b. **Any alteration to an existing building and/or site which significantly alters the vehicular and/or pedestrian circulation as determined by the City Planner.**

	Historic District Commission	Design Review Board	Planning Board
New construction and / or additions	Required if located in an Historic District	Not required	Required
Expansion/Alteration	Required if located in an Historic District	Not required	Required
Exterior modification without expansion/alteration of site per 7.25 (3)b	Required if located in an Historic District	Required	Not required

ORDAINED this _____ day of _____, 2019 to become effective 7 days after publication.

Patty Bordman, Mayor

Cherilynn Mynsberge, City Clerk



MEMORANDUM

Planning Division

DATE: March 8, 2019
TO: Planning Board
FROM: Jana L. Ecker, Planning Director
SUBJECT: Renovation of Commercial Properties

Background:

Questions have been posed as to the procedure for determining what level of board review is required for the renovation of a building or construction of a new building. Currently, there are three boards that review proposed modifications to buildings: the Planning Board, the Design Review Board, and the Historic District Commission.

Article 7, Section 7.25 of the Zoning Ordinance establishes the reviewing board for site plan reviews as follows:

For properties located within historic districts designated under Chapter 62 of the Birmingham City Code, Site Plan Reviews will be conducted by the Historic District Commission and the Planning Board. Site Plan Reviews by the Planning Board are required for non-historic properties and the following types of developments:

- A. Single-family cluster developments.*
- B. Accessory building in all zoning district except single-family.*
- C. Attached Single-Family Residential (R8).*
- D. Two-Family Residential (R4).*
- E. Multiple-Family Residential (R5, R6, R7).*
- F. Neighborhood Business (B1).*
- G. General Business (B3, B2B, B2C).*
- H. Office/Residential (B3).*
- I. Business/Residential (B4).*
- J. Office (O1).*
- K. Office/Business (O2).*
- L. Parking (P) and all off-street parking facilities in any zoning district except in a district zoned single-family residential when the area thereof accommodates three or less vehicles.*
- M. Mixed Use (MX).*

Thus, Article 7, section 7.25 requires site plan review for new development of all historic properties by the Historic District Commission and the Planning Board. Meanwhile site plan review for new development of non-historic properties is required by the Planning Board.

Article 7, Section 7.08 of the Zoning Ordinance establishes the review procedure for design reviews for all building renovation and construction activities as follows:

- *All Design Review plans for new non-historic construction also requiring Site Plan Review will be submitted to and reviewed by the [Planning Board](#).*
- *All plans, not requiring Site Plan Review or Historic District Review, for new construction, the alteration or painting of the exterior of any building and/or the addition of any lighting, signs, equipment or other structures which substantially alter the exterior appearance as determined by the City Planner shall be submitted to the [Design Review Board](#) for review.*
- *All plans for additions or alterations to historic structures or structures within a historic district shall be submitted to the [Historic District Commission](#) in addition to any required Site Plan Review.*
- *For uses requiring a special land use permit, Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26. Those items not requiring Design Review by the Design Review Board are as follows:*
 - A. Single-family residential buildings and structures not located within a cluster development.*
 - B. Items such as gutters, downspouts, door and window replacement when similar materials are used, antennas, roof vents and small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.*

Thus, Article 7, section 7.08 states that for all new non-historic construction projects, the Planning Board is responsible for conducting both the site plan review and design review. All plans for projects not requiring site plan review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB.

Article 7, section 7.08 also states that all Special Land Use Permit reviews will be conducted by the City Commission, with recommendations from the Planning Board. The Design Review Board is responsible for conducting design reviews for the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or when a site plan review is required.

Current Planning Department Practice:

City policy has been to require proposals that add square footage to a building or make significant changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain design review.

The Planning Department has discretion to determine what plans go to Planning Board vs. Design Review Board as per Section 7.08 of the Zoning Ordinance.

Multi-family, mixed use and commercial properties and projects that require Planning Board Site Plan review include:

- The construction of new buildings;
- Modifications to a building that increase or decrease the principal building's square footage;
- Modifications to the site that significantly change vehicle or circulation patterns; and
- Modifications to the approved Site Plan that are of lesser quality than previously approved.

Multi-family, mixed use and commercial properties and projects that require Design Review by the Design Review Board include:

- The alteration or painting of the exterior of any existing building;
- The addition of any exterior building or site lighting;
- The addition or alteration of signage; and
- The addition of any equipment or other structures which substantially alter the exterior appearance as determined by the City Planner.

Issue:

The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review.

Some recent examples of projects that have been reviewed by the Design Review Board exclusively include the following:

- Lavery Audi dealer – 34602 Woodward
- Meadowbrook Urgent Care – 33722 Woodward
- OWC wine shop – 912 S. Old Woodward
- Holiday Market select – 1740 W. Maple

On June 19, 2017, the City Commission and the Planning Board held a joint study session to discuss current planning issues in the City. When discussing the existing regulations regarding the renovation of existing buildings several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a site plan review as opposed to a design review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

On August 9th, 2017, the Planning Board held further discussion related to new construction and examined sample ordinance language requiring site plan approval for any alteration that affects the flow of traffic, the addition of building square footage, and if more than 25% of the exterior elevations are torn down. This discussion was carried into the next meeting on September 13th, 2017 where the Planning Board suggested revising the draft ordinance language to require site plan approval if more than 33.3% of the exterior elevations are torn down.

On September 13, 2017, the Planning Board briefly discussed the topic and summarized the problem. However, a detailed discussion of the issue was deferred to a later date.

On January 10th, 2018, the Planning Board reached a general consensus on commercial construction and renovation standards that would require Site Plan Approval. The Board then

worked on arranging the wording of the ordinance to portray the proposed changes in a concise manner.

On April 11th 2018, the Planning Board reviewed updated draft ordinance language and recommended several minor modifications to the language as presented. The Planning staff agreed to make the changes and bring it back to a future study session for final review before setting a public hearing for formal recommendation to the City Commission.

On January 9, 2019, the Planning Board reviewed modified draft ordinance language and recommended changes to codify the existing City policy as described above and in accordance with the comments of the last study session. The Planning Board requested several minor changes and agreed to bring the matter back for one more study session discussion.

On February 13, 2019, the Planning Board again reviewed draft ordinance language and discussed the impact of the proposed changes. Several minor changes were proposed to the draft ordinance language, and then the Planning Board voted to set a public hearing on the proposed amendments for March 13, 2019.

The proposed amendments have now been reviewed by the City Attorney, the Building Official and the City Engineer. Minor revisions were suggested and made, which do not affect the substantive provisions last discussed by the Planning Board. In addition, the draft ordinance language was provided to the members of the Design Review Board and Historic District Commission for their review and comment. Only one comment was received, and the email is attached to this memo for your review.

Suggested Action:

To recommend APPROVAL to the City Commission of the following amendments to Chapter 126; Zoning, of the Code of the City of Birmingham to clarify the board review process for the renovation and new construction of buildings:

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ORDAINED this _____ day of _____, 2019 to become effective 7 days after publication.

Patty Bordman, Mayor

Cherilynn Mynsberge, City Clerk

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2. For properties located within historic districts designated under Chapter 62 of the Birmingham City Code, Site Plan Reviews will **also** be conducted by the Historic District Commission ~~and the Planning Board~~.
3. **Site Plan Reviews by the Planning Board are also required for all expansions and/or alterations of buildings as follows:**
 - a. **Where reconstruction of ~~visible~~ exterior walls of existing buildings exceeds 33.3% of the total exterior wall area; and / or**
 - b. **Any alteration to an existing building and/or site which significantly alters the vehicular and/or pedestrian circulation as determined by the City Planner.**

	Historic District Commission	Design Review Board	Planning Board
New construction and / or additions	Required if located in an Historic District	Not required	Required
Expansion/Alteration	Required if located in an Historic District	Not required	Required
Exterior modification without expansion/alteration of site per 7.25 (3)b	Required if located in an Historic District	Required	Not required

ORDAINED this _____ day of _____, 2019 to become effective 7 days after publication.

Patty Bordman, Mayor

Cherilynn Mynsberge, City Clerk



Jana Ecker <jecker@bhamgov.org>

RE: Renovation and New Construction of Commercial Properties

1 message

Keith Deyer <kwdeyer@comcast.net>
To: Nicholas Dupuis <ndupuis@bhamgov.org>
Cc: Jana Ecker <Jecker@bhamgov.org>

Tue, Feb 26, 2019 at 4:17 PM

Hi Nick,

Thank you for sending the proposed changes.

I would offer the following thoughts for your consideration:

- It seems like the goal should be to reduce the number of board/commission reviews. All reviews in the Historic District should be done by the HDC. The HDC is fully capable of doing site plan reviews regardless of scale. I am not sure what problems we are trying to fix by moving more reviews to the Planning Board.
- All signage requests should go to just one board/commission for review.
- This proposal does not really clarify what constitutes an "alteration" beyond that "...**which significantly alters the vehicular and/or pedestrian circulation as determined by the City Planner**".

Regards, Keith

From: Nicholas Dupuis <ndupuis@bhamgov.org>
Sent: Tuesday, February 26, 2019 3:24 PM
To: Alexander Jerome <asjerome@gmail.com>; Ava Wells <avawells@gmail.com>; Dulce Fuller <d@woodwardandmaple.com>; Gigi Debbrecht <gigidebbrecht@yahoo.com>; Grace Donati <grace.donati@gmail.com>; John Henke <jwhenke@aol.com>; Joseph Mercurio <jfm248@gmail.com>; Keith Deyer <kwdeyer@comcast.net>; Michael Willoughby <mwilloughby@mwa-architects.com>; Natalia Dukas <nataliadukas@yahoo.com>; Patricia Lang <pal.family.friends@gmail.com>; Doug Burley <doug.burley@outlook.com>; Kevin Filthaut <kfilthau@umich.edu>
Cc: Jana Ecker <Jecker@bhamgov.org>
Subject: Renovation and New Construction of Commercial Properties

Hello all,

As we discussed during the Design Review Board meeting on Wednesday February 20th, the Planning Board will be reviewing the review processes and responsibilities for the three different boards that review commercial properties. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review.

Please review the attached document, and provide comments and feedback directly to me (DO NOT REPLY ALL), so that the Planning Board may have your comments when deliberating. As a reminder, the HDC/DRB does not meet on Wednesday March 6th, as it is Ash Wednesday. Our next meeting is scheduled for March 20th.

Look forward to hearing from you!

Nicholas J. Dupuis

Planning Department



Email: ndupuis@bhamgov.org

Office: 248-530-1856

Social: [Linkedin](#)

BIRMINGHAM CITY COMMISSION /

PLANNING BOARD JOINT WORKSHOP SESSION MINUTES JUNE 19, 2017

DPS FACILITY, 851 SOUTH ETON

1.8 RENOVATION OF COMMERCIAL PROPERTIES

Planning Director Ecker explained that there are three boards that review building improvements consisting of the Planning Board, the Design Review Board and the Historic District Commission. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review. Site plan reviews go to the Planning Board. If the building is in the historic district, it will also go to the Historic District Commission. If it is a design change only to an existing building, it would go to the Design Review Board. This issue came up particularly with the Audi building because they had not changed the footprint; it went to the Design Review Board. The question is should there be a clarification made to some of the ordinance language to determine how much of a renovation to an existing building is a renovation, or when it becomes new construction or a new building. She noted that this is not the first time for this issue.

She also suggested clarifying what exactly is a design change vs. a site plan change. In the past, a site plan change has been interpreted as a change in the footprint in the building or square footage, but it is unclear in the ordinance. Would the City like to see the review procedures amended for new construction and/or the renovation of existing buildings, both in terms of which boards review those actions and also whether there needs to be clarification on what constitutes renovation of an existing building, and where the line is drawn between that and new construction. Also, does the Commission wish to see a distinction or clear definition as to what constitutes a site plan change and what constitutes a design change.

Commissioner Sherman suggested it would be wise to have more of a review than what we have now.

Mr. Jeffares asked about dramatic changes in use. Ms. Ecker responded that would require an application for an occupancy permit and any building permits needed. The Building Department would route the plans to the other departments. The Planning Department would look at the use to confirm it is an approved use, and at parking to confirm it met the parking requirements. If there are no exterior changes to the building, it does not need to go to a board for planning review, according to the current ordinances.

Mr. Koseck asked if the Design Review Board look at things such as site issues, pedestrian flow, trash, pickup, access, etc. Ms. Ecker said the DRB focuses more heavily on the design and the signage than the site issues. They do discuss the site issues, but not as much detail as the Planning Board and have input.

Mayor Pro Tem Harris asked for specific examples when the ordinance did not require a site plan review and the project later was thought to have needed to have site plan review. Ms.

Ecker said the Audi building was an example of one that had concern expressed as to whether it needed a site plan review as well, but no changes were made to the layout of the site, access, etc. The Wachler building and the McCann building were other examples. A site on Cole Street was required to also go for site plan review, because changes were proposed to the parking lot and dumpster.

Commissioner DeWeese said the difference between design review and site plan review is not understood, and thinks it would be useful to have those defined and explained. He said that is also true of renovation and new construction. He added that site plan review considers internals, layout of other buildings around to see the interconnections between them, while Design Review does not look at as much, and so at a certain scale, it becomes important for site plan review.

Mayor Nickita said this is most evident in downtown overlay where we have specific requirements. The Surnow building is an example where we need the expertise of the Planning Board and the review that deals with specifics for a project of that sort. Maybe during the process, a recognition of the extent is clear, and if it is very minor and not much change, then it can be overlooked because we do not want to create difficulties when they are not there. We do not always know in the beginning of a project how big it might become. He thinks the Planning Board should have some type of review to be certain the project adheres to the City's guidelines.

Commissioner Bordman expressed concern about what happens when a project turns out to be more involved than originally thought. She is unsure that our ordinance could even address a situation like that without causing problems for the builder.

Ms. Boyce said it becomes more of a planning issue when an extensive renovation matched with a change in use occurs. She would like the Planning Board to have the opportunity to review it to make sure all of the issues are addressed.

Mayor Nickita said there seems to be solid support for reviewing this further and identifying a plan of action to address having a further review than we have done in the past. The intention is not to create another level of regulation, but we have to make sure we have the proper checks and balances.

Mr. Valentine said this issue will be added and brought back to the Commission.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 9, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

2. Renovation and New Construction of Commercial and Mixed-Use Buildings

Mr. Baka advised that questions have been posed recently as to the procedure for determining what level of board review is required for the renovation of an existing building or construction of a new building. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review. There are three boards that review building improvements: the Planning Board, the Design Review Board ("DRB") and the Historic District Commission ("HDC").

Article 7, section 7.25 provides for site plan review for new development of all historic properties by the HDC and the Planning Board, and for site plan review for new development of non-historic properties by the Planning Board.

Article 7, section 7.08 of the Zoning Ordinance establishes the review procedure for design reviews for all building renovation and construction activities. For all new non-historic construction projects the Planning Board is responsible for conducting both the Site Plan Review and Design Review. All plans for projects not requiring Site Plan Review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB.

Finally, Article 7, section 7.08 states that all Special Land Use Permit ("SLUP") reviews will be conducted by the City Commission, with recommendations from the Planning Board.

The DRB is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or what necessitates a site plan review. City policy for many years has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain design review only.

On June 19, 2017 the City Commission and the Planning Board held a joint study session to discuss current planning issues in the City. When discussing the existing regulations regarding the renovation of existing buildings, several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a Site Plan Review as opposed to a Design Review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

Ms. Ecker explained that right now there is no distinction between minor renovation and major re-build. Mr. Baka said the DRB did the Design Review for the Fred Lavery building. No one knew that he was going to tear half of his building down but use the same footings and foundation. Mr. Lavery didn't anticipate how much of his building would have to come down until they were into construction. The question is how to handle that sort of situation.

Ms. Ecker maintained that if nothing else, the board should define what a site plan change is. Applicants are still appearing before a board, unless the change is so minor that it can receive administrative approval. Mr. Baka thought if a threshold is set where a project requires site plan review, but there are larger buildings that might not be making significant changes, they shouldn't be required to have a site plan review.

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- D. Single-family residential buildings and structures not located within a cluster development.
- E. Uses requiring a special land use permit. Design Review of such uses shall be undertaken by the City Commission with recommendations from the Planning Board pursuant to Section 7.26
- F. Items such as gutters, downspouts, door and window replacement when similar materials are used, antennas, roof vents and small mechanical equipment not readily visible to the public, painting to a similar color, and items of ordinary repair and maintenance.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, SEPTEMBER 13, 2017**

3. Renovation and New Construction of Commercial and Mixed-Use Buildings

Mr. Baka advised that questions have been posed recently as to the procedure for determining what level of board review is required for the renovation of an existing building or construction of a new building. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and it is not clear as to what specific changes trigger site plan review. There are three boards that review building improvements: the Planning Board, the Design Review Board and the Historic District Commission.

Article 7, section 7.25 provides for site plan review for new development of all historic properties by the Historic District Commission and the Planning Board, and for site plan review for new development of non-historic properties by the Planning Board.

Article 7, section 7.08 states that for all new non-historic construction projects the Planning Board is responsible for conducting both the site plan review and design review. All plans for projects not requiring site plan review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB. Finally, Article 7, section 7.08 states that all Special Land Use Permit ("SLUP") reviews will be conducted by the City Commission, with recommendations from the Planning Board. The Design Review Board is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan review is required. However, it is not explicitly delineated when a design review is required or when a site plan review is required.

City policy for many years has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain only design review.

At the joint City Commission/Planning Board meeting on June 19, 2017 discussion occurred regarding current planning issues in the City. When discussing the regulations regarding the renovation of existing buildings, several deficiencies and/or ambiguities were identified in the Zoning Ordinance. Specifically, the question was raised as to what triggers a site plan review as opposed to a design review. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments that will clarify which type of reviews are required.

In an attempt to create objective criteria to delineate between what requires site plan review and what requires design review, the Planning Staff has provided draft ordinance language which would codify the existing City policy as described above.

The issue was discussed at the Planning Board meeting on August 9, 2017. The meeting reaffirmed the issue that right now there is no distinction between minor renovations and major re-builds of commercial buildings in Birmingham, and the possibility of a threshold being introduced to determine which board (DRB or PB) will perform the review. Members of the Planning Board agreed that the ordinance language should be clarified to say:

- A full Site Plan Review is required if more than 33.3% of the exterior elevations are torn down;
- The addition of square footage to any development shall be considered an expansion which requires site plan review;
- Any alteration which significantly alters the traffic or pedestrian circulation functions on a site as determined by the City Planner shall also require Site Plan Review.

Accordingly, the Planning Division is once again providing the draft ordinance language for comment by the Planning Board.

Mr. Baka explained if this ordinance language was in place Fred Lavery Audi Dealer would not have received approval off a demolition permit because they would not have had Site Plan Review, which would have been required as more than 33.3% of the building sides were removed. The DRB looks at the site, but does not consider the streetscape requirements.

Chairman Clein stated they are trying to avoid four walls going away and being rebuilt that feel like new construction but with no regard to any other site plan issues.

It was agreed to defer this topic to a future date.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 10, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

01-06-18

Review Process for Renovation/Reconstruction Projects

Mr. Baka advised that questions have been posed as to the procedure for determining what level of board review is required for the renovation of a building or construction of a new building. Currently there are three boards that review proposed modifications to buildings: the Planning Board, the Design Review Board ("DRB"), and the Historic District Commission ("HDC").

Currently, the Planning Dept. has discretion to determine what plans go to the Planning Board vs. the DRB as per section 7.08 of the Zoning Ordinance.

Currently, site plan review is required by the Planning Board for:

- new construction;
- increasing or decreasing the principal building's square footage and / or changing the building footprint;
- significant changes that are proposed to the circulation patterns of the site; and
- modifications are proposed to a previously approved site plan that are of lesser quality design or materials than previously approved.

Currently, design review is required by the Design Review Board Review for:

- the alteration or painting of the exterior of any building;
- the addition of any lighting;
- the addition of signage; and
- the addition of equipment or other structures which substantially alter the exterior appearance as determined by the City Planner.

The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger Site Plan Review.

At the Planning Board meeting of September 13, 2017, the board suggested revising the draft ordinance language to require site plan approval if more than 33.3% of the exterior elevations are torn down.

Staff has provided draft ordinance language that adds to section 7.25 as follows:

- for the purpose of this section new construction shall include the partial demolition and reconstruction of an existing building where 33.3% or more of the exterior elevations are demolished;
- for the purpose of this section the addition of square footage to any development shall be considered an expansion which requires Site Plan Review;

- any alteration which significantly alters the traffic or pedestrian circulation on a site as determined by the City Planner shall also require Site Plan Review.

Draft ordinance language added to section 7.08 strikes "new construction" from the description of all plans not requiring Site Plan Review or Historic District Review.

Answering Mr. Koseck, Mr. Baka explained that "exterior elevations" means all four sides. The intent was 33.3% of the exterior envelope.

Ms. Ecker clarified that if square footage is added to a building they would have to meet the parking requirements including the mezzanine, unless the property is in the Parking Assessment District.

Mr. Koseck offered staff his recommendations for language that simplifies the explanation of what types of reviews go to each board.

It was determined that the Planning Board would need to see this one more time with the language changes before it goes to the City Commission.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, APRIL 11, 2018
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on March 28, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Daniel Share; Student Representative Ellie McElroy (arrived at 8:35 p.m.)

Also Present:

Absent: Alternate Board Member Nasseen Ramin; Student Representatives Madison Dominato, Sam Fogel

Administration: Brooks Cowan, Planner

Jana Ecker, Planning Director

Carole Salutes, Recording Secretary

04-59-18

STUDY SESSION

1. Review Process for Renovation/Reconstruction Projects

Mr. Cowan advised that currently there are three boards that review proposed modifications to buildings: the Planning Board, the Design Review Board ("DRB"), and the Historic District Commission ("HDC").

Issue:

The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger Site Plan Review.

After several study sessions, on January 10, 2018 the Planning Board reached a general consensus on commercial construction and renovation standards that would require Site Plan Approval. They arranged the wording of the ordinance to portray the proposed changes in a concise manner.

Planning Staff considered recent suggestions and then divided construction into three categories: historic, new, and expansions/alterations. This specifies requirements for each type of construction, and having separate categories may provide for more efficient ordinance language amendments in the future. Upon further discussion staff agreed that a number four would be merited for the Design Review Board ("DRB").

Ms. Ecker added that number four does not exist in the current draft. it was added since the last meeting to state that if you are not historic, not new construction, and not going to the Planning Board or the Historic District Commission, you have to go to the DRB if you make exterior alterations to your building.

She recalled the review process was one of the items discussed at the joint Planning Board/City Commission last June.

Mr. Cowan went over comments that were made by the Building Official:

- Amend Article 07, section 7.25 Review (2) to read: "Site Plan Reviews by the Planning Board are required **for all new construction and additions to buildings** for the following types of developments"
- Amend Article 07, section 7.25 Review (3) to read: "Site Plan Reviews by the Planning Board are required for all expansions and/or alterations of buildings in the following types of **(re)**development, not including the addition of new interior mezzanines"

Responding to suggestions by the Chairman, Ms. Ecker removed "and the Planning Board" from Article 07, section 7.25 Review (1). For Article 07, section 7.25 Review (2) add "also" in front of "required." In Article 07, section 7.25 Review (3) add after "in" "as noted in number 2 above" or words to that effect.

It was discussed that this information might work in a chart form in addition to the printed material.

It was consensus to bring this matter back to the Planning Board study session on May 9th.

Planning Board Minutes January 9, 2019

STUDY SESSION ITEMS

1. Renovation of Commercial properties

Mr. Baka explained that questions have been posed as to the procedure for determining what level of board review is required for the renovation of a building or construction of a new building. Currently there are three boards that review proposed modifications to buildings: the Planning Board, the Design Review Board ("DRB"), and the Historic District Commission ("HDC").

Article 7, section 7.25 requires site plan review for new development of all historic properties by the HDC and the Planning Board. Meanwhile site plan review for new development of non-historic properties is required by the Planning Board.

Article 7, section 7.08 states that for all new non-historic construction projects, the Planning Board is responsible for conducting both the site plan review and design review. All plans for projects not requiring site plan review or HDC review such as exterior alternations, lighting, signs, equipment or other structures that substantially alter the exterior appearance of the building shall be reviewed by the DRB. Article 7, section 7.08 also states that all Special Land Use Permit ("SLUP") reviews will be conducted by the City Commission, with recommendations from the Planning Board.

The DRB is responsible for conducting design reviews for new construction and the alteration of existing buildings when no site plan is required. However, City policy has been to require proposals that add square footage to a building or make changes to a site that would affect vehicle or circulation patterns to obtain site plan approval. Proposals that are limited to modifying the exterior of the building but do not expand the building or alter the site are required to obtain design review.

After several study sessions the board came up with a formula for which they felt it would be appropriate to require site plan reviews by the Planning Board for expansions or alterations of buildings, not including the addition of new interior mezzanines if two specific requirements are met:

- a. Reconstruction of visible exterior walls of existing buildings exceeding 33.3% of the total visible wall area;
- b. Any alteration to an existing building and / or site which significantly alters the vehicular and / or pedestrian circulation as determined by the City Planner.

Board members made the following comments about changes to the proposed ordinance:

- The Planning Board doesn't want to look at the tear down of over one third of a residential wall.
- It is not right that the Planning Board does not review City projects.
- That issue has not been discussed at joint meetings with the City Commission.
- At times with a project that said they would not tear down more than 33% of walls, they end up taking out 75%. That is against their approved design review and therefore site plan

review would be required. Construction could be held up because a Stop Work Order would be imposed.

- Ask the City Attorney if that needs to be clarified and if so, what language would he suggest.
- It makes sense to swap numbers 1 and 2 in the proposed ordinance and the same thing with the matrix.

Mr. Baka added that the new number 1 would state that site plan reviews by the Planning Board as referenced in section 7.25 (1) of this section are also required.

Planning Board Minutes February 13, 2019

1. Renovation of Commercial Properties

Planning Director Ecker reviewed her February 4, 2019 memorandum to the Planning Board regarding the item, noting that Building Official Johnson had also reviewed the proposed updates and made some minor changes.

She added she would:

- Include a space between 'of' and 'and' in the proposed update to 7.25(1);
- Include a semicolon at the end of 7.25(3)(a) followed by 'and/or';
- Update 7.25(3) and 7.25(3)(a) to read "Site Plan Reviews by the Planning Board are also required for all expansions and/or alterations of buildings as follows: a. Where reconstruction of exterior walls of existing buildings exceeds 33.3% of the total exterior wall area; and/or", while leaving the wording of 7.25(3)(b) as presented.
- Update the final row of the included chart to read "Exterior modification without expansion/alteration of site per 7.25(3)", removing 'b' from the description.

Chairman Clein asked the Board for comment on the proposed ordinance updates, and asked how these changes would be implemented.

Planning Director Ecker confirmed:

- If a commercial property renovation did not have a site plan review, and began to make substantial changes to the building as defined in the proposed ordinance updates, the City would issue a stop work and require the owner to undergo a site plan review.
- Since commercial properties are required to submit a demolition plan to the Building Department, inspectors would be keeping an eye on the project. Should the inspectors find that more changes are made than originally detailed in the submitted demolition plan, the owner of the commercial property in question would be called in for a site plan review.
- The Planning Department could notify commercial owners renovating their properties from the outset, per Mr. Jeffares' suggestion, so that no owner could claim they were not aware of the site plan review requirements should the issue arise.
- City staff can also work to mitigate the potential issues caused by a temporary stop work by negotiating with the property owner to continue on any work that would not be related to the site plan review.
- The Planning Department does not mandate meetings with an owner prior to a site plan review, but most applicants do come in for a meeting in an attempt to resolve any issues that may arise ahead of the review.

Mr. Share stated that if a historic building were doing a substantial change, the Planning Department would send the building owner through for a site plan review at the Historic District Commission.

Mr. Koseck clarified that most often owners are trying to save money by doing a limited renovation, and then discover that more work is required for the renovation than expected.

Planning Director Ecker concurred.

Motion by Mr. Share

Seconded by Mr. Koseck to set a public hearing date of March 13, 2019 to consider amendments to Chapter 126; Zoning, of the Code of the City of Birmingham to Article 7, Section 7.08, Requirements and; Article 7, Section 7.25; Review in order to clarify the board review process for renovation and new construction, as presented, with the inclusion of the editorial and clarifying comments introduced this evening.

Motion carried, 5-0.

VOICE VOTE

Yeas: Clein, Jeffares, Koseck, Share, Whipple-Boyce

Nays: None

Absent: Boyle, Emerine, Ramin, Williams

NOTICE OF PUBLIC HEARING

BIRMINGHAM CITY COMMISSION

ORDINANCE AMENDMENT

Meeting - Date, Time, Location:	Monday, May 6, 2019 at 7:30 PM Municipal Building, 151 Martin Birmingham, MI 48009
Nature of Hearing:	To consider the following ordinance amendment: To amend Chapter 126, Article 4, Section 4.74 SS-01, Structure standards to add intent and standards regulating encroachments into the right of way. A complete copy of the proposed ordinance amendments may be reviewed at the City Clerk's Office.
City Staff Contact:	Jana Ecker 248.530.1841 jecker@bhamgov.org
Notice:	Publish: March 31, 2019
Approved minutes may be reviewed at:	City Clerk's Office

Should you have any statement regarding the above, you are invited to attend the meeting or present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice) or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.



MEMORANDUM

Planning Division

DATE: April 29, 2019
TO: Joseph A. Valentine, City Manager
FROM: Jana L. Ecker, Planning Director
SUBJECT: Public Hearing for Amendment to Article 4, Section 4.74
SS- 01 of the Zoning Ordinance – Projections into the ROW

INTRODUCTION:

The Michigan Building Code permits projections/encroachments of certain architectural elements into the right of way ("ROW"), including awnings, signage, canopies, lintels, overhangs, marquees and other similar elements. The recent renovation of the 100 S. Old Woodward building and the 335 E. Maple building has raised questions as to whether projecting elements should be permitted, and if so, whether there should be restrictions in addition to those permitted by the Building Code.

Currently, the Zoning Ordinance provides minimal regulations regarding the size and placement of awnings and the permitted amount of projection into the public ROW but does not contain any regulations governing the projection of architectural details such as balconies, piers, overhangs, lintels, canopies or other elements that may project into the ROW.

BACKGROUND:

On June 19, 2017, the City Commission and the Planning Board held a joint study session to discuss current planning issues in the City. One of the issues discussed was allowable projections into the ROW. First, should the City permit projections in the public ROW, and if so, which projections should be permitted, and to what extent. There was a general consensus among the group that these issues should be studied by the Planning Board with the goal of providing recommendations to the City Commission for ordinance amendments to regulate projections into the ROW.

Accordingly, the Planning Board has studied these issues over the past year, reviewed past projects and concerns that have been raised, conducted research into standards used by other communities, and finalized draft ordinance language.

LEGAL REVIEW:

The City Attorney has reviewed the draft language and has no concerns.

FISCAL IMPACT:

There are no anticipated fiscal impacts of the proposed amendments.

SUMMARY:

On March 13, 2019, the Planning Board held a public hearing on the draft ordinance language to add a purpose and intent statement for projections into the ROW and to establish standards regulating projections/encroachments in the public ROW. Board members voted unanimously to recommend approval of the proposed amendments to Article 4, Section 4.74 SS-01 of the Zoning Ordinance.

ATTACHMENTS:

- Proposed ordinance language
- Planning Board report from March 13, 2019
- Relevant meeting minutes
- Examples of projections standards in other cities

SUGGESTED ACTION:

To approve an amendment to Article 4, Section 4.74 SS-01 of Chapter 126, Zoning, of the Code of the City of Birmingham to establish standards regulating projections in the public right-of-way.

CITY OF BIRMINGHAM

ORDINANCE NO. __

THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 4, SECTION 4.74 SS-01, STRUCTURE STANDARDS TO ADD INTENT AND STANDARDS REGULATING ENCROACHMENTS INTO THE RIGHT OF WAY.

4.74 SS-01

(A-C Unchanged)

D. Encroachments into the Right of Way

- 1. Purpose and Intent:** The purpose and intent of this section is to ensure that any allowable encroachments into the right of way do not impede the safety and welfare of the general public and foster a pedestrian friendly environment that prioritizes the accessibility of space, light and air for all users while simultaneously allowing for creative and innovative architectural design and construction.
- 2. Applicability:** This section applies to all encroachments that extend into the public right of way at, above or below grade.
- 3. Approval Required:** Any encroachment into the public right of way must comply with the Michigan Building Code and requires City approval. Encroachments may be subject to a Special Treatment License approved by the Engineering Department, lease agreement approved by the City Commission and/or may require monetary compensation to the City. Encroachments into the right of way may also require approval by an appropriate reviewing body as per Article 07, Processes, Permits and Fees and are subject to the requirements set forth in this section.
- 4. General Encroachment Standards:**
 - a) *Below Grade Encroachments:*** All below grade encroachments must be reviewed by the Community Development Department and approved by the City Commission through a lease agreement.
 - b) *Above grade encroachments 8' and below:*** Permanent architectural features such as columns, pilasters, belt courses, lintels, pediments and similar features may be approved by the Planning Board, Design Review Board and/or Historic District Commission or through administrative approval, as determined by the Planning Director, to project into the right of way provided they do not create any obstruction and that said the encroachment complies with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance.
 - c) *Above grade encroachments above 8':***
 - i.** Removable architectural elements such as awnings, canopies, marquees may be approved by the Planning Board, Design Review Board and/or Historic District Commission or through administrative approval, as determined by the Planning Director,

to project into the right of way provided that they are constructed to support applicable loads without any ground mounted supports on public property. Encroachments with less than 15' of clearance above the sidewalk shall not extend into or occupy more than two-thirds of the width of the sidewalk or 5 feet, whichever is less, and must not interfere with any existing or planned streetscape elements or infrastructure.

- ii. Permanent architectural features such as windows, balconies, overhangs and other architectural features that encroach into the right of way above 8' may be approved by the Planning Board, Design Review Board and/or the Historic District Commission provided that they do not extend 2' or more into the right of way or create an obstruction and that the encroachment complies with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance. Encroachments that extend more than 2' into the right of way will also require the approval of the City Commission through a lease agreement.
 - iii. Permanent encroachments that create usable space such as cantilevered rooms, dormers, elevated walkways, balconies, bridges and similar projections may be approved by the Planning Board, Design Review Board and/or the Historic District Commission provided they comply with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance and must be approved by the City Commission through a lease agreement.
- d. *Temporary encroachments:*
- i. Temporary encroachments associated with construction projects are subject to approval of an obstruction permit or logistical plan to be reviewed and approved by the Community Development and Engineering Departments.
 - ii. Temporary encroachments that are seasonal in nature such as vestibules or storm enclosures may be approved by the Planning Board, Design Review Board and/or Historic District Commission through the site plan and design review process provided that an unobstructed 5' public pedestrian path is provided at all times and that the temporary encroachments are is subject to a rental fee rate as indicated by the Birmingham Schedule for Fees, Charges, Bonds and Insurance.

ORDAINED this _____ day of _____, 2019 to become effective 7 days after publication.

Patty Bordman, Mayor

Cherilynn Mynsberge, City Clerk



MEMORANDUM

Planning Division

DATE: March 7, 2019
TO: Planning Board
FROM: Jana L. Ecker, Planning Director
SUBJECT: Encroachments into Public Right of Way

The Michigan Building Code permits projections of certain architectural elements into the right of way, including awnings, signage, canopies, marquees, planters and other similar elements. The recent renovation of the 100 S. Old Woodward building and the 335 E. Maple building has raised questions as to whether projecting elements should be permitted, and if so, whether there should be restrictions in addition to those permitted by code. The Zoning Ordinance has regulation standards for the size and placement of awnings, but does not contain comprehensive standards governing the projection of architectural details such as balconies projecting into the right-of-way.

The regulations related to projections of awnings in the Zoning Ordinance can be found in Article 3, Overlays. Article 3, section 3.04(B) of the Zoning Ordinance states:

- 5.) *First-floor awnings may encroach upon the frontage line and public sidewalk, but must avoid the street trees; **provide at least 8 feet of clearance above the sidewalk; and be set back a minimum of 2 feet from the road curb.***
- 6.) *Upper-floor awnings shall be permitted only on vertically proportioned windows, **provided that the awning is only the width of the window, encroaches upon the frontage line no more than 3 feet, and is not used as a backlit sign.***

These regulations only apply in the Downtown Birmingham Overlay District. There are no other such regulations governing properties outside of the Downtown Birmingham Overlay District.

The Birmingham Code of Ordinances also has an excerpt related to projections into the right-of-way. Chapter 98, Section 2, *Streets, Sidewalks and Other Public Places* states:

- (2) ***Construction and maintenance of awnings, canopies, marquees.***
All awnings, canopies and marquees shall be constructed to withstand loads as specified, and in accordance with provisions of chapter 22, and shall be maintained in a clean, whole, safe and sound condition at all times, and any awning, canopy or marquee which shall become torn, frayed, loose, or out of repair as a whole, shall be dismantled and removed by the owner thereof. If such awning, canopy or marquee shall become torn, frayed, loose and out of repair in part, the same shall be repaired

promptly, upon notification from the building official. Upon failure or neglect of the owner of any awning, canopy, or marquee to repair or remove the same within five days after due notice, requiring such removal or repair, has been received from the building official, such building official shall have the power, and it shall be his duty, to dismantle and remove any such awning, canopy or marquee which is maintained contrary to the provisions of this section. Any costs incurred by the city in connection therewith may be charged against the property upon which such awning, canopy or marquee is located, in accordance with provisions of chapter X of the city Charter.

Section 2 of Chapter 98 implies that projections are permitted to extend over a street, sidewalk or other public space, but does not provide limitations related to size.

When cities allow for projections in the right of way, the amount of these projections is governed by the Michigan Building Code. Chapter 32 of Michigan's Building Code, Section 3202, *Encroachments in the Public Right-of-Way* provides specific requirements based upon the height of encroachments above grade.

Section 3202.2 states that ***encroachments above grade and below 8' in height are prohibited***, unless they meet one of these exceptions:

3202.2.1 Steps. *Steps shall not project more than 12" and shall be guarded by approved devices not less than 3' in height, or shall be located between columns or pilasters.*

3202.2.2 Architectural features. *Columns or pilasters, including bases and moldings, shall not project more than 12". Belt courses, lintels, sills, architraves, pediments and similar architectural features shall not project more than 4".*

3202.2.3 Awnings. *The vertical clearance from the public right-of-way to the lowest part of any awning, including valences, shall be not less than 7'*

Section 3202.3 further states that ***encroachments 8' or more above grade*** are permitted, but must comply with the following:

3202.3.1 Awnings, canopies, marquees and signs. *Awnings, canopies, marquees and signs shall be constructed so as to support applicable loads as specified in Chapter 16. Awnings, canopies, marquees and signs with less than 15' clearance above the sidewalk shall not extend into or occupy more than two-thirds the width of the sidewalk measured from the building. Stanchions or columns that support awning, canopies, marquees and signs shall be located not less than 2' in from the curb line.*

3202.3.2 Windows, balconies, architectural features and mechanical equipment. *Where the vertical clearance above grade to projecting windows, balconies, architectural features or mechanical equipment is more than 8', 1" of encroachment is permitted for each additional 1" of clearance above 8', but the maximum encroachment shall be 4'.*

Section 3202.3.3 states that ***encroachments 15' or more above grade shall not be limited.*** Current Zoning Ordinance regulations do not specifically specify the limit to which architectural features may encroach upon the public right-of-way.

On August 9th, 2018, the Planning Board discussed these issues and developed a list of concerns that they would like to have addressed. These issues included:

- Allowing architectural features such as cornices and bay windows to project in the right-of-way.
- Having consistent regulations for projections into the right-of-way apply throughout the entire city.
- Specifying that no occupiable space may project into right-of-way.
- Requiring a special encroachment permit to be obtained after final site plan or design approval is granted from the Planning Board, Design Review Board, or Historic District Commission.

On October 10th, 2018 the Planning Board reviewed draft language modeled after the standards in the Building Code and decided that they did not want language from the Building Code to be in Zoning Ordinance because doing so would be redundant.

On October 24, 2018 the Planning Board reviewed revised draft language incorporating the stated concerns into Chapter 4, Section 4.30(OS-01). After lengthy discussion it was determined that the revised ordinance language was not specific enough. Accordingly, the old draft language has been omitted from this memo but can be revisited if the Board would like.

The Board requested that the staff review ordinances from other cities to glean information on what types of architectural elements are regulated and what methods are used to regulate encroachments. Accordingly, per the suggestion of the Chairperson, the ordinances regulating encroachments for the Cities of Portland OR, New York NY, Denver CO, and San Francisco CA, have been included for your review.

Staff also reviewed the ordinances. While each City deals with the encroachments differently to varying degrees, generally these documents predominately rely on Chapter 32 of the International Building Code (IBC) to regulate encroachments that are elements of a building. As noted above, there are three main categories of encroachments identified in the building code. Those categories are below grade encroachments, above grade encroachments below 8' and above grade encroachments above 8'.

Below grade encroachments include items such as footings, vaults, areaways and tunnels. Above grade encroachments include items such as entrance details, architectural details (such as cornices, eaves, bases, sills, headers, band course, opening frames, rustications, and other similar elements), balconies, marquees, lights, flagpoles and signs.

The ordinances also provide classifications for encroachments that dictate the level of review required. In Portland, for example, minor encroachments called "typical encroachments", require a revocable permit. These types of encroachments are permitted under a specified set of guidelines and may be revoked at any time and if revoked must be removed within 30 days. "Major encroachments" are subject to a higher level of review and analysis. These are typically

permanent structures such as sky bridges, arcades or underground walkways. All of the encroachments in each city are regulated by the Building Code as would be expected.

The Portland, OR regulations are clearly the most comprehensive of the four that were reviewed. The district intent provided a clear outline of how the regulations are intended to enhance the experience of the pedestrian in the right of way. However, much of the document deals with encroachments in the right of way that are not directly attached to a building. This includes elements such as fences, retaining walls, landscaping and irrigation, transit shelters, planter boxes and so forth. These types of encroachments generally fall under the jurisdiction of the Engineering Department. The other three documents provided for your review focus more exclusively on the dimensional and procedural aspects of regulating encroachments which, as stated previously, are taken from the IBC.

As discussed on October 10, 2018, there are certainly elements that could be taken from these documents and adapted for the specific needs of Birmingham. The multi-tiered review process could be implemented to delineate between which elements should be permitted as part of a standard site plan review. This could be simply what is permitted by the IBC or some lesser degree of projection that could be codified in the Zoning Ordinance. Other more significant encroachments could be specifically reviewed by the Planning Board and/or City Commission and subject to some type of a land or air rights lease. In addition, drafting an intent section that outlines the goals of Birmingham and what the experience in the right of way is intended to be could provide useful guidance to developers and property owners when they are considering an application for redevelopment.

On November 14, 2018 the Planning Board held a study session to discuss the various ordinances requested at the previous meeting. After reviewing the information that was provided, the Board requested that the Planning staff draft language that provides an intent section and also to make recommendations for any further restrictions beyond what is permitted by code. The intent section is intended to provide a general guiding principle of prioritizing the safety and accessibility for pedestrians in the right of way while allowing some projections as permitted by the Building Code with the permission of the appropriate reviewing body. The additional draft standards are intended to give the reviewing body the ability to limit encroachments in addition to what is permitted by code. Staff has intentionally allowed for flexibility within these standards to give the reviewing body discretion on a case by case basis without the need for applicant to obtain a variance.

On November 28, 2019, the Planning Board conducted another study session to consider amendments to the structure standards in all zone districts to add regulations for projections in the public right of way. Planning Board members suggested several changes to the draft ordinance language, and asked the Planning staff to make these amendments and conduct additional research regarding maximum projections over sidewalks. Board members agreed that the previous proposal of allowing projections to extend horizontally 2/3 of the sidewalk width was too generous.

On February 13, 2019, the Planning Board again reviewed draft ordinance language and discussed the impact of the proposed changes. Several minor changes were proposed to the draft ordinance language, and then the Planning Board voted to set a public hearing on the proposed amendments for March 13, 2019.

The proposed amendments have now been reviewed by the City Attorney, the Building Official and the City Engineer. Minor revisions were suggested and made, which do not affect the substantive provisions last discussed by the Planning Board.

Please see attached ordinance language for your review and comment. The additional research regarding maximum limits for projections over sidewalks discussed at previous meetings is also attached, along with a chart summarizing sample standards for the maximum horizontal projections over sidewalks in other communities for your reference.

Suggested Action:

To recommend APPROVAL to the City Commission of Article 4, Development Standards, section 4.74, Structure Standards, of Chapter 126, Zoning, of the Code of the City of Birmingham to add development standards to regulate encroachments into the right-of-way.

**CITY OF BIRMINGHAM
ORDINANCE NO. __**

THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

**TO AMEND ARTICLE 4, SECTION 4.74 SS-01, STRUCTURE STANDARDS TO ADD
INTENT AND STANDARDS REGULATING ENCROACHMENTS INTO THE RIGHT
OF WAY.**

4.74 SS-01

(A-C Unchanged)

D. Encroachments into the Right of Way

- 1. Purpose and Intent:** The purpose and intent of this section is to ensure that any allowable encroachments into the right of way do not impede the safety and welfare of the general public and foster a pedestrian friendly environment that prioritizes the accessibility of space, light and air for all users while simultaneously allowing for creative and innovative architectural design and construction.
- 2. Applicability:** This section applies to all encroachments that extend into the public right of way at, above or below grade.
- 3. Approval Required:** Any encroachment into the public right of way must comply with the Michigan Building Code and requires City approval. Encroachments may be subject to a Special Treatment License approved by the Engineering Department, lease agreement approved by the City Commission and/or may require monetary compensation to the City. Encroachments into the right of way may also require approval by an appropriate reviewing body as per Article 07, Processes, Permits and Fees and are subject to the requirements set forth in this section.
- 4. General Encroachment Standards:**
 - a) *Below Grade Encroachments:*** All below grade encroachments must be reviewed by the Community Development Department and approved by the City Commission through a lease agreement.
 - b) *Above grade encroachments 8' and below:*** Permanent architectural features such as columns, pilasters, belt courses, lintels pediments and similar features may be approved by the Planning Board, Design Review Board and/or Historic District Commission or through administrative approval, as determined by the Planning Director, to project into the right of way provided they do not create any obstruction and that said the encroachment complies with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance.
 - c) *Above grade encroachments above 8':***
 - i.** Removable architectural elements such as awnings, canopies, marquees may be approved by the Planning Board, Design Review Board and/or Historic District Commission or through administrative approval, as determined by the Planning Director, to project into the right of way provided that they are constructed to support applicable loads without any ground mounted supports

on public property. Encroachments with less than 15' of clearance above the sidewalk shall not extend into or occupy more than two-thirds of the width of the sidewalk or 5 feet, whichever is less, and must not interfere with any existing or planned streetscape elements or infrastructure.

- ii. Permanent architectural features such as windows, balconies, overhangs and other architectural features that encroach into the right of way above 8' may be approved by the Planning Board, Design Review Board and/or the Historic District Commission provided that they do not extend 2' or more into the right of way or create an obstruction and that the encroachment complies with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance. Encroachments that extend more than 2' into the right of way will also require the approval of the City Commission through a lease agreement.
 - iii. Permanent encroachments that create usable space such as cantilevered rooms, dormers, elevated walkways, balconies, bridges and similar projections may be approved by the Planning Board, Design Review Board and/or the Historic District Commission provided they comply with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance and must be approved by the City Commission through a lease agreement.
- d. ***Temporary encroachments:***
- i. Temporary encroachments associated with construction projects are subject to approval of an obstruction permit or logistical plan to be reviewed and approved by the Community Development and Engineering Departments.
 - ii. Temporary encroachments that are seasonal in nature such as vestibules or storm enclosures may be approved by the Planning Board, Design Review Board and/or Historic District Commission through the site plan and design review process provided that an unobstructed 5' public pedestrian path is provided at all times and that the temporary encroachments are is subject to a rental fee rate as indicated by the Birmingham Schedule for Fees, Charges, Bonds and Insurance.

ORDAINED this _____ day of _____, 2019 to become effective 7 days after publication.

Patty Bordman, Mayor

Cherilynn Mynsberge, City Clerk

BIRMINGHAM CITY COMMISSION / PLANNING BOARD
JOINT WORKSHOP SESSION MINUTES
JUNE 19, 2017

B. COMMERCIAL PROJECTIONS ONTO PUBLIC PROPERTY/ ARCHITECTURAL ALLOWANCES

Ms. Ecker explained that Chapter 98 implies that awnings, balconies, marquees, and canopies are permitted to project over the public right-of-way, but does not clearly state that they are permitted. They are to comply with Chapter 22, which are the Building Code regulations. The question has that arisen is should it be clarified in the Zoning Ordinance which, if any projections are permitted, and to address the height, projection or permitted materials for architectural features projecting into the public right of way.

Mayor Nickita added that the property line is the building face, so anything that projects beyond the building face is technically over City property. When the projections are a bit atypical or if they take on other forms, it becomes more difficult. Ms. Ecker said while we have a review process, we do not have a hard and fast regulation as to how far it can project.

In response to Commissioner Hoff, Ms. Ecker said we could potentially determine a size of how many inches a projection could protrude into the right of way, and if the location on the building would impact how far it could protrude.

Commissioner DeWeese said some of these projections are pleasing to the eye and are pedestrian-friendly, so the key may not be to define exactly how much, but maybe a minimum which would trigger a review standard.

Mr. Koseck said it is worth more study and investigation and development of some criteria or measurement.

Mayor Nickita said this issue is worthy of another layer of review to incorporate clear guidelines.

PLANNING BOARD MINUTES AUGUST 8, 2018

STUDY SESSION

1. Projections Into the Right-of-Way

Ms Ecker advised this was another matter that came up at the joint City Commission/Planning Board in June of 2017. She noted that the City permits projections of certain architectural elements into the right-of-way, including awnings, signage, canopies, marquees, planters and other similar elements. The recent renovation of the 100 S. Old Woodward Ave. building and the 335 E. Maple Rd. building have raised questions as to whether projecting elements should be permitted; and if so, whether there should be restrictions on the materials used. The City Code does not contain any comprehensive standards or regulations governing the projection of awnings, architectural details, balconies etc. into the right-of-way. However, the regulations that do exist are scattered in several locations:

Chapter 126, Zoning Ordinance Regulations

The only regulations dealing with projections currently in the Zoning Ordinance can be found in Article 3, Overlays. The Zoning Ordinance allows for the projection of awnings into the public right-of-way as long as 8 ft. of clearance is provided, and upper floor awnings do not project into the right-of-way more than 3 ft. However, this regulation only applies in the Downtown Birmingham Overlay District. There are no other such regulations governing properties outside of the Downtown Birmingham Overlay District. The Board might want to expand the regulation to include different encroachments and make those rules apply throughout the City.

Chapter 98, Streets, Sidewalks and Other Public Places Regulations

Additional regulations concerning potential projections into the right-of-way can be found in Chapter 98 of the City Code. Section 2 of Chapter 98, Streets, Sidewalks and Other Public Places. Section 2 of Chapter 98, Streets, Sidewalks and Other Public Places provides regulations dealing with the construction and maintenance of awnings, canopies and marquees, which implies, but does not specifically state, that they are permitted to extend over a street, sidewalk or other public space. Section 2 also states that such structures must be constructed in accordance with Chapter 22, which adopts the regulations of the Building Code.

Michigan Building Code

Chapter 32 of Michigan's Building Code, Section 3202, Encroachments in the Public Right-of-Way, addresses encroachments, and provides specific requirements based upon the height of encroachments above grade.

Section 3202.2 states that encroachments above grade and below 8 ft. in height are prohibited, unless they meet one of certain exceptions for steps, architectural features, and awnings. Section 3202.3 further states that encroachments 8 ft. or more above grade are permitted but must comply with certain conditions. Finally, section 3202.3.23 further states that encroachments 15

ft. or more above grade shall not be limited. Ms. Ecker thought that the Building Code sets some basic parameters for the discussion of projections.

Mr. Jeffares noted in the wintertime icicles that form on balconies over a sidewalk could fall and injure somebody.

Chairman Clein advised that the City of Detroit requires a special approval permit which is a grant of right by the City to allow certain things to be installed projecting into the right-of-way. The applicant has to show what they are and receive authorization which then becomes a condition of the site plan.

He wanted to have a conversation about what is actually encroaching, such as interior space that may be occupied outside the footprint of the building, which is quite different than exterior features.

Ms. Ecker indicated she will bring back language for future discussion.

PLANNING BOARD MINUTES OCTOBER 10TH, 2018

1. Projections into the Right-of-Way

Mr. Cowan noted that the City permits projections of certain architectural elements into the right-of-way, including awnings, signage, canopies, marquees, planters and other similar elements. Recent renovations have raised questions as to whether projecting elements should be permitted; and if so, whether there should be restrictions on the materials used. The Zoning Ordinance has regulation standards for the size and placement of awnings, but does not contain comprehensive standards governing the projection of architectural details such as balconies, canopies or other architectural elements projecting into the right-of-way.

Current City policy for the size of projections into the right-of-way is governed by the Michigan Building Code Regulations and enforced by the Birmingham Building Dept. Chapter 32 of Michigan's Building Code, Section 3202, Encroachments in the Public Right-of-Way provides specific requirements based upon the height of encroachments above grade.

On August 9, 2018, the Planning Board discussed these issues and developed a list of concerns that they would like to have addressed. These issues include:

- Allowing architectural features such as cornices and bay windows to project in the right-of-way.
- Having consistent regulations for projections into the right-of-way apply throughout the entire city.
- Specifying that no occupiable space may project into right-of-way.
- Requiring a special encroachment permit to be obtained after final site plan or design approval is granted from the Planning Board, Design Review Board, or Historic District Commission.

Draft language incorporating these concerns has been provided as an amendment to the Zoning Ordinance Chapter 4, Section 4.30(OS-01)

Chairman Clein was concerned they are adding regulations that are already in place into the Zoning Code. Mr. Share thought putting them in to restrict an outer limit is okay.

Chairman Clein thought that allowing awnings, canopies, marquees and signs with less than 15 ft. clearance above the sidewalk to extend two-thirds into the width of the sidewalk is too much. He suggested that staff take a look at whether there is a standard corridor along the building face that would allow architectural features to encroach. Mr. Boyle liked that idea, but it might not fit in every place. There may be different rules for the main streets.

Mr. Jeffares thought that bridges between buildings might be considered.

Chairman Clein said that to him a special permit for encroachments into the right-of-way should be a condition of the site plan rather than obtained after Final Site Plan or Design Approval has been granted.

Ms. Whipple-Boyce mentioned the length of projections should be restricted. Consensus was to bring this matter back to the next meeting.

**PLANNING BOARD MINUTES
WEDNESDAY, OCTOBER 24, 2018**

1. Projections in the Right-of-Way

Mr. Baka noted that the City permits projections of certain architectural elements into the right-of-way, including awnings, signage, canopies, marquees, planters and other similar elements. Recent renovations have raised questions as to whether projecting elements should be permitted; and if so, whether there should be restrictions on the materials used. The Zoning Ordinance has regulation standards for the size and placement of awnings, but it does not contain comprehensive standards governing the projection of architectural details such as balconies, canopies or other architectural elements projecting into the right-of-way.

Current City policy for the size of projections into the right-of-way is governed by the Michigan Building Code Regulations and enforced by the Birmingham Building Dept. Chapter 32 of Michigan's Building Code. Section 3202, *Encroachments in the Public Right-of-Way* provides specific requirements based upon the height of encroachments above grade.

On August 9, 2018, the Planning Board discussed these issues and developed a list of concerns that they would like to have addressed.

On October 10, 2018 the Planning Board reviewed draft language and decided they did not want language from the Building Code to be in the Zoning Ordinance because it would be redundant.

Accordingly, draft language incorporating the Planning Board's comments was provided for Chapter 4, Section 4.30 (D) Open Space Standards:

4.30 OS-01 (A-C Unchanged)

D. Projection into the right-of-way: Projections into the right-of-way shall be permitted as follows:

1. Projections such as cornices, canopies, awnings, sunscreens, bay windows, bow windows, and other architectural features are permitted as long as they do not support or contain habitable space.
2. A special permit for encroachments into the right-of-way at or above grade must be obtained after final site plan or design approval has been granted by the Planning Board, Design Review Board, or Historic District Commission.
3. All projections more than 4 ft. into the right-of-way will be subject to a lease agreement with the City for the use of air rights.

Mr. Jeffares received confirmation from Ms. Ecker that a bay window does not contain living space. The language should clearly state what is allowed and then nothing else is allowed. Also, the third item only applies in Mixed-Use and Multi-Family Districts and not in Single-Family.

Mr. Baka affirmed for Ms. Whipple-Boyce there is nothing in the Building Code that restricts the length of a projection into the right-of-way.

Mr. Koseck was inclined to leave the term "habitable space" in the draft language and hopefully catch it in the Definitions Section.

Mr. Share thought that projections should be limited to a maximum number of feet or a percentage of the sidewalk width. Further, his sense was that it would be more efficient to have a special permit for encroachments included as part of the Final Site Plan Approval.

Chairman Clein did not think a lease agreement with the City for encroachments more than 4 ft. into the right-of-way was the intent of the City Commission. Rather, he felt the Commission wanted the Planning Board to figure out a way to control atypical projections. He noted that San Francisco, Denver, Portland, and New York City all have extensive ordinances about encroachments.

Ms. Ecker said the Zoning Ordinance should be very clear which projections are allowed and which ones are not, along with standards for each. Staff agrees there should be some sort of maximum. With regard to a lease, Chairman Clein suggested saying that any approval of encroachment may require the applicant to enter into a lease agreement at the sole discretion of the City Commission.

Ms. Ecker thought for the next meeting the board could consider a list of the types of projections, are they wanted; and if so, what are reasonable standards. Also, Chairman Clein wanted to see the ordinances from other cities so that ideas could be drawn from them.

Mr. Share asked for a ruling from the City Attorney about what implication there is under common law if someone is built to the property line whether they have a right to encroach onto the neighbor's property underneath the ground for a reasonable foundation. Further, do they have the right to encroach up above for an eave and whether this applies to a municipality. Then, if it does apply to a city, whether it can be changed by ordinance.

Mr. Koseck noted he is a little concerned about balconies lurking over the right-of-way and what may occur on them such as wash hanging out to dry.

At 7:56 p.m. no one from the public cared to comment on this matter.

**PLANNING BOARD MINUTES
NOVEMBER 14, 2018**

G. STUDY SESSION ITEMS

1. Projections in the Public Right-of-Way

Mr. Baka recalled that on October 24, 2018 the Planning Board requested that the staff review ordinances from other cities to glean information on what types of architectural elements are regulated and what methods are used to regulate encroachments. Accordingly, per the suggestion of the Chairperson, the ordinances regulating encroachments for the Cities of Portland OR, New York NY, Denver CO, and San Francisco CA, have been included for the Board's review. The Portland OR regulations are clearly the most comprehensive of the four.

While each city deals with the encroachments differently to varying degrees, generally these documents predominately rely on Chapter 32 of the International Building Code ("IBC") to regulate encroachments that are elements of a building. These elements include the following:

- Below grade encroachments
- Above grade encroachments below 8 ft.
- Above grade encroachments above 8 ft.

Below grade encroachments include items such as footings, vaults, areaways and tunnels. Above grade encroachments include items such as entrance details, architectural details (such as cornices, eaves, bases, sills, headers, band courses, opening frames, rustications, (and other similar elements), balconies, marquees, lights, flagpoles and signs.

The ordinances also provide classifications for encroachments that dictate the level of review required.

Mr. Baka felt that Portland certainly was the most developed of the four ordinances that they reviewed. It is split into two different types of encroachments, major and minor. The difference is that the major encroachments are essentially permanent such as skyways and tunnels, whereas the minor encroachments are things that could be removed.

Even though something is permitted by the IBC doesn't mean it is right for Birmingham.

There are certainly elements that could be taken from these documents and adapted for the specific needs of Birmingham. In addition, drafting an Intent section that outlines the goals of Birmingham and what the experience in the right-of-way is intended to be could provide useful guidance to developers and property owners when they are considering an application for redevelopment.

Mr. Share thought it was interesting that Portland's ordinance comes out of their transportation section. He thought Denver was very similar. New York, as a denser place, wasn't quite so helpful. He likes the idea of developing a Birmingham Intent section. He felt the City would benefit from being more restrictive on awning encroachments toward the street than what the IBC allows and what these ordinances allow.

Mr. Boyle asked if they need to be as comprehensive as Portland because some of the items are already covered in other City Code sections.

Ms. Ecker advised that what the Board is talking about here are certain elements related to buildings. Any type of projection section drafted should deal with at grade, below grade, and above grade projections.

Discussion disclosed that if a building is cluttered with too many of the same projections it is a design issue and it could be denied. The ordinance contains a list of criteria for design review. Further it was agreed that the Board should not be so specific with details. Instead talk about the types of things that would be permitted and any restrictions.

Mr. Share indicated he would like to get rid of awnings with vertical supports in the walkway. The path should be kept clear for pedestrians. Further, he wanted the board to think about the future as materials develop and architecture changes. Chairman Clein was in favor of thinking about a recommendation on scaling an awning to the width of the sidewalk.

Mr. Baka advised that the City Attorney has opined that no one has the right to encroach on anyone else's property or into the public right-of-way.

Staff will present another draft at the next meeting.

**PLANNING BOARD MINUTES
NOVEMBER 28, 2018**

1. Projections into the Right-of-Way

Mr. Baka advised that as requested by the Planning Board at their meeting on November 14, 2018, Planning staff has provided draft language that includes an intent section and also makes recommendations for further restrictions beyond what is permitted by the Building Code. Staff has intentionally allowed for flexibility within the standards to give the reviewing body discretion on a case-by-case basis without the need for the applicant to obtain a variance.

Mr. Jeffares indicated he would like to see a maximum allowable encroachment onto the sidewalk rather than two-thirds which may be excessive in some cases. Mr. Koseck added that a unique use such as the Birmingham Theatre might require a higher level of review. Further, the requirement that permanent architectural features such as windows, balconies, and overhangs cannot extend more than 18 in. into the right-of-way should require a little more study.

Referring to D(4)(c)(iii), Permanent encroachments that create usable space, Ms. Whipple-Boyce suggested that the bump out on the new Peabody site building be added to the other three examples.

Mr. Share asked for elimination of "said this" or "said that." Additionally, think about different percentages of allowable projection for different streets.

Mr. Boyle suggested under D(1) reverse "light, space" so that it reads "space, light."

Mr. Share said to mention something about not interrupting the flow of people on the street and that the pedestrian path needs to be maintained unobstructed.

Chairman Clein said in D(4)(b) and (c) note with consistency who is authorized to approve above grade encroachments. Also, review the proposed ordinance to ensure it meets the requirements of the Building Code.

Mr. Boyle hoped to see some schematic drawings included in the Ordinance. It was thought that perhaps Mr. Koseck could help with that.

Staff agreed to bring back the suggested changes.

Planning Board Minutes February 13, 2019

2. Projections in the Right of Way

Planning Director Ecker reviewed her February 7, 2019 memorandum to the Planning Board regarding the item. She added the Planning Board could consider adding to section 4.74(D)(4)(c)(i) cannot exceed two thirds of the sidewalk width "...or five feet, whichever is less", though it may not be necessary since a projection cannot interfere with "any existing or planned streetscape elements or infrastructure".

Mr. Share said determining the right parameters for awnings in the City could be somewhat of a work in progress, and that he liked the proposed changes while noting they could be amended again should the Board see need in the future. He suggested that the end of 4.74 SS-01 (D)(4)(d)(ii) be updated to read "...public pedestrian path is provided at all times and that the temporary encroachments are subject to a rental fee as indicated by the Birmingham Fee Schedule."

Planning Director Ecker concurred. Drawing the Board's attention to 4.74 SS-01 (D)(4)(c)(ii), she added that the last sentence would be updated to reflect the two feet requirement, rather than the previous eighteen inch requirement.

In reply to Mr. Share, Planning Director Ecker stated she was not sure whether a dormer could create space that encroaches. She said she did not think so, but the proposed wording would cover any expanded interpretation of dormers that the Building Department may apply to gable ends or other such features.

In reply to Chairman Clein, Planning Director Ecker said that Building Official Johnson had reviewed a previous draft, and would review this draft before a public hearing.

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to set a public hearing date of March 13, 2019 to consider amendments to Article 4, section 4.74 SS-01, Structure Standards to add intent and standards regulating encroachments into the right of way, as presented, with editorial commentary included.

Chairman Clein commended the Board and staff for the good work on this item.

Planning Director Ecker asked if illustrations are necessary for this section. The Board said the descriptions are sufficiently clear without illustration.

Motion carried, 5-0.

VOICE VOTE

Yeas: Clein, Jeffares, Koseck, Share, Whipple-Boyce

Nays: None

Absent: Boyle, Emerine, Ramin, Williams

Standards	Milwaukee, WI	Burlington, IO	Denver, CO	LeMoore, CA	San Fran, CA	Manhattan, NY	Portland, OR
Horizontal Projection / Distance from Curb	<ul style="list-style-type: none"> • ½ of sidewalk width, max of 6' • If sidewalk < 12, max of 6', but not closer than 2' to curb 	<ul style="list-style-type: none"> • No closer than 2' from curb 	<ul style="list-style-type: none"> • No max for awnings, but if projection more than 5', awning must be sprinkled • Max of 4' projection for building encroachments • In no case past curb 	<ul style="list-style-type: none"> • Awnings 3' to 8' • Max of 8' from building • Min 4' from curb • 2' to 6' for bay windows & balconies 	<ul style="list-style-type: none"> • Awnings, marquees can project no more than 2' from curb • Maximum width of 10' • Balconies & arch features – if 10' vertical clearance than 2', with add'l 1" of projection for each 1" above 10', up to 4' projection 	<ul style="list-style-type: none"> • Storefront Awnings max of 8' from building • Window/door awnings max of 5' from building • Balconies max of 2.5' from building 	<ul style="list-style-type: none"> • Awnings, marquees no more than 2/3 width of sidewalk, but not closer than 2' to curb • Balconies & arch features 1" of projection for every 1" in vertical clearance above 8', max 4' projection
Vertical Clearance from Grade	<ul style="list-style-type: none"> • 7.5' 	<ul style="list-style-type: none"> • 8' 	<ul style="list-style-type: none"> • 12' above sidewalk • 24' above alley 	<ul style="list-style-type: none"> • 8' 	<ul style="list-style-type: none"> • 10' for balconies & arch features 	<ul style="list-style-type: none"> • 10' for balconies • 8' for awnings 	<ul style="list-style-type: none"> • 8'

CHAPTER 245
ENCROACHMENTS, PROJECTIONS AND
SPECIAL PRIVILEGES

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245-14	Air and Subterranean Space Lease Structures

245-1. General Regulations. 1. Except as otherwise regulated in this chapter, no part of any building, structure, addition, alteration or construction hereafter erected shall project beyond a street line.

2. Structures, appendages or architectural ornamentations projecting beyond a street line as regulated and permitted by this chapter shall be constructed of materials as required in ch. 251 and as further regulated herein. The projection of any structure, appendage or ornamentation shall be the distance measured horizontally from the street line to the outermost point of such structure, appendage or ornamentation.

3. No person shall erect, place or store any material, equipment, shed, roof, fence or temporary walk, guard, device or any other structure on a public thoroughfare, nor shall any person move any building or structure onto, across or over any public thoroughfare without first obtaining a permit therefor from the commissioner of public works.

4. Permits and permit fees for permissible projections shall be as regulated in s. 200-33.

5. There shall be no permitted projections which limit the clear paved sidewalk width to less than 5 feet.

6. No permission shall be given for projections into the public right-of-way where there is no paved public sidewalk, unless the encroachments are otherwise allowed by code.

245-2. Structural Supports. All projections permitted in this chapter, except footings and their supports, shall be so constructed that their removal may be made without causing the building or structure to become structurally unsafe.

245-3. Maintenance and Removal. 1. All construction for which a permit is hereafter granted pursuant to the regulations of this chapter by the commissioner of city development for projections beyond the street line, or by the commissioner of public works permitting the occupancy or use of public property or public thoroughfares, and any special privilege granted by the common council pursuant to s. 245-12, and all other existing projections or encroachments shall be maintained in good state of repair and in a safe condition.

2. Such construction shall be removed and the permit revoked whenever public necessity or public safety so requires when ordered by the commissioner of neighborhood services, the commissioner of public works, by resolution of the common council or by authorities of the state of Wisconsin.

3. No change or enlargement shall be made to any such existing projection or encroachment except in conformity with the regulations of this chapter.

245-4. Permissible Projections and Encroachments. Projections and encroachments beyond the street line other than those listed in this section may be permitted by special privilege granted by the common council under s. 245-12. Under the conditions prescribed in this chapter and within the limitations regulated herein, the following projections and encroachments beyond a street line are permitted:

245-4-1 Encroachments, Projections And Special Privileges

1. Main cornices or roof eaves projecting not more than 3 feet, provided they are a minimum of 14 feet above the adjacent established grade.

2. Cornices of porches and false mansard-type structures projecting not more than 15 inches, provided they are a minimum of 10 feet above the adjacent established grade.

3. Pediments, nonstructural columns or pilasters, and similar architectural projections, including bases and capitals, projecting not more than 8 inches.

4. Masonry projections, including but not limited to quoins, belt courses, lintels, sills, base courses and rustications, projecting not more than 4 inches.

5. Footings or walls and their supports at street lines projecting not more than one foot, provided the tops of the footings are a minimum of 4 feet below the adjacent established grade. Projections beyond the one-foot line shall be subject to the approval of the commissioner of public works.

6. Emergency exit doors, when open, projecting not more than 48 inches into an alley. All other doors when open may project not more than 36 inches.

7. Fire escapes and balconies to smoke-proof stair towers or horizontal exits projecting not more than 7 feet. All other balconies may project not more than 6 feet. Fire escapes and balconies shall be a minimum of 10 feet above the adjacent established street walk grade and 14 feet above alley grade.

8. Oriel or bay windows projecting not more than 24 inches, provided that the lowest portion of the window is a minimum of 10 feet above the adjacent established grade. No oriel or bay window that projects into a public right-of-way shall exceed 10 feet in width. Oriel and bay windows shall not be permitted to project into a public right-of-way which is less than 30 feet in width.

9. Exterior hose connections for fire protection equipment, in approved locations, projecting not more than 8 inches, provided that such connections are a minimum of 1 1/2 feet but not more than 3 feet above the adjacent established grade.

10. Street walk basements or sidewalk vaults when constructed and located as regulated in s. 245-5.

11. Movable awnings when constructed and located as regulated in s. 245-6.

12. Awnings, canopies and sunshades when constructed and located as regulated in s. 245-7.

13. Fixed awnings in the Historic Third Ward projecting beyond the street line under s. 245-7-9.

14. Marquees when constructed and located as regulated in s. 245-10.

15. Remodeled building facades encroaching a maximum of 6 inches.

16. Temporary encroachments and use of public thoroughfares during erection, construction, enlargement, alteration, repair, renovation, moving, removing or demolition of buildings and structures when in compliance with the regulations of ch. 228 and s. 245-11.

17. Signs or advertising devices when constructed as regulated in ch. 244.

18. Roof gutters and conductors projecting not more than 8 inches into a public alley. Roof gutters and conductors may not project into a public street.

19. The cutting of street curbs, the installation of driveways and any construction therewith, when in conformity with rules and regulations of the commissioner of public works and permitted by the commissioner of public works.

20. Electrical or gas lighting fixtures attached to the exterior walls of buildings or structures, in approved locations, projecting not more than one foot, provided that the lowest portion of the fixture is a minimum of 7 feet but not more than 10 feet above the adjacent established grade. The fixtures, when more than 10 feet above grade, may extend 5 feet into the public right-of-way and shall be a minimum of 14 feet above grade when projecting into an alley.

21. Security cameras attached to the exterior walls of buildings or structures projecting not more than 5 feet into the public right-of-way, provided they are greater than 10 feet above the adjacent established grade. The fixtures shall be a minimum of 14 feet above grade when projecting into an alley.

22. Sewer sampling manholes, catch basins, water meter pits, sprinkler pits and similar underground structures when in compliance with s. 245-5.

23. Monitoring wells when associated with a remediation project recognized by the state of Wisconsin.

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24. Flagpoles for the flying of federal, state, county or municipal flags only, attached to the exterior walls of buildings or structures, projecting a distance not closer than 3 feet from the curb line, provided the flag and pole have at least 8 feet clearance above the street walk.

25. Permissible projections, obstructions and encroachments as provided by s. 115-32.

26. Items installed in the public right-of-way as part of a streetscape for which a maintenance agreement, approved by the common council, has been fully executed.

27. Projections and encroachments for one- and 2-family residential properties as provided in s. 245-4.5.

28. Decorative landscaping edging in the public right-of-way as regulated in s. 116-54.

29. Approved appliances and devices used in connection with equipment not otherwise regulated herein, in approved locations, projecting not more than one foot, provided the lowest portion thereof is a minimum of 10 feet above the adjacent established grade.

245-4.5. Encroachments for One- and 2-Family Residential Properties.

1. DEFINITION. "Encroachments for one- and 2-family residential properties" means objects or structures placed in the public right-of-way that are approved by the commissioner of public works and that are not otherwise permitted by s. 245-4.

2. GENERAL REGULATIONS. All encroachments for one- and 2-family residential properties shall comply with the following guidelines:

a. Plans shall be submitted to the commissioner of public works for approval and issuance of a permit prior to applying for any other necessary permits.

b. All necessary permits shall be obtained prior to construction of a proposed encroachment.

c. Any proposed encroachments shall conform to this section, as well as any other requirements of the code. If a conflict exists, the more restrictive requirement shall govern.

3. PROJECTION. a. If a paved public sidewalk is present, encroachments may be located between the sidewalk and the street line and may project to the edge of the sidewalk.

b. If no paved public sidewalk is present, encroachments may not project into the

public right-of-way unless specifically allowed by s. 245-4.

c. Encroachments may not project into an alley, pedestrian way or bicycle way unless otherwise allowed by the code.

4. APPLICATION. The owner of a property under consideration for construction and installation of a public way encroachment shall submit plans to the city engineer for review and approval. The grantee shall subsequently submit plans and obtain permits from the commissioner of public works and commissioner of city development, as necessary, for any installation.

5. CONDITIONS OF PERMIT. The owner of a public way encroachment for one- or 2-family residential property shall:

a. Become primarily liable for damages to persons or property by reason of the granting of a permit for the encroachment.

b. Remove or modify the encroachment whenever the city determines that the public convenience would be enhanced by such removal or modification as provided in s. 115-32-2. The owner shall not be entitled to damages relating to the removal or modification.

6. SPECIAL PROVISIONS. Any encroachment for one- or 2-family residential property as herein regulated, in existence as of June 12, 2010, which meets the requirements of sub. 3, shall be allowed to remain in its existing location until such time that removal of the encroachment is ordered pursuant to sub. 5. The owner of the existing encroachment shall be deemed primarily liable for damages to persons or property by reason of the maintenance of the existing encroachment.

245-4.7. Dumpsters. No dumpster may be placed in the public right-of-way, including any alley, sidewalk, paved roadway, tree border or other unpaved portion of the right-of-way, unless the owner of the property served by the dumpster has obtained a special privilege granted by the common council under s. 245-12. When 2 or more dumpsters serve a particular property, the property owner may apply for a single special privilege for all dumpsters located in the right-of-way. The commissioner of public works is authorized to remove, or to have removed, from the right-of-way any dumpster for which no special privilege has been granted.

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245-5. Street Walk Basements. 1. GENERAL REGULATIONS. a. Street-walk basements entirely below a street walk and adjoining a building or structure may be constructed, maintained, occupied and used in connection with such building or structure for any purposes not inconsistent with this code, other laws or ordinances, or rules regulating the construction, maintenance, occupancy and use of such basements, on condition that the right to maintain, occupy and use such basements may be revoked by the city at any time. When an order is issued for the removal of such basement, the owner of the building or structure shall execute all construction work and assume all costs and expenses attendant therewith. Such street-walk basements shall not interfere with any public work or improvement, and the city in granting a permit to construct such basements, reserves the right at any time to construct under or within such basements municipally owned utilities for the public service.

b. Boilers, engines or machinery using steam, gas or explosive mixtures, or tanks containing volatile flammable liquid, shall not be located in such basements or under any public thoroughfare.

2. DESIGN. a. Street-walk basements may extend beyond the street line for a distance as approved by the commissioner of public works, but not beyond the curb line. Such basements shall be of approved construction and shall be provided with a roof or top of noncombustible material, capable of carrying a live load of 250 pounds per square foot. The top surface of the street walk shall be at a grade as established by the city and shall be constructed of concrete or other approved material with a nonslippery surface. No glass in such street walk surface shall be permitted.

b. The walls of such basements shall be constructed of solid masonry units, plain or reinforced concrete, and shall be of a strength and thickness to resist safely lateral pressure from the adjacent earth, and to support vertical loads. Footings for such walls shall be designed and constructed to maintain a safe load on the soil and shall not project beyond the curb line.

3. OPENINGS IN STREET WALKS.

a. Openings in street walks shall be permitted when protected with approved

non slippery metal covers or gratings, as herein regulated, flush with the top surface of the street walk, designed to support a live load of 250 pounds per square foot. Such covers or gratings shall be maintained normally closed and secured in place, and when open shall be equipped with approved guards to prevent accidents. Such openings, when used for ventilating purposes and located in street-walk basements, shall be protected with gratings or covers having openings therein not more than 3/4 inch in width, and shall be equipped with approved pans or screens with mesh openings therein not in excess of 1/4 inch. Electric transformer vaults need not be equipped with approved pans or screens with mesh openings.

b. Except as otherwise required or approved by the commissioner of public works, the location and size of openings in street walks shall be as follows:

b-1. For existing elevators and for conveyors or chutes, openings shall be located with not more than 2 feet of space from the face of the curb. The length of such openings on the side parallel to the curb shall not exceed 8 feet. The width of such openings shall not exceed 1/3 the distance from the face of the curb to the street line, but not more than 6 feet in any case. New elevator installations shall not pierce a sidewalk or be located in an area used by people or vehicles as a place of travel.

b-2. For the delivery of coal or other materials, openings shall be located with not more than 2 feet of space from the face of the curb, and shall not exceed 8 square feet in area.

b-3. For ventilation or other approved purposes, openings shall be located with not more than 2 feet of space from the face of the curb on the street line and shall not exceed 8 square feet in area.

c. If upon inspection the department finds any cover or grating which appears defective or unsafe for any reason whatsoever, the commissioner may order that a critical examination be performed by a registered architect or registered structural engineer employed by the owner or the agent. The registered architect or registered structural engineer shall submit a written report showing the structural condition of the cover or grating. Two copies of the report shall in turn be

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submitted to the commissioner. One copy of the report shall, if satisfactory to the commissioner, be returned to the owner or agent bearing a stamp of approval signed by the commissioner. All defects noted on the written report submitted by the registered architect or registered structural engineer shall be corrected by the owner within a time period mandated by the commissioner. A written report showing that all defects noted in the prior report have been corrected shall be submitted in duplicate to the commissioner by a registered architect or registered structural engineer. One copy of the report shall, if satisfactory, be returned to the owner or agent bearing a stamp that the correction report has been placed on file.

4. APPROVAL. a. No permit shall be issued by the commissioner for the construction of a street-walk basement unless such basement is first approved by the commissioner of public works.

b. The cost of protecting, altering or changing the location of any city-owned utilities to permit the construction of a street-walk basement shall be paid by the owner of the real estate abutting such basement.

5. REMOVAL. All street-walk basements used in connection with a building or structure shall be removed whenever such building or structure is removed or razed. Removal of such basements shall be construed to mean the removal of all work executed in the construction of the basement to the extent required by the commissioner of public works. After the street-walk basement is removed, the area shall be filled to grade and the street curb, street walk, pavement and other public improvements shall be restored. The type and placement of the fill and the construction of the curb, walk, pavement and other improvements beyond the street lot line shall be in accordance with the specifications and regulations of the department of public works. The owner of the premises affected shall be responsible for the removal of such basement (vault) and for the restoration of public improvements as herein regulated, and shall assume all costs and expenses attendant therewith.

245-6. Movable Awnings. 1. DEFINITION. "Movable awning" means a tractable rooflike shelter attached to the exterior wall of a building or structure in an approved manner, and so constructed and erected to permit being rolled,

collapsed or folded back to a position against the building or structure.

2. GENERAL REGULATIONS. All movable awnings erected on any building or structure and projecting beyond a street line shall comply with the regulations of this section.

3. LENGTH. There shall be no limitation on the length of a movable awning.

4. PROJECTION. The projection of a movable awning from the street line shall not exceed 1/2 the distance from street line to the curb line, but not more than 6 feet in any case. If a sidewalk is less than 12 feet in width, the awning may project 6 feet, but not closer than 2 feet to the curb line. Awnings shall not project into a public right-of-way which is less than 30 feet in width.

5. CLEARANCE. There shall be not less than 7 1/2 feet in the clear between any point of the frame of a movable awning and the sidewalk grade directly below.

6. CONSTRUCTION AND DESIGN.

a. Movable awnings shall be supported entirely by the building or structure to which they are attached.

b. The covering shall be of canvas, cloth or other approved material, which shall be sufficiently flame proofed.

c. Movable awnings shall be designed and supported to withstand snow and other loads of not less than 25 pounds per square foot and wind pressure of 20 pounds per square foot applied in any direction when the awning is not retracted.

d. Approved supporting structure shall be provided for the support and fastening of awnings.

7. SIGNS AND ADVERTISING DEVICES. No sign or advertising device shall be hung from, attached to, printed or painted on a movable awning unless the sign complies with the awning sign regulations of ch. 295.

8. REMOVAL. The owner shall remove or modify a movable awning whenever the city determines that the public convenience would be enhanced by such removal or modification as provided in s. 115-32-2. The owner shall not be entitled to damages relating to the removal or modification.

9. SUPPORTING STRUCTURE. Approved supporting structure shall be provided for the support and fastening of awnings.

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245-7. Awnings, Canopies and Sun Shades.

1. DEFINITION. In this section "awning, canopy or sun shade" means a roof-like structure attached to the exterior of a building or structure in an approved manner.

2. GENERAL REGULATIONS. Awnings, canopies and sun shades, when projecting beyond the street line shall comply with the regulations of this section. No awning, canopy or sun shade shall project into a public right-of-way which is less than 30 feet in width.

3. LENGTH. There shall be no limitation on the length of an awning, canopy or sun shade.

4. PROJECTION. The projection of an awning, canopy or sun shade from the street line shall not exceed 1/2 the distance from such street line to the curb line, but not more than 6 feet in any case. If a sidewalk is less than 12 feet in width, the awnings may project 6 feet, but not closer than 2 feet to the curb line.

5. CLEARANCE. There shall be not less than 7 1/2 feet in the clear between any point of an awning, canopy or sun shade and the sidewalk grade directly below.

6. CONSTRUCTION AND DESIGN. Awnings, canopies and sun shades shall be:

a. Constructed of noncombustible, rust-resistive materials. Awnings covered in cloth, canvas or other approved pliable material shall be sufficiently flame-proofed.

b. Supported entirely by the building or structure to which they are attached.

c. Designed and supported to withstand snow and other loads of not less than 25 pounds per square foot and wind pressure of 20 pounds per square foot applied in any direction.

7. SIGNS AND ADVERTISING. No sign or advertising device shall be hung from, attached to, printed or painted on an awning, canopy or sun shade unless the sign complies with the sign regulations of ch. 295.

8. EXISTING FIXED AWNINGS. All fixed awnings heretofore erected and projecting beyond the street line except fixed awnings covered under sub. 9, shall be made to conform to the regulations of this section, or they shall be removed within 30 days following the effective date of June 12, 2010.

9. AWNINGS IN THE HISTORIC THIRD WARD. An awning which is located in the Historic Third Ward District, as defined in s. 200-61-2-e, projects beyond the street line and

was in existence on December 16, 2003, may be maintained without a special privilege. The awning may also be repaired, altered or replaced without a special privilege, provided the projection from the street line is equal to that of the existing awning or the distance to the curb face, whichever is greater. The awnings shall be constructed in accordance with sub. 6. A permit shall be required for repair, alteration or replacement of an awning, but not for maintenance of an awning. Whenever a permit is required, the owner of the building to which the awning is attached shall:

a. Become primarily liable for damages to persons or property by reason of the granting of a permit for the awning.

b. Remove or modify the awning whenever the city determines that the public convenience would be enhanced by such removal or modification as provided in s. 115-32-2. The owner shall not be entitled to damages relating to the removal or modification.

245-10. Marquees. 1. DEFINITION. A marquee as herein regulated shall mean a rigid, flat, roof-like structure, affording shelter, attached to the exterior walls of a building or structure in an approved manner and erected only over an entrance to a building or structure.

2. GENERAL REGULATIONS. Marquees, when constructed and erected as regulated in this section, shall be permitted to project beyond a street line above the entry doorways of any building or structure, provided, however, that no such marquee shall project into a public thoroughfare which is less than 30 feet in width.

3. LENGTH. The length of marquees, measured parallel to the face of the building or structure to which attached, shall not exceed the width of the entrance doorway or doorways by more than 10 feet, but in no case shall the front face of such marquee be closer than 6 feet to an alley line or 3 feet to an intersecting street line.

4. PROJECTION. The projection of marquees from the street line shall not exceed a distance beyond one foot inside the face of the street curb.

5. CLEARANCE. There shall be not less than 10 feet in the clear between any point of a marquee and the sidewalk grade directly below.

6. CONSTRUCTION AND DESIGN.

a. Marquees shall be constructed of noncombustible materials throughout.

b. Marquees shall be supported entirely by the building or structure to which they are attached.

c. Marquees shall be designed and constructed to safely support a superimposed load of 80 pounds per square foot.

d. The roof of the marquee shall be made watertight and shall have a slope of not more than one in four. Such roofs shall slope and drain toward the building or structure and shall be provided with conductors connected with the house sewer or drain.

e. The vertical dimension of the side or front face of a marquee shall not exceed 8 feet.

7. SIGNS AND ADVERTISING DEVICES. No signs or advertising devices shall be hung from or attached to the bottom of a marquee, except that other signs or advertising devices may be attached to or made a part of the sides or front face of a marquee, as regulated in ch. 244 and in accordance with the regulations for hood signs in ch. 295. Illumination by means of recessed lighting fixtures or by other approved means shall be provided in soffits or marquees.

8. EXISTING MARQUEES. All marquees projecting 4 feet or less and being 32 square feet in size or smaller and heretofore erected prior to June 12, 2010 shall be made to conform to the regulations of this section when altered or replaced.

9. REMOVAL. The owner of a marquee shall remove or modify the marquee whenever the city determines that the public convenience would be enhanced by such removal or modification as provided in s. 115-32-2. The owner shall not be entitled to damages relating to the removal or modification.

245-11. Permits and Fees. 1. No person shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, raze or demolish any permissible projection regulated in s. 245-4-1 to 15, 17, 18, 20 to 24, 27 and 29, or any existing projections without first obtaining a permit therefor from the commissioner of city development and paying the fee as prescribed in s. 200-33.

2. Permits for the temporary occupancy and use of public thoroughfares, the cutting of street curbs, installation of driveways, the establishment of sidewalk area dining facilities and any construction therewith regulated in s. 245-16, 19 and 25, shall be

obtained pursuant to ch. 115 and by rules, fees and regulations established by the commissioner of public works.

245-12. Special Privileges. 1. COMPLIANCE. Privileges for an obstruction or excavation beyond the street line, other than those regulated by this chapter or by other ordinances, may be granted by the common council pursuant to s. 66.0425, Wis. Stats.

2. FIXED COSTS. Any person, firm, association or corporation desiring such special privileges shall file with the commissioner of public works a petition in writing on a form furnished for such purpose by the city engineer or the commissioner of city development, and shall pay to the city treasurer the fee as specified in s. 81-115, special privileges, for the purpose of defraying the cost of printing and other expenses which the city may incur in the consideration of such resolution for a special privilege, as regulated in s. 301-7.

3. PROVISIONS. A special privilege shall be granted only on condition that by acceptance of such special privilege the grantee shall:

a. Become primarily liable for damages to persons or property by reason of the granting of such special privilege.

b. The applicant shall file with the commissioner of public works a certificate of insurance indicating applicant holds a public liability policy in the sum of at least \$25,000 covering bodily injury to any one person, and \$50,000 covering bodily injury to more than one person in any one accident, and \$10,000 covering property damage to any one owner on the area or areas included within the special privilege, and naming the city of Milwaukee as an insured. The insurance policy shall provide that it shall not be cancelled until after at least 30 days' notice in writing to the commissioner of public works. In lieu of the insurance policy coverage, a public service corporation, or a cooperative association organized under ch. 185, Wis. Stats., to render or furnish telephone, gas, light, heat or power, or colleges and universities may file with the commissioner of public works proof of financial responsibility containing the conditions and giving the protection required in the public liability policy. Acceptance of the proof of financial responsibility shall be subject to approval by the city attorney upon consultation with the city comptroller.

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c. Pay to the city treasurer the annual fee fixed by the special privilege board.

d. Maintain a minimum sidewalk clearance of 5 feet, which shall be kept clear of all obstructions.

e. Remove such special privilege whenever public necessity so requires, and when so ordered by resolution adopted by the common council; such grantee shall not be entitled to damages for such removal.

f. Waive the right to contest in any manner the validity of s. 66.0425, Wis. Stats., or the amount of the annual fixed fee as determined by the special privileges board.

g. Put the special privilege into use within one year after approval by the common council. Should the grantee fail to do so, the commissioner may, by resolution, seek revocation of said privilege.

h. If the special privilege is for placement of one or more dumpsters in the public right-of-way, the grantee shall ensure that:

h-1. Each dumpster remains in the location for which the special privilege was granted.

h-2. No dumpster has rusted surfaces or is otherwise in a state of disrepair.

h-3. The lid or lids of each dumpster remain closed at all times except when refuse is being placed in the dumpster or the dumpster is being emptied.

h-4. No contents of a dumpster spill onto the public right-of-way.

h-5. No refuse remains on the ground on the perimeter of any dumpster

4. RECOMMENDATIONS. The common council shall refer all petitions for special privileges for consideration and recommendation to the commissioners of public works and neighborhood services for consultation with the commissioner of city development when the special privilege includes the extension of use.

5. AMENDMENTS. a. A grantee desiring to add items to or remove items from a special privilege shall file with the commissioner of public works a special privilege amendment petition in writing on a form furnished for this purpose by the city engineer or the commissioner of city development.

b. Any sale, transfer or conveyance of ownership of a property with a special privilege requires the new ownership to file with the

commissioner of public works a special privilege amendment petition in writing on a form furnished for this purpose by the city engineer or the commissioner of city development.

6. FIXED CHARGE EXEMPTIONS. The city of Milwaukee, county of Milwaukee, state of Wisconsin, and the United States of America and all political subdivisions thereof shall be exempt from the paying of the fixed charge made for the purpose of defraying the cost of printing and other expenses which the city may incur in the consideration of such resolution for a special privilege.

7. ENFORCEMENT; SANCTIONS. If the commissioner of public works determines that a person has failed to comply with the provisions of this section, the commissioner shall notify the person of the violation. If the person fails to comply with any order issued by the commissioner within 60 days of receipt of the order, or, in the case of a special privilege for placement of one or more dumpsters in the public right-of-way, within 24 hours of receipt of the order, the commissioner may assess the person a monthly enforcement fee under s. 200-33 until compliance is obtained. The fee may be assessed and collected as a special tax on the property or otherwise be collected as allowed by law. In addition, in the case of a special privilege for placement of one or more dumpsters in the public right-of-way, the common council may, by resolution, revoke the special privilege for failure to comply with any of the standards of sub. 3-h.

245-12.5. Special Privileges Board. A special privileges board is established consisting of 3 members: the mayor, the commissioner of public works and the city attorney. Any member may appoint a designee. The commissioner of neighborhood services shall act as secretary of the board. The special privileges board shall determine annual fees for special privileges grantees when fees are appropriate.

245-13. Roofed Sidewalks (Covered Walks).

1. DEFINITION. A roofed sidewalk or covered walk shall mean a rooflike structure, other than an awning, canopy, hood or marquee, erected over a sidewalk for the sole purpose of providing shelter for persons entering or leaving a public building.

2. GENERAL REGULATIONS. No roofed sidewalk (covered walk) shall be constructed or maintained beyond the street line without individual and specific rights and privileges granted by the common council, pursuant to s. 245-12 and s. 66.0425, Wis. Stats. The construction and location of such roofed sidewalks (covered walks) shall be in compliance with the terms and conditions set forth in the privilege. All privileges for such structure shall also comply with the standards and policy established by the common council.

3. SIGNS AND ADVERTISING DEVICES. No sign or advertising device shall be hung from, attached to, printed or painted on any part of a roofed sidewalk (covered walk). The name, street number, or character of the business may be indicated on the vertical portion only, not to exceed 8 inches in height.

245-14. Air and Subterranean Space Lease Structures. **1.** There is created a committee on air and subterranean space lease structures composed of the following or their designees:

- a. Commissioner of neighborhood services.
- b. Commissioner of public works.
- c. City engineer.
- d. Planning director, department of city development.
- e. City real estate agent.

1.5. An assistant city attorney shall be assigned to the committee by the city attorney to provide legal advice for the conduct of the committee and the drafting of the necessary documents.

2. Such committee shall have for its duties the coordination of all air space and subterranean lease requests which are made to the city of Milwaukee pursuant to s. 66.0915(3) and (4), Wis. Stats.

3. The committee shall design all forms to be used, and the commissioner of neighborhood services shall distribute application forms to those requesting the same. The members of the committee shall elect one of their members chair to preside over the committee for a term at the pleasure of the committee. Verbatim reports of the committee activities need not be kept unless the committee so decides. Completed applications shall be returned to the commissioner of neighborhood services or his or her representative on the committee, together with the building plans, plot plans and other data that will show the elevations, location, height and site of the

proposed structure, its relationship to adjoining buildings, and a memorandum of ownership showing the last recorded owner of all of the properties proposed to be joined by the air or subterranean space structure.

4. The application and additional submissions, in duplicate, shall be accompanied by the fee specified in s. 200-33, special privileges, etc., which shall be paid to the city treasurer, and the commissioner of neighborhood services shall submit the original of the application to the city clerk, who shall transmit the same to the common council for introduction at its next regularly scheduled meeting. A combination air space and subterranean lease shall require individual leases and a separate application and fee shall be required for each. Such fee shall not be returnable, nor shall such fee be waived at any time. The council, on receipt thereof, shall refer the same jointly to an appropriate committee of the common council, the city plan commission and the special committee on air and subterranean space lease structures, and shall be transmitted to the special committee for investigation.

5. The special committee may meet with the applicant from time to time, and may request additional information, maps, drawings, documents, plans and other information from the applicant relative to the request. When the special committee completes its investigation, it shall make a written report thereof, attach it to the common council file and transmit same to the city plan commission.

6. Upon receipt of the entire file from the special committee, the city plan commission shall review the same, make its recommendations thereon in writing, attach such recommendations to the file and return such file to the special committee. Upon receipt thereof, the special committee shall transmit the entire file including the suggested lease fee to the committee of the common council to which it was referred.

7. The common council committee may make further references of the file to such other boards, commissions or officers for any further information that it may deem necessary, or may return the file to the special committee with instructions or for additional information.

8. This section is intended to be procedural only and is not intended to supersede or nullify any other section of the Milwaukee code, or the building and zoning code.

**245-- (HISTORY) Encroachments, Projections And
Special Privileges**

**LEGISLATIVE HISTORY
CHAPTER 245**

Abbreviations:

am = amended
cr = created

ra = renumbered and amended
rc = repealed and recreated

rn = renumbered
rp = repealed

<u>Section</u>	<u>Action</u>	<u>File</u>	<u>Passed</u>	<u>Effective</u>
Ch. 45	rc	77-558	7/26/77	8/12/77
45-4-2	am	82-1876	2/15/83	3/3/83
45-4-3	am	82-1876	2/15/83	3/3/83
45-4.5	cr	79-559	10/23/79	11/8/79
45-4.6	cr	79-1565	12/21/79	1/8/80
Ch. 245	rn from ch. 45	85-1396	12/20/85	1/1/86
245-1	am	85-1396	12/20/85	1/1/86
245-1-5	cr	091615	5/25/2010	6/12/2010
245-1-6	cr	091615	5/25/2010	6/12/2010
245-3	am	85-1396	12/20/85	1/1/86
245-3-1	am	86-676	7/29/86	8/16/86
245-3-1	am	980963	12/18/98	1/1/99
245-3-2	am	980963	12/18/98	1/1/99
245-4	am	85-1396	12/20/85	1/1/86
245-4	rc	091615	5/25/2010	6/12/2010
245-4.5	rc	091615	5/25/2010	6/12/2010
245-4.6	rp	091615	5/25/2010	6/12/2010
245-4.7	cr	170930	10/17/2017	11/3/2017
245-4-10	am	991763	5/14/2002	10/1/2002
245-4-12	am	882295	5/16/89	6/3/89
245-4-14.5	cr	86-979	10/14/86	10/31/86
245-4-19	am	020467	8/1/2002	8/20/2002
245-4-21	am	991763	5/14/2002	10/1/2002
245-4-28	cr	980249	6/16/98	7/3/98
245-4-29	cr	030307	11/25/2003	12/16/2003
245-4-30	cr	081573	5/5/2009	5/22/2009
245-4.5-2	am	85-1396	12/20/85	1/1/86
245-4.5-2-a	am	921114	11/20/92	12/11/92
245-4.5-2-a	am	991763	5/14/2002	10/1/2002
245-4.5-4	am	031602	6/15/2004	7/2/2004
245-4.6-1	am	980963	12/18/98	1/1/99
245-4.6-3	am	980963	12/18/98	1/1/99
245-4.6-4	am	85-1396	12/20/85	1/1/86
245-4.6-4-a	am	980963	12/18/98	1/1/99
245-4.7	cr	170930	10/17/2017	1/1/2018
245-5-1	am	85-1396	12/20/85	1/1/86
245-5-2	am	85-1396	12/20/85	1/1/86
245-5-3	am	85-1396	12/20/85	1/1/86
245-5-3-c	cr	990819	5/19/2000	6/8/2000
245-5-4	am	85-1396	12/20/85	1/1/86
245-5-4	am	120914	11/8/2012	1/1/2013
245-5-4-a	am	980963	12/18/98	1/1/99
245-6	rc	091615	5/25/2010	6/12/2010
245-6-7	am	86-676	7/29/86	8/16/86
245-6-7	rc	991763	5/14/2002	10/1/2002
245-6-7	rc	021287	5/13/2003	5/30/2003
245-6.5	cr	86-676	7/29/86	8/16/86

**Encroachments, Projections And
Special Privileges 245 - (HISTORY)**

245-6.5	rp	091615	5/25/2010	6/12/2010
245-6.5-7 and 8	rn	871339	10/27/87	11/13/87
245-6.5-7	cr	871339	10/27/87	11/13/87
245-6.5-7	rc	991763	5/14/2002	10/1/2002
245-6.5-7	rc	021287	5/13/2003	5/30/2003
245-7	am	85-1396	12/20/85	1/1/86
245-7	rc	091615	5/25/2010	6/12/2010
245-7-7	rc	991763	5/14/2002	10/1/2002
245-7-7	rc	021287	5/13/2003	5/30/2003
245-7-8	am	030307	11/25/2003	12/16/2003
245-7-9	cr	030307	11/25/2003	12/16/2003
245-8	am	85-1396	12/20/85	1/1/86
245-8	rp	091615	5/25/2010	6/12/2010
245-8-7	am	991763	5/14/2002	10/1/2002
245-9	am	85-1396	12/20/85	1/1/86
245-9	rp	091615	5/25/2010	6/12/2010
245-9-7	am	991763	5/14/2002	10/1/2002
245-10	am	85-1396	12/20/85	1/1/86
245-10-1	am	091615	5/25/2010	6/12/2010
245-10-7	am	991763	5/14/2002	10/1/2002
245-10-7	am	091615	5/25/2010	6/12/2010
245-10-8	cr	091615	5/25/2010	6/12/2010
245-10-9	cr	091615	5/25/2010	6/12/2010
245-11	am	85-1396	12/20/85	1/1/86
245-11	am	091615	5/25/2010	6/12/2010
245-11-1	am	980963	12/18/98	1/1/99
245-11-2	am	881465	11/11/88	12/9/88
245-11-2	am	980249	6/16/98	7/3/98
245-12	am	85-1396	12/20/85	1/1/86
245-12-1	am	001458	2/27/2001	3/16/2001
245-12-2	am	881930	3/7/89	3/25/89
245-12-2	am	980963	12/18/98	1/1/99
245-12-2	rc	091268	2/9/2010	2/26/2010
245-12-2	rc	091665	5/4/2010	7/20/2010
245-12-3-b	am	86-342	7/29/86	8/16/86
245-12-3-b	am	080754	10/7/2008	10/24/2008
245-12-3-b	am	081687	5/5/2009	5/22/2009
245-12-3-b	am	091665	5/4/2010	7/20/2010
245-12-3-c	am	980963	12/18/98	1/1/99
245-12-3-c	am	051188	1/18/2006	2/4/2006
245-12-3-d	rn to	061340	4/17/2007	5/4/2007
	245-12-3-e			
245-12-3-d	cr	061340	4/17/2007	5/4/2007
245-12-3-e	am	001458	2/27/2001	3/16/2001
245-12-3-e	rn to	061340	4/17/2007	5/4/2007
	245-12-3-f			
245-12-3-f	am	980963	12/18/98	1/1/99
245-12-3-f	rn to	061340	4/17/2007	5/4/2007
	25-12-3-g			
245-12-3-h	cr	170930	10/17/2017	1/1/2018
245-12-4	rc	86-1461	4/7/87	4/24/87
245-12-4	am	980963	12/18/98	1/1/99
245-12-5	rn to	081687	5/5/2009	5/22/2009
	245-12-6			
245-12-5	cr	081687	5/5/2009	5/22/2009
245-12-5	am	091665	5/4/2010	7/20/2010

**245-(HISTORY)-Encroachments, Projections And
Special Privileges**

245-12-7	cr	081687	5/5/2009	5/22/2009
245-12-7	rc	091665	5/4/2010	7/20/2010
245-12-7	am	170930	10/17/2017	1/1/2018
245-12-7	am	171140	11/28/2017	1/1/2018
245-12.5	cr	051188	1/18/2006	2/4/2006
245-13	am	85-1396	12/20/85	1/1/86
245-13-2	am	001458	2/27/2001	3/16/2001
245-14	am	85-1396	12/20/85	1/1/86
245-14-1	rc	051188	1/18/2006	2/4/2006
245-14-1-a	am	980963	12/18/98	1/1/99
245-14-1.5	cr	051188	1/18/2006	2/4/2006
245-14-2	am	001458	2/27/2001	3/16/2001
245-14-3	am	980963	12/18/98	1/1/99
245-14-3	am	151199	3/29/2016	4/15/2016
245-14-4	am	871340	10/27/87	1/1/88
245-14-4	am	980963	12/18/98	1/1/99
245-14-4	am	151199	3/29/2016	4/15/2016

[Pages 425-426 are blank]

CITY OF BURLINGTON - ENCROACHMENT POLICY

I. INTRODUCTION

1. This policy establishes the City of Burlington's position with regard to proposed encroachments and private use of the public right of way within the corporate limits of Burlington, Iowa. In the context of this policy "public right of way" refers to the area on, below, and above all public sidewalks, street right of way, and alley right of way. For the purposes of this policy, all parkland and all other property owned or controlled by the City of Burlington shall be defined as public right of way, and shall be in compliance with the requirements of this policy.
2. This Encroachment Policy solely covers encroaching on the public right of way and by no means covers permits or licenses required by individuals or businesses to bring or have merchandise to sell within the corporate limits of the City of Burlington.

II. GOALS AND OBJECTIVES

1. To ensure the public continues to have aesthetically pleasing views as well as safe areas to walk and drive.
2. To protect and preserve the sidewalks, streets, and all other property owned or controlled by the City of Burlington.
3. To promote a consistent policy of reducing and minimizing encroachments on the public right of way.
4. To establish consistent and objective criteria for assessing each existing encroachment as well as future encroachments, and to accept these encroachments where exceptional circumstances apply.
5. To encourage appropriate outdoor activity in the public right of way, to ensure future private uses of public right of way are for the better of the community, and to guarantee adequate space for pedestrians and motorists for safe travel.
6. To establish a uniform application process and solution for all encroachment on the public right of way.

III. DEFINITIONS

For use in this policy, the following terms are defined:

1. Encroachment
 - A. Webster's Definition – To intrude or infringe upon the property of another.
 - B. An individual or business setting anything on, below, or above the public right of way as defined in section 1.0 (Goals and Objectives). Encroachments can be temporary, permanent, and vertical in nature.
2. Public Right of Way

- A. Webster's Definition – Land owned or controlled by a government usually over which facilities such as roads, highways, railroads, or power lines are built.
 - B. An example would be in most cases the area between the street and the furthest edge of the sidewalk.
- 3. Temporary Encroachment
 - A. Any item placed on the public right of way that is not permanent or fixed in nature and can be moved from one location to another.
 - B. Examples include but are not limited to tables, chairs, grills, furniture, clothing racks, signs, planters, and benches that can be moved.
- 4. Permanent Encroachment
 - A. Any item permanently attached to the ground or buried underneath the ground on the public right of way. The item is considered permanent if it cannot be relocated without special equipment or large expense due to the item's size or weight or if it is not the intent of the applicant to move the item after it is in place.
 - B. Examples would include but are not limited to benches, planters, railings, ramps, steps, or stairs that are permanently attached to the ground, and pipes or cables that can be buried underneath the ground.
- 5. Vertical Encroachment
 - A. Any item that projects over the public right of way and is located eight feet (8') above grade or higher.
 - B. Examples would include, but are not limited to signs, banners, flags, and awnings.
- 6. Sidewalk Café
 - A. An outdoor area of an adjacent business that may be located upon City right-of-way and allows tables and chairs for dining and seating.
- 7. Special Event
 - A. Webster's Definition - Something designed for a particular occasion.
 - B. Examples would include but are not limited to Steamboat Days, Taste of Burlington, Snake Alley Criterium, and Heritage Days.

IV. APPLICATION PROCEDURE AND FEES

- 1. Temporary Public Right of Way Encroachment Permit
 - A. An application can be obtained in the Development Department Office.
 - B. Permit Fee
 - (i) \$25.00 three (3) day permit fee.
 - (ii) \$50.00 one (1) week permit fee.
 - (iii) \$125.00 three (3) month permit fee.
 - (iv) \$200.00 six (6) month permit fee.

- C. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately shows the location, height, nature and extent of all proposed objects or improvements within the encroachment area. This includes any mechanical devices, signs, tables, chairs, grills, furniture, clothing racks, planters, benches, etc. The site plan should also include all existing fixed features such as tree wells, sign posts, parking meters, fire hydrants, etc. within twenty-feet (20') of the encroachment area.
 - D. A copy of a current Health Department Certificate, if selling food or drink.
 - E. If applicable, a written statement from all adjacent property owners who are giving permission for the applicant to place the encroachment in front of their property.
 - F. A temporary encroachment permit application will go to the Development Department for review and will then be forwarded to the City Manager for approval; this process will take approximately five (5) to ten (10) days.
2. Permanent Public Right of Way Encroachment Permit
- A. An application can be obtained in the Development Department Office.
 - B. \$25.00 non-refundable administrative fee is required.
 - C. Permit Fee
 - (i) Commercial/Industrial - \$275.00 permit fee.
 - (ii) Residential - \$ 55.00 permit fee.

In addition to the fees stated above, any fixed features stated in subsection (e.) shall be moved or replaced at the property owners expense when required as part of approving the encroachment contract.
 - D. No renewal fee will be required.
 - E. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately shows the location, height, nature, and extent of all proposed objects or improvements within the encroachment area. This includes any mechanical device, benches, planters, railings, ramps, steps or stairs, etc. The site plan should also include all existing fixed features such as tree wells, sign posts, parking meters, fire hydrants, etc. within twenty-feet (20') of the encroachment area.
 - F. The Applicant must provide the Development Department with a list of all adjacent property owners. The department will then notify these property owners of the proposed encroachment and the date of public hearing.
 - G. A permanent encroachment permit application will go to the City Council for approval by public hearing, which will take approximately forty five (45) to sixty (60) days.
3. Vertical Public Right of Way Encroachment Permit
- A. An application can be obtained in the Development Department Office.

- B. \$25.00 non-refundable administrative fee is required.
- C. \$75.00 permit fee is required.
- D. No renewal fee will be required.
- E. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately shows the location, height, nature, and extent of all proposed objects or improvements within the encroachment area. This includes any signs, banners, flags, awnings, etc. that are attached to the side of the building and are located vertically between the item and the ground. The site plan should also include all existing fixed features on the ground such as tree wells, sign posts, parking meters, fire hydrants, etc. within twenty-feet (20') of where the item would project over the public right of way.
- F. The application shall be accompanied by all sign and building permits and all other permit applications that are required by Municipal Code.
- G. A vertical encroachment permit application will go to the Development Department for review and will then be forwarded to the City Manager for approval; this process will take approximately five (5) to ten (10) days.

4. Sidewalk Café:

- A. An application can be obtained in the Development Department Office.
- B. Permit Fee: \$25.00 fee is required
- C. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately shows the location, height, nature and extent of all proposed objects or improvements within the encroachment area. This includes any mechanical devices, signs, tables, chairs, grills, furniture, clothing racks, planters, benches, etc. The site plan should also include all existing fixed features such as tree wells, sign posts, parking meters, fire hydrants, etc. within twenty-feet (20') of the encroachment area.
- D. A copy of a current Health Department Certificate, if selling food or drink.
- E. If applicable, a written statement from all adjacent property owners who are giving permission for the applicant to place the encroachment in front of their property.
- F. A Sidewalk Cafe application will go to the Development Department for review and will then be forwarded to the City Manager for approval; this process will take approximately five (5) to ten (10) days.

V. PERMIT CONDITIONS

1. Permit Required

- A. A permit shall be required for any type of encroachment in the public right of way, except for those encroachments that are identified as exempt by section 8.0 (Prohibited and Exempt Encroachments), item 2. (Exempt.) of this policy.

2. Conditions
 - A. The City of Burlington City Manager, Development Department, or Council shall have the authority to apply any other conditions not found in this policy to the approval of a permit seen as needed to ensure compliance with the intent of this policy.
3. Zoning
 - A. Permits shall only be granted for encroachments that are used for purposes allowed in the zoning district where the encroachment will be located. See Municipal Code Chapter 17.20 (District Regulations) for a list of allowed uses in each zoning district.
4. Allowable Uses
 - A. Encroachments shall only be allowed in public right of way provided they can meet all city standards, codes, and policies.
5. Historic Circumstances
 - A. Encroachments may be permitted where older properties were built across the public right of way or right up to the public right of way and prohibiting the encroachment would impair use, privacy, or security of the structure.
6. Special Events
 - A. Any temporary encroachment occurring at the time slated for the special event shall be made a part of the special event application to the City Manager's Office. No individual encroachments shall be granted during an approved Special Event (as herein defined).
7. Permit Transfer for Change of Property Ownership.
 - A. No temporary encroachment permits shall be transferred.
 - B. Permanent encroachment permits may be transferred if the existing owner notifies the City of his/her intent to transfer or sell property for which an encroachment permit has been issued. The city must be notified of this according to the termination procedures stated in the encroachment contract thirty (30) days before the date of sale or transfer of the property.
 - (i) The proposed permit transfer will be reviewed by the Development Department and will be forwarded to the City Manager for approval. Approval or modification of the permit is based on compliance with this policy and the overall goals, objectives, and interests of the city. This process will take approximately ten (10) to fifteen (15) days.
 - (ii) If approved or modified, the new owner shall have thirty (30) days after the date of sale or transfer of ownership to sign the contract and submit a copy of Certificate of Insurance that is in compliance with item 9. (Insurance.) of this section. The copy shall be submitted to the Development Department.

- (iii) There is no fee associated with a permit transfer that is completed within the time frames set above, however; failure to transfer the encroachment permit within the time allotted will cause the permit fee to be paid.
 - (iv) If the new owner does not sign a contract, the terms and conditions of the existing contract will still apply to the original owner of the property.
- 8. Indemnification
 - A. The permit holder shall defend, indemnify and hold the City and its employees harmless from and against any loss or damage arising from the use or existence of an encroachment or improvement authorized under this permit.
- 9. Insurance
 - A. The permit holder shall be required to provide insurance and have named on a Special Endorsement Form, the City, its elected boards, officers, agents, and employees as additional insured's; the minimum insurance requirement is \$500,000. Proof of insurance is required prior to constructing or placing an approved encroachment.
 - B. The Certificate of Insurance shall also contain provisions that prohibit cancellations, modifications, or lapse without thirty (30) days written notice to the City.

VI. LOCATION REQUIREMENTS

- 1. Horizontal Clearance
 - A. When encroachments are on pedestrian paths, the following development standards shall apply; however, these requirements may be modified at the discretion of the City in locations where unusual circumstances exist and where public safety would be jeopardized.
 - B. As used herein, pedestrian pathways means a continuous obstruction free sidewalk area, paved to City standards, between the outside boundary of the encroachment and any obstruction, including but not limited to parking meters, streets, trees, landscaping, street lights, bus benches, public art, and curb lines.
 - (i) Encroachments shall not interfere with the view of pedestrians or motorists on or adjacent to the public right of way and shall not create a traffic hazard.
 - (ii) Encroachments shall maintain a minimum of four feet (4') in unobstructed sidewalk width to maintain pedestrian circulation.
 - (iii) Encroachments shall maintain a minimum of six feet (6') in unobstructed sidewalk width to maintain heavy pedestrian traffic.
- 2. Vertical Clearance
 - A. When encroachments are located above/over the public right of way the following development standards shall apply; however, these requirements may be modified

at the discretion of the City in locations where unusual circumstances exist and where public safety would be jeopardized.

(i) Vertical encroachments shall be located eight feet (8') or more above the public right of way, measured from grade to the lowest point of the encroaching item.

(ii) Vertical encroachments shall be no closer than two (2') feet from a curb line measured horizontally.

3. Extension to Adjacent Properties.

- A. No temporary permit holder will be allowed to extend onto the property of an adjacent home or business without the written consent of that business or resident, the property owner, and by obtaining City approval.
- B. Any permit holder wishing to extend outside of the adjacent property, see sections of City Code on Solicitor, Transient Merchant, Peddler or Special Event Permits.

4. Street Intersection Setbacks.

- A. Encroachments shall not be placed within twenty-five feet (25'), measured back in either direction, from the corner of a street intersection in order to preserve a clear vision zone for pedestrians and motorists. (No item shall also exceed a height of two and a half feet (2 and 1/2') to eight feet (8') above grade, measured from the point of intersection of the public right of way.) See Municipal Code Chapter 170.10 (General Provisions and Definitions), Chart B, for a diagram of the clear zone.)
- B. See Municipal Code Chapter 170.30.20 (Bulk Regulations) for additional setback requirements.

5. Alley Right of Way Setbacks.

- A. Permanent encroachments into alley right of ways shall be limited to alleys that are sixteen feet (16') or greater in width.
- B. Permanent encroachments shall be limited to secondary exit ways and shall not encroach into the alley right of way more than three feet (3'), provided that structures, such as fire escapes, utility lines, and balconies placed at or above a height of sixteen feet (16') above grade shall be exempt from the three foot (3') width requirement.
- C. A twenty-five foot (25') setback shall be required from the entrance or exit of the alley right of way onto a public street.

VII. DESIGN STANDARDS

1. Barriers

- A. No barriers shall be required if the applicant proposes to limit the encroachment area and no alcohol will be served.

- B. Encroachments that serve alcoholic beverages must provide a physical barrier that meets the requirements of this policy and all other requirements of the Iowa Alcoholic Beverage Division.
 - (i) Barriers should complement the building façade as well as any street furniture, be somewhat transparent and shall be able to withstand inclement weather.
 - (ii) Barriers shall be capable of being removed through the use of recessed sleeves and posts, wheels that can be locked into place, or weighted bases.
 - (iii) The height of any barrier shall be a minimum of three feet (3’).
- 2. Awnings and Umbrellas
 - A. The use of awnings over an encroachment may be permitted per the Municipal Code. Removable umbrellas may be permitted per the Municipal Code, provided they do not interfere with street trees, signs, or the view from inside a structure. No freestanding awning will be allowed unless it will meet required setbacks and will not distract from or obstruct the view of motorists and pedestrians.
- 3. Lighting
 - A. Outdoor lighting fixtures may be permitted for permit holders, provided they are not glaring to pedestrians or motorists on the adjacent right of way. Outdoor lighting may be installed on the façade of the building with an electrical permit per the Municipal Code and completed by a licensed electrician. Freestanding electrical fixtures shall not be permitted in the public right of way. Battery operated lamps or candles will be permitted.
- 4. Design
 - A. The design, material, and colors used for any part of an encroachment should complement the architectural style of the building façade and street furniture.
- 5. Signs
 - A. All signs must meet the regulations of this policy and all other regulations of the City, including the Municipal Sign Code, Chapter 17.75 (Signs).
- 6. Sidewalk Café
 - A. Sidewalk Cafes must be part of an existing business and must be used for purposes allowed in the zoning district where the encroachment will be located.
 - B. Sidewalk café areas must be contiguous with a side of a building wherein the establishment is located
 - C. Sidewalk café hours of operation are limited, typically between 7 AM and 11 PM, or whenever the kitchen of the adjoining business closes.
 - D. If permanent improvements are proposed as part of the sidewalk café, the City may require a bond or some other form of guarantee to ensure the restoration of the sidewalk as a condition of lease and/or may require a permanent encroachment.

- E. The café owner is responsible for trash removal and shall maintain the area and surrounding five feet in a clean and litter free manner during all hours of operation.
- F. Sidewalk cafes may not extend beyond the building line and may not be located on street corners as defined by building lines extending to the street.
- G. No blockage of building entrances or exists is permitted in a sidewalk café area.
- H. A minimum 5-foot unobstructed sidewalk clearance shall be maintained adjacent to any approved sidewalk café area for public pedestrian use.
- I. Occupancy limits are determined as set forth in the City building codes.
- J. The city retains the right to terminate any sidewalk café agreement after written notice is given to the property owner for reasons including but not limited to: violations of state and liquor control laws, violations of any agreements, creating a safety hazard, creating a health hazard, or creating a nuisance
- K. Other Encroachment conditions, requirements, and standards apply as applicable.

VIII. CONDITIONS OF USE

1. Daily and Seasonal Maintenance

- A. All encroachment permit holders shall keep the area surrounding the encroachment clear of liter. At the end of each day the encroachment area shall be picked up, cleaned, and swept. No debris shall be swept, washed or blown into the sidewalk, gutter, street, or alley.
- B. All encroachment permit holders shall maintain the area around the encroachment during all weather conditions including but not limited to snow and ice removal.
- C. If the permit holder will be providing food or drink, the permit holder must provide private trash receptacles. Private trash receptacles shall be emptied daily. Receptacles shall be placed immediately adjacent to the encroachment, but not in the path of pedestrians.
- D. City trash receptacles may not be substituted for private receptacles.

2. Prohibited Locations and Times.

- A. None of the above defined will be allowed to set up or move about for the purpose of sales, storage, etc. in the public right of way without meeting all requirements of this policy and the Municipal Code.
- B. Permit holders shall not encroach on public right of way during City scheduled clean up and maintenance days.
- C. Temporary permit holders will only be allowed to operate during the hours of dawn to dusk unless stated otherwise on the permit.

3. Removal

- A. All temporary encroachments shall be removed at the end of each business day unless permission has been granted with the approval of the application.

- B. Removal of encroachment will be enforced year-round.
- 4. Displaying Contracts
 - A. All temporary permit holders must have on hand the signed encroachment contract as well as all required licenses, certificates, and permits while encroaching on the designated public right of way. All permanent and vertical encroachment permit holders must have readily available the signed encroachment contract as well as all required licenses, certificates, and permits.
- 5. Inspection.
 - A. Any City Official may inspect an encroachment or improvement in a public right of way, to ensure compliance with this policy and all other Municipal policies and codes, at any time without notice to the holder.

IX. PROHIBITED AND EXEMPT ENCROACHMENTS

- 1. Prohibited
 - A. Encroachments that violate any section of this policy or the Municipal Code unless stated otherwise herein.
 - B. Encroachments will be prohibited where there is an issue of safety. Instances include, but are not limited to soil erosion, protected areas, fenced land, steep slopes, emergency vehicle access areas, and motor vehicle or pedestrian safety areas.
- 2. Exempt
 - A. Encroachments of the following nature will be exempt from this policy.
 - (i) Government required breakaway mailboxes approved by the U.S. Postal Service that are supported by a wood post no greater in cross section than four inches square or by a post with strength no greater than a two-inch diameter standard steel pipe. Two posts may be used to support a cluster of four or more mailboxes.
 - (ii) Traffic signs, traffic signals, streetlights, barricades for street and sidewalk repair, all public utility infrastructure, all seasonal lights and decorations, and all other infrastructure owned by the federal government; any governmental agency, organization, and institution created by the federal government; the State of Iowa; and all political subdivisions of the state, including the City of Burlington.
 - (iii) Official newspaper machines when all adjacent property owners have given permission for the machine owner to place the encroachment in front of their property.
 - (iv) Fire escapes and balconies placed at or above eight feet (8') measured from grade to the lowest point of the item.

X. TERM OF PERMIT

1. Pre-existing Encroachments

- A. All pre-existing permanent, temporary, and vertical encroachments shall be, upon adoption of this policy, allowed, subject to any previous agreement and conditions made between the City of Burlington and the Responsible Party.
- B. If no agreement was ever made between the City of Burlington and the Responsible Party prior to February 2000, the property owner must submit an application according to this policy within two (2) weeks of being notified by city staff of the violation.
- C. Failure to submit an encroachment application with the city two (2) weeks after being notified shall cause the removal of the encroachment. City staff shall have the authority to remove said encroachments and charge all costs to the property owner.
- D. Valid permits shall remain in effect until modified, expired, or revoked.

XI. VIOLATION/REMEDY

- 1. In the event that a permit holder fails to abide by the provisions of this policy or the terms and conditions of the permit, the City Manager may revoke or abate any permit upon proper notice.
- 2. The permit holder or property owner shall pay all costs incurred by the City in abating any encroachment or improvement.

PUBLIC WORKS

RULES & REGULATIONS

OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS, CITY & COUNTY OF DENVER

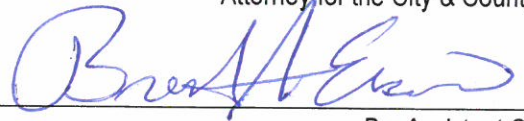
Adopted Pursuant to Article II
of the Charter of the City &
County of Denver and Section
2-91 et seq. of the Revised
Municipal Code

ENCROACHMENTS IN THE PUBLIC RIGHT OF WAY

Date Advertised November 7, 2014
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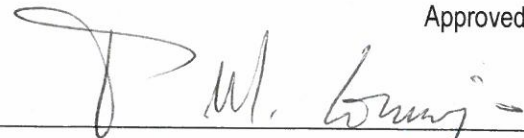
Approved as to form:
D. Scott Martinez

Attorney for the City & County of Denver



By, Assistant City Attorney

Approved & Adopted



Jose Cornejo, P.E.

Executive Director of Public Works

12/15/2014

Effective Date

ENCROACHMENTS IN THE PUBLIC RIGHT OF WAY

Under the authority of the Denver City Charter, Article II; the Denver Revised Municipal Code (DRMC), Chapter 49; and by other City Ordinances and Regulations, the Denver Department of Public Works manages the Public Right of Way (ROW).

ROW is public property specifically dedicated for the purposes of constructing, reconstructing, owning, and repairing public thoroughfares such as streets, alleys, sidewalks, and trails for transportation, utilities, and other public infrastructure. When there is a need to locate privately owned improvements in the ROW (Encroachments), certain conditions must be met.

The intent of this document is to categorize Encroachments into Tiers, and to establish criteria and general conditions for placement of Encroachments in the ROW. Additionally, details the application, and review process and identifies other City permits that may be required when encroaching into the ROW with private improvements.

Encroachments are categorized into one of three (3) Tiers depending on the significance of the encroachment:

Tier I Encroachment:

(Pages 3-11)

Encroachments that meet the specific criteria contained in the Tier I section of this document. There is no review process for a Tier I Encroachment; however, Street Occupancy and Construction permits may be required. For permit information contact PW Construction Inspections at (303) 446-3469.

Examples:

- **Art/Sculptures**
- **Awnings without poles**
- **Landscaping and Planters**
- **Stairs/Ramps**
- **Temporary Shoring**
- **Sewers and Pretreatment devices**

Processing time: 3-5 days for Revocable Street Occupancy and/or Street Cut Permit

Tier II Encroachment:

(Pages 12-15)

Encroachments that due to their significance require a formal review process, including application, fee, review process, issuance of a Tier II Encroachment Permit, and recordation of the Tier II Permit. Tier II Encroachments do not require approval by City Council.

Examples:

- **Awnings with poles**
- **Roadway vaults**
- **Signs that do not qualify as Tier I**
- **Mail Kiosks**

Processing time: 4-6 weeks

Tier III Encroachment:

(Pages 16-18)

Encroachments that are substantial in nature and due to the complexity require a formal review and City Council approval. Tier III Encroachments are defined as an expansion of a private use into the ROW, typically substantial building elements. Tier III Encroachments require an application, fee, review, and adoption and recordation of a City Council Resolution.

Examples:

- **Below grade parking garages**
- **Caissons**
- **Elevated or Enclosed patios**
- **Loading Docks**
- **Structural Retaining walls**
- **Pedestrian Bridges**

Processing time: 10-12 weeks

Permit Resources:

Prior to placing an Encroachment in the ROW, a Street Cut and/or Revocable Street Occupancy Permit may be required. Permit Request forms can be found at:

<http://www.denvergov.org/tabid/442455/Default.aspx>

Acronyms contained in this document

AASHTO – American Association of State & Highway Transportation Officials
ADA / ADAAG – Americans with Disabilities Act/ Accessibility Guidelines
CASDP – Construction Activities Stormwater Discharge Permit
CCD – City and County of Denver
CDOT – Colorado Department of Transportation
CP – Right of Way Construction Permit
CPD –Community Planning & Development, a department in the City and County of Denver
DEH – Department of Environmental Health, a department in the City & County of Denver
DPR – Department of Parks & Recreation, a department in the City & County of Denver
DRMC – Denver Revised Municipal Code
DS – Development Services, a division of CPD
GPS – Global Positioning System
MUTCD – Manual on Uniform Traffic Control Devices
PW – Department of Public Works, a department in the City & County of Denver
ROW – Right of Way
RSOP – Revocable Street Occupancy Permit
SCP – Street Cut Permit
SUDP – Sewer Use and Drainage Permit
TCRP – Table Chair and Railing Permit

General Definitions

Bollard – Any small vertical element such as decorative steel or iron pole, or a short concrete column intended to allow pedestrian traffic, but to restrict vehicular traffic. Bollards are normally used in groups to indicate an edge between pedestrian and vehicular areas.

Encumbrance – See Encroachment

Enclosed Patio – A patio closed in on all sides by material such as canvas, wood, or glass.

Encroachment – Privately owned improvements that are located in, or project into the Public Right of Way.

Flow Line – At vertical curbs, flow line is defined as the base of the curb. For sloped curbs, flow line is defined as the base of the slope. If no curb exists, flow line is defined as the edge of the pavement.

Intersection Corner Sight Triangles – Specified areas along intersection approach legs and across their included corners that are clear of obstructions that might block a driver's view of potentially conflicting vehicles. The dimensions of the legs of the sight triangles depend on the design speeds of the intersecting roadways and the type of traffic control used at the intersection, as defined by AASHTO in the "Policy on Geometric Design of Highways and Streets". At no time shall the minimum dimensions of the Intersection Corner Sight Triangle be less than a shape starting at the convergence of the two intersecting streets' flow lines, and running back along each flow line for a total distance of 30 feet.

Median – The area of raised paving or planting typically running down the center of a street, separating the directions of traffic.

Pedestrian Sight Triangle – The pedestrian sight triangle is defined as a 10 foot leg located at the edge of any intersecting driveway or alley and a 10 foot leg located at the back of the sidewalk.

Right of Way or ROW - An area of land owned or controlled by CCD dedicated by City Council for the purposes of constructing, operating and maintaining public facilities such as streets, alleys, sidewalks, and bike paths for the needs of transportation, utilities and other public infrastructure.

Sidewalk – Any surface provided for use by pedestrians.

Maintenance Entity – A legal entity, such as a Homeowners Association, with a defined purpose of maintaining specific Encroachments installed in the ROW.

Tree Lawn/Amenity Zone – Includes the following three areas: 1) Between the back of curb to the curbside of sidewalk, 2) Where no curb or sidewalk exist, the entire area between property line and the paved portion of street or alley.

Utility Company – An entity that owns, operates, or maintains utilities in the ROW.

Zone Lot – Land designated as the building site for a structure and/ or the site for a land use or activity by CPD. CCD uses the zone lot as the basic land unit for zoning review and permitting.

Tier I Encroachment

Tier I Encroachment	<p>Encroachments that meet the specific criteria contained in this section. No review of a Tier I Encroachment is required, provided the criteria and general conditions are met. Encroachments that do not meet the criteria of a Tier I Encroachment will be classified as Tier II or Tier III Encroachment as defined in this document, or so categorized through an official determination.</p> <p>Typically, a Tier I Encroachment in the ROW will require a Revocable Street Occupancy Permit (RSOP). Upon request for a RSOP, the Construction Inspector reserves the right to re-assign the Encroachment to require a review under Tier II requirements. Careful coordination must be taken to ensure that all applicable CCD and non-CCD permits are obtained as required.</p>
Authority	<p>City Charter, Article II; and DRMC, Chapter 49</p>
Insurance and Indemnification	<p>As a condition for placement of a Tier I Encroachment, the owner of such Tier I Encroachment shall hold the CCD harmless from all loss or damage to persons or property on account of injury arising from the construction or maintenance of the Tier I Encroachment; and</p> <ul style="list-style-type: none"> (a) Post with the Executive Director of Public Works, a bond in a penal sum not to exceed \$50,000 with sureties approved by the Executive Director; or (b) Obtain and keep current a policy of public liability insurance in the name of the permittee, with the CCD as a named insured, with the minimum limits of coverage of \$50,000/\$100,000 for bodily injury and \$5,000 for property damage, covering the location of the Tier I Encroachment on the public property.
Revocable Street Occupancy and Construction Permit, or if an Official Determination is Desired	<p>To obtain the RSOP and/or construction permit or if the applicant is unable to identify whether the proposed Encroachment meets the Tier I criteria and would like to obtain an official determination, the applicant may consult with the following division of PW:</p> <p style="text-align: center;"> Public Works Right of Way Services, Construction Inspections WMDPWDESCE@denvergov.org 2000 W. 3rd Ave, 2nd floor Denver CO 80223-1027 Phone: (303) 446-3469 </p>

Tier I Encroachment

Tier I General Conditions

1. Per DRMC Sections 49-246 through 49-254, the Executive Director of Public Works is authorized to remove or to order the removal of any article, vehicle, object or thing whatsoever encroaching onto any street, alley, sidewalk, or other public way or place. The Executive Director of PW may prescribe appropriate methods, specifications, placement and materials for encroachments in the ROW.
2. Any person who places an encroachment in the ROW is responsible for conducting utility locates prior to placing encroachments in the right of way.
3. Any person who places an encroachment in the ROW is responsible for the ongoing maintenance of the encroachment. The directly abutting and/or adjacent property owner assumes maintenance responsibilities of the encroachment. Whenever ownership of the encroachment is in question or unknown.
4. No third party, person or agency, unless specifically authorized by an Association or similar legal means, may place an encroachment in front of a property without written permission of the adjacent property owner.
5. The use of the ROW for placement of an encroachment does not create a property right or ownership interest of any kind.
6. Any person who places an encroachment in the ROW agrees that the act of doing so acknowledges the duty to hold the city harmless and indemnify CCD from any damages or claims arising out of said placement.
7. Other agency reviews or permits may be required prior to placing an encroachment in the ROW. Prior to placement it is suggested that the encroachment owner contact the referral agencies outlined herein. This document is not a comprehensive list of all required CCD approvals nor does it cover those agencies rules, standards or guidelines.
8. Any damage caused to City-owned assets by the construction or occupancy of the encroachment including, but not limited to; trees, irrigation systems, curb, gutter and sidewalks, the owner of the encroachment shall repair and/or replace the damaged asset at the sole expense of the owner of the encroachment.
9. Encroachment shall not create sight distance barriers for pedestrians, bicycles and drivers, and must comply with the standards published by AASHTO and all other CCD sight distance standards.
10. All encroachments located underground or flush with the ground shall meet HS-20 loading criteria as defined by AASHTO.
11. Encroachments shall not create access barriers in the ROW or conflict with ADA requirements.
12. Encroachments shall not create safety hazards.
13. Encroachments shall not obstruct ROW drainage or drainage from private property. Water shall not collect on sidewalks, streets or alleys or conflict with DRMC Section 49-554.
14. All disturbance associated with encroachments shall be addressed with minimum BMPs to prevent soil erosion per CCD standards.
15. Encroachments proposed adjacent to **any** State Highway shall require CDOT approval.
16. Encroachments proposed adjacent to a designated park or within a dedicated parkway shall require DPR approval prior to installation.
17. Encroachments proposed within any Historic Landmark or Design Review District, or Special District shall require consideration of any design guidelines required within the district, and obtain prior approval from the district. Visit the following web page to identify whether within a district and to obtain additional design information:
<http://www.denvergov.org/preservation/PreservationHome/tabid/429948/Default.aspx>
18. The Encroachment owner shall take adequate measures to control the drainage in the ROW (including water dripping, freezing, damming etc.).
19. Encroachments shall not block Fire Department connections, fire hydrants, access or pathways.
20. Encroachments shall not display advertising except for projecting signs attached to a building, and shall comply with DRMC Section 3-1.
21. Encroachments shall be visible at night to the extent possible.

Tier I Encroachment

Placement and Raised Object Criteria Required for all Tier I Encroachments

Removability - To be considered a Tier I Encroachment, it must be possible to remove the encroachment from the ROW in a short period of time. Unless otherwise noted, Encroachments that by size or construction methods cannot be easily removed will likely require a Tier II Permit or Tier III Resolution.

Placement & Access – Encroachment placement shall not impede access to utilities, or access from the street to the sidewalk. Utility locates shall be performed prior to placing any Encroachment in the ROW. All raised Encroachments shall maintain a minimum 4 foot wide pedestrian access every 40 feet between the street and the sidewalk.

Encroachments located on sidewalks (plus adjacent ADA / ADAAG compliant Amenity Zone surfaces) less than 21 feet wide, shall provide at least 5 feet of clear walkway width around the Encroachment. 8 feet of clear walkway shall be provided for sidewalks (plus adjacent ADA / ADAAG compliant Amenity Zone surfaces) greater than 21 feet. Also, at least 8 feet of clear walkway shall be provided for all sidewalks on arterial streets, regardless of existing width. Additional clear width may be required in high pedestrian areas, as determined by PW.

Encroachments a minimum of 1.5 feet from the back of curb (2' to the flowline), unless otherwise specified by PW. Continuous Encroachments shall be placed at a minimum of 3 feet from face of curb wherever there is adjacent on-street parking. Where there is no on-street parking, there shall be a minimum of 1.5 feet (2' to the flowline).

General Height Criteria - All Encroachments unless otherwise noted, within 10 feet of the flowline shall be a maximum of 30 inches in height including the height of any plantings. Encroachments located in the Tree Lawn / Amenity Zone shall not be greater than 30 inches in height including plantings. Raised encroachments located between 10 feet of the flowline and the property line shall not exceed 48 inches in height.

Fences, Bollards, or street trees placed as required below and in accordance with CCD standards are exempted from the General Height Criteria.

Height in Sight Triangles – Intersection Corner Sight Triangles shall be free of all Encroachments over 30 inches in height. Pedestrian Sight Triangle areas shall remain clear of all encroachments over 30 inches in height, that are 18 inches or greater in width.

In all Sight Triangles, the only exemptions from the height restrictions are traffic control devices, equipment, or Encroachments as otherwise approved and permitted in writing by PW.

Tier I Encroachment

Tier I Encroachments	<p>To be considered a Tier I Encroachment, the constructed item shall also comply with criteria set forth for the specific Encroachment below or specifically allowed by other PW regulations.</p>
	<p><u>Artwork</u></p> <ul style="list-style-type: none"> • Including, but not limited to: craftwork, decorative objects, designs, ornaments, sculptures, and statues. • Shall not display or convey any objects or images that would be considered obscene as defined in DRMC Sections 49-504; or would be considered threatening to the public. • Ownership of artwork shall be visible on the art piece (plaque or etching). • Should the Artwork require foundation plans, the plans shall be stamped by a Colorado Licensed Professional Engineer, and submitted for review with any PW RSOP or SCP application. • Shall not be any type of advertisement of a product, service or event. <p>Other City permits that may be required: RSOP, CP, Building and/ or Zoning Permit</p>
	<p><u>Awnings, Canopies, Marquees, etc.</u></p> <ul style="list-style-type: none"> • Awnings, Canopies, Marquees and their projections into the ROW shall be placed consistent with applicable Building and Fire Codes • Awning and Canopy construction shall comply with DRMC Sections 49-401 through 49-410. • Marquee construction shall comply with DRMC Sections 49-386 through 49-391. • Awnings, Canopies, or Marquees with poles, supports, or stanchions located in the ROW are considered structures and are considered a Tier II Encroachment • Per Denver Fire and Building Codes, Awnings must have a fire sprinkler system installed if the awning or canopy projects more than 5 feet off the building, and the attached building is sprinklered. The sprinkler may be omitted if the awning is non-combustible material and approved by the Fire Dept (Reference NFPA 13 Sec.8.14.7). <p>Other City permits that may be required: RSOP, Building and/ or Zoning Permit</p>
	<p><u>Balconies and other Building Appendages</u></p> <ul style="list-style-type: none"> • Balconies, oriel windows, unroofed porches, cornices/ belt courses, appendages and other decorative features and their projections into the ROW shall be placed consistent with DRMC Sections 49-341 through 49-346. • Other than architectural details such as belt courses, sills, bases, etc, the minimum height of any building projection (except balconies as noted below) above the grade immediately below is 8 feet. • The vertical clearance from the ROW to the lowest part of any balcony shall be 12 feet minimum and 24 feet minimum over alleys. • All building appendages or balconies shall meet projection requirements as defined in DRMC Sections 49-341 through 49-346, and at no point shall exceed 4 feet of projection into the ROW or beyond any adjacent face of street curb. • Any building element that projects more than 12 inches into the ROW shall have a drainage system that prevents water from draining directly onto the ROW. <p>Other City permits that may be required: RSOP, SUDP, Building and/ or Zoning Permit</p>
	<p><u>Bollards</u></p> <ul style="list-style-type: none"> • Shall not be greater than 18 inches in diameter or exceed 48 inches in height. • Shall not impede pedestrian movements. • Shall maintain a minimum 5' feet of clear walkway, and shall not be placed less than 2 feet from the back of the curb and gutter. • Shall not be placed where they block fire department access points. If unsure or if any question regarding required fire department access, the Denver Fire Department shall be consulted. • More than twelve bollards adjacent to one Zone Lot/ or development parcel shall require prior consultation and written approval by PW ROW Services, Construction Inspections. <p>Other agency permits required: RSOP, CP</p>
	<p><u>Boulders, Cobbles, and Rocks</u></p> <ul style="list-style-type: none"> • Boulders, cobbles, or rock mulch products located in the ROW shall be between 4 inches and 30 inches in diameter. Products less than 4 inches in diameter shall be grouted in place. • No gravel, tree bark, wood chips, loose stones or other non-organic materials may be used as ground cover in tree lawns. • Crusher fines shall meet the specification set forth in the approved ROW material list. <ul style="list-style-type: none"> ◦ Any such items located behind back of sidewalk shall be constructed in a way to prevent anything from migrating onto the sidewalk or into the flowline or curb and gutter. • The owner is responsible for maintaining the material so that a level surface is maintained with the adjacent sidewalk. <p>Other City permits that may be required: RSOP, CP, DPR Forestry</p>

Tier I Encroachment

Tier 1 Encroachments (cont'd)	<p><u>Caisson, Piles, Piers and Spread Footings</u></p> <ul style="list-style-type: none"> May encroach up to 1 foot provided they are a minimum of 1 foot below finished grade. <p>Other City permits that may be required: RSOP, SCP, Building permit</p>
	<p><u>Doors for Existing Buildings</u></p> <ul style="list-style-type: none"> Unless specifically permitted or required by PW, Denver Building and/ or Fire Codes, doors on new buildings when fully opened or when opening shall not project into the ROW. When performing new work at existing or otherwise permitted doors that swing into the ROW, permanent safety features (i.e. ADA/ ADAAG compliant barriers) shall be installed on either side of the door to prevent doors from obstructing or impacting any adjacent pedestrian areas. <p>Other City permits that may be required: RSOP, CP, Building Permit</p>
	<p><u>Electric</u></p> <ul style="list-style-type: none"> All electrical connections to Encroachments shall be buried in conduit. Electric boxes or junctions shall not be physically attached to any tree or vegetation. Voltage shall not exceed 120 volts. Voltage exceeding 120 volts is considered a Utility and is subject to additional PW review and permitting through a Tier II Encroachment Permit or a Utility Plan Review. <p>Other City permits that may be required: RSOP, CP, PW Utility Plan Review, Building Permit (if attached to a building)</p>
	<p><u>Fences (New & Existing)</u></p> <ul style="list-style-type: none"> Fences shall meet criteria, setbacks, and other specifications established in the Denver Zoning Code Fences located along primary street frontage of the ROW shall not exceed 48 inches in height and shall be at least 50% open. Fences shall be placed a minimum of 6 inches behind the back of the sidewalk to allow for future walk maintenance. If no curb, gutter, or sidewalk exists, fence shall be set back a minimum of 10 feet from the edge of pavement. Fences shall not be placed in the area between the curb and gutter and a detached sidewalk (also known as Tree Lawn/Amenity Zone). Fences placed next to sidewalks that are narrower than 5 feet wide shall be located to allow for the future expansion of the sidewalk to a minimum of 5 foot walking surface. Fences proposed on or adjacent to a Park or Parkway shall obtain DPR approval prior to installation. Fences shall not block access to any of the following: <ul style="list-style-type: none"> 1. Emergency Services 2. Utilities (including service meters/ valves, etc.) 3. Public accesses or objects which require routine maintenance <p>Other City permits that may be required: RSOP, Zoning Permit – Fences, DPR Permit</p>
	<p><u>Gates (Vehicle and/or Pedestrian Access)</u></p> <ul style="list-style-type: none"> Powered and non-powered vehicle access gates shall not impede pedestrian traffic and shall only open towards private property rather than towards the street. Vehicle entrance gates shall be placed a minimum of 20 feet behind the back of the sidewalk. Pedestrian gates that are attached to railings adjacent to a building shall only open outward per Denver Fire Code; provide however that the gate shall not swing into the clear walkway. Pedestrian gates that swing into the ROW, permanent safety features (i.e. ADA/ ADAAG compliant barriers) shall be required to be installed in the adjacent pedestrian walk area. The features shall be installed on either side of the gate, to prevent gates from impeding the pedestrian path. <p>Other City permits that may be required: Zoning Permit, Building Permit</p>
	<p><u>Hardscape</u></p> <ul style="list-style-type: none"> Hardscape consisting of pavement other than standard concrete may include flagstone, granite, bricks, brick pavers, paver stone, colored concrete or stamped concrete located in the ROW between the curb and gutter/ edge of pavement and the adjacent property line. If proposed hardscape in the Tree Lawn / Amenity Zone is not a level ADAAG compatible walking surface, a 4 foot wide sidewalk shall be installed for pedestrian access from the street curb to the sidewalk a minimum of every 40 linear feet. A RSOP and review by the Denver City Forester is required prior to placement of any Hardscape in the Tree Lawn / Amenity Zone that is intended or may be used as a walking surface. <p>Other City permits that may be required: RSOP, CP, DPR (Review by City Forester)</p>

Tier I Encroachment

Tier 1 Encroachments (cont'd)	<p><u>Irrigation Lines</u></p> <ul style="list-style-type: none"> Irrigation lines shall not exceed 3 inches in diameter. All irrigation appurtenances shall be buried and remain flush with adjacent surfaces. Only irrigation systems that are within a Maintenance Entity may have raised elements in the ROW (meeting raised object requirements herein). <p>Other City permits that may be required: Building Permit, RSOP, SCP</p>
	<p><u>Landscaping & Organic Material</u></p> <ul style="list-style-type: none"> Specific materials shall comply with the requirements herein. Refer to Streetscape Design Manual or current adopted guidance document, DRMC Chapter 57, and consult with PW, DPR, Forestry, and other applicable CCD staff to clarify. All proposed vegetation except for deciduous tree trunks and tree limbs must meet the Raised Object criteria (in its estimated fully grown state). Shredded tree mulch (<u>not bark</u>) is permitted to be placed in the ROW. Other types of mulch that will float or blow into the street and impact the storm sewer are not permitted. Tree limbs located over the sidewalk or any pedestrian path (including tree grates) shall be at least 80 inches above the ground (temporary exemptions given for new tree plantings until tree maturity). Tree limbs that extend past the curb and gutter above the street shall be at least 13.5 feet over the pavement of the ROW. For species and spacing information, contact the Office of the City Forester at 720-913-0651, forestry@denvergov.org, or visit the following website: http://www.denvergov.org/forestry Permits from the City Forester are required prior to the planting or removal of trees within the ROW. <p>Other City permits that may be required: Tree Work Permit from DPR Forestry, RSOP</p>
	<p><u>Lighting (Accent)</u></p> <ul style="list-style-type: none"> Pedestrian light poles and/or other permanent accent lights in the ROW will only be allowed if approved as a development site plan or on a case by case basis by PW. The City approved document setting forth maintenance obligation shall be approved and recorded with the Denver Clerk and Recorder by the applicant prior to issuance of the PW RSOP, and construction permit. <p>Other City permits that may be required: RSOP, PW Utility Plan Review, Bldg Permit (if attached to a bldg)</p>
	<p><u>Mailboxes</u></p> <ul style="list-style-type: none"> Placement of mailboxes shall only apply to single family and duplexes. Mailboxes shall meet United States Postal Services standards. <p>Other City permits that may be required: ROSP, SCP</p>
	<p><u>Monitoring Wells (Temporary)</u></p> <ul style="list-style-type: none"> Monitoring well pipes shall be capped and must be flush with the grade of the adjacent ROW. To be Tier I Encroachment, Monitoring wells shall be removed within one (1) year following installation. All wells shall be located behind the curb/ flowline, or in paved alleys. Wells are not allowed in the sidewalk or street and/or driving path. The cover shall be mounted flush to the adjacent ground. Structure must meet HS20 loading as defined in AASHTO. Well locations shall be approved in advance by the DEH. All sampling results shall be submitted to DEH as required by DEH. All wells abandoned and/or closed shall meet the applicable standards dictated by the conditions stated in the RSOP and/or SUDP. Provide the City with GPS coordinates of the well caps when possible. <p>Other City permits that may be required: RSOP, SCP, and SUDP (if discharging to sewer), DEH approval</p>
	<p><u>Outdoor Heating</u></p> <ul style="list-style-type: none"> Outdoor heating attached to buildings shall be located at least 8 feet above the ground, shall not extend more than 5 feet into the ROW, and shall not be located within 2 feet of the face of curb. Outdoor heating shall be compliant with the Electrical provisions defined in this document. <p>Other City permits that may be required: Building Permit (if attached to the building)</p>

Tier I Encroachment

Tier 1 Encroachments (cont'd)	<p><u>Pillars</u></p> <ul style="list-style-type: none"> • Shall not support structures or other features. • If a pillar holds weight/structure or does not meet the Raised Object Criteria of these Rules and Regulations, then the Pillar may only be allowed through a Tier III Encroachment Resolution. <p>Other City permits that may be required: RSOP, Building Permit</p>
	<p><u>Planters</u></p> <ul style="list-style-type: none"> • Planter boxes and vegetation that meet the Placement and Raised Object Criteria of this section (Page 5).
	<p><u>Ramps to Existing Structures</u></p> <ul style="list-style-type: none"> • Ramps immediately adjacent /attached to existing structures may be placed in the ROW as long as the top and bottom landings, railing, and ramp impact only the single property's ROW frontage. • The total length of top and bottom landings, railing, and ramp shall not exceed the total length of the property's ROW frontage on the side to be accessed. • Abutting properties may be allowed to share ramp access with appropriate legal documentation signed by both property owners, which identifies ramp ownership, maintenance obligations, and what would happen to shared ramp if either property is sold. • The maximum total width of ramp structure (perpendicular Encroachment) into the ROW is 5 feet. • The ramp and associated features shall comply with all sections of ADA/ADAAG as applicable to both public access ways and private building access. • The ramp shall not impede pedestrian movements of the existing public walk. A minimum 5 feet clear, ADA compliant, unobstructed sidewalk shall remain beyond the outer limits of the proposed ramp structure, unless a wider sidewalk section is required by PW to match existing and/or proposed street section requirements or adjacent walk character. • For a ramp to be considered a Tier I Encroachment, it shall not change direction in the ROW. • No signage, planters, benches, chairs, or other obstructions shall be allowed on any of the landings, railings, or ramps. • The ramp and railing shall be designed or illuminated so that they are visible at night. • Dimensioned plans shall be submitted to PW Right of Way Services Construction Inspections prior to approval of any installation. <p>Other City permits that may be required: RSOP, CP, Building Permit</p>
	<p><u>Sanitary Sewer Pretreatment Devices</u></p> <ul style="list-style-type: none"> • A SUDP is required for this type of Encroachment, and requires permit issuance prior to installation. • Grease traps and sand oil interceptors may be considered when no private property is reasonably available as determined during permit plan review. • Pretreatment devices shall be located on the alley side for maintenance and to keep odors and stains away from pedestrian areas. • Maximum encroachment of 5 feet. <p>Other City permits that may be required: SUDP, RSOP, SCP</p>
	<p><u>Sewers: Sanitary, Storm and Drainage</u></p> <ul style="list-style-type: none"> • A SUDP is required for this type of Encroachment, and requires permit issuance prior to installation. • All pipe connections shall be perpendicular to the ROW if possible. Pipe connections that cannot be perpendicular shall not be less than 45 degrees from the ROW line. • Sanitary and storm sewer pipes shall remain in front of the system owner's property until they extend under the roadway. <ul style="list-style-type: none"> ◦ Pipes shall not enter neighboring private property. ◦ Unless under the roadway, no pipe shall cross in front of or extend past neighboring private property. • Any underground water quality detention devices within 8 feet of the property line, under the sidewalk/tree lawn area. Underground devices enhancing tree health may extend to 1' from the back of curb. • Any surface Water Quality/Detention areas with a depth of less than 28 inches in the tree lawn that are safe, aesthetically pleasing, functional and meet all current PW guidance documents. <p>Other City permits that may be required: SUDP, RSOP, CP</p>

Tier I Encroachment

<p>Tier 1 Encroachments (cont'd)</p>	<p><u>Signs</u></p> <ul style="list-style-type: none"> • <u>Projecting Signs</u> <ul style="list-style-type: none"> ○ Maximum projection of sign from the wall of the building shall not exceed 36" into the right of way. ○ Applicant shall obtain DPR approval prior to any construction adjacent to a park or a parkway. ○ Projecting signs shall require approval of Development Services, and/or Zoning. • <u>Neighborhood Identification Signs</u> <ul style="list-style-type: none"> ○ Neighborhood Identification Signs up to a maximum height of 30" are allowed as a Tier I Encroachment. ○ Neighborhood Identification Signs shall be located a minimum of 2 feet from the face of the curb. ○ Electrical connections shall not exceed 120 Volts. ○ Approval in writing by the property owner with the closest proximity to the proposed sign. ○ Shall obtain DPR approval prior to any construction adjacent to a park or a parkway. <p>Other City permits that may be required: RSOP, SCP, DPR, DS Building Permit, DS-Zoning</p>
	<p><u>Snow Melt Systems</u></p> <ul style="list-style-type: none"> • All mechanical components and controllers associated with such systems shall be located on private property and any connections made via underground conduit. • Such systems shall be designed and constructed so that the portion located in the ROW can be isolated from the rest of the system, so that any work in the ROW will not impact the entire system. <p>Other City permits that may be required: RSOP</p>
	<p><u>Stairs to Existing Structures</u></p> <ul style="list-style-type: none"> • Stairs as a Tier I Encroachment may only be placed in the ROW when they are attached to an existing improvement. • Stairs immediately adjacent/attached to existing improvements may be placed in the ROW as long as the top and bottom landings, handrails, and stairs impact only the single property's ROW frontage. • The total length of top and bottom landings, railing, and stairs shall not exceed the total length of the property's ROW frontage on the side to be accessed. • Abutting properties may be allowed to share stair access with appropriate legal documentation, signed by property owners, identifying stair ownership, maintenance obligations, and what would happen to shared stairs if either property is sold. • The maximum perpendicular Encroachment into the ROW shall be 5 feet. • The stairs and associated features shall comply with all sections of ADA/ADAAG and Building Code as applicable to both public access ways and private building access. • The stairs shall not impede pedestrian movements of the existing public walk. A minimum 5 feet clear, ADA compliant, unobstructed sidewalk must remain beyond the outer limits of the proposed stair structure, unless a wider sidewalk section is required by PW to match existing and/or proposed street section requirements or adjacent walk character. • Changes of stair direction are not allowed. • No signage will be allowed on the landings, railing or stairs. • The stairs and railing should be designed so that they are visible at night. • Dimensioned plans shall be submitted to PW Right of Way Services, Construction Inspections for approval of any installation. <p>Other City permits that may be required: RSOP, CP, Building permit</p>
	<p><u>Temporary Shoring</u></p> <ul style="list-style-type: none"> • Approval and issuance of a 1C construction permit by DS. • Approval by the DPR, Division of Forestry. • Engineered / dimensioned site plan shall be submitted to Right of Way Services, Construction Inspections, and may require an Excavation Bond, and onetime fee of \$200.00. • Duration in the ROW for a period of less than one (1) year shall be considered a Tier I Encroachment. • Video inspections coordinated with Denver Wastewater of existing storm and sanitary sewer piping shall be required before and after temporary shoring is placed to verify the structural integrity of same is not compromised. <p>Other City permits that may be required: RSOP, Building Permit, DPR (Forestry), Denver Wastewater</p>

Tier I Encroachment

<p>Tier 1 Encroachments (cont'd)</p>	<p><u>Trench Drains</u></p> <ul style="list-style-type: none"> • An approved SUDP is required prior to construction. • Any Trench Drains that are not approved as part of a new development or re-development project, and that connect into a CCD Storm sewer system shall receive a separate engineering plan review through PW Right of Way Services, Construction Inspections. • Trench Drains shall not cross over sidewalks or pedestrian areas in the ROW. • The top surface of Trench Drains shall be flush with the surrounding surface. <p>Other City permits that may be required: SUDP, RSOP, SCP</p>
	<p><u>Vaults</u></p> <ul style="list-style-type: none"> • Except for Utility Companies, construction of any vault located underground which dimensions exceed the dimensions of 4 feet x 4 feet shall require a Tier II Encroachment Permit. • Access covers/lids shall be constructed to be flush with the adjacent ground or pavement surface. • Access covers/lids shall not be located in the sidewalk/pedestrian travel areas, or in curbs and gutters. • All means shall be taken to limit the placement of covers in the wheel paths of travel lanes on collector/arterial streets. <p>Other City permits that may be required: RSOP and SCP</p>
	<p><u>Walls</u></p> <ul style="list-style-type: none"> • Any wall with a sole purpose of aesthetics (e.g. slope dampening, planting, etc) is considered a Tier I Encroachment provided it meets the Raised Object Criteria of these Rules and Regulations. • Retaining Walls placed in the ROW that retain soil for the purpose of maintaining the structural integrity of a building/improvement or other surcharged area such as parking, driving surfaces, storage areas, etc. are considered "Retaining Walls" and shall obtain a Tier III Encroachment Resolution. <p>Other City permits that may be required: RSOP, Building Permit</p>

Tier II Encroachment

Tier II Encroachment	<p>Encroachments that due to their significance or complexity require a formal review process and permit approval to ensure general consistency with raised object and placement criteria. If approved, a revocable Tier II Encroachment Permit will be issued and recorded with the Office of the Clerk and Recorder granting the private use of the ROW. An annual fee shall be required to maintain the Tier II Encroachment Permit.</p> <p>If a determination of appropriate tier category is necessary, the application will be forwarded to PW Right of Way Services, Construction Inspections.</p>
Authority	<p>City Charter, Article II; and DRMC, Chapter 49</p>
Insurance and Indemnification	<p>As a condition for placement of an Encroachment, the owner of such Encroachment shall hold the CCD harmless from all loss or damage to persons or property on account of injury arising from the construction or maintenance of the Encroachment; and</p> <ul style="list-style-type: none"> (a) Post with the Executive Director of Public Works, a bond in a penal sum not to exceed \$50,000 with sureties approved by the Executive Director; or (b) Obtain and keep current a policy of public liability insurance in the name of the permittee, with the CCD as a named insured, with the minimum limits of coverage of \$50,000/\$100,000 for bodily injury and \$5,000 for property damage, covering the location of the Encroachment on the public property for which the permit is issued.
Tier II Encroachments Types	<p>To be considered a Tier II Encroachment, the encroachment item will generally meet criteria contained in the following section:</p> <p>SIGNS:</p> <ul style="list-style-type: none"> • Any signs that do not qualify as a Tier I Encroachment • Any other type of sign other than a Neighborhood Identification Sign or Blade/Projecting sign. <p>AWNINGS, CANOPIES AND MARQUEES:</p> <ul style="list-style-type: none"> • Awnings with supports/or poles that do not qualify as a Tier I Encroachment <p>BUILDING APPURTENANCES:</p> <ul style="list-style-type: none"> • Building appurtenances that do not qualify as a Tier I Encroachment • Including but not limited to, steps, stoops, stairs, handicap ramps, balconies, planters, light fixtures, fire escapes etc. <p>FREE STANDING STRUCTURES</p> <ul style="list-style-type: none"> • Any free standing structures that do not qualify as a Tier I Encroachment • Including but not limited to: medians, guard/valet shelters, fences etc. <p>BELOW GRADE/UNDERGROUND ENCROACHMENTS:</p> <ul style="list-style-type: none"> • Below grade/underground items that do not qualify as a Tier I Encroachment • Including, but not limited to, remediation/injection systems, roadway vaults, electrical connections greater than 120 volts, etc. <p>MEDIANS:</p> <ul style="list-style-type: none"> • Prior to proceeding with Tier II Encroachment application, a median requires specific written endorsement by PW. • Shall have a maintenance entity established • Median design shall be stamped and signed by a Registered Professional Engineer in the State of Colorado to ensure code compliance

Tier II Encroachment

<p>Application Requirements</p>	<p>A pre-application consultation may be requested prior to applying for a Tier II Encroachment Permit. All correspondence regarding Encroachment applications shall be submitted to:</p> <p style="text-align: center;">Public Works Engineering, Regulatory & Analytics (ERA) 201 W. Colfax Ave, Dept. 507 Denver, CO 80202 Denver.PWERA@denvergov.org (720) 865-3003</p> <p>To apply for a Tier II Encroachment Permit:</p> <ol style="list-style-type: none"> Submit a completed "Application for Tier II Encroachment" The application is available on the website at: www.denvergov.org/pwprs <p>If the applicant is not the property owner, a signed authorization from the owner or power of attorney from the owner shall be required.</p> <p>Applications shall include the following items to support the request:</p> <ol style="list-style-type: none"> Labeled and dimensioned site plan and elevation plan, including the following when applicable: <ol style="list-style-type: none"> ROW lines, flowlines, property lines, etc. Area of Encroachment into ROW Labeled construction materials Vertical clearance from grade Projection from building Projection into the ROW and over the sidewalk Plans shall be stamped by a Professional Engineer Registered in the State of Colorado Distance the Encroachment is from flowline Specifications of item proposed to be in the ROW A general location description. If proposed Encroachment is underground, the following additional items are required: <ol style="list-style-type: none"> Plans shall be prepared and stamped by a Professional Engineer Registered in the State of Colorado Indicate the depth, location and size of Encroachments. Structural plans must be submitted and show all structural details and design loads. A land description of the Encroachment shall be submitted following these guidelines (<i>may be submitted after 1st review and comment period</i>): http://www.denvergov.org/rightofwayservices/RightofWayServices/Survey/GuidelinesforLandDescriptions/tabid/442347/Default.aspx Photograph of the proposed location of the Encroachment Indicate electrical voltage/amps and where the electrical connection is located (if applicable) Explanation of why the design of the encroachment cannot be accomplished without utilizing the ROW <ol style="list-style-type: none"> If the proposed Tier II Encroachment is located within a design review district under the Denver Zoning Code, or a floodplain zone; approval documents from that reviewing authority shall be attached. Pay Initial Fee. (See Fees Section Below)
<p>Review Process</p>	<p>Once the application is received and deemed complete, the application will be distributed to affected CCD Agencies, External Agencies and Utility Companies for a review and comment period (3 weeks). Following the review period, a report of compiled comments will be provided to the applicant. It is then the applicant's responsibility to satisfy or address the comments from required reviewers.</p> <p>Some or all of the following reviewers may be included in the review and comment period as deemed appropriate by the PW ERA staff:</p> <p><u>CCD Agencies:</u></p> <ul style="list-style-type: none"> PW (ERA Erosion Control, ERA Transportation, ERA Wastewater, CPM Wastewater , ERA Floodplain, Policy & Planning, Construction Engineering, Survey, Traffic Engineering Services-Signs and Stripe, and Street Maintenance) City Council (District where encroachment is located only) Denver Office of Disability Rights (ADA) DS (Building and Construction, Transportation, Wastewater, Project Coordination and Zoning) Office of Emergency Management DEH (for remediation/injection systems)

Tier II Encroachment

Review Process Cont'd	<ul style="list-style-type: none"> • Fire Department • Forestry • DPR • Division of Real Estate • Telecommunications <p><u>External Agencies:</u></p> <ul style="list-style-type: none"> • Colorado Department of Transportation (CDOT) (for Encroachments in or abutting a state highway), Metro Wastewater Reclamation District, Regional Transportation District (RTD) <p><u>Utility Companies:</u></p> <ul style="list-style-type: none"> • CenturyLink, Comcast Cable, Denver Water, Xcel Energy <p>Once all comments have been addressed by the applicant and acknowledged by the PWERA, a recommendation will be made to the Executive Director of Public Works to approve, approve with conditions or deny the Tier II Encroachment. Following Executive Director approval, PWERA staff shall record with the Denver County Clerk and Recorder the permit and approved legal or location description within twenty (20) business days.</p>
Fees	<p>FEES: \$2,100.00 Initial Fee \$ 200.00 Annual Fee</p> <p>The Initial Fee shall be paid prior to review or processing of the application. All fees shall be paid by credit card, or check payable to the 'Manager of Finance' of the City and County of Denver. Fees are subject to change by authority of the Executive Director of Public Works.</p> <p>Following Encroachment approval and issuance of Permit, the applicant or their successor will be billed annually \$200.00 for annual inspection and administration beginning the following calendar year.</p> <p>A lien may be placed on the real property of an owner who fails to pay the annual fee in accordance with DRMC Section 49-252.</p>
Tier II Revocation Process	<p>If the owner desires to cancel a Tier II Encroachment Permit, a separate letter requesting a revocation shall be submitted to PWERA.</p> <ul style="list-style-type: none"> • A site inspection will be performed to verify the Encroachment(s) have been removed. • The Tier II Encroachment Permit will be revoked. The revocation of the Permit will be recorded in the same manner as issued.

Tier II Encroachment

Tier II General Conditions

1. The Executive Director of Public Works is authorized to remove or to order the removal of any article, vehicle, object or thing whatsoever encroaching into any street, alley, sidewalk, or other public way or place (DRMC Section 49).
2. The Executive Director of Public Works may prescribe appropriate methods, specifications, placement and materials for Encroachments in the ROW.
3. Any person who places an Encroachment in the ROW is responsible for the ongoing maintenance of the Encroachment. No third party, person or agency, unless specifically authorized by an Association or similar legal means, may place an Encroachment in front of a property without written permission of the adjacent property owner.
4. The use of the ROW for placement of an Encroachment does not create a property right or ownership interest of any kind.
5. Any person who places an Encroachment in the ROW agrees that the act of doing so acknowledges the duty to hold the harmless and indemnify the CCD from any damages or claims arising out of said placement.
6. RSOP and Right of Way Construction Permits may be required prior to placing an Encroachment in the ROW. At least five days prior to placement of the Encroachment, owner shall contact the PW Right of Way Inspections at (303) 446-3469 to coordinate placement and to obtain necessary permits.
7. Encroachments shall comply with the current Section 32 of the International Building Code and all subsequent amendments.
8. The owner of the Encroachment shall repair and/or replace, to the satisfaction of the Executive Director of Public Works, any damage to CCD owned assets, including but not limited to: trees, irrigation systems, curb, gutter and sidewalks as a result of the Encroachment, and all associated costs shall be paid for by the owner of the Encroachment.
9. Permittee shall assume full responsibility for any and all damages incurred to Denver Water facilities due to activities authorized by the permit. Denver Water, at the sole expense of the Permittee, shall make any and all replacement or repair of Denver Water facilities attributed to the permit. In the event Permittee's facilities are damaged or destroyed due to the Denver Water's repair, replacement and/or operation of its facilities, repairs will be made by the Permittee at its sole expense.
10. Encroachments shall not create sight distance problems for pedestrians, bicycles and drivers, and must comply with the standards published by AASHTO and all other CCD sight distance standards.
11. All Encroachments located underground or flush with the ground With the exception of tree grates, shall meet HS-20 loading criteria as defined by AASHTO. All required replacement of damaged existing Right-of-Way improvements will be in accordance with current CCD codes and standards, or may be more restrictive as determined on a case by case basis.
12. Encroachments shall not create access problems in the ROW or conflict with ADA requirements.
13. Encroachment shall not create a substantial adverse impact on persons or property or adversely affect the public health, safety and welfare.
14. Encroachments shall not obstruct stormwater drainage in and through the Right of Way nor cause water to collect on sidewalks, streets or alleys or conflict with DRMC Section 49-554.
15. All disturbances associated with construction of the Encroachment shall be managed as required by CCD standards for erosion control which may require standard notes or CASDP permitting depending on location and scope of project.
16. Encroachments proposed adjacent to a designated park or within a dedicated parkway shall require DPR approval prior to installation.
17. Encroachments shall not block Fire Department connections, fire hydrants, access or pathways.
18. Encroachments shall not display advertising without the permission of the Executive Director of Public Works and shall comply with DRMC Section 3-1.
19. Encroachments in the regulatory floodplain shall require a SUDP and comply with Chapter 12 Floodplain Management of the "PW Rules and Regulations Governing Sewerage Charges and Fees and Management of Wastewater" and the CCD Floodplain Ordinance in DRMC Section 56-200 through 56-206.
20. Encroachments shall be visible at night to the extent possible.

Tier III Encroachment

Tier III Encroachment	Encroachments that are significant or complex. Tier III Encroachments are defined as an expansion of a private use into the ROW, and are commonly structural building elements more substantial in nature. Tier III Encroachments require an application, fee, legal description, and review process to ensure general compliance with raised object and placement criteria, approval through a City Council Resolution, and recordation of the resolution in the Office of the Denver County Clerk and Recorder's Office. An annual fee shall be required to maintain the Tier III Encroachment Resolution.
Authority	City Charter, Article II; and DRMC, Chapter 49
Insurance and Indemnification	<p>As a condition for placement of an Encroachment, the owner of such Encroachment shall hold the City harmless from all loss or damage to persons or property on account of injury arising from the construction or maintenance of the Encroachment; and</p> <ul style="list-style-type: none"> (a) Post with the Executive Director of Public Works, a bond in a penal sum not to exceed \$50,000 with sureties approved by the Executive Director; or (b) Obtain and keep current a policy of public liability insurance in the name of the permittee, with the City as a named insured, with the minimum limits of coverage of \$50,000/\$100,000 for bodily injury and \$5,000 for property damage, covering the location of the Encroachment on the public property for which the permit is issued.
Tier III Encroachment Types	<p>To be considered a Tier III Encroachment, the proposed encroachment item will generally meet criteria contained in the following section:</p> <p>STRUCTURAL BUILDING ELEMENTS</p> <ul style="list-style-type: none"> • For any structural building elements that do not qualify as a Tier I or Tier II Encroachment • Including but not limited to: below grade parking garages, elevated or enclosed patios, loading docks, air locks, structural retaining walls, building walls, pedestrian bridges
Application Requirements	<p>A pre-application consultation may be requested prior to applying for a Tier III Encroachment Resolution. All correspondence regarding Encroachment applications shall be submitted to:</p> <p style="text-align: center;"> Public Works Engineering, Regulatory & Analytics (ERA) 201 W. Colfax Ave, Dept. 507 Denver, CO 80202 Denver.PWERA@denvergov.org (720) 865-3003 </p> <p>To apply for a Tier III Encroachment Resolution:</p> <ol style="list-style-type: none"> 1. Submit a completed Application for Tier III Encroachment The application is available on the website at: www.denvergov.org/pwprs <p>If the property owner is not the applicant, a signed authorization or power of attorney from the owner is required.</p> <p>The application shall include the following items to support the request.</p> <ol style="list-style-type: none"> a. Labeled and dimensioned site plan and elevation plan, including the following: <ol style="list-style-type: none"> i. ROW, flowline and property lines etc. ii. Area of Encroachment into ROW iii. Labeled construction materials b. Labeled and dimensioned specifications for the proposed Encroachment including <ol style="list-style-type: none"> i. Vertical clearance from grade ii. Projection from building iii. Projection into the ROW and over the sidewalk iv. Distance the Encroachment is from curb c. If underground <ol style="list-style-type: none"> i. Plans shall be prepared and stamped by a Professional Engineer Registered in the State of Colorado ii. Indicate the depth, location and size of Encroachments. iii. Structural plans must be submitted and show all structural details and design loads. d. Photograph of the proposed location of the Encroachment e. Indicate electrical voltage/amps and where the electrical connection is located (if applicable)

Tier III Encroachment

Application Requirements (cont'd)	<p>f. Explanation of why the design of the Encroachment cannot be accomplished without utilizing the ROW</p> <ol style="list-style-type: none"> If the proposed Tier III Encroachment is located within a design review district under the Denver Zoning Code or a floodplain zone approval documents from that reviewing authority shall be attached. A legal description of the Encroachment shall be submitted following these guidelines: (legal description may be submitted after the 1st review and comment period). http://www.denvergov.org/rightofwayservices/RightofWayServices/Survey/GuidelinesforLandDescriptions/tabid/442347/Default.aspx Pay Initial Fee. (See Fees Section Below)
Review Process	<p>Once received and deemed complete, the application will be distributed to affected CCD Agencies, External Agencies and Utility Companies for a review and comment period (3 weeks). Following the review period, a report of compiled comments will be provided to the applicant. It is then the applicant's responsibility to satisfy or address the comments from required reviewers.</p> <p>Some or all of the following reviewers may be included in the review and comment period as deemed appropriate by the PW ERA staff:</p> <p><u>City Agencies:</u></p> <ul style="list-style-type: none"> PW (ERA Erosion Control, ERA Transportation, ERA Wastewater, CPM Wastewater, ERA Floodplain, Policy & Planning, Construction Engineering, Survey, Traffic Engineering Services-Signs and Stripe, and Street Maintenance) City Council (District member only) The Denver office of Disability Rights (ADA) DS (Building and Construction, Transportation, Wastewater, Project Coordination and Zoning) Office of Emergency Management DEH (for remediation/injection systems) Fire Department Forestry DPR Division of Real Estate Telecommunications <p><u>External Agencies:</u></p> <ul style="list-style-type: none"> Colorado Department of Transportation (CDOT) for Encroachments on or abutting a state highway), Metro Wastewater Reclamation District, Regional Transportation District (RTD) <p><u>Utility Companies:</u></p> <ul style="list-style-type: none"> CenturyLink, Comcast Cable, Denver Water, Xcel Energy <p>Once all comments have been addressed by the applicant and acknowledged by PWERA, a recommendation will be made to the Executive Director of Public Works to prepare the Resolution request of the Tier III Encroachment for City Council consideration. PWERA will submit a Resolution request to City Council for consideration of a Resolution which will run with the land until such time the Resolution is revoked.</p> <p>Following City Council Resolution approval, PW ERA staff will record the Resolution in the Denver County Clerk and Recorder's Office within (20) business days following the approval of the Resolution.</p>
Fees	<p>FEES: \$2,100.00 Initial Fee \$ 200.00 Annual Fee</p> <p>The Initial Fee shall be paid prior to review or processing of the application. Fees shall be paid by credit card or check, payable to the 'Manager of Finance' of the City and County of Denver. Fees are subject to change by authority of the Executive Director of Public Works.</p> <p>Following the Encroachment Resolution approval and issuance of Permit, the applicant or their successor will be billed annually \$200.00 for annual inspection and administration beginning the following calendar year.</p> <p>A lien may be placed on the real property of an owner who fails to pay the annual fee in accordance with DRMC Section 49-252.</p>
Tier III Encroachment Resolution Revocation process	<p>If the owner desires to remove a Tier III Encroachment, and cancel the Tier III Encroachment Resolution, a letter requesting a revocation shall be submitted along with revocation processing fee of \$600.00.</p> <ul style="list-style-type: none"> A site inspection will be performed to verify the Encroachment(s) have been removed. The Tier III Encroachment Resolution may be revoked by City Council. After notice the revocation of the Resolution will be recorded in the same manner as an approved resolution.

Tier III Encroachment

Tier III General Conditions

1. The Executive Director of Public Works is authorized to remove or to order the removal of any article, vehicle, object or thing whatsoever encroaching into any street, alley, sidewalk, or other public way or place (DRMC Section 49).
2. The Executive Director of Public Works may prescribe appropriate methods, specifications, placement and materials for Encroachments in the ROW.
3. Any person who places an Encroachment in the ROW is responsible for the ongoing maintenance of the Encroachment. No third party, person or agency, unless specifically authorized by an Association or similar legal means, may place an Encroachment in front of a property without written permission of the adjacent property owner.
4. The use of the ROW for placement of an Encroachment does not create a property right or ownership interest of any kind.
5. Any person who places an Encroachment in the ROW agrees that the act of doing so acknowledges the duty to hold the harmless and indemnify the CCD from any damages or claims arising out of said placement.
6. RSOP and Right of Way Construction Permits may be required prior to placing an Encroachment in the ROW. At least five days prior to placement of the Encroachment, owner shall contact the PW Right of Way Inspections at (303) 446-3469 to coordinate placement and to obtain necessary permits.
7. Encroachments shall comply with the current Section 32 of the International Building Code and all subsequent amendments.
8. The owner of the Encroachment shall repair and/or replace, to the satisfaction of the Executive Director of Public Works, any damage to CCD owned assets, including but not limited to: trees, irrigation systems, curb, gutter and sidewalks as a result of the Encroachment, and all associated costs shall be paid for by the owner of the Encroachment.
9. Permittee shall assume full responsibility for any and all damages incurred to Denver Water facilities due to activities authorized by the permit. Denver Water, at the sole expense of the Permittee, shall make any and all replacement or repair of Denver Water facilities attributed to the permit. In the event Permittee's facilities are damaged or destroyed due to the Denver Water's repair, replacement and/or operation of its facilities, repairs will be made by the Permittee at its sole expense.
10. Encroachments shall not create sight distance problems for pedestrians, bicycles and drivers, and must comply with the standards published by AASHTO and all other CCD sight distance standards.
11. All Encroachments located underground or flush with the ground With the exception of tree grates, shall meet HS-20 loading criteria as defined by AASHTO. All required replacement of damaged existing Right-of-Way improvements will be in accordance with current CCD codes and standards, or may be more restrictive as determined on a case by case basis.
12. Encroachments shall not create access problems in the ROW or conflict with ADA requirements.
13. Encroachment shall not create a substantial adverse impact on persons or property or adversely affect the public health, safety and welfare.
14. Encroachments shall not obstruct stormwater drainage in and through the Right of Way nor cause water to collect on sidewalks, streets or alleys or conflict with DRMC Section 49-554.
15. All disturbances associated with construction of the Encroachment shall be managed as required by CCD standards for erosion control which may require standard notes or CASDP permitting depending on location and scope of project.
16. Encroachments proposed adjacent to a designated park or within a dedicated parkway shall require DPR approval prior to installation.
17. Encroachments shall not block Fire Department connections, fire hydrants, access or pathways.
18. Encroachments shall not display advertising without the permission of the Executive Director of Public Works and shall comply with DRMC Section 3-1.
19. Encroachments in the regulatory floodplain shall require a SUDP and comply with Chapter 12 Floodplain Management of the "PW Rules and Regulations Governing Sewerage Charges and Fees and Management of Wastewater" and the CCD Floodplain Ordinance in DRMC Section 56-200 through 56-206.
20. Encroachments shall be visible at night to the extent possible.

Chapter 6

DOWNTOWN DEVELOPMENT STANDARDS

9-6-1: PURPOSE AND OVERVIEW:

9-6-2: BASE DEVELOPMENT STANDARDS:

9-6-3: PARKING AREA AND ENCROACHMENTS:

9-6-4: ARCHITECTURAL DESIGN STANDARDS:

9-6-5: BUILDING TYPES AND FRONTAGES:

9-6-6: SPECIAL DESIGN AND OPERATIONAL STANDARDS:

9-6-7: CONVERSION OF RESIDENCES TO NONRESIDENTIAL USES:

9-6-1: PURPOSE AND OVERVIEW:

- A. Purpose: This chapter describes the specific development and land use standards for the downtown area of Lemoore. These standards work in concert with the other provisions of this title to define the allowed use, development, and design parameters for the downtown.
- B. Overview Of Form Based Zoning: Form based zoning provides a method of regulating development to achieve a desired urban form characterized by building typologies, and street frontage requirements. Form based provisions address the relationship between building facades and the public realm (e.g., streets and sidewalks), and the form and mass of buildings.
- C. Applicability Of Standards: As established in [chapter 3](#), "Zoning Districts And Map", of this title, downtown Lemoore is broken down into three (3) zoning districts: downtown mixed use - core (DMX-1), downtown mixed use - auto oriented (DMX-2), and downtown mixed use - transitional (DMX-3). [Chapter 4](#), "Land Uses", of this title identifies the allowed uses within each of these districts. This chapter identifies the development standards and design requirements for all new development and remodels of existing development within these districts. Unless otherwise exempted, all development and redevelopment in the DMX-1, DMX-2, and DMX-3 districts shall comply with the standards in this chapter and shall be reviewed for consistency as part of site plan and architectural review and zoning plan review.
- D. Deviations: Deviations from this chapter shall be allowed through the site plan and architectural review process for public/civic buildings. (Ord. 2013-05, 2-6-2014)

9-6-2: BASE DEVELOPMENT STANDARDS:

All proposed development and redevelopment of property within the downtown shall comply with the base development standards listed in this section.

- A. Building Placement: Each proposed new or remodeled structure shall comply with the build-to line, setback, and buildable area standards listed in table 9-6-2-A1, "Building Placement", of this section, except that encroachments into the public right of way may be allowed as provided in subsection [9-6-3B](#), "Encroachments", of this chapter.

TABLE 9-6-2-A1
BUILDING PLACEMENT

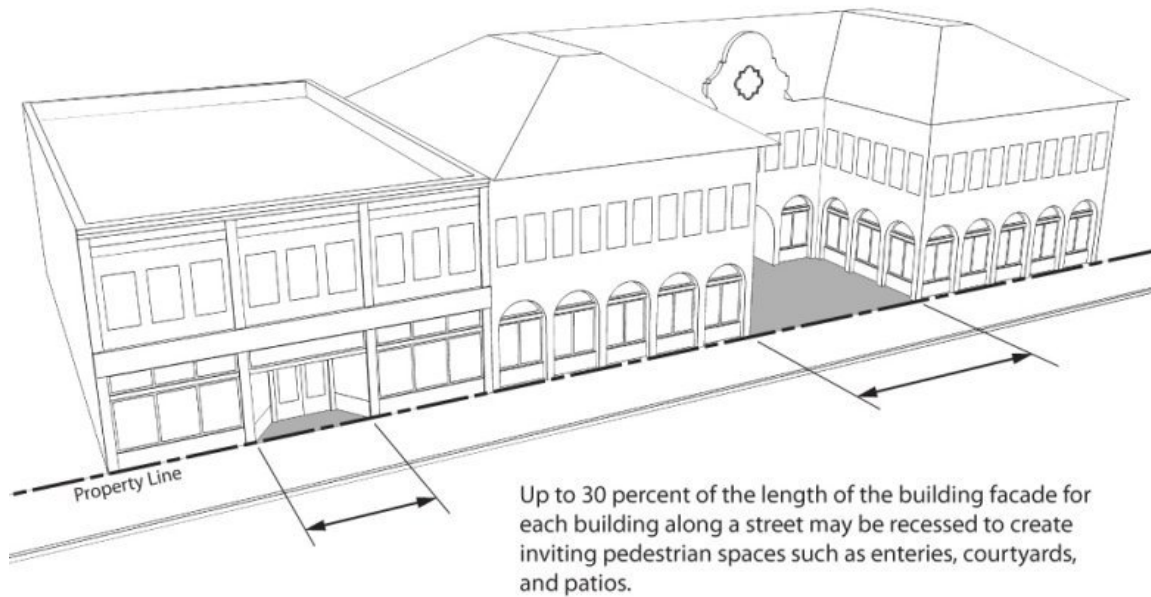
Development Standard	Measurement		
	DMX-1	DMX-2	DMX-3
Build-to line (maximum distance from property line):			
Front	0' ^{1,2}	5' ³	No max.
Street side, corner lot	0' ^{1,2}	5' ³	No max.
Setback (minimum distance from property line):			
Front	0'	0'	15'
Street side, corner lot	0'	0'	15'
Side	0'	0'	5'
Rear, adjacent to property line	0'	0'	15'
Rear, adjacent to alley	0'	0'	0' ⁴

Notes:

- Up to 30 percent of the length of the building facade along a street may be recessed. A higher percentage shall be allowed through site plan and design review where the setback area provides a more meaningful pedestrian area, such as patio seating for a restaurant, or other gathering spaces. See figure 9-6-2-A1, "Recessed Spaces", of this section.
- Exceptions shall be granted through site plan and design review for historic home/office conversion buildings and frontages to a maximum of 20 feet.
- Exceptions shall be granted through site plan and design review for automotive related uses to a maximum setback of 30 feet.

4. Row houses may be developed with no side yard setback and no alley setback as part of site plan and design review.

FIGURE 9-6-2-A1
RECESSED SPACES



Up to 30 percent of the length of the building facade for each building along a street may be recessed to create inviting pedestrian spaces such as entries, courtyards, and patios.

B. Height: Height standards for development within the downtown are listed in table 9-6-2-B1, "Height", of this section and shown in figure 9-6-2-B1, "Height", of this section.

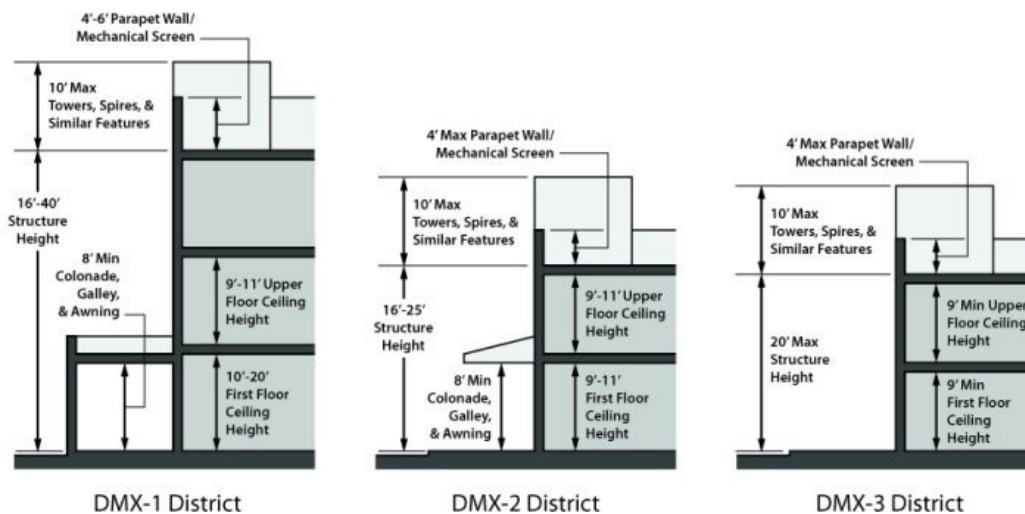
TABLE 9-6-2-B1
HEIGHT

Development Standard	Measurement		
	DMX-1	DMX-2	DMX-3
General height standards (maximum height):			
Structure height (finished grade to top of roof)	16' min., 40' max. ¹	16' min., 25' max.	No min., 20' max.
First floor ceiling height (finished floor to finished ceiling top plate)	10' min., 20' max.	9' min., 11' max.	No min. or max.
Upper floor(s) ceiling height (finished floor to finished ceiling)	9' min., 11' max.	9' min., 11' max.	9' min., No max.
Projections (additional height above maximum):			
Parapet wall, mechanical screen, and sloped false roofs	4' min., 8' max.	4' max.	4' max.
Towers, spires, elevator structures and similar features	10' max.	10' max.	10' max.
Vertical clearance of architectural features over public right of way	8' min.	8' min.	Not allowed

Note:

1. See special requirements for landmark buildings in subsection 9-6-4D, "Landmark Buildings", of this chapter.

FIGURE 9-6-2-B1
HEIGHT



(Ord. 2013-05, 2-6-2014)

9-6-3: PARKING AREA AND ENCROACHMENTS:

A. Parking: In places where parking is required or provided at the option of the property owner, parking areas shall be developed consistent with the standards listed in table 9-6-3-A, "Parking Area Design", of this section.

TABLE 9-6-3-A
PARKING AREA DESIGN

Development Standard	Measurement		
	DMX-1	DMX-2	DMX-3
Parking lot location (minimum setback):			
Setback from front property line	10' min .	10' min .	15' min .
Setback from side property line	5' min .	5' min .	5' min .
Setback from street side property line	10' min .	10' min .	10' min .
Setback from rear property line	4' min .	4' min .	4' min .

B. Encroachments: Permanent structures or improvements, including, but not limited to, planter boxes, seating, galleries, and awnings, are allowed within the public right of way within the DMX-1 and DMX-2 districts with approval of an encroachment agreement. Encroachments into the public right of way shall be in conformance with the standards in table 9-6-3-B1, "Encroachments", of this section and shown in figures 9-6-3-B1, "Encroachments", and 9-6-3-B2, "Sidewalk Clearance", of this section.

TABLE 9-6-3-B1
ENCROACHMENTS

Development Standard	Measurement		
	DMX-1	DMX-2	DMX-3
Encroachment location:			
Front and street side (maximum encroachment distance)	8'	8'	Permanent encroachments not allowed in the DMX-3 district
Clear space to curb (minimum distance to maintain clear at all times)	4'	4'	
Clear walk path (minimum distance to maintain clear at all times)	4'	4'	
Vertical clear area to sidewalk (minimum distance to maintain clear at all times)	8'	8'	

FIGURE 9-6-3-B1
ENCROACHMENTS

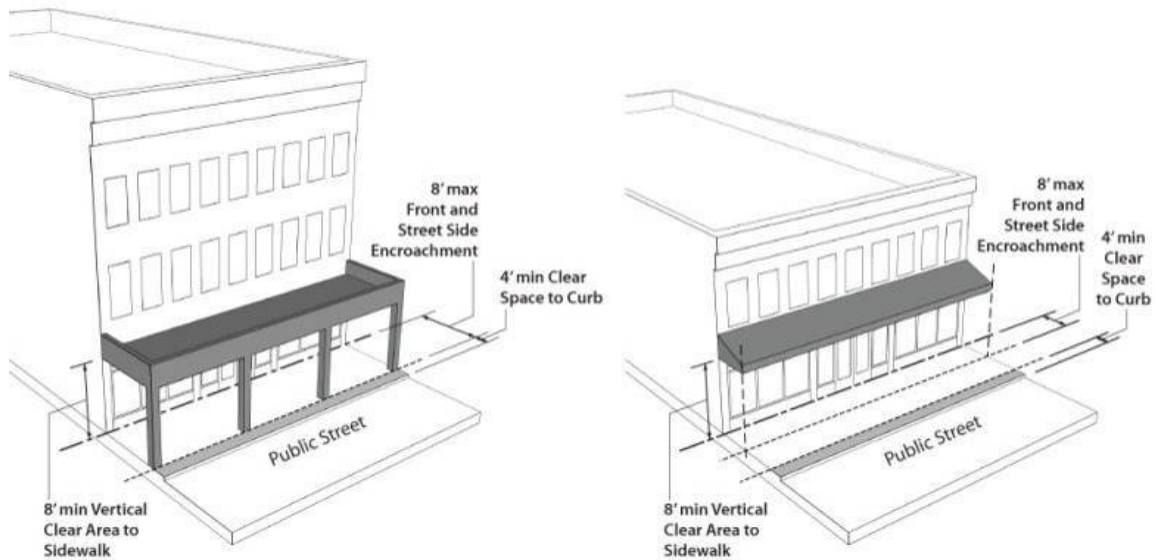
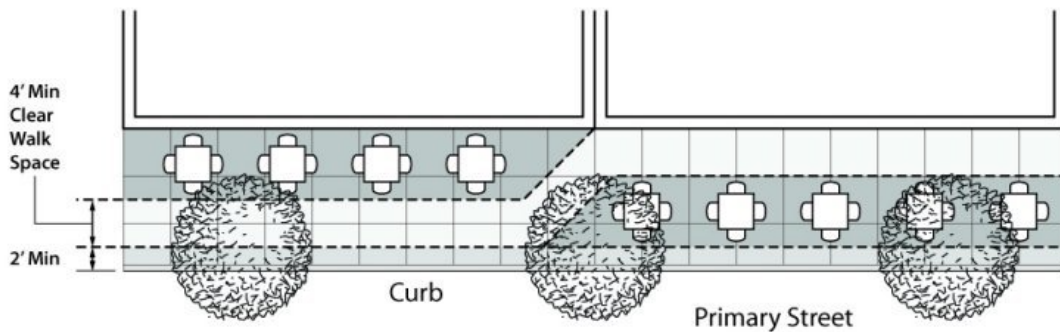


FIGURE 9-6-3-B2
SIDEWALK CLEARANCE



(Ord. 2013-05, 2-6-2014)

9-6-4: ARCHITECTURAL DESIGN STANDARDS:

This section includes architectural design standards for all new buildings, renovated buildings, and remodels within the downtown.

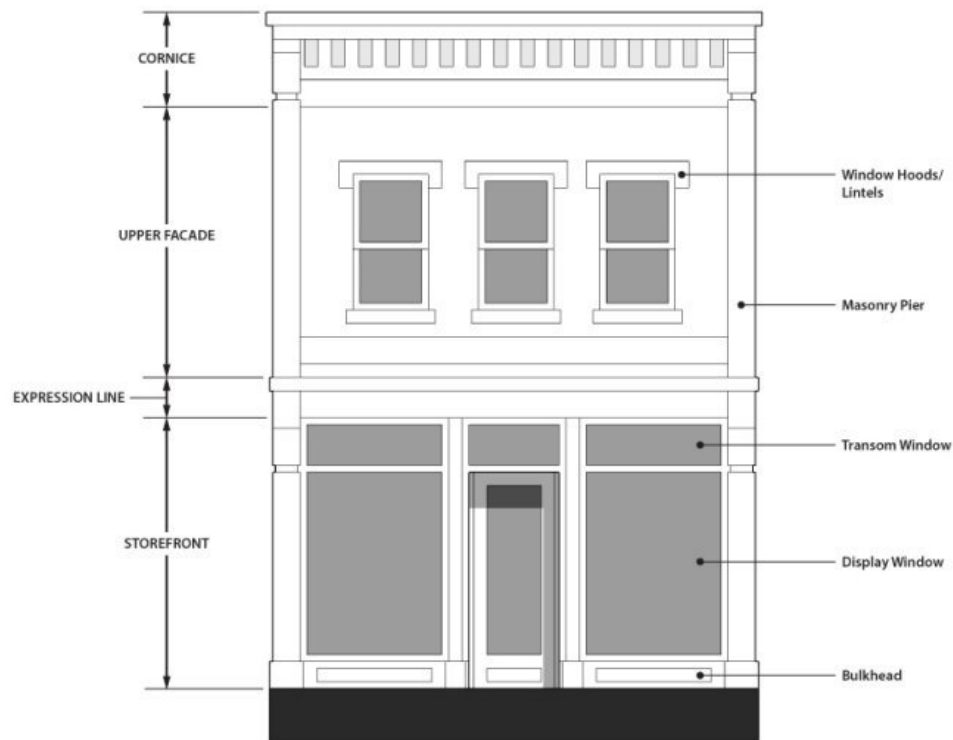
The city shall not require more than twenty percent (20%) of the construction costs for the building to be toward architectural detailing. Documentation showing the cost of the detailing relative to the overall cost of the structure will only need to be submitted by the applicant if they seek relief as part of the site plan and architectural design review process.

A. Architectural Details:

1. New and remodeled buildings within the downtown shall include architectural detailing consistent with the design character of the DMX district within which it is located. Design features include, but are not limited to, the following concepts identified below and illustrated in figure 9-6-4-A1, "Design Concepts", of this section:
 - a. Detailed cornice such as relief banding, tile banding, and accent tiles;
 - b. Trim around windows (e.g., window hoods and lintels) and doors;
 - c. Windows with muntins or glazing bars (elements that divide the window into multiple panes/lites) and/or mullions (structural elements that divide adjacent window units);
 - d. Expression lines between the first and second floors of multi-story buildings;
 - e. Transom windows on the first floor;
 - f. Recessed entries;
 - g. Large display windows that run the length of the building frontage; and

h. Wainscot base treatments along the bulkhead.

FIGURE 9-6-4-A1
DESIGN CONCEPTS



2. The physical design of building facades shall vary every twenty (20) to thirty (30) linear feet. This can be achieved through such techniques as:

- a. Architectural division into multiple buildings,
- b. Break or articulation of the facade,
- c. Significant change in facade design,
- d. Placement of window and door openings, or
- e. Position of awnings and canopies.

B. Building Materials: Building materials and finishes shall be selected to reinforce the overall design intent of the project and be consistent with the desired architectural character of the building. Buildings and structures shall be constructed with durable, low maintenance, and timeless building materials of the same or higher quality as surrounding developments. See figure 9-6-4-B1, "Building Materials", of this section.

1. The following materials are encouraged, but not required:

a. Roofs:

- (1) Barrel "U" shaped mission tile in a natural terra cotta or clay earth tone color;
- (2) Concrete tiles in terra cotta or earth tones;
- (3) Exposed wood structural members such as rafter tails, roof beams, and corbels;
- (4) Copper accents, gutters, downspouts, and scuppers;
- (5) Built up stucco or preformed molding on parapets for flat roof buildings.

b. Building walls:

- (1) Stucco (with hand troweled, smooth appearance), adobe, terra cotta, brick, replica brick, and cut stone are all acceptable materials to use on a main surface of a building;
- (2) Wood surfaces in the form of lap siding or board and batten may be used when consistent with architectural character of the building;
- (3) Ornamental tiles, wood, and bricks can be used as trim or accents around the base of the building;
- (4) Split face block may be used on unexposed sides and rears of buildings.

2. The following materials are prohibited:

a. Roofs:

- (1) Brightly colored glazed roofing tiles; and
- (2) Wood shingles and shake roofs.

b. Building walls:

- (1) Synthetic materials of poor quality;
- (2) Corrugated fiberglass;
- (3) Coarsely finished or unfinished plywood;
- (4) Metal siding;
- (5) Unfinished concrete block and split face block;
- (6) Shingles and T-111 siding;
- (7) Slumpstone block; and
- (8) Stucco when applied by sprayer (lace, sand finishes).

FIGURE 9-6-4-B1
BUILDING MATERIALS

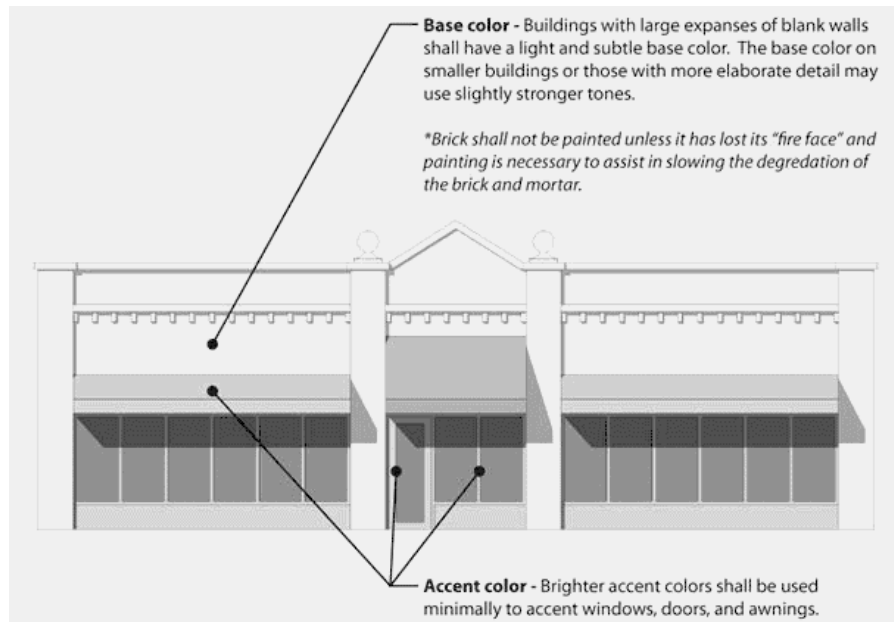


C. Colors And Painting: Color is an important aspect of the overall building design and character. Palettes shall be balanced, using the correct proportions between the lighter base colors and the brighter accent colors. Colors are to be chosen from the city adopted historic color palette, which is the Benjamin Moore Historic Colors palette, the America's Colors palette, and the Ready Mixed Colors palette. See figure 9-6-4-C1, "Building Color", of this section.

1. Brick: Brick shall not be painted unless it has been determined by the chief building official that the brick has lost its fire face and clear coat painting is necessary to assist in slowing the degradation of the brick and mortar.
2. Base Color: Buildings with large expanses of blank walls shall have a light and subtle base color. The base color on smaller buildings or those with more elaborate detail may use slightly stronger tones. Examples of base colors include, but are not limited to, light gray, cream, white, pale flesh, pale yellow, light beige, sage green, and caramel.

3. Accent Color: Brighter accent colors shall be used minimally to accent windows, doors, and awnings. Special materials such as glazed tile can also be used to introduce accent colors on building facades. Examples of accent colors include, but are not limited to, forest green, deep blue green, brick red, deep blue, and sea green.

FIGURE 9-6-4-C1
BUILDING COLOR



D. Landmark Buildings: The city encourages that new and remodeled buildings on corner lots in the DMX-1 zone be developed with the following features, achieving a concept called "landmark buildings" where corner lots have a more prominent presence and character than interior lots.

1. Utilize a multi-story design (at least 2 stories tall) with full, habitable upper floors;
2. Utilize corner treatments, including the use of towers, angled entries, balconies, and plaza areas;
3. Incorporate a higher level of architectural treatment than interior lots, including, but not limited to, articulated parapets and enhanced facade detail and trim (e.g., detailed cornice and expression line).

E. Lighting: Lighting shall be used to enhance the architectural details of a building, such as spotlighting for a shadow effect, to provide security to a building and to indicate whether a business is open. In addition to the requirements of section [9-5B-4](#), "Outdoor Lighting", of this title, development within the downtown shall comply with the following lighting standards:

1. Lighting fixtures shall be attractively designed to complement the architecture of the project. Accent lighting should be used to accent building details such as tower elements, ornamental windows, and tile, or to accent landscaping.
2. Lighting should improve visual identification of residences and businesses and create an inviting atmosphere for passersby.
3. Wall mounted lights should be used to the greatest extent possible to minimize the total number of freestanding light standards and shall be well detailed to complement the building architecture.
4. Parking lot lighting fixtures should not exceed twenty four feet (24') in height. When within fifty feet (50') of residential properties, fixtures should not exceed eighteen feet (18').
5. The light source used in outdoor lighting should provide a warm, calm glow, such as yellow light.
6. Street lighting shall be provided consistent with the city's improvement standards and other adopted lighting standards for the downtown, including specifically the type and style of historic light fixture similar to those existing in downtown. See figure 9-6-4-E1, "Street Lighting", of this section for an example.

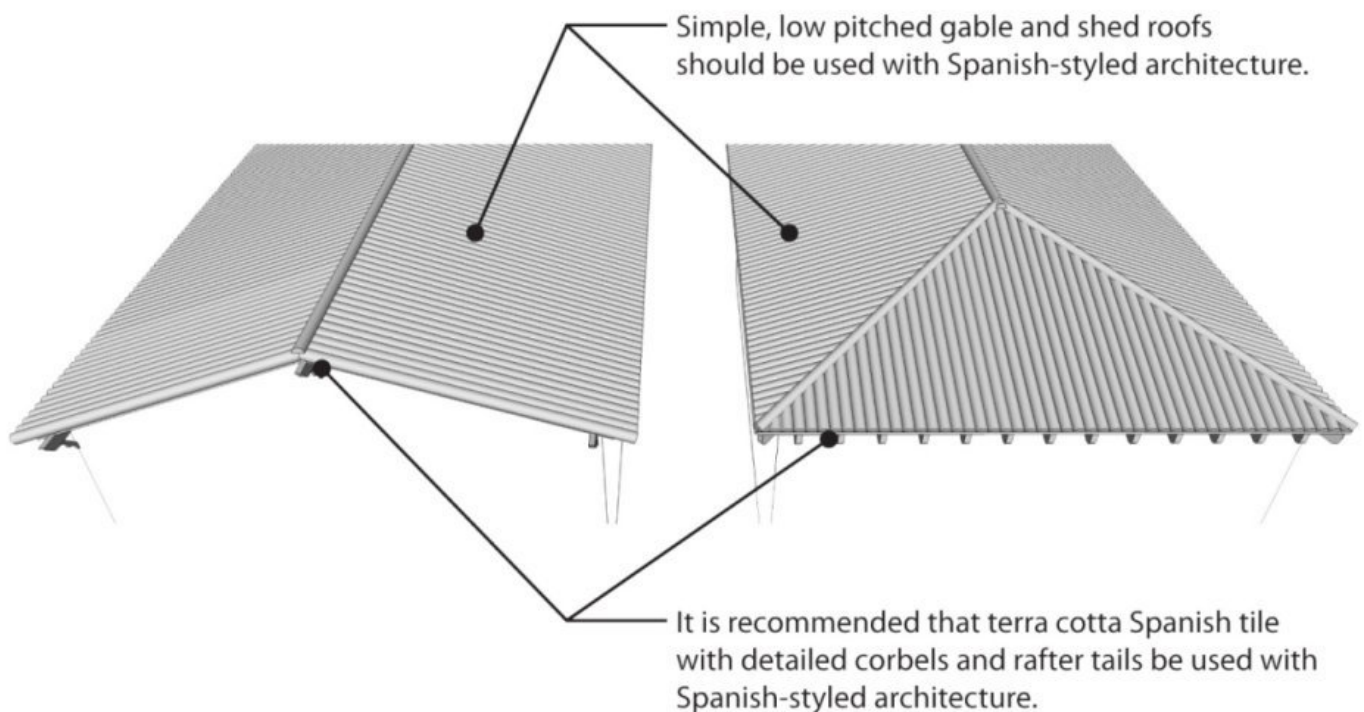
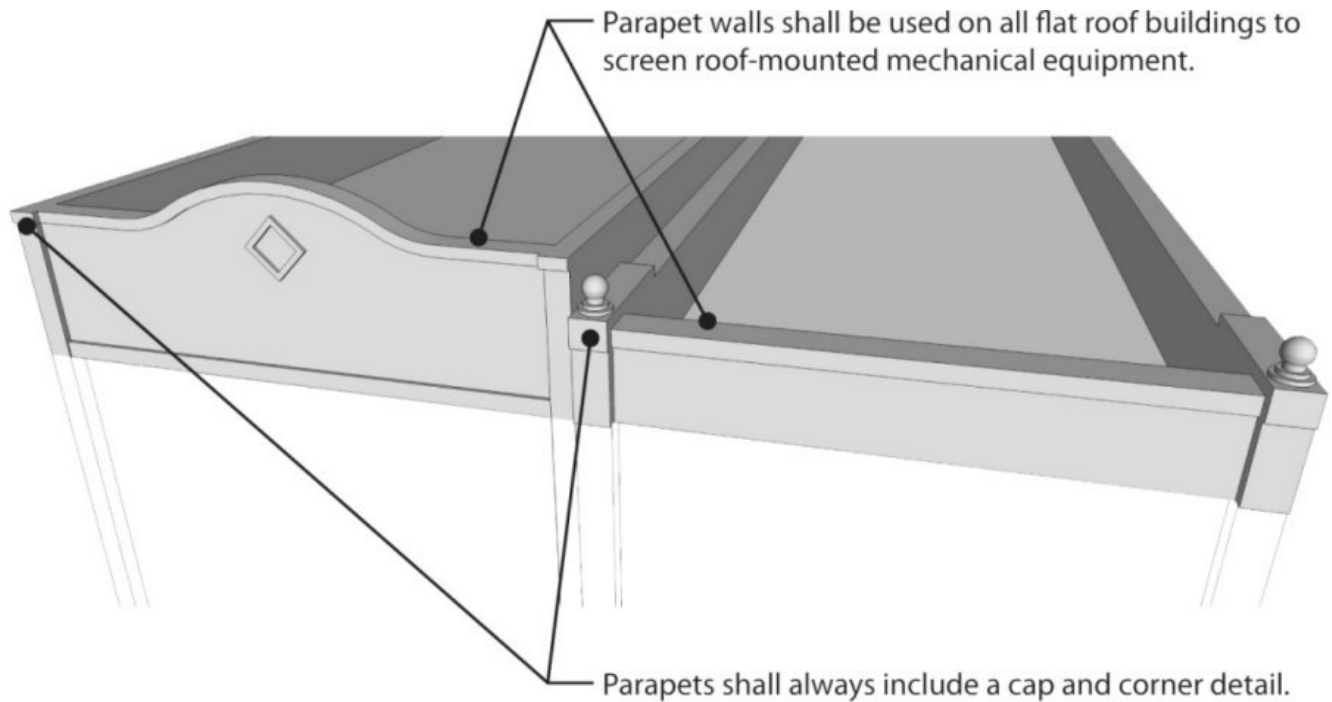
FIGURE 9-6-4-E1
STREET LIGHTING



F. Roof Forms: The following are the required design of roofs within the downtown. See figure 9-6-4-F1, "Roof Forms", of this section.

1. Parapet walls shall be used on all flat roof buildings to screen roof mounted mechanical equipment. Parapets shall always include a cap and corner detail.
2. The visible portion of sloped roofs should be sheathed with a roofing material complementary to the architectural style of the building and other surrounding buildings.
3. Simple, low pitched gable and shed roofs should be used with Spanish styled architecture. Terra cotta Spanish tile with detailed corbels and rafter tails can also be used.

FIGURE 9-6-4-F1
ROOF FORMS



G. Windows, Doors, And Awnings: New and remodeled windows, doors, and awnings shall meet the following standards:

1. Recess doors and windows to give the appearance of traditional, thick masonry walls consistent with architecture of the early 1900s and to produce interesting shadows.
2. Provide large storefront windows along first floor elevations accessible by the general public. These windows open up the sidewalk to create an inviting pedestrian atmosphere.
3. Use consistent treatment and types of windows and door frames across the entire building (or tenant space when a building is visually broken down to appear as multiple buildings from the street).
4. Windows shall include muntins or glazing bars (elements that divide the window into multiple panes/lites) and/or mullions (structural elements that divide adjacent window units) consistent with the architectural style of the building.
5. Awnings and canopies shall be constructed of canvas and metal. Textured plastic is not allowed.

6. Store entrances should open onto the public sidewalk. Space entrances to stores, particularly in the DMX-1 district, between twenty feet (20') and thirty feet (30') apart.
7. Windows shall not be reflective or dark glass and may not be tinted more than to meet building energy codes. (Ord. 2013-05, 2-6-2014)

9-6-5: BUILDING TYPES AND FRONTAGES:

A. Overview Of Standards: This section identifies the types of buildings and frontages allowed within downtown. Frontage type refers to the architectural composition of the front facade of a building, particularly concerning how it relates and ties into the surrounding public realm. The downtown Lemoore frontage types are intended to enhance social interactions in the historic downtown while simultaneously providing appropriate levels of privacy in residential areas. All new development within the downtown shall be consistent with one or more of the building and frontage types allowed within the applicable DMX district.

There are nine (9) types of buildings and frontages that can be developed throughout the downtown. The types allowed in each downtown district are listed in subsection B, "Allowed Buildings And Frontages In Each DMX District", of this section. The frontage types are defined, along with specific development standards for each type, in subsection C, "Building And Frontage Definitions And Standards", of this section.

B. Allowed Buildings And Frontages In Each DMX District: Allowed building and frontage types in the different DMX districts are listed in table 9-6-5-B1, "Allowed Buildings And Frontages", of this section. The symbols in the table shall have the following meanings:

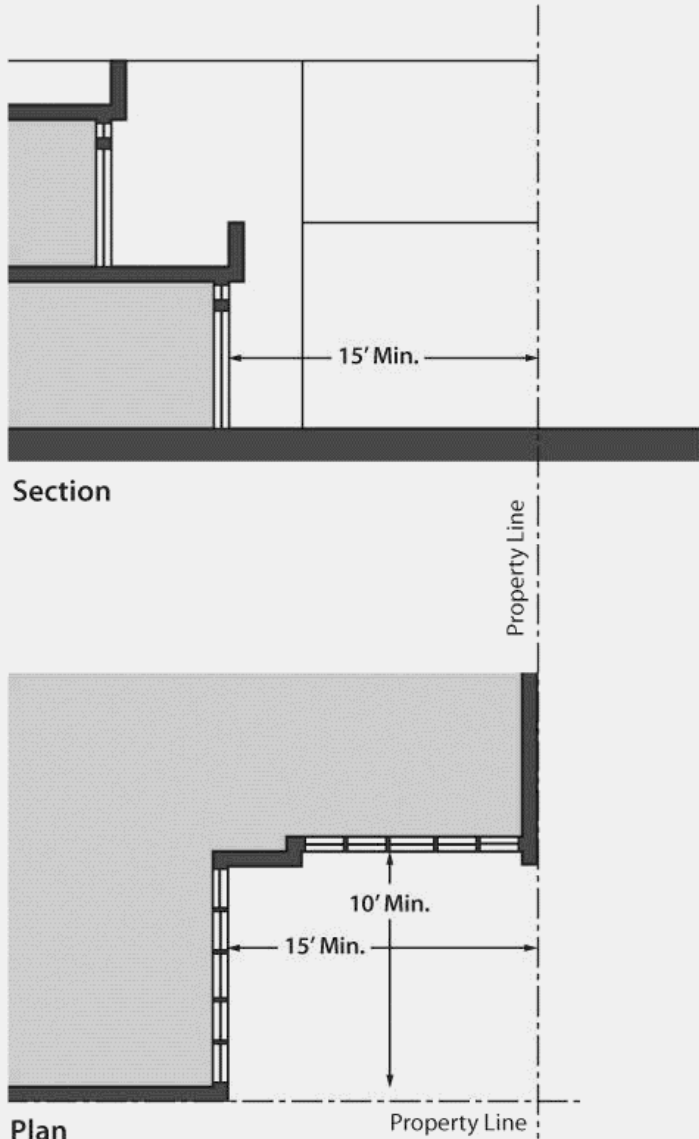
1. An "A" means that the building and frontage type is allowed;
2. An "E" means that the building and frontage type is preferred and encouraged; and
3. An "N" means that the building and frontage type is not permitted.

TABLE 9-6-5-B1
ALLOWED BUILDINGS AND FRONTAGES

Building And Frontage Type	Allowed Buildings And Frontages By Downtown District		
	DMX-1	DMX-2	DMX-3
Alley/paseo - active	E	A	N
Alley/paseo - nonactive	A	A	A
Balcony/bay window	A	N	N
Gallery - deck or roof	E	N	N
Historic home/office conversion	A	A	E
Porch	N	A	A
Row house	N	A	A
Storefront	E	A	N

C. Building And Frontage Definitions And Standards: The following defines the various building and frontage types allowed in the downtown. Each type includes text and illustrations describing the features that define the building and its frontage. It also includes a series of development standards for each type (e.g., minimum spacing between supporting columns). Development applications will be reviewed for consistency with these standards as part of site plan and architectural review and building permit plan check. These standards are in addition to any requirements of the city adopted building and fire codes as may be required at the time of building permit issuance.

ALLEY/PASEO - ACTIVE



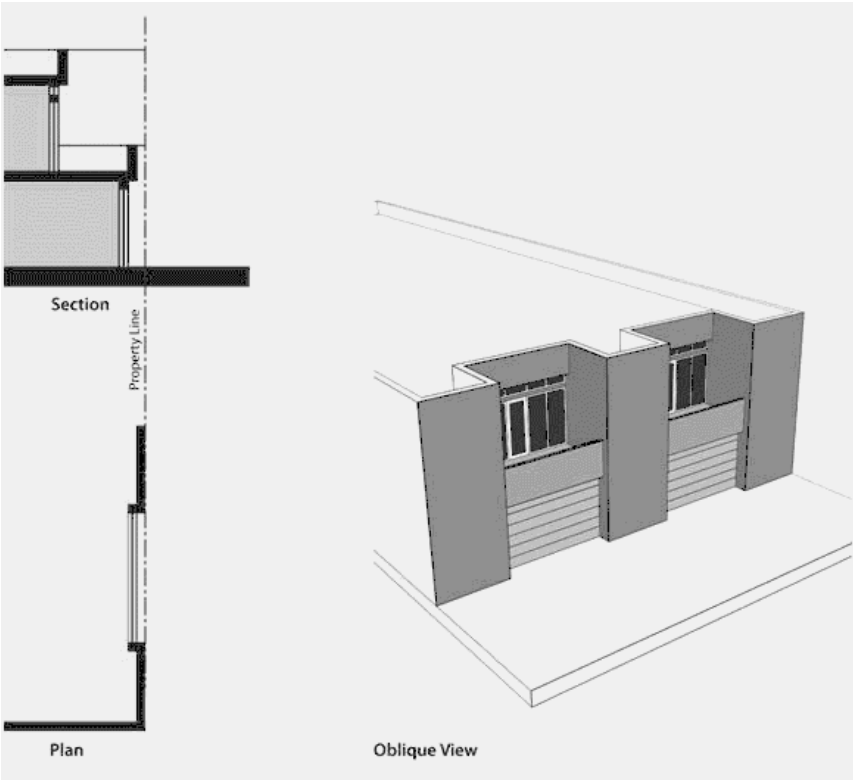
Oblique View

Alley/Paseo - Active Description: The active alley/paseo frontage is the development of the rear of a building abutting an alley with an active pedestrian area. Examples include patio seating for restaurants, primary entrances for ground floor businesses, and other gathering spaces for pedestrians. While alleys are typically used as the service areas for buildings (e.g., trash collection, utility service), the city recognizes that parcels in the downtown have substantial depth and present an opportunity for property owners to create multiple tenant spaces at both ends of their buildings.

Alley/Paseo - Active Dimensions

Development Standard		Measurement
Pedestrian area:		
	Width	10 feet minimum
	Depth	15 feet minimum

ALLEY/PASEO - NONACTIVE

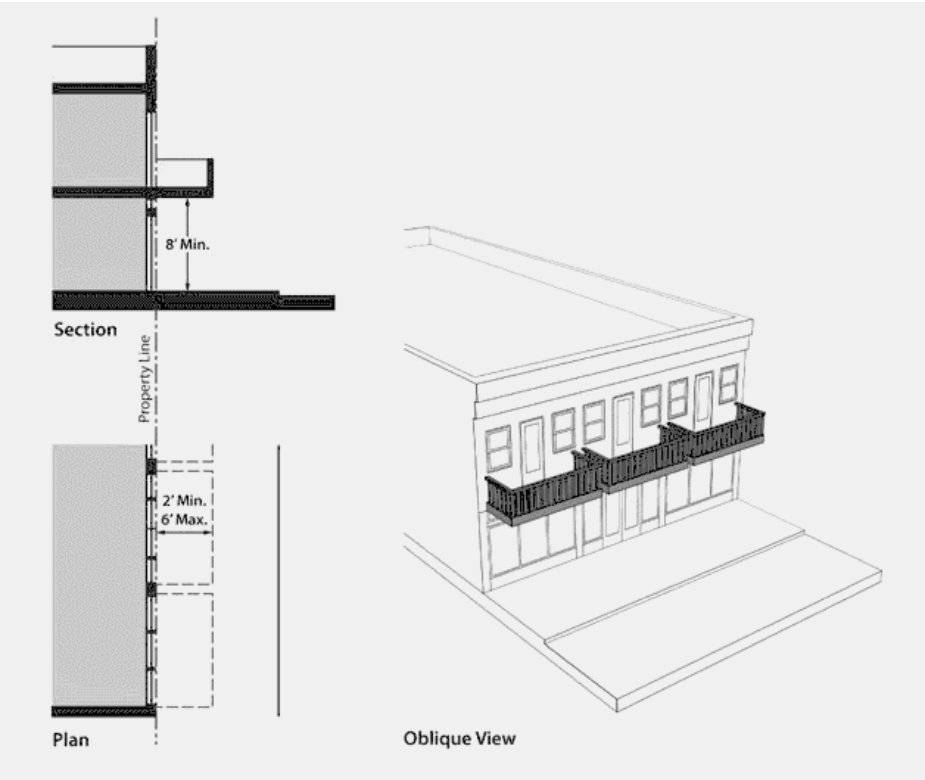


Alley/Paseo - Nonactive Description: The nonactive alley/paseo frontage is the development of a building directly abutting the rear property line where there is an alley. This type of frontage may have secondary/emergency access to the building, along with utility and service access. This type of frontage is appropriate for retail and office buildings throughout the downtown, as well as row houses with alley access garages. This frontage type does allow for a balcony or balconies to be built along the frontage, provided the balcony does not encroach into the alley.

Alley/Paseo - Nonactive Dimensions

Development Standard	Measurement
There are no specific development standards for the alley/paseo - nonactive building and frontage beyond the building placement and height standards in section 9-6-2 , "Base Development Standards", of this chapter.	

BALCONY/BAY WINDOW

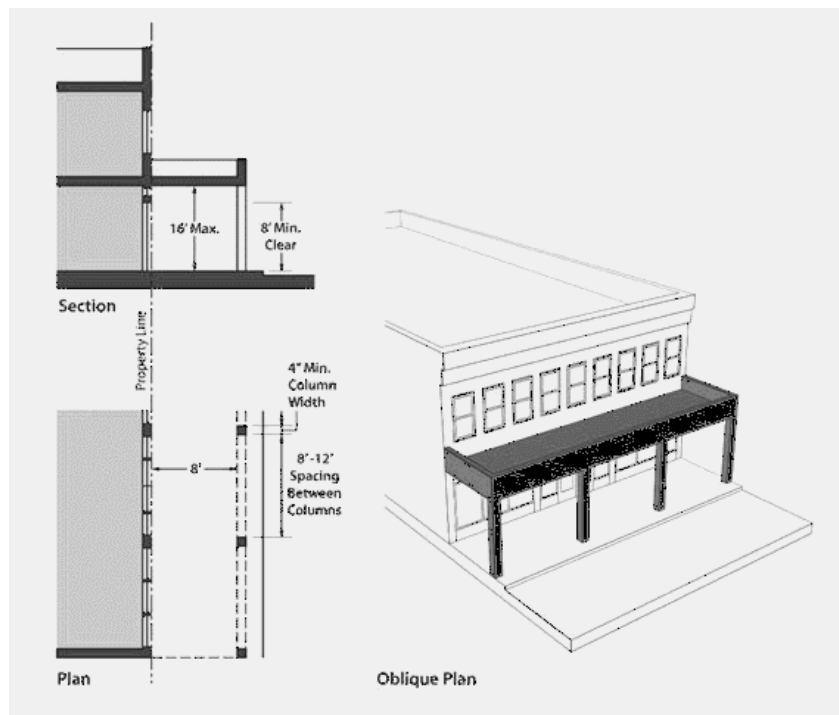


Balcony/Bay Window Description: A balcony/bay window frontage is characterized by a facade which is aligned close to or directly on the build-to line with the building entrance at the sidewalk grade and by a balcony or bay window projecting into the right of way on a floor other than the ground floor. This frontage is typically appropriate for ground floor retail or restaurant use with office or residential above. An encroachment agreement is needed to construct this frontage type.

Balcony/Bay Window Dimensions

Development Standard		Measurement
Depth		2 feet minimum
		6 feet maximum
Height (base to sidewalk)		8 feet minimum clear
Percentage of building front (collective)		50 percent to 100 percent
Doorways (ground floor):		
Doorway inset		0 feet to 12 feet
Doorway width		5 feet to 11 feet
Ground floor windows:		
Window width		5 feet to 7 feet
Window height (allowed range)		6 feet to 7 feet

GALLERY - DECK OR ROOF



Gallery - Deck Or Roof Description: A gallery - deck or roof frontage is characterized by a facade which is aligned close to or directly on the build-to line with the building entrance at the sidewalk grade and with an attached colonnade deck that projects over the public sidewalk and encroaches into the public right of way. The sidewalk must be fully absorbed within the colonnade so that a pedestrian may not bypass it. The colonnade may project over the public sidewalk, provided that the upper stories of the building do not also project over the public sidewalk. This frontage is typically appropriate for retail use. An encroachment agreement is needed to construct this frontage type.

Gallery - Deck Or Roof Dimensions

Development Standard		Measurement
Depth		8 feet
Height (base to sidewalk)		8 feet minimum clear 16 feet maximum
Percentage of building front		100 percent
Spacing between columns		8 feet minimum to 12 feet maximum
Minimum column width		4 inches
Doorways (ground floor, allowed ranges):		
	Doorway inset	0 feet to 12 feet
	Doorway width	5 feet to 11 feet
Ground floor windows (allowed ranges):		
	Window width	5 feet to 7 feet
	Window height	6 feet to 7 feet

HISTORIC HOME/OFFICE CONVERSION



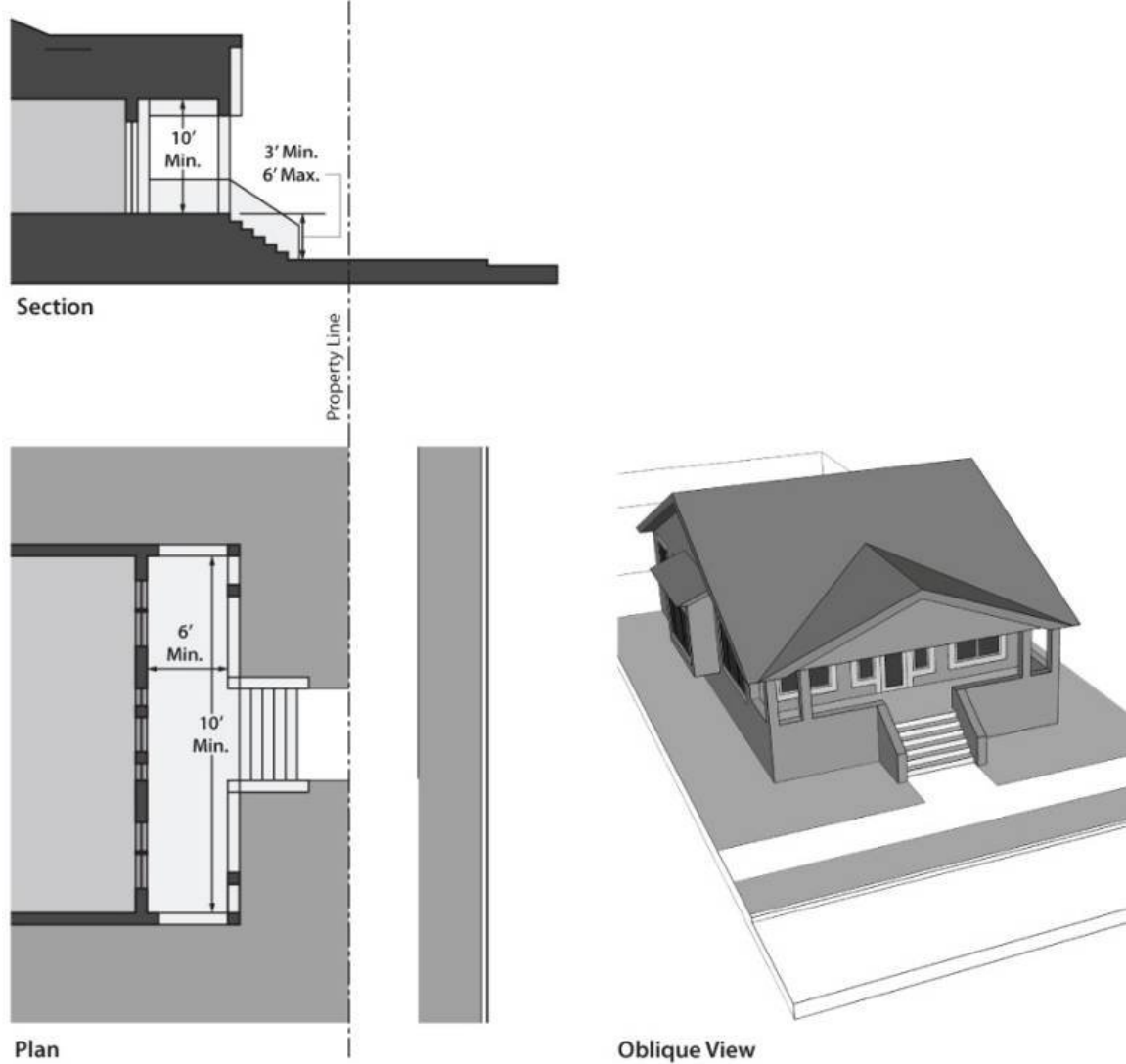
Historic Home/Office Conversion Description: The historic home/office conversion frontage is the reuse of an existing home for a nonresidential use (typically office or general medical service), or the development of a new structure to resemble a historic home that has been converted to an office use.

Historic Home/Office Conversion Dimensions

Development Standard	Measurement
Setback	20 feet maximum
Distance to porch	6 feet minimum 20 feet maximum
Porch height above sidewalk grade	3 feet minimum 6 feet maximum
Porch width	10 feet minimum
Porch depth	6 feet minimum
Clearance above porch to roof	10 feet minimum

Note: ADA ramp(s) shall be located to connect to the side of the porch. Ramps are exempt from setback standards.

PORCH

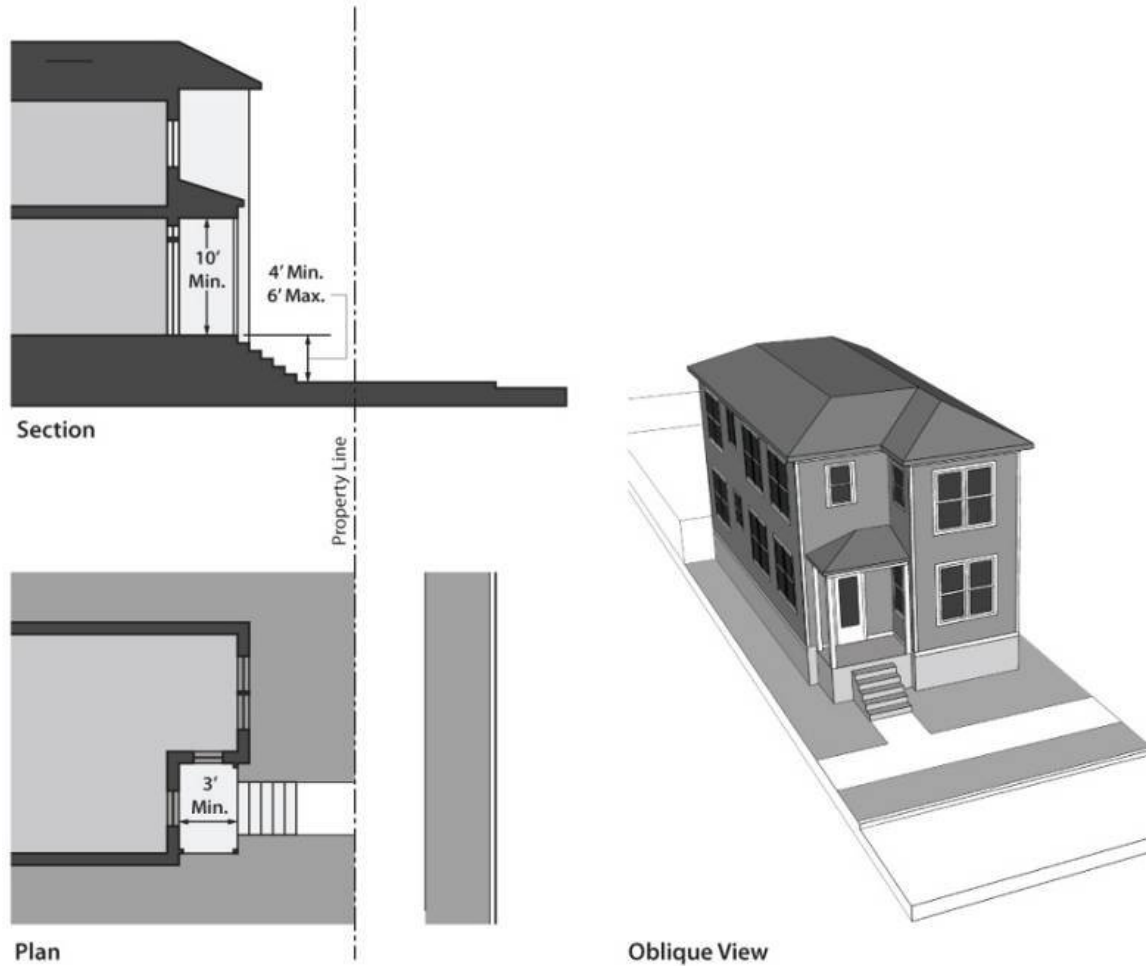


Porch Description: The porch frontage is intended for residential uses. The type is characterized by a covered, active outdoor living space connected to the front of the building. The porch shall be raised above the finished grade of the lot and adjacent public sidewalk.

Porch Dimensions

Development Standard	Measurement
Porch height above sidewalk grade	18 inches minimum 6 feet maximum
Porch width	10 feet minimum
Porch depth	6 feet minimum
Clearance above porch to roof	8 feet minimum

ROW HOUSE

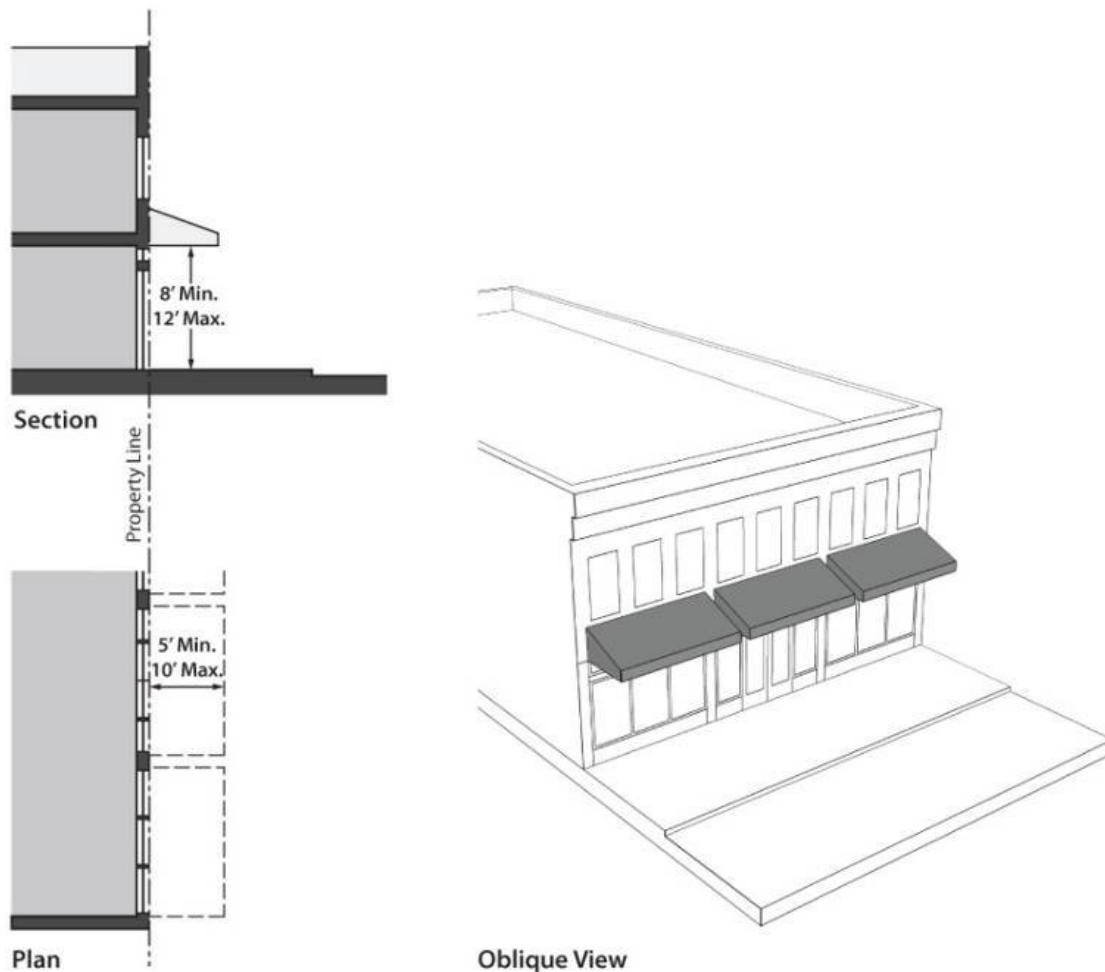


Row House Description: A row house is a residential dwelling with little to no side yard. The entrance to the dwelling is raised above the sidewalk in order to create privacy for the occupant. Living spaces are located at the front of the unit. Parking is accessible from the alley behind the unit.

Row House Dimensions

Development Standard	Measurement
Stoop height above sidewalk grade	18 inches minimum 6 feet maximum
Stoop depth	3 feet minimum
Clearance above stoop	8 feet minimum

STOREFRONT



Storefront Description: A storefront frontage is characterized by a facade which is aligned close to or directly on the public right of way line with the building entrance at sidewalk grade. Storefront frontages have substantial glazing on the ground floor and provide awnings or canopies cantilevered over the sidewalk. Building entrances may either provide a canopy or awning, or alternatively, may be recessed behind the front building facade. Awnings over the public sidewalk require approval of an encroachment agreement.

Storefront Dimensions

Development Standard	Measurement
Awning depth	3 feet minimum 8 feet maximum
Height (base to sidewalk)	8 feet minimum clear 12 feet maximum
Doorways (allowed range):	
Doorway inset	0 feet to 12 feet
Doorway width	5 feet to 11 feet
Ground floor windows (allowed range):	
Window width	5 feet to 7 feet
Window height	6 feet to 7 feet

(Ord. 2013-05, 2-6-2014)

9-6-6: SPECIAL DESIGN AND OPERATIONAL STANDARDS:

The following are special development standards for the downtown pertaining to trash enclosures and utilities. These standards are intended to ensure that services for properties within the downtown are planned and developed in a manner that is consistent with the overall character of the area.

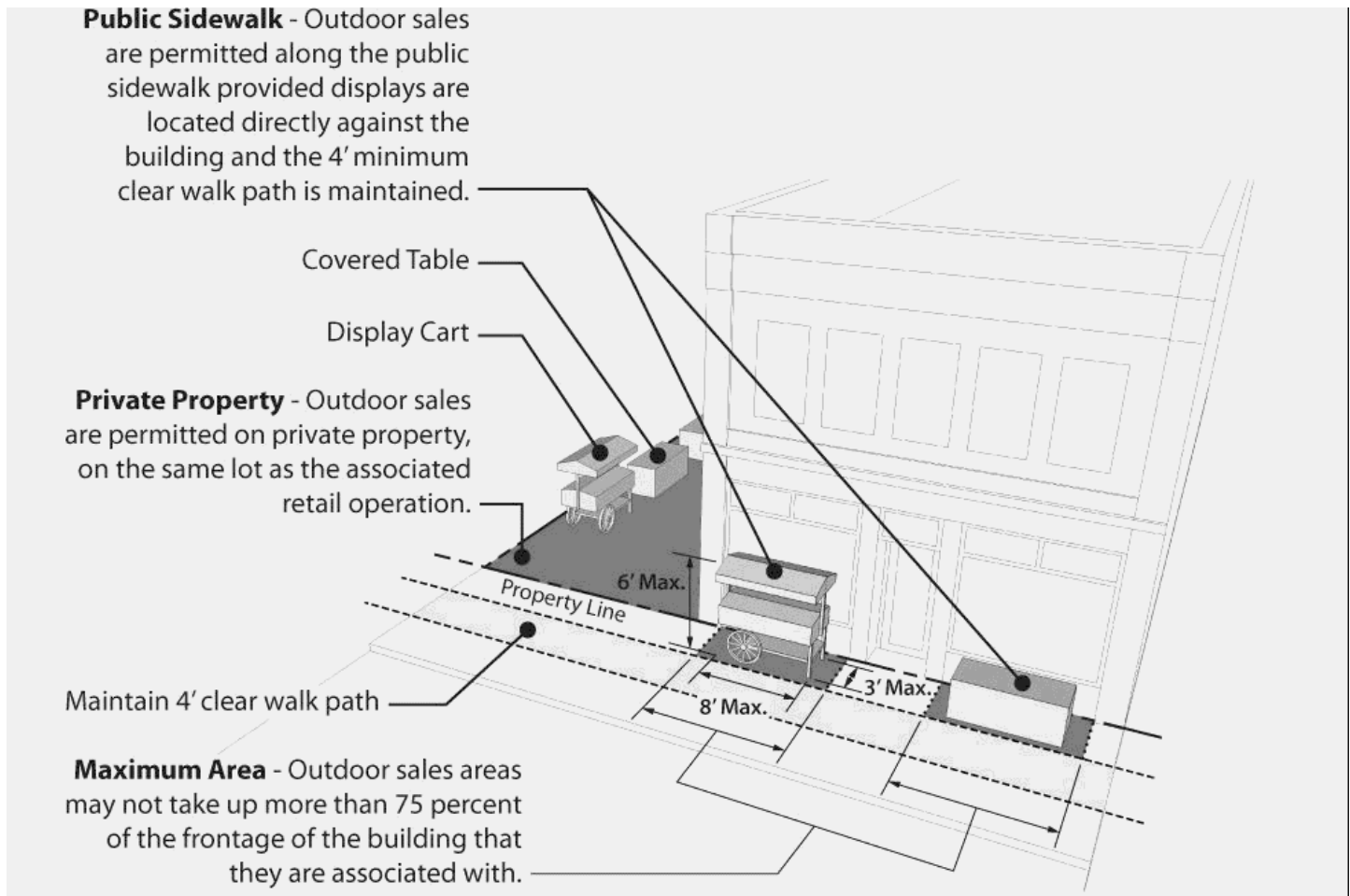
A. Outdoor Dining: The development standards below apply to all outdoor seating for food uses, including both fixed and movable seats. These standards are intended to be consistent with the requirements of the state alcoholic beverage control agency.

1. Location: Seating shall be located proximate to the dining establishment. Where seating is located within the public right of way, an encroachment agreement shall be required and seating areas shall be installed consistent with subsection 9-6-3B, "Encroachments", of this chapter, specifically maintaining a clear walk path as illustrated in section 9-6-3, figure 9-6-3-B2, "Sidewalk Clearance", of this chapter.
2. Enclosure: An enclosure wall, fence, or planter shall be required around any outdoor seating areas with restaurant table service where alcohol is served, consistent with state licensing requirements. Walls, fences, and planters shall not exceed a maximum height of three and one-half feet (3.5'). The wall/fence may be extended to a maximum height of six feet (6') if the area above three and one-half feet (3.5') remains primarily open view (e.g., glass, wrought iron).

B. Outdoor Sales (Temporary): The following development and operational standards apply to all temporary outdoor sales. See also figure 9-6-6-B1, "Temporary Outdoor Sales", of this section.

1. Location: Outdoor sales are allowed to occur when consistent with the following standards:
 - a. On private property, on the same lot as the associated retail operation; and
 - b. Along the public sidewalk when consistent with subsection 9-6-3B, "Encroachments", of this chapter, specifically maintaining a clear walk path as illustrated in section 9-6-3, figure 9-6-3-B2, "Sidewalk Clearance", of this chapter. Displays shall be located directly against the building and not along the curbside.
2. Maximum Area: Outdoor sales areas may not take up more than seventy five percent (75%) of the frontage of the building that they are associated with.
3. Product Display: Products shall be displayed as follows:
 - a. Tables: Products displayed on tables shall be kept organized at all times. The tables shall be covered with a table cloth or skirt such that the legs and under table area is screened.
 - b. Display Carts: Display carts shall be no taller than six feet (6'), no longer than eight feet (8'), and no wider than three feet (3').
4. Term: Products may only be displayed outdoors during the business hours of the associated retail use. Goods may not be displayed outside overnight.

FIGURE 9-6-6-B1
TEMPORARY OUTDOOR SALES



C. Outdoor Storage And Sales (Permanent): The following development and operational standards apply to all permanent outdoor storage.

1. Location: Outdoor storage and permanent sales are allowed in the rear of the lot or within interior side yards. Outdoor storage is not allowed within front and street side yards.
2. Maximum Area: The maximum area allowed for outdoor storage shall be twenty five percent (25%) of the total lot area.
3. Enclosure/Screening: Outdoor storage areas shall be enclosed through the use of walls or fencing. The maximum allowed fence height is six feet (6'). Fencing shall be of a solid surface, blocking all views into the storage space, such as CMU block (required to be treated with a graffiti resistant material) and solid wood.
4. Storage Area Maintenance And Upkeep When Visible From Public Right Of Way: When the storage area is viewable from the public right of way (e.g., sidewalk), the storage area shall be regularly maintained and kept orderly and clean such that it does not create a public nuisance.

D. Trash Collection: The following provisions describe the city's minimum standards for the design and location of trash and other refuse collection areas as part of new development.

1. Trash storage must be fully screened from public streets, subject to design approval from the city and operational approval from the public works department. Where practical, storage at common enclosures is preferred. Other design solutions may include, but are not limited to, incorporating within the main structure (subject to compliance with city adopted building and fire codes) or within a separate freestanding enclosure.
2. Trash enclosures shall be architecturally compatible with the project. Examples include use of the same materials and colors as the building.
3. Refuse containers and service facilities shall be screened from view by solid masonry walls with powder coated solid metal doors. Chainlink or wood fencing is prohibited.
4. When possible, trash enclosures shall be located away from residential uses to minimize nuisance for the adjacent property owners.

E. Utilities: Utilities for new development and redevelopment of property shall be integrated either into the structure(s), placed underground, or otherwise designed as an integral part of the project. (Ord. 2013-05, 2-6-2014)

9-6-7: CONVERSION OF RESIDENCES TO NONRESIDENTIAL USES:

A. Purpose: The purpose of this section is to provide development standards that accommodate the conversion of historic residences for nonresidential use in the DMX zone districts, while maintaining the historic character of the neighborhoods.

B. Development Standards: When existing buildings that have historically been used as residences are converted to nonresidential uses the standards of this section shall be met.

1. Significant Alteration: For existing residences, exterior alterations or additions will be permitted so long as they do not significantly alter the original architectural style and provided that the changes enhance or upgrade the property.
2. Standards For Conversion: Exterior modifications to buildings shall be minimized to the extent possible. When exterior modifications are made, the standards in table 9-6-7-B, "Standards For Conversion To Nonresidential Use", of this section shall be met.

TABLE 9-6-7-B
STANDARDS FOR CONVERSION TO NONRESIDENTIAL USE

Development Standard	Measurement
Setback - front	20 feet minimum
Setback - interior side	5 feet minimum
Setback - corner side	10 feet minimum
Setback - rear	5 feet minimum
Building height	35 feet maximum

3. Porches And Handrails: Buildings with existing front and/or side yard covered porches and handrails that are indicative of the architectural style shall remain and be improved.
4. Parking: Parking shall be located in the rear of the lot. Parking shall not be allowed in the front or corner side setback areas of a corner lot.
5. Access: Parking shall only be accessed from the alley. (Ord. 2013-05, 2-6-2014)

Chapter 32

ENCROACHMENTS INTO PUBLIC RIGHT-OF-WAY

SECTION 3201 – GENERAL

3201.4 *Revise this section as follows:*

3201.4 Drainage. Drainage water collected from a roof, awning, canopy, or marquee, and condensate from mechanical equipment shall be conducted to the building drain or building sewer, and shall not flow over a public walking surface.

SECTION 3202 – ENCROACHMENTS

3202.3.1 *Replace this section as follows:*

3202.3.1 Awnings, canopies, marquees and signs. Awnings, canopies, marquees and signs shall be constructed so as to support applicable loads as specified in Chapter 16.[←] Canopies shall be allowed only over entrance doorways and only for Occupancy Groups A, B, F-1, M, S-1, S-2 and R. Canopies may be constructed as awnings and with the same limitations except that:

1. The maximum width shall be 10 feet (3.048 m); and
2. The maximum extension over public sidewalk may be to a point 2 feet (0.61 m) from the curb; and
3. The outer column support shall be located in the outer one-third of the sidewalk.

3202.3.2 *Replace this section as follows:*

3202.3.2 Windows, balconies, architectural features and mechanical equipment.[←]

A 3-foot (0.914 m) projection shall be permitted for bay and oriel windows when the clearance above grade is at least 10 feet (3.048 m) and the width of the sidewalk is greater than 9 feet (2.74 m). Where the sidewalk width is 9 feet (2.74 m) or less, the projection shall not exceed 2 feet (0.61 m).

For all other appendages, a 2-foot (0.61 m) projection is permitted when the clearance above grade is at least 10 feet (3.048 m). The projection may be increased 1 inch (25.4 mm) for each additional foot of clearance over 10 feet (3.048 m), to a maximum of 4 feet (1.219 m).

3202.3.4 *Add the following after the first paragraph as follows:*

A covered pedestrian walkway may be constructed over a street between buildings of only Types I-A and I-B construction. Permission from the Board of Supervisors and approval of the Department of Public Works and Planning Commission is required. The pedestrian walk-way shall comply with the following conditions:

1. The pedestrian walkway shall be equipped with an automatic sprinkler system. The supporting structure shall be three-hour fire-resistive construction. Columns located within 8 feet (2.438 m) of the

curb, or otherwise vulnerable to vehicle impact, shall either be designed for such impact or protected from the impact.

2. The openings in the exterior walls of the buildings at the ends of the pedestrian walkway shall be protected by 1½ hour fire assemblies.

SECTION 3203 – SIDEWALK CONSTRUCTION

<i>3203 Add a section as follows:</i>

3203.1 General. Sidewalks shall be constructed in accordance with the Public Works Code.

Sidewalks over excavated areas shall be supported on noncombustible construction with 3-hour fire-rated protection. The sidewalk shall be waterproofed by use of a hot mopped asphalt membrane or other approved means.

3203.2 Openings in Sidewalks.

3203.2.1 Sidewalk trapdoor. Every basement extending under the sidewalk shall have an approved sidewalk trapdoor. The minimum size of the trapdoor opening shall be 4 feet by 4 feet (1.219 m by 1.219 m). However, trapdoors shall not be required where the basement is provided with an automatic sprinkler system.

3203.2.2 Sidewalk elevators. All openings hereafter constructed in sidewalks for sidewalk elevators shall be located in the outer half of the sidewalks, next to the curb. The outer edges of the openings shall be not more than 30 inches (762 mm) from the outer line of the curb. The length of the sides of the openings at right angles to the curb shall not exceed one-half of the width of the sidewalk and in no case shall it exceed 5 feet (1.524 m).

3203.2.3 Any other purpose. Openings on the sidewalks for any other purpose, if placed outside the property line, shall be covered with approved gratings having a maximum opening between bars of ½ inch (12.7 mm), or with covers having a rough surface, and rabbeted flush with the sidewalk. When a cover is placed in any sidewalk, it shall be placed as near as practicable to the line of the curb. All spaces under sidewalks shall be thoroughly ventilated.

3203.2.4 Framing. All framing supporting only the sidewalk opening shall be of noncombustible material.

3203.2.5 Guards. Metal guards will be required for openings in sidewalks in accordance with the Police Code.

3203.3 Electrical Transformers. No portion of any electrical transformer pad shall be constructed, nor electrical transformer installed on the surface of any portion of any public sidewalk.

Chapter 32 Encroachments Into the Public Right-Of-Way

Section 3201 General

3201.1 Scope

The provisions of this chapter shall govern the encroachment of structures into the public right-of-way.

3201.1.1 Encroachments Removable

All encroachments permitted beyond the street line by the provisions of this chapter shall be constructed so that they may be removed at any time without endangering the structural safety or fire safety of the building except that footings as permitted under Section 3202.1.1 of this code need not be removable.

3201.2 Measurement

The projection of any structure or portion thereof shall be the distance measured horizontally from the lot line to the outermost point of the projection.

3201.3 Other Laws

The provisions of this chapter shall not be construed to permit the violation of other laws regulating the use and occupancy of public property.

3201.3.1 Restrictions on Construction and Projections on Certain Streets, Parkways, Boardwalks and Beaches

Notwithstanding the provisions of this chapter, it shall be unlawful to build, erect, or make areaways, steps or other encroachments or projections prohibited by Sections 19-131, 19-132, 19-135, 18-109, 18-112 and 18-113 of the *Administrative Code*.

3201.4 Drainage

Drainage water collected from a roof, awning, canopy or marquee, other than canvas and flexible material, and condensate from mechanical equipment shall not flow over a public walking surface.

3201.5 Permission Revocable

Any permission, expressed or implied, permitting the construction of encroachments within the area of the street under the provisions of this chapter shall be revocable, except footings as permitted under Section 3202.1.1.

3201.6 Existing Projections

Any part of a building that projects beyond a street line on January 1, 1938, may be maintained as constructed until its removal is directed in accordance with applicable law.

3201.7 Alteration of Existing Encroachments

Alterations to existing encroachments beyond the street line may be permitted in whole or in part, provided that such alterations conform with the requirements of this chapter.

3201.8 Definitions

As used in this chapter, the following terms shall have the following meanings:

AREAWAY. A space below grade adjacent to a building open to the outer air and enclosed by walls.

CURB LINE. The line coincident with the face of the street curb adjacent to the roadway.

FOOTING. A foundation element consisting of an enlargement of a foundation pier or foundation wall, wherein the soil materials along the side of and underlying the element may be visually inspected prior to and during its construction.

PROJECTING SIGN. A sign other than a wall sign, which projects from and is supported by a wall of a building or structure.

SIGN. Any letter, figure, character, mark, plane, point, marquee sign, design, poster, pictorial, picture, stroke, stripe, line, trademark, reading matter or illuminated service, which shall be constructed, placed, attached, painted, erected, fastened or manufactured in any manner whatsoever, so that the same shall be used for the attraction of the public to anyplace, subject, person, firm, corporation, public performance, article, machine or merchandise, whatsoever, which is displayed in any manner outdoors. Every sign shall be classified and conform to the requirements of that classification as set forth in this chapter.

STREET. A thoroughfare, including sidewalks and roadways, dedicated or devoted to public use by legal mapping or other lawful means, or a public way.

STREET LINE. A lot line separating a street from other land.

VAULT. Any space below the surface of a street, that is covered over, except those openings that are used exclusively as places for descending, by means of steps, to the cellar or basement of any building.

3201.9 Department of Transportation Approval

Any encroachment into the public right-of-way that exceeds the limitation provided for in this chapter shall require the approval of the Department of Transportation.

Section 3202 Encroachments

3202.1 Encroachments Below Grade

Encroachments below grade shall comply with Sections 3202.1.1 through 3202.1.4.

3202.1.1 Footings

Exterior wall and column footings may be constructed to project beyond the street line not more than 12 inches (305 mm), provided that the top of the footing is not less than 8 feet (2438 mm) below the ground or sidewalk level. Foundation walls required to support permitted projections may be constructed to project not more than the permitted projection beyond the street line.

3202.1.1.1 Footings for Temporary Barriers or Shields in Areas of Special Flood Hazard or Shaded X-Zones

In areas of special flood hazard or shaded X-Zones, continuous footings for the support and attachment of temporary, removable dry floodproofing barriers or shields may be constructed to project beyond the street line not more than 12 inches (305 mm) both at grade and below grade.

3202.1.2 Vaults

Vaults may be permitted in accordance with the New York City Charter and Chapter 19 of the *Administrative Code*. Such vaults shall comply with the provisions of this code and other applicable laws and rules.

3202.1.3 Areaways

Areaways shall be protected by grates, guards or other approved means, subject to approval by the Commissioner of the Department of Transportation.

3202.1.4 Tunnels Between Buildings

Tunnels connecting buildings and projecting beyond street lines may be constructed subject to the approval of the Commissioner of the Department of Transportation. Such tunnels shall comply with the provisions of this code and other applicable laws and regulations.

3202.1.5 Sidewalk Supports

Exterior foundation walls are permitted to be constructed with a ledge that projects beyond the street line not more than 4 inches (102 mm) to support sidewalk construction, provided that:

1. the top of the ledge is not more than 8 inches (203 mm) below the ground or sidewalk level; and
2. bottom of the ledge is not more than 24 inches (610 mm) below the ground or sidewalk level.

3202.2 Encroachments Above Grade

Encroachments into the public right-of-way above grade shall be prohibited except as provided for in Sections 3202.2.1 through 3202.2.3.

3202.2.1 Encroachments Subject to the Area Limitations

Encroachments that are subject to area limitations are those elements listed in Sections 3202.2.1.1 through 3202.2.1.9, generally of an architectural character, that form an integral part of the building facade. The aggregate area of all such elements constructed to extend beyond the street line shall not exceed 10 square feet (0.93 m²) within any 10 feet (3048 mm) by 10 feet (3048 mm) square area of wall, except that a veneer may be applied to the entire facade of a building erected before December 6, 1968, if such veneer does not project more than 4 inches (102 mm) beyond the street line. The area of any such projection shall be measured at that vertical plane, parallel to the wall, in which the area of the projection is greatest. This plane of measurement may be at the street line, the line of maximum projection or any point in between. For the purpose of measuring the projected area of a balcony, air spaces of less than 6 inches (152 mm) between closely spaced railing or guards elements shall contribute to the area of the projection.

Exception: The aggregate area of all elements subject to area limitations that includes a balcony or associated railings and brackets shall not exceed 24 square feet (2.2 m²) in any 240 square foot (22.3 m²) area on a given story.

3202.2.1.1 Entrance Details

Entrance details, including steps and doors when fully open, may be constructed to project beyond the street line not more than 18 inches (457 mm). Entrance steps that project beyond the street line shall be guarded at each end by railings at least 3 feet (914 mm) high or by other members of the entrance detail providing equivalent protection.

3202.2.1.2 Architectural Details

Details such as cornices, eaves, bases, sills, headers, band course, opening frames, rustications, applied ornament or sculpture, grilles, windows when fully open, air conditioning units, and other similar elements may be constructed:

1. To project not more than 4 inches (102 mm) beyond the street line when less than 10 feet (3048 mm) above the ground or sidewalk level.
2. To project not more than 10 inches (254 mm) beyond the street line when more than 10 feet (3048 mm) above the ground or sidewalk level.

Exceptions:

1. Replacement or restoration of historical architectural details that are, or were, located more than 10 feet (3048 mm) above the sidewalk and that project more than 10 inches (254 mm), on existing buildings or structures designated by the Landmarks Preservation Commission, may be permitted provided they do not exceed the historic projections and provided that they are approved by the Landmarks Preservation Commission.
2. New architectural details on new or existing buildings, additions or structures subject to the jurisdiction of the Landmarks Preservation Commission, that are more than 10 feet (3048 mm) above the sidewalk and that project more than 10 inches (254 mm) and no more than 3 feet (914 mm), may be permitted provided that the Landmarks Preservation Commission finds that the proposed detail is appropriate to the historic character of the historic district or landmarked building, structure or site.

3202.2.1.3 Balconies

Balconies, including railings and supporting brackets, no parts of which are less than 10 feet (3048 mm) above the ground or sidewalk level, may be constructed to project not more than 2 feet 6 inches (762 mm) beyond the street line. When permitted by the provisions of this code, fire escapes that are part of a required exit may be constructed to project not more than 4 feet 6 inches (1372 mm) beyond the street line provided no part, including any movable ladder or stair, is lower than 10 feet (3048 mm) above the ground or sidewalk level when not in use.

3202.2.1.4 Marquees

Marquees may be constructed to project beyond the street line provided that they comply with Section 3106 and Sections 3202.2.1.4.1 through 3202.2.1.4.5.

3202.2.1.4.1 Height

Marquees shall receive structural support only from the building and shall be at least 10 feet (3048 mm) above the ground level or sidewalk.

3202.2.1.4.2 Projection

Marquees shall project no closer to the curb line than 2 feet (610 mm).

3202.2.1.4.3 Thickness

Marquees shall be no thicker nor shall the fascia be higher than 3 feet (914 mm) when measured vertically from its lowest to its highest point.

3202.2.1.4.4 Dimensions

Dimensions shall include all decoration but shall exclude any tension supports suspending the marquee from the wall.

3202.2.1.4.5 Occupancy Restrictions

Marquees may be erected on:

1. Buildings of an essentially public nature, including but not limited to the following:

- 1.1. Public buildings, including schools.

1.2. Theatres.

1.3. Hotels.

1.4. Terminals.

1.5. Large department stores.

1.6. Supermarkets.

1.7. Multiple dwellings.

1.8. Office buildings

2. Warehouses or markets in one of the following established market areas:

2.1. Bronx.

2.1.1. Edgewater Road and Halleck Street between Lafayette Avenue and East Bay Avenue.

2.1.2. Lafayette Avenue between Edgewater Road and the Bronx River.

2.1.3. East Bay Avenue between Halleck Street and the Bronx River.

2.1.4. Hunt's Point Avenue between East Bay Avenue and the Bronx River.

2.1.5. Exterior Street between East 149th Street and East 157th Street.

2.1.6. Cromwell Avenue between East 150th Street and East 153rd Street.

2.1.7. East 150th Street between Exterior Street and River Avenue.

2.1.8. Westchester Avenue between St. Ann's Avenue and Bergen Avenue.

2.1.9. Brook Avenue between East 150th Street and East 156th Street.

2.1.10. Bergen Avenue between East 149th Street and East 156th Street.

2.1.11. East 152nd Street between Bergen Avenue and Brook Avenue.

2.1.12. East 153rd Street between Bergen Avenue and Brook Avenue.

2.2. Brooklyn.

2.2.1. North 6th Street between Berry Street and Wythe Avenue.

2.3. Manhattan.

2.3.1. John Street to Fulton Street between South Street and Front Street.

2.3.2. Fulton Street to Dover Street between South Street and Water Street.

2.3.3. South Street and Front Street between John Street and Dover Street.

2.3.4. Water Street between Fulton Street and Dover Street.

2.3.5. Horatio Street to West 14th Street between West Street and 9th Avenue.

2.3.6. West Street, Washington Street, Greenwich Street.

2.3.7. 9th Avenue and 10th Avenue between Horatio Street and West 14th Street.

2.3.8. West 16th Street, north side, and West 17th Street, south side, between 10th Avenue and 11th Avenue.

2.3.9. West 24th Street to West 26th Street, south side, between 11th Avenue and 12th Avenue.

2.3.10. West 27th Street, north side, to West 28th Street between 11th Avenue and 12th Avenue.

2.3.11. 12th Avenue and St. Claire Place between 125th Street and 132nd Street.

2.3.12. 12th Avenue, west side, between 132nd Street and 133rd Street.

2.4. Queens.

2.4.1. 95th Avenue, north side, between Sutphin Boulevard and 148th Street.

3202.2.1.4.6 Change of Occupancy

When the occupancy or use of a building with a marquee is changed to an occupancy or use for which a projecting marquee is not permitted, the marquee shall be removed.

Exception: For buildings subject to the jurisdiction of the Landmarks Preservation Commission, Section 3202.2.1.4.6 shall not apply when the Landmarks Preservation Commission makes a determination that the removal of the marquee would be inappropriate to the architectural character of the building or historic district.

3202.2.1.4.7 Other Agency Approvals

An applicant wishing to erect a marquee shall provide proof that the Commissioners of the Departments of Transportation, Consumer Affairs, and Environmental Protection have not permitted the use of a space or structure on or under the sidewalk beneath the proposed marquee in such a manner that the construction of the proposed marquee shall interfere with the removal or repair of any such permitted use or structure.

3202.2.1.5 Light Fixtures

Light fixtures that are supported entirely from the building may be constructed to project not more than 2 feet (610 mm) beyond the street line, provided no part of the fixture is less than 8 feet (2438 mm) above the ground or sidewalk level.

3202.2.1.6 Flagpoles

Flagpoles that are supported entirely from the building may be constructed to project not more than 18 feet (5486 mm) beyond the street line, but not closer than 2 feet (610 mm) to the curb line, provided that no part of the flagpole is less than 15 feet (4572 mm) above the ground or sidewalk level.

3202.2.1.7 Wall Signs

Wall signs may be constructed to project not more than 12 inches (305 mm) beyond the street line when conforming to the requirements of this code and Section H111 of Appendix H.

3202.2.1.8 Projecting Signs

All permitted projecting signs may be constructed to project not more than 10 feet (3048

Any permitted projecting signs may be constructed to project not more than 10 feet (3048 mm) beyond the street line, but not closer to the curb line than 2 feet (610 mm), when conforming to the requirements of this code and Section H112 of Appendix H, and provided that no part of the sign is less than 10 feet (3048 mm) above the ground or sidewalk level.

Exceptions: Permanent projecting signs are prohibited on buildings in the areas indicated below:

1. Borough of Manhattan.

1.1. Projecting signs. No permanent projecting sign shall be erected on any building on:

1.1.1. 5th Avenue between Washington Square north and 110th Street;

1.1.2. 34th Street between Park Avenue and 7th Avenue;

1.1.3. Madison Avenue between 23rd Street and 96th Street;

1.1.4. 57th Street between Lexington Avenue and Broadway;

1.1.5. Vanderbilt Avenue between 42nd Street and 47th Street;

1.1.6. Park Avenue between 32nd Street and 40th Street;

1.1.7. Park Avenue between 45th Street and 96th Street;

1.1.8. 33rd Street between Lexington Avenue and 5th Avenue;

1.1.9. 35th through 41st Streets between Lexington Avenue and 5th Avenue;

1.1.10. 43rd through 56th Streets between Lexington Avenue and 5th Avenue;

1.1.11. 58th Street between Lexington Avenue and 5th Avenue;

1.1.12. 60th Street between Lexington Avenue and 5th Avenue;

1.1.13. Nassau Street between Wall Street and Frankfort Street; or

1.1.14. John Street between Broadway and William Street.

1.2. Illuminated projecting signs. No permanent illuminated projecting sign shall be erected on any building on:

1.2.1. 72nd Street between Central Park West and River Drive.

2. Borough of Brooklyn.

2.1. Projecting signs. No permanent projecting sign shall be erected on any building on:

2.1.1. Fulton Street between Flatbush Avenue and Joralemon Street and Willoughby Street.

2.2. Illuminated projecting signs. No permanent illuminated projecting sign shall be erected on any building on:

2.2.1. Fulton Street between Flatbush Avenue and Prospect Street and Henry Street;

2.2.2. Washington Street between Myrtle Avenue and Prospect Street;

2.2.3. Court Street between Fulton Street and Livingston Street;

2.2.4. Pierrepont Street between Fulton Street and Clinton Street;

2.2.5. Montague Street between Court Street and Clinton Street;

2.2.6. Remsen Street between Court Street and Clinton Street; or

2.2.7. Joralemon Street between Court Street and Clinton Street.

3202.2.1.9 Sun Control Devices

Sun control devices constructed in accordance with Section 3105 and supported entirely from the building may project beyond the street line not more than 2 feet 6 inches (762 mm), provided that no part of the sun control device is less than 8 feet (2438 mm) above the ground or sidewalk level. Any portion of a sun control device that is located over a sidewalk vault and is more than 10 inches (254 mm) beyond the street line and less than 40 feet above the ground or sidewalk shall be removable or retractable to less than 10 inches (254 mm) beyond the street line.

3202.2.2 Encroachments Not Subject to Area Limitations

3202.2.2.1 Ramps

When a building erected prior to December 6, 1969, is altered to provide access to individuals who use wheelchairs, ramps constructed to provide such access may, with the approval of the commissioner, project beyond the street line for a distance of not more than 44 inches (1118 mm). Ramps shall comply with the applicable provisions of Chapter 11.

3202.2.2.2 Bridges Between Buildings

Bridges connecting buildings and projecting beyond street lines may be permitted in accordance with applicable law. Such bridges shall be of a construction class that is at least equal to the higher class of the two buildings connected and shall otherwise comply with the provisions of this code and other applicable laws and rules.

3202.2.2.3 Flood Shield Supports

In areas of special flood hazard or shaded X-Zones, permanent attachments to building façades necessary for the support and attachment of temporary, removable dry floodproofing barriers or shields may be constructed to project beyond the street line for a distance of not more than 6 inches (152 mm).

3202.2.2.4 Curb Cuts

The lowering of any curb or the change of grade of any sidewalk for the purpose of providing a driveway across such curb or sidewalk shall be constructed in accordance with the specifications prescribed in Sections 406.7.6 and 406.7.7. All sidewalks and driveways or portions thereof that are structurally supported shall be designed for loads prescribed in Chapter 16.

3202.2.2.4.1 Curb Cut Removal

Vehicular access curb cuts that can no longer serve as vehicular access across a curb or sidewalk shall be removed and the curb and sidewalk shall be restored in accordance with standards of the Department of Transportation. The commissioner may order such removal and restoration. The commissioner shall limit the length of any curb cut for the purpose of providing a driveway across such curb or sidewalk, when in the opinion of the commissioner the actual use or intended use of such driveway would endanger the public. Where the vehicular use of such driveway, in the opinion of the commissioner is dangerous to the public, the commissioner shall order the owner to discontinue use of such driveway and restore the curb and sidewalk in accordance with standards of the Department of Transportation. Upon the failure of the owner to comply with any of the orders provided for in Section 3202.2.2.4, in such cases where the restoration of such curb cuts are needed to facilitate department of transportation work, the commissioner may inform the commissioner of transportation of such failure to comply and may request the cooperation of the commissioner of transportation acting under his or her authority pursuant to Section 2903(b)(7) of the New York City Charter in the enforcement of this section.

3202.2.3 Awnings

Awnings constructed in accordance with Section 3105 and supported entirely from the building may project beyond the street line as follows:

3202.2.3.1 Store Front Awnings

Store front awnings may project beyond the street line not more than 8 feet (2438 mm), provided no part of the awning is less than 8 feet (2438 mm) above the ground or sidewalk level, except for a flexible valance which may be not less than 7 feet (2134 mm) above the ground or sidewalk level, and provided that the awning box or cover does not project more than 12 inches (305 mm).

3202.2.3.2 Awnings Over Windows or Doors

Awnings over windows or doors may project beyond the street line not more than 5 feet (1524 mm), provided that no part of the awning is less than 8 feet (2438 mm) above the ground or sidewalk level.

3202.2.4 Reserved

3202.2.5 Fire Department Connections, Caps or Plugs

Fire department connection swivels, caps and plugs shall be permitted to project beyond the street line as provided for in NFPA 14, as amended by Appendix Q of this code.

3202.3 Reserved

3202.4 Temporary Encroachments

Encroachments of temporary nature shall comply with Sections 3202.4.1 and 3202.4.3.

3202.4.1 Sidewalk Cafés

Enclosures for sidewalk cafés, where permitted by the Commissioner of the Department of Consumer Affairs pursuant to applicable law and constructed in compliance with Section 3111, may be constructed beyond the street line.

3202.4.2 Storm Enclosures

Storm enclosures projecting not more than 18 inches (457 mm) beyond the street line may be permitted during the period between November 15 and the following April 15. Such enclosures shall be removed at the end of this period. Construction of storm enclosures must comply with the requirements of this code including the fire-resistance rating of the building to which it is appurtenant and Chapter 11 of this code.

3202.4.3 Temporary Flood Shields, Stairs and Ramps in Areas of Special Flood Hazard and Shaded X-Zones

In areas of special flood hazard and shaded X-Zones, temporary flood shields, stairs and ramps shall comply with Sections G308.6 and G308.7 of Appendix G of the *New York City Building Code* and shall be permitted in accordance with plans approved by the department subject to the following conditions:

1. Such flood shields, stairs and ramps shall project no more than one foot (305 mm) beyond the street line.
2. Such flood shields, stairs and ramps shall be removed in a timely manner after a flood event.

**City of Portland
Bureau of Transportation**



**Encroachments in the Public
Right-of-Way**

Accreditations

City Staff:

Christine Leon
Alex Bejarano
Rich Eisenhauer
David Nassif
Rob Burchfield
Steve Townsen
Kurt Krueger
Lavinia Gordon
Mark Braun
April Bertelsen

Citizens Advisory Committee:

Andre Baugh
Alan Beard
Brian McCarter
Anne Niles

**City of Portland
Bureau of Transportation**

**Encroachments in the Public
Right-of-Way**



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Introduction

Encroachments in the Public Right-of-Way

“Right-of-Way” is the area between neighboring properties and includes street surfaces, curbs and sidewalk, and also frequently includes additional areas on either side of the sidewalk. The size and configuration of the right-of-way vary from street to street, as do the sizes of the actual street surfaces and sidewalks.

Rights-of-way are generally dedicated to the movement of vehicles, pedestrians and/or goods. However, the City of Portland’s transportation policy allows for some privately owned structures to be located in the public right-of-way (herein referred to as “*encroachments*”) as long as certain conditions are met. The most fundamental requirement is that encroachments may not impede on the Through Pedestrian Zone of the sidewalk corridor. Table A (see page 7) identifies the size and location of the Through Pedestrian Zone for various types of streets.

The City’s Major Encroachment Policy (TRN 8.01) was adopted in June, 1982. It establishes three categories of encroachments: Above Grade (sky bridges, arcaded structures), At Grade and Below Grade. Its primary focus is Above and Below Grade structures. Although it mentions At-Grade encroachments, to some, these may be classified as “minor” encroachments. It provides very minor guidance and criteria for approving or allowing these types of At-Grade encroachments.

At-Grade encroachments tend to be located within the realm of the sidewalk area and not in vehicular travel-ways. Two documents establish the foundation for the design and use of, including encroachments upon, the City’s sidewalks. The Portland Pedestrian Master Plan was created in June, 1998. The Portland Pedestrian Design Guide is a companion document to the Pedestrian Master Plan and was also created in June, 1998. In addition, the City’s *Comprehensive Plan Goal 12: Urban Design*, provides an important framework that will guide encroachment decisions.

The following policy statements are excerpts from these documents. These provide guidance regarding encroachments in the public domain.

- **Encroachments in the public right of way should not reduce access to light and air or the intimate scale that is so much a part of Portland’s character.**
- **The purpose of Portland’s Pedestrian Design Guide is to integrate the wide range of design criteria and practices into a coherent set of new standards and guidelines that, over time, will promote an environment conducive to walking.**

- Conflicts between the design needs of competing functions should not produce conditions that discourage pedestrian travel.

The public right-of-way houses many transportation activities, including walking, bicycling, transit, freight movement and automobile travel. It harbors the hardware, such as traffic signals and street lights, which supports those activities. The right-of-way also contains utilities. Each of these functions has specific design needs and constraints. The variety of functions is administered by people in several agencies, both inside and outside the City of Portland.

The following pedestrian design principles represent a set of ideals which should be incorporated, to some degree, into every pedestrian improvement. They are ordered roughly in terms of relative importance.

1. The pedestrian environment should be safe.

Sidewalks, pathways and crossings should be designed and built to be free of hazards and to minimize conflicts with external factors such as noise, vehicular traffic and protruding architectural elements.

2. The pedestrian network should be accessible to all.

Sidewalks, pathways and crosswalks should ensure the mobility of all users by accommodating the needs of people regardless of age or ability.

3. The pedestrian network should connect to places people want to go.

The pedestrian network should provide continuous direct routes and convenient connections between destinations, including homes, schools, shopping areas, public services, recreational opportunities and transit.

4. The pedestrian environment should be easy to use.

Sidewalks, pathways and crossings should be designed so people can easily find a direct route to a destination and delays are minimized.

5. The pedestrian environment should provide good places.

Good design should enhance the look and feel of the pedestrian environment. The pedestrian environment includes open spaces such as plazas, courtyards, and squares, as well as the building facades that give shape to the space of the street. Amenities such as street furniture, banners, art, plantings and special paving, along with historical elements and cultural references, should promote a sense of place.

6. The pedestrian environment should be used for many things.

The pedestrian environment should be a place where public activities are encouraged. Commercial activities such as dining, vending and advertising may be permitted when they do not interfere with safety and accessibility.

7. Pedestrian improvements should be economical.

Pedestrian improvements should be designed to achieve the maximum benefit for their cost, including initial cost and maintenance cost as well as reduced reliance on more expensive modes of transportation. Where

possible, improvements in the right-of-way should stimulate, reinforce and connect with adjacent private improvements.

- **Enhance Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations.** (Comprehensive Plan Goal 12, Urban Design)

- **Enhance and extend Portland's attractive identity.** Build on design elements, features and themes identified with the City. Recognize and extend the use of City themes that establish a basis of a shared identity reinforcing the individual's sense of participation in a larger community. (Policy 12.1 - Portland's Character.)

Objectives (only those specifically relating to the pedestrian realm are included):

D. Expand the use of street furniture. As new street furniture is needed, incorporate Portland design themes into its design.

G. Extend urban linear features such as linear parks, park blocks and transit malls. Celebrate and enhance naturally occurring linear features such as rivers, creeks, sloughs and ridge-lines. Tie public attractions, destinations and open spaces together by locating them in proximity to these linear features. Integrate the growing system of linear features into the City's transportation system, including routes and facilities for pedestrians, bicyclists and boaters.

I. Encourage the use of materials and a quality of finish work which reinforce the sense of this City as one that is built for beauty and to last. Reflect this desire in both public and private development projects.

- **Provide for a pleasant, rich and diverse experience for pedestrians.** Portland is experienced most intimately by pedestrians. Recognize that auto, transit and bicycle users are pedestrians at either end of every trip and that Portland's citizens and visitors experience the City as pedestrians. Ensure that those traveling on foot have comfortable, safe and attractive pathways that connect Portland's neighborhoods, parks, water features, transit facilities, commercial districts, employment centers and attractions. (Policy 12.4 - Provide for Pedestrians.)

In most situations, the proposed encroachments must be reviewed by Bureau of Transportation staff to ensure that all necessary conditions are met, and a *"Revocable Encroachment Permit"* will be issued. In some other situations, no review or permit is required as long as the necessary conditions are met. This document describes the most common types of encroachments, the necessary conditions that must be met, and whether or not a permit must be issued for each one.

Pre-existing encroachments that have not been recently modified (i.e. within the last 1-year period) may be allowed to remain in place as non-conforming encroachments, without requiring a review by PBOT or a Revocable Encroachment Permit, as long as they are not: (a) deemed to be a safety hazard or nuisance, (b) modified, (c) damaged, (d) removed or relocated, and/or (e) the subject of a complaint. PBOT staff will determine whether the encroachment meets these conditions and whether it may remain in place without a permit; the encroachment shall have no “grandfathered” rights to remain in place. Regardless of whether an encroachment meets any or all of these conditions, the City Engineer may require a full review of the encroachment, a complete permit application, and/or removal of the existing encroachment.

Prior publications from the Bureau of Transportation and additional information may be obtained on the internet at <http://www.portlandonline.com/transportation>. Information may also be obtained by calling the Bureau of Transportation at (503) 823-7002.

Conditions Governing Encroachments

Encroachments in the Public Right-of-Way

1. Major Encroachments

All “Major Encroachments” are subject to (and are defined in) *Transportation Administrative Rule TRN 8.01, Encroachments in the Public Right-of-Way*. These “Major Encroachments” include sky bridges; building projections or extensions not covered by Title 16, Title 24 or Title 32; arcades; underground walkways; malls or parking; and other structures for the movement of people or goods, excepting items regulated as utilities.

2. Encroachments that are not defined as “Major Encroachments” are subject to the following general conditions:

- a) Unless otherwise indicated in this document, encroachments require a Revocable Encroachment Permit, establishing requirements and clarifying liability and maintenance obligations.
- b) The permittee is responsible for meeting all other applicable City Codes and regulations, and for paying any taxes resulting from the encroachment.
- c) The Revocable Encroachment Permit is issued to the owner of the abutting property and runs with the land, unless stated otherwise. The Revocable Encroachment Permit may also be issued, with the abutting property owner’s consent, to a business association, a neighborhood association, a district coalition, a non-profit organization or a government agency. Reference Chapter 17.44.015.B.
- d) Exceptions to the consent requirement will be made where the applicant is able to demonstrate underlying fee ownership of the right-of-way where the encroachment is to be placed. Reference Chapter 17.44.015.B.

- e) Where an encroachment is approved for a public agency and that agency has entered into a separate formal agreement with City Council that establishes ownership, liability, maintenance, removal, and provides a method for tracking the encroachment, a Revocable Encroachment Permit is not required.
- f) The PBOT Director will evaluate the acceptability of encroachments based on adopted policy and regulations, safety, right-of-way usage, management and operations, and legal issues. The City Engineer may deny a permit, revoke a permit, or require removal of an encroachment at any time, unless otherwise specified in Title 14 or Title 29 of City Code, based on their evaluation. Unless otherwise specified in City Code or in the permit, the party responsible for maintenance of the right-of-way as specified in Chapter 17.28.020 shall remove the encroachment within 30 days, with no liability and at no cost to the City.
- g) Various types of encroachments are permitted in the Frontage Zone and Furnishing Zone of the sidewalk corridor, but encroachments are not permitted in the Through Pedestrian Zone. The PBOT Director has the authority to approve or deny an encroachment request based on right-of-way management, usage needs and safety concerns, and to apply requirements as needed to address such issues.
- h) Design Review may be required for any non-standard item planned for the right-of-way.
- i) It is prohibited for an encroachment to close or preclude public access through a right-of-way.

Typical Encroachments

Encroachments in the Public Right-of-Way

This section describes many of the common types of encroachments (not considered “Major Encroachments”) and the specific conditions to which each must adhere. Some of these elements refer to requirements to maintain a minimum sidewalk corridor width and “Through Pedestrian Zone.” For these requirements, please refer to Table A below:

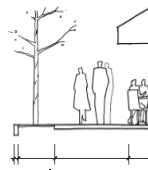
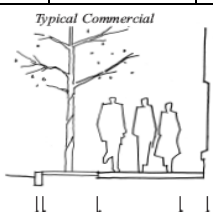
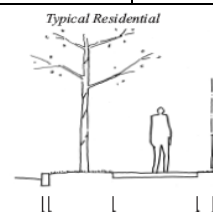
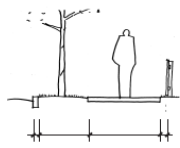
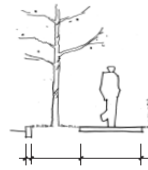
Sidewalk Corridor	Application	Recommended Configuration			
15'	City Walkways within a Pedestrian District, or any street with a right-of-way width of 80' or greater.				
		Curb Zone	Furnishing Zone	Through Pedestrian Zone	Frontage Zone
		0'-6"	4'-0"	8'-0"	2'-6"
12'	Local Service Streets within a Pedestrian District, City Walkways outside of Pedestrian Districts, or any street with a right-of-way width between 60' and 79'.	 			
		Curb Zone	Furnishing Zone	Through Pedestrian Zone	Frontage Zone
		0'-6"	4'-0"	6'-0"	1'-6"
11'	Local Service Streets in non-residential zones and higher density residential zones (R1 through R5) with a right-of-way width of less than 60'.				
		Curb Zone	Furnishing Zone	Through Pedestrian Zone	Frontage Zone
		0'-6"	4'-0"	6'-0"	0'-6"
10'	Local Service Streets in lower density residential zones (R7 through Rf) with a right-of-way width of less than 60'.				
		Curb Zone	Furnishing Zone	Through Pedestrian Zone	Frontage Zone
		0'-6"	4'-0"	5'-0"	0'-6"

Table A

C.1 – Fences

Fences may be allowed within the right-of-way. The fence must be located so that it does not restrict the minimum sidewalk corridor width and must be at least 1' away from the Through Pedestrian Zone (see Table A on page 7.) If the right-of-way is not wide enough to accommodate these requirements, fences will generally not be allowed in the right-of-way.

Also, the height of the fence must meet the Planning and Zoning requirements of Title 33, as if it were located on private property. These requirements vary depending on the zoning of the particular property; but generally require that a fence may not exceed 3.5' high in a front-yard setback or 6' high in a side-yard setback. For more information regarding allowable fence height and setbacks, consult with the Bureau of Development Services (Planning & Zoning - 503-823-7526) prior to beginning construction.

In design districts, fences in the right-of-way may be subject to Design Review.

A Revocable Encroachment Permit Application for the fence should be submitted to the Bureau of Transportation, including a site plan and any relevant details to clearly demonstrate the proposal. If it is acceptable, a Revocable Encroachment Permit will be issued to the owner of the property to which the encroachment is adjacent. The permit will detail specific maintenance and liability requirements. It will also be recorded with the county so that the permit will run with the land, and therefore any future owners will also be bound by the permit conditions. The applicant will be required to pay a permit fee as well as a county recording fee, as per Title 17 of the City Code.



C.2 - Retaining Walls

Private retaining walls may be allowed within the right-of-way. The retaining wall must be located so that it does not restrict the minimum sidewalk corridor width and must be at least 1' away from the Through Pedestrian Zone (see Table A on page 7.) If proposed on a street without sidewalks, it must not impede traffic or the safety of pedestrians, and should be located clear of the Through Pedestrian Zone's future location.

Some retaining walls will require a structural review. Walls that exceed 4' in height, measured from the bottom of the footing to the top of the wall, as well as any retaining wall that is affected by the weight of an adjacent slope, nearby driveway or structure, will require a structural review by Bureau of Transportation staff.

In design districts, retaining walls in the right-of-way may be subject to Design Review.

A Revocable Encroachment Permit Application for the retaining wall should be submitted to the Bureau of Transportation, including a site plan and any relevant details to clearly demonstrate the proposal. If the wall requires a structural review, calculations prepared by a licensed engineer shall also be submitted. If it is acceptable, a Revocable Encroachment Permit will be issued to the owner of the property to which the encroachment is adjacent. The permit will detail specific maintenance and liability requirements. It will also be recorded with the county so that the permit will run with the land, and therefore any future owners will also be bound by the permit conditions. The applicant will be required to pay a permit fee as well as a county recording fee, as per Title 17 of the City Code. If a structural review of the retaining wall is required, additional review fees will also be assessed based upon the complexity of the review.



C.3 - Stairs and Hand Railings

Stairs and hand railings may be allowed within the right-of-way. The stairs and hand railings shall be located so that they do not restrict the minimum sidewalk corridor width and must be at least 1' away from the Though Pedestrian Zone (see Table A on page 7.)

Stairs and railings should be constructed so as to comply with Building Code and other applicable regulations, as if they were being constructed on private property. If the stairs exceed the allowance of the International Building Code (IBC 3202.2.1) (i.e., project more than 12" into the public right-of-way), then a building code appeal is also necessary.

In design districts, stairs and hand railings in the right-of-way may be subject to Design Review.

A Revocable Encroachment Permit Application for the stairs and/or railings should be submitted to the Bureau of Transportation, including a site plan and any relevant details to clearly demonstrate the proposal. If it is acceptable, a Revocable Encroachment Permit will be issued to the owner of the property to which the encroachment is adjacent. The permit will detail specific maintenance and liability requirements. It will also be recorded with the county so that the permit will run with the land, and therefore any future owners will also be bound by the permit conditions. The applicant will be required to pay a permit fee as well as a county recording fee, as per Title 17 of the City Code.



C.4 - Irrigation Systems

Private property owners may install certain elements of an irrigation system in the public right-of-way. Only non-pressurized plastic feeder lines and sprinkler heads are allowed in the right-of-way. No other part of the irrigation system, such as control valves and back-flow preventers, may be located within the right-of-way. All parts of the irrigation system must be buried a minimum of 12" below grade, except for sprinkler heads. Sprinkler heads must be flush with the surrounding surface when not in use, and should be oriented so as to limit the distribution of water to the landscaped areas. Feeder lines beneath the sidewalk shall be installed perpendicular to the sidewalk. The abutting property owner is responsible for installation in a manner that does not interfere with street trees, utilities, sidewalks, or other public infrastructure.

The adjacent property owner is responsible for any damage to the irrigation system caused by repair, replacement or installation of any utility systems, street or sidewalk facilities or any other permitted right-of-way work.

As described above, private irrigation systems do not require any permit from the Bureau of Transportation. A Revocable Encroachment Permit Application does not need to be submitted, and no review of the proposal will be performed by City staff. However, if any portion of a driveway approach, sidewalk or curb is damaged or replaced in the process of installing the irrigation system, then a right-of-way permit will be required as usual. Any concrete work in the public right-of-way requires a standard right-of-way construction permit.



C.5 – Landscaping

Low-growing landscaping, such as grass and other ground cover, installed and maintained by the abutting property owner may be allowed within the right-of-way. Landscaping installed in the portion of right-of-way for which the abutting property owner is responsible and which complies with Title 29 of the City Code does not require a permit. Such landscaping must not be allowed to become a nuisance, as per Title 29. Landscaping that meets these requirements does not require any sort of application or city review, and no Revocable Encroachment Permit will be issued.

Landscaping in the public right-of-way must not be allowed to become a safety hazard by obscuring the visibility of drivers, bicyclists or pedestrians. As per Title 16 of the City Code, the City Traffic Engineer has the authority to require the removal or pruning of any such hazardous vegetation.

Landscaping installed in traffic islands or other areas for which the permittee is not normally responsible for maintenance does require a Revocable Encroachment Permit. This type of proposal should be submitted to the Bureau of Transportation for review, and if approved, a revocable encroachment permit will be issued to an insured neighborhood or business association.

This type of landscaping does not include trees in the public right-of-way. Trees planted in the right-of-way require a separate permit from the Urban Forestry Division of the Portland Parks Bureau.



C.6 - Structural Driveways

Structures connecting to and providing access from a parking facility to a public street may be allowed within the right-of-way when there is a grade differential between the public right-of-way and private property. Such structures will require structural review by Bureau of Transportation staff.

A Revocable Encroachment Permit Application for the structural driveway should be submitted to the Bureau of Transportation, including a site plan, engineered calculations and any relevant details to clearly demonstrate the proposal. If it is acceptable, a Revocable Encroachment Permit will be issued to the owner of the property to which the encroachment is adjacent. The permit will detail specific maintenance and liability requirements. It will also be recorded with the county so that the permit will run with the land, and therefore any future owners will also be bound by the permit conditions. The applicant will be required to pay a permit fee as well as a county recording fee, as per Title 17 of the City Code. An additional review fee will also be assessed for the structural review of the driveway, based upon the complexity of the review.



C.7 - Bollards and Barricades

Bollards and/or barricades are generally not allowed in the public right-of-way – they are only allowed with the prior approval of the City Engineer and the City Traffic Engineer. Proposals for bollards and/or barricades in the right-of-way should be submitted to the Bureau of Transportation, along with a Revocable Encroachment Permit Application, and will be reviewed on a case-by-case basis. If they are allowed, a Revocable Encroachment Permit will be issued to the responsible party, and will detail case-specific conditions and requirements.

In design districts, bollards or barricades in the right-of-way may be subject to Design Review.



C.8 - Temporary Shoring

Piles and anchors placed within the right-of-way under tension for the purpose of temporary building shoring may be allowed. All components of the shoring system in the right-of-way that are less than 5' below the ground surface must be permanently removed upon completion. Any components of the system within the right-of-way that are greater than 5' deep and will remain in place must be permanently detensioned upon completion. The proposed shoring system will be reviewed for any conflicts with existing utilities and will also require a structural review. Liability insurance meeting the Bureau of Transportation's requirements for street and sidewalk use permits is required until all permanent detensioning and all permanent removal of components is complete.

A Revocable Encroachment Permit Application for the shoring should be submitted to the Bureau of Transportation, including drawings and engineered calculations. If it is acceptable, a Revocable Encroachment Permit will be issued to the owner of the property to which the shoring is adjacent. The permit will detail specific maintenance and liability requirements. It will also be recorded with the county so that the permit will run with the land, and therefore any future owners will also be bound by the permit conditions. The applicant will be required to pay a permit fee as well as a county recording fee, as per Title 17 of the City Code. An additional review fee will also be assessed for the structural review of the shoring system, based upon the complexity of the review.



C.9a - Vault Openings

Vault openings within the right-of-way to a vaulted basement or a facility in a vaulted basement may be allowed, as described here. The vault opening must be within the furnishing zone of the sidewalk corridor and flush with the surrounding surface. It may not interfere with public use of the right-of-way, the placement of street trees or public and franchise utilities. The vault opening must meet all ADA requirements and the material and construction requirements of the City Engineer. See Code Chapter 24.65 for additional regulations.

This section does not pertain to utility vaults permitted under the City's franchise agreement.



C.9b - Vault Vents

Intake and exhaust vents or other facilities releasing gases or providing ventilation from vaulted structures or facilities located within vaulted basements are prohibited within the right-of-way.

This section does not pertain to utility vaults permitted under the City's franchise agreement.

C.10 – Signs

The City Engineer does not have authority to allow the encroachment of private signs in the public right-of-way. The City Traffic Engineer has authority to install and regulate signs in the right-of way for certain guidance, traffic and transportation functions as defined in Title 16 of the City Code. These may include delineating Neighborhood Associations, delineating Business Districts and identifying political boundaries, as well as those functions otherwise meeting the requirements of the City Traffic Engineer.

Signs as defined in Title 32 of the City Code, Signs and Related Regulations, are allowed within the right-of-way only as described in that code section. These regulations are reviewed and enforced by the Bureau of Development Services. Furthermore, where requested modifications or adjustments for signs over the right-of-way allowed under Title 32 would interfere with management or use of the right-of-way, the City Engineer or City Traffic Engineer may deny the adjustment or modification.



C.11 – Public Art

Public art, either as its own structure or as treatment to a surface in the right-of-way, may be allowed subject to approval through the Regional Arts and Culture Council (RACC). In addition, public art is subject to approval by the City Engineer or City Traffic Engineer for location and safety considerations. Public art is placed within the public right-of-way through the Art on the Street Program or as part of the 2 percent contribution on capital projects. All public art is owned by the City and maintained by RACC through contract; privately owned structures containing art are not allowed in the public right-of-way.

A proposal for an artistic installation in the public right-of-way should first be made to RACC. Upon their approval, a Revocable Encroachment Permit Application for the public art should be submitted by RACC to the Bureau of Transportation, including a site plan and any relevant details to clearly demonstrate the proposal. A Revocable Encroachment Permit will be issued to the artist or contractor for construction. The applicant will be required to pay a permit fee, as per Title 17 of the City Code.

Public art in the right-of-way approved by RACC is exempt from Historic Review and Design Review.

Bicycle racks approved as art racks are not subject to this section. (See “Bicycle Racks” section below.)



C.12 – Public Memorials, Historic Markers and Plaques

In limited circumstances, public memorials, historic markers and plaques may be approved subject to review and approval of the City Engineer and City Attorney. Generally speaking, the language must represent the City's interest. Proposals for this type of installation in the right-of-way should be submitted to the Bureau of Transportation, along with a Revocable Encroachment Permit Application, and will be reviewed on a case-by-case basis. If approved, a Revocable Encroachment Permit will be issued to the responsible party, and will detail case-specific conditions and requirements.

In design districts, this type of encroachment may be subject to Design Review.



C.13 - 'Intersection Repair' Projects

The City Engineer may allow the installation of structures that are part of an approved 'Intersection Repair' project. Reference Ordinances 175937 and 172207, and also Portland Policy Document TRN-2.04. The structure may be considered only after having met the project requirements as defined by the City Engineer and the City Traffic Engineer. Examples of structures which may be considered for approval include benches, arbors, trellises, walls, bulletin boards and kiosks.

A Revocable Encroachment Permit Application for the proposed project should be submitted to the Bureau of Transportation, including a site plan and any relevant details to clearly demonstrate the proposal. If it is acceptable, a Revocable Encroachment Permit may be issued to either the adjacent property owner or to the appropriate neighborhood association. If the permit is issued to the adjacent property owner, then the permit will be recorded with the county, so that the permit will run with the land to any future owners. If the permit is issued to a neighborhood association, then the permit will be personal to the neighborhood association and they must have and maintain proper liability insurance. The permit will detail maintenance and liability requirements that will be vary based on the specific proposal. No fee will be assessed for the encroachment permit, although a county recording fee may be assessed if necessary, as per Title 17 of the City Code. Depending on the specific proposal, a structural review may also be required by the office of the City Engineer, and may potentially add structural review fees.

In design districts, 'Intersection Repair' projects in the right-of-way may be subject to Design Review.

Art and signs are not approvable through this process.



C.14 - Bicycle Racks

Public bicycle racks are allowed in the right-of-way through a bicycle rack permit from the City Engineer or City Traffic Engineer. Public bicycle racks are owned and maintained by the City of Portland. Requests to have publicly owned and maintained bicycle racks installed in a particular location may be made by phone to 503-823-CYCL (503-823-2925.)

Privately owned and non-standard bicycle racks are allowed in the right-of-way under the terms as described in the Administrative Rule for Art Racks. Reference TRN 10.09.

Private development may meet Title 33 bicycle parking requirements within the right-of-way subject to the Administrative Rule for the Bicycle Parking Fund. Reference TRN 5.02, Title 17.28.065.C, and Title 33.266.220.A.2.d.



C.15 – Benches

Privately owned benches for public use may be allowed in the right-of-way within the furnishing zone. A proposal for the bench should be submitted to the Bureau of Transportation, along with a Revocable Encroachment Permit Application. A Revocable Encroachment Permit will be issued to either the adjacent property owner or an appropriate neighborhood association. For this type of street furniture, offering a public benefit, the Revocable Encroachment Permit may be issued without assessment of the full permit fee. If the permit is issued to an adjacent property owner, then the permit will be recorded with the county and the applicant will be required to pay the necessary recording fee. If the permit is issued to a neighborhood association, then the permit will be personal to that association, and they will be required to have and maintain proper liability insurance.

In design districts, benches in the right-of-way may be subject to Design Review.

Benches containing advertising must be approved, owned and maintained by Tri-Met. Reference Chapter 17.44.030. In this instance, a permit for the bench is issued to Tri-Met.



C.16 - Transit Shelters

Transit shelters owned by Tri-Met and Portland Streetcar may be allowed in the right-of-way only under agreement adopted by City Council. Siting is regulated by agreement between Tri-Met or Portland Streetcar and the City.

In design districts, transit shelters in the right-of-way may be subject to Design Review.

Shelters containing advertising must be approved, owned and maintained by Tri-Met. Reference Chapter 17.44.030.



C.17 - Garbage Receptacles

Permanent garbage receptacles for use by the general public may be allowed in the right-of-way. The garbage receptacle may not be greater than 3 feet in width and 4 feet in height, and must fit within the Frontage Zone or the Furnishing Zone of the sidewalk corridor. The garbage receptacle should not be easily movable. The owner must provide garbage removal service at the minimum frequency needed to keep the garbage receptacle from overflowing or developing odor problems, and must maintain the garbage receptacle with regard to vandalism, sanitation and physical condition.

A proposal for the garbage receptacle should be submitted to the Bureau of Transportation along with a Revocable Encroachment Permit Application. A Revocable Encroachment Permit will be issued to either the adjacent property owner or an appropriate neighborhood association. For this type of street furniture, offering a community benefit, the Revocable Encroachment Permit will be issued with no permit fee; however, if the permit is issued to an adjacent property owner, then the permit will be recorded with the county and the applicant will be required to pay the necessary recording fee. If the permit is issued to a neighborhood association, then the permit will be personal to that association, and they will be required to have and maintain proper liability insurance.

The garbage receptacle may not be used for business purposes.

In design districts, garbage receptacles in the right-of-way may be subject to Design Review.

Garbage receptacles and dumpsters used for private use are not included as part of this policy, and are not allowed in the public right-of-way. Reference the final report from the Containers in the Right-of-Way (CROW) Work Group dated September 13, 2007. Information about the CROW work group is available on the Bureau of Planning and Sustainability's web site:

<http://www.portlandonline.com/osd/index.cfm?c=45762&>



C.18 - Planter Boxes

(a) Planter boxes in the “Frontage Zone” (adjacent to buildings)

Planter boxes are allowed in the Frontage Zone of the public right-of-way (between the sidewalk and the building) without a permit, if meeting general guidelines as described here. The planter box should not be greater than 8 feet in length and 3 feet in height, and should fit entirely within the Frontage Zone of the sidewalk corridor. The planter box should be movable and, in combination with other planter boxes, should take up no more than 30% of the length of the building frontage.

Under these general guidelines (in the Frontage Zone), no application or city review is required, nor will a permit be issued. It is important to remember that, whether or not a review has been performed or a permit has been issued, the adjacent property owner remains responsible for maintenance of any such encroachments and retains liability for any damage that may occur as a result of the encroachment. Permission for these encroachments to exist in the right-of-way may be revoked at any time and for any reason that the City Engineer deems to be in the interest of the City. Upon written notice of such revocation, the adjacent property owner shall remove any such structure from the public right-of-way and return the street area in which the structure was located to the satisfaction of the City Engineer.

In design districts, planter boxes in the right-of-way may be subject to Design Review.



Planter Boxes (continued)

(b) Planter boxes in the “Furnishing Zone” (between the curb and the sidewalk)

Planter boxes may be allowed in the Furnishing Zone of the public right-of-way (between the curb and the sidewalk) if meeting the following general guidelines.

In Furnishing Zones wider than four feet, planter boxes:

- Should be located two (2) feet from the curb face.
- Should be located one (1) foot from the Through Pedestrian Zone, which is the concrete sidewalk in most cases.
- Should not exceed ten (10) feet in length.
- Should maintain four (4) feet of separation between adjacent planter boxes.

In Furnishing Zones four feet wide or narrower, planter boxes:

- May be constructed with no separation from the curb and the Through Pedestrian Zone.
- Should not exceed four (4) feet in length.
- Should maintain ten (10) feet of separation between adjacent planter boxes.

Regardless of Furnishing Zone width:

- Planter boxes (raised beds or pots) should not exceed eighteen (18) inches in height.
- Landscaping and soil within the planter box should not exceed thirty (30) inches in height (as measured from the top of the curb) when located within twenty-five (25) feet from an intersection.
- Planter boxes should be located a minimum of five (5) feet from any utility or apparatus (street lights, utility poles, water meters, fire hydrants, etc.) (to allow access and maintenance by the utility.)
- Planter boxes should not be located within the drip line of any street tree (to protect the health of the tree.)

Planter Boxes (continued)

(b) Planter boxes in the “Furnishing Zone” (continued)

Under the parameters of these general guidelines (in the Furnishing Zone), no application or city review is required, nor will a permit be issued. It is important to remember that, whether or not a review has been performed or a permit has been issued, the adjacent property owner remains responsible for maintenance of any such encroachments and retains liability for any damage that may occur as a result of the encroachment. Permission for these encroachments to exist in the right-of-way may be revoked at any time and for any reason that the City Engineer deems to be in the interest of the City. Upon written notice of such revocation, the adjacent property owner shall remove any such structure from the public right-of-way and return the street area in which the structure was located to the satisfaction of the City Engineer.

In design districts, planter boxes in the right-of-way may be subject to Design Review.



C.19 - Tree Tubs

Tree tubs may be allowed in the right-of-way within the Furnishing Zone to meet street tree requirements when tree wells are not possible. Tree tubs within the furnishing zone must be located at least 2 feet from the curb face, at least 1 foot from the Through Pedestrian Zone, and must not impede access from the Through Pedestrian Zone to parked vehicles or the street. The tree tub should not be easily movable. The tree tub must be maintained and may not become a nuisance. Reference Chapter 17.52.050.

In design districts, tree tubs in the right-of-way may be subject to design review

C.20 - Loading Docks

Loading docks in the public right-of-way are generally discouraged. They may be allowed in the River District per the River District Right-of-Way Standards (2004), or in other districts with similar adopted standards. They may be considered on a case-by-case basis in industrial areas of the city where they do not significantly conflict with traffic operations, safety or existing or future pedestrian facilities. Docks are considered only with approval from the City Traffic Engineer.

Docks extending from a building face into the right-of-way are private structures; however, accessibility by the public may be required. Docks are considered accessory to private buildings and fall under ADA building regulations. However, where the dock will provide through pedestrian access in lieu of a public sidewalk, the City Engineer will apply ADA requirements in order to provide a higher level of accommodation. Since docks are allowed in the right-of-way under a Revocable Encroachment Permit, they cannot serve as the required building ADA access.

Docks may be allowed when they are in compliance with the River District Right-of-Way Standards (2004) and requirements as described herein. Docks extending into the right-of-way are discouraged except on NW 13th Avenue between West Burnside Street and NW Raleigh Street, and NW 15th Avenue between NW Glisan Street and NW Savier Street. In these locations, requests are evaluated based on traffic operations, safety, pedestrian facility requirements and the purpose they serve regarding loading.



Loading Docks (continued)

(1) NW 13th Avenue, between West Burnside Street and NW Raleigh Street

- (a) Existing docks in private use may be retained in private use if previously permitted as such, no modifications are proposed, and the City Engineer chooses not to revoke the existing permit to accommodate transportation or other right-of-way functions.
- (b) Existing docks being renovated for purposes other than vehicle loading, but as determined by the City Engineer are not able to serve as a through pedestrian access, must be open to the public right-of-way across one full end.
- (c) Existing docks proposed for renovation, modification or reconstruction, and new docks, when for uses other than vehicle loading, shall be rebuilt to serve as a through public pedestrian facility including entries the full width of the dock on each end, a minimum 6-foot clear zone the length of the dock, and ADA accessibility on at least one end. Docks shall be modified or reconstructed to a minimum average height of at least 18 inches.
- (d) Existing docks proposed for renovation, modification or reconstruction, when for vehicle loading purposes, do not need to provide through pedestrian access.

(2) NW 15th Avenue, between NW Glisan Street and NW Xavier Street

- (a) Existing docks proposed for renovation, modification or reconstruction, or new docks, when for uses other than vehicle loading, shall be rebuilt to serve as a through public pedestrian facility including entries the full width of the dock on each end, a minimum 6-foot clear zone the length of the dock, and ADA accessibility at each end.
- (b) Existing docks proposed for renovation, modification or reconstruction, when for vehicle loading purposes, do not need to provide through pedestrian access.

In design districts, docks extending into the right-of-way may be subject to Design Review.

C.21 - Private (Non-Franchised) Utilities

Private sanitary sewers, storm drains, water facilities, monitoring manholes and other private utility facilities are not allowed in the right-of-way except as described here.

Private storm connections, such as rain drains to the curb, outfalls to existing roadside ditches and connections to storm sewers or combination sewers as allowed per the Bureau of Environmental Service's (BES) Rules of Connection are permitted without an encroachment permit. This includes connections from private storm water planter boxes located on private property.

Private swales and private sump/sed systems may be permitted only with BES approval and a Revocable Encroachment Permit detailing the maintenance requirements. In these limited situations, the Bureau of Environmental Services must agree to be a "co-issuer", or in some cases a "co-permittee", on the Revocable Encroachment Permit, ensuring that the stormwater system is appropriate and that emergency maintenance service will be available to these facilities at all times.

Permitting of private stormwater and sanitary facilities are subject to change. Contact the PBOT Development Review Manager for the latest requirements.

C.22 - Electrical Vehicle Charging Stations

Privately owned and maintained electrical vehicle charging stations may be allowed in the public right-of-way through a separate policy, currently under development. Contact the Portland Bureau of Transportation (503)-823-7002 or www.portlandoregon.gov/transportation for most current information.

C.23 - Electrical Outlets for Street Tree Lights

Electrical outlets may be allowed when installed in tree wells for the purpose of powering temporary festive lights placed in street trees only when within recognized business districts. The outlet must be located at or below sidewalk grade so as not to constitute a tripping hazard, and must be placed so as not to restrict tree growth or damage the tree. The outlet must be supplied through a conduit with a power cut-off switch at the property line. The conduit shall run perpendicular to the curb and sidewalk and must be marked with locator tape for future underground work. Only Level 1 power is allowed – no Level 2 or Level 3 power may be used for these purposes in the public right-of-way. The applicant is required to become a member of the Oregon Utility Notification Center One-Call system. Proof of participation in One-Call is required for as long as the conduit remains.

A proposal for the placement of the electrical outlets should be submitted to the Bureau of Transportation along with a Revocable Encroachment Permit Application. A Revocable Encroachment Permit will be issued to the adjacent property owner, and will be recorded with the county so that the permit will run with the land. The applicant will be required to pay a permit fee as well as a county recording fee, as per Title 17 of the City Code.

Additionally, a separate permit is required from the Urban Forestry Division of the Portland Parks Bureau in order to install lights in trees. For specific conditions and more information, reference Parks Administrative Rule PRK-2.02 or contact the Urban Forestry Division at (503) 823-4489 or online at: <http://www.portlandoregon.gov/parks>.



C.24 - Sidewalk Cafés

Sidewalk Cafés may be allowed in the public right-of-way, administered through a separate permitting process. Reference Portland City Code Chapter 17.25 and Portland Policy Document TRN-10.04. The Sidewalk Café program, administered by the Bureau of Transportation, allows bars, restaurants and cafés to place tables and chairs in the sidewalk area for the purpose of serving food and beverages to their patrons. These cafés, when properly applied, add vibrancy and diversity to Portland's commercial streets. There are limitations placed on the size and location of the café area located in the public right-of-way. For more information regarding the Sidewalk Café program, call (503) 823-7002 or visit www.portlandoregon.gov/transportation.



C.25 - Vending Carts

Vending Carts may be allowed in the public right-of-way and are administered through a separate permitting process. Reference Portland City Code Chapter 17.26 and Portland Policy Document TRN-10.05. The Vending Cart program is administered by the Bureau of Transportation and allows certain types of goods and services to be sold in the public right-of-way. The goods or services must be sold from an approved cart, and limitations are placed on the location of the cart to allow sidewalk use to be accommodated in the public right-of-way. For additional information regarding the Vending Cart program, call (503) 823-7002, or visit <http://www.portlandonline.com/transportation/sidewalkvending>.



C.26 - Street Banners

The City periodically receives requests to place banners in the right-of-way for the purpose of identifying a neighborhood or public charitable event. Permits are issued for three types of banners placed on one of three types of structures: street light poles, utility poles or Transit Mall banner standards. This section applies to banners that hang over the public right-of-way, affixed to utility poles. For information on Transit Mall banner standards, refer to Portland City Code Chapter 17.45. Permits for hanging banners on street lights are issued by the Signals and Street Lighting Division (503.823.5185.)

For cross-street banners outside the Transit Mall, the banner must meet the following conditions:

- Cross-street banners may be used for the purpose of identifying a neighborhood event or a public charitable event only.
- Cross-street banner permits are issued to recognized neighborhood associations, district neighborhood coalitions and non-profit agencies only. There is no fee for a cross-street banner permit to such an agency.
- A cross-street banner may be in place for a maximum of four weeks and must be installed in the vicinity of the neighborhood or public charitable event it is announcing.
- Banner layout, design and location must be approved by the City Engineer.
- Logos of commercial supporters who help defray the cost of a banner must fit within a square that is no more than half the height of the banner.
- Installation of cross-street banners is not allowed at intersections, in underground wiring districts or on City street light or traffic signal poles.
- Banners shall be installed with the bottom of the banner a minimum of 18 feet above the travel way and a minimum of 10 feet above the sidewalk area.
- The banner shall be fabricated with crescent shaped slots held closed with a small piece of material or thread, which will blow open if a wind gust hits the banner, or some other equivalent means of reducing wind loading.
- The banner must be attached to a 3/8" or larger steel support cable strung between cable mounts. All banners must be hemmed, fitted with grommets and attached to the steel support cable with a 5/16" or larger nylon rope.
- Liability insurance shall be provided by one of the recognized neighborhood associations/district neighborhood coalitions or by a non-profit agency.

Street Banners (continued)

To apply for a cross-street banner, submission of the following is required:

- A letter requesting a cross-street banner permit, which includes a description of the event, the requested location, dates the cross street banner will be in place, contact person and phone number.
- Information on the banner including the layout, design, text, construction, and method of hanging the banner.
- Letter of authorization from the owner of the structure(s) to which the banner will be mounted.
- Liability insurance certificate and additional insured form that meet City of Portland Bureau of Transportation insurance requirements.



C.27 - Other Structures in the Public Right-of-Way

Proposals for other, less typical structures in the public right-of-way will be considered on a case-by-case basis. The following criteria identify general location and placement restrictions. The encroachment should be located:

- (1) Outside of the Through Pedestrian Zone
- (2) Outside of the Sidewalk Corner Obstruction-Free Area
- (3) Outside of any Bus Zone
- (4) Minimum 2' from the curb face
- (5) Minimum 5' from fire hydrants
- (6) Minimum 3' from utility, light or signal poles, guy wires and driveways

In addition, the location and placement must not compromise transportation safety (sight distance, visibility, object hazard), ADA requirements or interfere with City maintenance functions.

Encroachments and Building Projections

Encroachments in the Public Right-of-Way

This section describes specific types of encroachments and building projections that are defined by the International Building Code (IBC.) All building projections that encroach into the right-of-way and that meet Chapter 31 and Chapter 32 of the IBC and the following requirements may be allowed without an encroachment permit, unless otherwise specified herein.

- (1) The *Conditions Governing Encroachments in the Public Right-of-Way* (see pages 4-5) apply to permitted building projections as defined by the International Building Code.
- (2) IBC does not differentiate between alleys and streets. It is Portland Bureau of Transportation policy that no projections are allowed in alleys.
- (3) IBC categorizes building projections into four categories:
 - (a) 0' (at-grade) and below
 - (b) 0' to 8' above-grade
 - (c) 8'-15' above-grade
 - (d) 15' or more above-grade

IBC Chapter 32 states that encroachments 15' or more above grade shall not be limited; however, the Bureau of Transportation requires that building projections 15' or more above grade comply with the IBC regulations for encroachments that are 8'-15' above-grade.

D.1 - IBC Section 3202.1 – Encroachments Below Grade

“Encroachments below grade shall comply with Sections 3202.1.1 through 3202.1.3.”

3202.1.1 – Structural support. *A part of a building erected below grade that is necessary for structural support of the building or structure shall not project beyond the lot lines, except that the footings of street walls or their supports which are located at least 8 feet (2438 mm) below grade shall not project more than 12 inches (305 mm) beyond the street lot line.*

PBOT policy makes no changes to Section 3202.1.1. No encroachment permit is necessary for structural supports that meet these building code requirements.

3202.1.2 – Vaults and other enclosed spaces. *The construction and utilization of vaults and other enclosed space below grade shall be subject to the terms and conditions of the authority or legislative body having jurisdiction.*

Vaults and other enclosed below-grade spaces may be allowed within the right-of-way with a Revocable Encroachment Permit, a lease if conditions warrant it, and a building code appeal granted by the Bureau of Development Services. The building section within the right-of-way must be designed to be severable from the main building and the structural support for the building above grade must meet IBC 3202.1.1. No projections are allowed beyond the curb line. A minimum of 5' of clearance is required from the street gutter grade to the top of the building lid. It is the applicant's responsibility to demonstrate that no conflict will exist with street trees, streetlights, signals, ADA ramps or any other item constructed within the right-of-way permitted through the Public Works Permit.

A Revocable Encroachment Permit for the vault or other enclosed structure must be issued before the building code appeal to the Bureau of Development Services will be granted. The building code appeal submitted to the Bureau of Development Services must include a demonstration and statement from the structural engineer of record that the main building structure will meet all of the necessary structural requirements and remain stable under gravity, lateral, soil and flood loads if the projection is removed. The proposed design should clearly delineate the extent of the projection, both in plan view and in section view. The Revocable Encroachment Permit from the Bureau of Transportation must be included with the building code appeal. A revocable encroachment permit should also be issued for existing unpermitted vaulted basements upon being modified.

Vaulted and other enclosed structures extending beyond the curb line are considered a “*Major Encroachment*”. They are only allowed on a limited basis, are strongly discouraged and must be approved by City Council. See Transportation Administrative Rule TRN 8.01, *Encroachments in the Public Right-of-Way*, for more information on “*Major Encroachments*.”

3202.1.3 – Areaways. *Areaways shall be protected by grates, guards or other approved means.*

Areaways may be allowed in the public right-of-way. The areaway must be contained entirely within the building Frontage Zone and must be protected by grates, guards or other approved means meeting ADA requirements and IBC regulations. The areaway requires a Revocable Encroachment Permit, issued to the adjacent property owner. Areaways will be reviewed on a case-by-case basis. It is the applicant's responsibility to demonstrate the need for the areaway versus other means contained on private property.

A proposal for the areaway should be submitted to the Bureau of Transportation, along with a Revocable Encroachment Permit Application. If acceptable, a Revocable Encroachment Permit will be issued to the adjacent property owner. The applicant will be required to pay a permit fee, as well as a county recording fee, as required by Title 17 of the City Code.

D.2 – IBC Section 3202.2 – Encroachments above grade and below 8' in height

Encroachments into the public right-of-way above grade and below 8' (2438 mm) in height shall be prohibited except as provided for in Sections 3202.2.1 through 3202.2.3. Doors and windows shall not open or project into the public right-of-way.

Doors or windows that open or swing out into the right-of-way less than 8' above the sidewalk surface are only allowed under certain circumstances and require a revocable encroachment permit. The door must meet one of the two following conditions:

- (1) The door is used solely for access to an on-site garbage receptacle or utility room. The door or gate must be operated solely from the outside. The door must automatically return to the closed position except when it is flush and latched to the building wall.

-or-

- (2) The door is used solely as an emergency exit. The door must have no exterior hardware and must be connected to an audible alarm, which shall be operational at all times, to alert passersby when the door is being opened. The door is to be signed as an "emergency exit only".

Security gates that swing into the right-of-way at recessed doorways also require a revocable encroachment permit and must meet *both* of the following conditions:

- (1) The gate opens independently of the door.

-and-

- (2) The gate is locked in the open position at the start of the day and is closed at the end of the day. PBOT will not permit gates that are designed to be opened and closed throughout the day.

Door or window projections that do not meet the requirements of IBC Chapter 32 will require a building code appeal to the Bureau of Development Services. A Revocable Encroachment Permit for the door or window projection must be issued before the building code appeal will be granted by the Bureau of Development Services. The Revocable Encroachment Permit from the Bureau of Transportation must be included with the building code appeal. Proposals that do not meet the above conditions are discouraged and will be reviewed on a case-by-case basis. It is the applicant's responsibility to demonstrate the building constraints which cause the inability to meet the IBC regulations.

3202.2.1 – Steps. *Steps shall not project more than 12 inches (305 mm) and shall be guarded by approved devices not less than 3 feet (914 mm) high, or shall be located between columns or pilasters.*

Stairs and hand railings may be allowed within the right-of-way. A Revocable Encroachment Permit Application for the stairs and/or railings should be submitted to the Bureau of Transportation, including a site plan and any relevant details to clearly demonstrate the proposal. If it is acceptable, a Revocable Encroachment Permit will be issued to the owner of the property to which the encroachment is adjacent. The permit will detail specific maintenance and liability requirements. It will also be recorded with the county so that the permit will run with the land, and therefore any future owners will also be bound by the permit conditions. The applicant will be required to pay a permit fee as well as a county recording fee, as per Title 17 of the City Code. The stairs and hand railings shall be located so that they do not restrict the minimum sidewalk corridor width as defined in Table A (on page 7) and must be at least 1' away from the Thorough Pedestrian Zone.

Stairs and railings should be constructed so as to comply with Building Code and other applicable regulations, as if they were being constructed on private property. If the stairs exceed the allowed 1' encroachment of the International Building Code (IBC 3202.2.1), then a building code appeal to the Bureau of Development Services is also necessary.

In design districts, stairs and hand railings in the right-of-way may be subject to Design Review.

3202.2.2 – Architectural features. *Columns or pilasters, including bases and moldings shall not project more than 12 inches (305 mm). Belt courses, lintels, sills, architraves, pediments and similar architectural features shall not project more than 4 inches (102 mm).*

Structures extending from a building whose front is located at or within 1 foot of the property line, such as utility meters and valves, garage entry protections and other building appurtenances are allowed without a Revocable Encroachment Permit. The appurtenance must be severable, may not extend more than 1 foot from the face of the building and may not restrict the minimum required Thorough Pedestrian Zone as defined in Table A on page 7.

Decorative building facings and architectural features are allowed to extend up to 4 inches beyond the property line without a Revocable Encroachment Permit. The building facing must be severable, may not extend more than 4 inches into the right-of-way and may not restrict the minimum required Thorough Pedestrian Zone as defined in Table A on page 7.

Other building appurtenances and architectural features that do not meet these requirements are generally discouraged. Appurtenances and architectural features that do not meet the requirements of IBC Chapter 3202.2.2 will require a building code appeal to the Bureau of Development Services. A Revocable Encroachment Permit must be issued before the building code appeal will be granted by the Bureau of Development Services. The Revocable Encroachment Permit from the Bureau of Transportation must be included with the building code appeal. This type of proposal will be reviewed on a case-by-case basis.

3202.2.3 – Awnings. *The vertical clearance from the public right-of-way to the lowest part of any awning, including valances, shall be 7 feet (2134 mm) minimum.*

Awnings must be supported by the building or another structure on private property. No structural supports are allowed within the public right-of-way. Awnings may not extend more than two-thirds of the distance from the property line to the curb, and the horizontal clearance between the awning and the curb shall not be less than 2 feet.

Awnings that meet these requirements and the IBC regulations do not require Revocable Encroachment Permits. Awnings that do not meet these requirements and the IBC regulations are considered a “*Major Encroachment*.” They are only allowed on a limited basis, are strongly discouraged and must be approved by City Council. See Transportation Administrative Rule TRN 8.01, *Encroachments in the Public Right-of-Way*, for more information regarding “*Major Encroachments*.”

D.3 – IBC Section 3202.3 – Encroachments 8' or more above grade

Encroachments 8 feet (2438 mm) or more above grade shall comply with Sections 3202.3.1 through 3202.3.4.

3202.3.1 – Awnings, canopies, marquees and signs. *Awnings, canopies, marquees and signs shall be constructed so as to support applicable loads as specified in Chapter 16. Awnings, canopies, marquees and signs with less than 15 feet (4572 mm) clearance above the sidewalk shall not extend into or occupy more than two-thirds the width of the sidewalk measured from the building. Stanchions or columns that support awnings, canopies, marquees and signs shall be located not less than 2 feet (610 mm) in from the curb line.*

PBOT policy dictates that awnings, canopies, marquees and signs must be supported by the building or another structure on private property. No structural supports within the public right-of-way are allowed.

Awnings, canopies and signs may not extend more than two-thirds of the distance from the property line to the curb, and the horizontal clearance between the awning, canopy or sign and the curb shall not be less than 2 feet.

Marquees may project more than two-thirds of the distance from the property line to the curb line with the following conditions:

- (1) The marquee must be at least 12 feet above the sidewalk.
- (2) The horizontal clearance between the marquee and the curb line must be at least 2 feet.
- (3) The length of the marquee may not exceed 25 feet along the direction of the street.

Awnings, canopies, marquees and signs that meet these requirements and the IBC regulations do not require Revocable Encroachment Permits.

Awnings, canopies, marquees and signs that do not meet these requirements or the IBC regulations are considered a “*Major Encroachment*.” They are allowed on a limited basis, are strongly discouraged and must be approved by City Council. See Transportation Administrative Rule TRN 8.01, *Encroachments in the Public Right-of-Way*, for more information regarding “*Major Encroachments*.”

3202.3.2 – Windows, balconies, architectural features and mechanical equipment. *Where the vertical clearance above grade to projecting windows, balconies, architectural features or mechanical equipment is more than 8 feet (2438 mm), 1 inch (25 mm) of encroachment is permitted for each additional 1 inch (25 mm) of clearance above 8 feet (2438 mm), but the maximum encroachment shall be 4 feet (1219 mm).*

Oriel Windows and balconies that meet these IBC regulations do not require a Revocable Encroachment Permit. No oriel window or balcony projections are allowed less than 8' above grade. Over 8' above grade, one inch of encroachment is allowed for each additional inch of clearance above 8', with a maximum allowable encroachment of 4'. Oriel Windows and balconies that do not meet these IBC regulations are considered a "Major Encroachment" and require a lease. They are only allowed on a limited basis, are strongly discouraged, may require Design Review and must be approved by City Council. See Transportation Administrative Rule TRN 8.01, *Encroachments in the Public Right-of-Way*, for more information regarding "Major Encroachments." Reference Portland Policy Document ENB-15.51 for additional requirements of the Bureau of Development Services for oriel windows.

3202.3.3 – Encroachments 15 feet or more above grade. *Encroachments 15 feet (4572 mm) or more above grade shall not be limited.*

PBOT policy requires that all encroachments 15 feet or more above grade shall meet the same requirements encroachments 8 feet above grade (Section 3202.3).

3202.3.4 – Pedestrian Walkways. *The installation of a pedestrian walkway over a public right-of-way shall be subject to the approval of local authority having jurisdiction. The vertical clearance from the public right-of-way to the lowest part of a pedestrian walkway shall be 15 feet (4572 mm) minimum.*

Elevated Pedestrian Walkways are considered a "Major Encroachment" and require a lease. They are allowed on a limited basis, are strongly discouraged, may require Design Review and must be approved by City Council. See Transportation Administrative Rule TRN 8.01, *Encroachments in the Public Right-of-Way*, for more information regarding "Major Encroachments."

D.4 – IBC Section 3202.4 – Temporary encroachments

Where allowed by the local authority having jurisdiction, vestibules and storm enclosures shall not be erected for a period of time exceeding 7 months in any one year and shall not encroach more than 3 feet (914 mm) nor more than one-fourth of the width of the sidewalk beyond the street lot line. Temporary entrance awnings shall be erected with a minimum clearance of 7 feet (2134 mm) to the lowest portion of the hood or awning where supported on removable steel or other approved noncombustible support.

Per Portland City Code and PBOT policy, it is unlawful for any person to obstruct or cause to be obstructed any roadway, curb or sidewalk by leaving or placing, to remain longer than 2 hours, any object, material or article which may prevent free passage over any part of such street or sidewalk area. Reference Chapter 17.44.010 A.

Exception Process

Encroachments in the Public Right-of-Way

If a proposal for a right-of-way encroachment does not meet the policy as described in this document, the proposal may be reviewed by the Bureau of Transportation on a case-by-case basis, at the discretion of the Transportation Development Review Manager. The encroachment applicant should include the reasons for the exception request and an explanation of how the proposal meets the intent of City Code and adopted policies. The Development Review Manager will review the request and consult with staff and the City Engineer as needed. The applicant may be contacted for additional information. A written response will be provided to the applicant, explaining the reasons for approval or denial of the request. The timeline for a response may vary depending on the complexity of the issue. Decisions made by the Bureau of Transportation regarding proposed right-of-way encroachments are final.

Glossary

Encroachments in the Public Right-of-Way

- **Alley** - A facility primarily intended to provide access to the rear or side of lots or buildings in urban areas and not intended for through vehicular movement.
- **Bus Zone** – The area of the Sidewalk Corridor adjacent to a bus when stopped at a marked bus stop, running the length of the bus, necessary for passenger loading and unloading.
- **Curb Zone** – The area of the Sidewalk Corridor between the Furnishing Zone and the roadway as defined in Table A on page 7.
- **Design District** – Areas subject to Design Review as defined on the Zoning Map of the Comprehensive Plan and in Title 33.
- **Design Review** – Review by the Bureau of Development Services to ensure that facility design meets design parameters for development and preserves the conservation, enhancement, and continued vitality of the identified scenic, architectural, and cultural values of each Design District or area and the quality of development near transit facilities.
- **Frontage Zone** – The area of the Sidewalk Corridor between the Through Pedestrian Zone and the property line as defined in Table A on page 7.
- **Furnishing Zone** – The area of the Sidewalk Corridor between the Curb Zone and the Through Pedestrian Zone as defined in Table A on page 7.
- **Encroachment** – Any private structure installed within the Right-of-Way.

Glossary (continued)

- **Major Encroachment** – Any of the following specific encroachments, as defined in Transportation Administrative Rule TRN 8.01, Encroachments in the Public Right-of-Way:
 - a. sky-structures
 - b. building projections or extensions not covered by Title 16, Title 24 or Title 32
 - c. arcades
 - d. underground walkways
 - e. malls or parking
 - f. other structures for the movement of people or goods, excepting items regulated as utilities
- **Private** – For the purposes of this rule, “private” is defined as a facility not owned by the Bureau of Transportation, Bureau of Water Works or the Bureau of Environmental Services, or a facility that is owned by a Franchise Utility but not allowed though the franchise agreement.
- **Right-of-Way** – The area between property lines of a street, easement, tract or other area dedicated to the movement of vehicles, pedestrians and/or goods.
- **Sidewalk** – An improved facility intended to provide for pedestrian movement; usually, but not always, located in the public right-of-way adjacent to a roadway. Typically constructed of concrete. (See Standard Construction Specifications.)
- **Sidewalk Corner Obstruction-Free Area** – The space between the curb face and the lines created by extending the adjacent property lines (or boundary lines of the public sidewalk easements) to the curb face.
- **Sidewalk Corridor** – The area behind the curb face of a street and including the area designated for the Curb Zone, Furnishing Zone, Through Pedestrian Zone and the Frontage Zone as defined in Table A on page 7.
- **Structural Review** – Review by either the Bureau of Development Services or the Bureau of Transportation to ensure conformance of a structure with City standards and governing codes.
- **Through Pedestrian Zone** – The area of the Sidewalk Corridor between the Furnishing Zone and the Frontage Zone as defined in Table A on page 7.



MEMORANDUM

Office of the City Manager

DATE: May 6, 2019

TO: Joseph A. Valentine, City Manager

FROM: Tiffany J. Gunter, Assistant City Manager

SUBJECT: N. Old Woodward Parking Garage / Bates Street Extension and Site Redevelopment Project – Bond Authorization and Resolution for Public Project Components

INTRODUCTION:

On February 11, 2019, an Engagement and Cost Reimbursement Agreement (ECRA) was adopted that initiated the design and development work to establish cost estimates for demolition of the existing N. Old Woodward parking deck, proposed new parking deck with expanded capacity, and extension of Bates Street to N. Old Woodward. The design and development drawings would serve as the basis for the delivery of the guaranteed maximum price (GMP) to construct the public components.

The purpose of establishing the GMP is to estimate total project cost and ensure sufficient funding for the revenue bond will be authorized to support the public components of the project if 1) the referendum is passed on August 6, 2019 and 2) the decision is made by the Commission to proceed with the project.

The action being recommended does not obligate the Commission to proceed with the project or issue bonds for the project even with successful passage of the bond initiative. The deadline for certifying ballot language to the City and County Clerk's office for the August 6 vote is Tuesday, May 14, 2019.

In order to develop the GMP, proposals for every major trade necessary for construction of the proposed project (i.e. concrete, plumbing, and earthwork, etc.) were collected and evaluated. The presentation will illustrate the cost differential between the original GMP, which contemplated a mixed use building that would line Old Woodward (Site 2) with a fifty-foot depth and a revised GMP that extends the footprint of the liner building to a seventy-foot depth and extends the three levels of below grade parking underneath the proposed Site 2 building. The revised GMP presents the maximum possible amount required to build the public components of the project at \$64,850,346.

During review of the original and revised GMP, the City began hosting meetings with the neighbors immediately adjacent to the proposed site development. Subsequently, the site plan was revised to accommodate a smaller overall foot-print in an effort to respond to community input. The proposed foot print of the entire site was lessened by just over 24% (41,000 square feet), which reduced the anticipated demand for parking. The reduction in office and retail space, prompted

a discussion whereby three alternate parking structure layouts and associated costs were developed for consideration. The following table provides a summary of the options:

Table: Bates Parking Structure Alternate Layout Evaluation

	Description of Change from Base GMP	Levels of Parking Below Grade	Levels of Parking at grade and above	Total Parked Levels	Roof Level Parapet Height Elevation	Total Public Parking Spaces	Reduced Number of Public Parking from Base GMP	Schedule Duration in months (Start 11/2019)	Total Cost
Original GMP		3	7	10	66'-0"	1277	0	27	\$57,924,589
Revised GMP	Modified footprint of Site 1 – added parking beneath Site 2	3	7	10	66'-0"	1277	0	30	\$64,850,346
Alternate 1	Remove 1 of elevated parking	3	6	9	55'-0"	1153	-124	29	\$62,386,365
Alternate 2	Remove 1 of below grade parking	2	7	9	66'-0"	1109	-168	29	\$61,133,165
Alternate 3	Eliminate all below grade parking beneath Site 2 (LL1, 2,& 3)	3	7	10	66'-0"	1155	-122	27	\$56,781,203

BACKGROUND:

[The June 4, 2018 project summary memo is provided here as a link embedded within the memo, which provides a comprehensive overview of the project background.](#)

LEGAL REVIEW:

The proposed bond resolution and ballot language were drafted by bond counsel at Miller Canfield Paddock and Stone P.L.C. in cooperation with the City's bond financial advisors at Bendzinski and Co. and have been reviewed and accepted by the City Attorney.

FISCAL IMPACT:

The City's financial advisor has created cost worksheets that consider all alternatives represented in the above table. The total bond issuance could range from \$50,455,000 - \$57,400,00. Staff evaluated the bonding capacity and parking system capacity to support the project at the maximum range of the bond authorization and have determined that the City has sufficient capacity to support the maximum authorization.

Bonding Capacity

Under state law a municipality may bond up to 10% of its assessed value. The City's total assessed value is \$3,056,223,080, which means the City's bonding capacity is approximately \$305,622,000. At the present time, the City's debt is approximately, \$12, 500,000 and will continue to diminish over the next few years as we retire our sewer bond debt. The \$12,500,000 represents 4% of the City's total capacity.

If the City were to issue \$57,400,000 in parking bonds, the City's total debt would be approximately \$69,900,000, or 23% of its total bonding capacity. The remaining capacity would allow the City to include other City projects as needed.

Parking System Capacity

The parking system is projected to have unrestricted reserves of approximately \$17.5M at the end of the fiscal year. Of the total project cost of \$67.4M, the City would initially fund \$10M of the total project cost from its reserves and bond the remaining \$57.4M. This would leave \$7.5M in unrestricted reserves in the system. Additionally, the City would special assess businesses in the parking assessment district \$3M over 10 years which will partially offset the City's initial \$10M investment from the parking system's reserves.

Based on the Revised GMP and on projections for future operating costs, capital improvements, parking mitigation during construction, and debt service, the system has the capacity to fund this project with an approximate increase in monthly permit rates of \$15/month, while keeping the daily transient rates the same. The last time, the City raised monthly permit rates was March 1, 2017 and an additional rate increase was contemplated at that time. The summarized financial information in the table below is based on projected revenues and expenditures in the first year after construction. The projected annual net reserves of \$1 million will be used to rebuild Parking System reserves and ensure the City maintains the ability to adequately respond the other existing infrastructure demands.

Revenues:	
Monthly Permit Revenue	\$4,151,800
Transient Parking Revenue	3,148,000
Parking Meter Revenue	2,020,000
Other (including special assessment)	630,000
Total Revenues	9,949,800
Expenditures:	
Operating	3,589,500
Capital Improvements	1,600,000
Debt Service	3,648,400
Total Expenses	8,837,900
Net annual increase in reserves	\$1,111,900

SUMMARY:

Jones Lang LaSalle conducted an independent review of the GMP to identify potential issues or inconsistencies in the cost estimates. They participated, along with the City and the Developer team in each discussion regarding the cost estimates, revisions, and alternates and concluded that the revised GMP provides a reliable number that is compatible with current and future projected market.

Staff will make a recommendation in a future meeting that the City considers Alternate 3 as a potential cost saving opportunity. As the City continues to work with Development Counsel, it has been brought to our attention that the option to pursue a "stacked development," where the below grade portion of a public parking deck supports a private development above grade that there are many additional considerations that would increase the City's obligations both now and in the future. For example, the option not to build under Site 2 would eliminate the need to negotiate a reciprocal easement agreement that would delineate responsibilities for the City and Developer. Additionally, given the approval of a 100-year lease the City would then be obligated to maintain the structure below Site 2 for a minimum of 100 years, where the useful life of a structure is approximately 70 years.

The Commission is not being asked to decide on an alternate today, but staff wanted to highlight the arguments that have been made to suggest that pursuing Alternate 3 would be the best alternative for the City to consider as the project moves forward.

The action being requested today will enable a question of funding to be placed on the August 6, 2019 ballot. The action does not 1) obligate the City to issue bonds given successful passage of the ballot question nor does it 2) approve the project for construction. The outcome of today's decision will begin the process to ensure sufficient financial capacity to proceed with construction of the public components of the project.

ATTACHMENTS:

- Resolution: Parking Structure Bond Proposal and Ballot Language
- Jones Lang LaSalle Validation Letter, Comparison Table, and Recommendation
- Walbridge GMP Detail Worksheet
- Guaranteed Maximum Price: Cost Estimate Worksheet
- Bates Parking Structure Alternate Layout Evaluation Table
- Bond Financing – Estimates of Cost Tables
- [Project Background: June 4, 2018 Memorandum \(click here\)](#)

SUGGESTED RESOLUTION:

To approve the Authorizing Resolution for the parking structure bond proposal and ballot language for the August 6, 2019 referendum in the amount of \$57,400,000.

RESOLUTION SUBMITTING PARKING STRUCTURE BOND PROPOSAL

CITY OF BIRMINGHAM County of Oakland, State of Michigan

Minutes of a regular meeting of the City Commission of the City of Birmingham, County of Oakland, State of Michigan, held on the 6th day of May, 2019, at 7:30 p.m., prevailing Eastern Time.

PRESENT: Members _____

ABSENT: Members _____

The following preamble and resolution were offered by Member _____ and supported by Member _____.

WHEREAS, the City Commission (the "City Commission") of the City of Birmingham (the "City") has determined that it is necessary to pay part of the cost of acquiring and constructing a new parking structure to replace the North Old Woodward parking structure, including related demolition, street and site improvements (the "Project"); and

WHEREAS, the City Commission has determined that the City should borrow money in an amount not to exceed Fifty-Seven Million Four Hundred Thousand Dollars (\$57,400,000), and issue unlimited tax general obligation bonds of the City, in such amount for the purpose of paying part of the cost of the Project; and

WHEREAS, the City Commission has determined that a proposal to issue bonds for the Project shall be submitted to the qualified electors of the City at an election to be held in the City on Tuesday, August 6, 2019 (the "Election Date"); and

WHEREAS, in order for the bond proposal to be submitted to the qualified electors, it is necessary for the City Commission to certify the ballot wording of the proposal to the City Clerk and to the County Clerk of the County of Oakland (the "County Clerk"), as required by Act 116, Public Acts of Michigan, 1954, as amended (the "Michigan Election Law").

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The bond proposal attached hereto as Exhibit A (the "Bond Proposal") shall be submitted to a vote of the qualified electors of the City on the Election Date.
2. The ballot wording of the Bond Proposal is hereby certified to the City Clerk and the County Clerk for submission to the City's electors on the Election Date. The City Clerk is hereby authorized and directed to file this Resolution and/or complete any such forms, certificates

or documents as may be required by the County Clerk to evidence the foregoing certification and/or submission by no later than 4:00 p.m. on Tuesday, May 14, 2019.

3. The City Clerk and the County Clerk are hereby directed to (a) post and publish notice of last day of registration and notice of election as required by the Michigan Election Law; and (b) have prepared and printed, as provided by the Michigan Election Law, ballots for submitting the bond proposal at the election, which ballots shall contain the Bond Proposal, or the proposition shall be stated as a proposal on the voting machines, which ballots may include other matters presented to the electorate on the same date.

4. The City makes the following declarations for the purpose of complying with the reimbursement rules of Treas. Reg. § 1.150-2 pursuant to the Internal Revenue Code of 1986, as amended:

- (a) If the ballot proposal is approved by the electors, the City reasonably expects to reimburse itself with proceeds of the Bonds for certain costs of the Project which were paid or will be paid from the general funds of the City subsequent to sixty (60) days prior to today.
- (b) The maximum principal amount of debt expected to be issued for the Project, including issuance costs, is \$57,400,000.
- (c) A reimbursement allocation of the capital expenditures described above with the proceeds of the Bonds will occur not later than 18 months after the later of (i) the date on which the expenditure is paid, or (ii) the date the Project is placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid. A reimbursement allocation is an allocation in writing that evidences the City's use of the proceeds of the Bonds to reimburse the City for a capital expenditure made pursuant to this resolution.

5. All resolutions and parts of resolutions, insofar as they conflict with the provisions of this resolution, are hereby repealed.

AYES: Members _____

NAYS: Members _____

RESOLUTION DECLARED ADOPTED.

Cherilynn Mynsberge
City Clerk

I HEREBY CERTIFY that the attached is a true and complete copy of a resolution adopted by the City Commission of the City of Birmingham, County of Oakland, State of Michigan, at a regular meeting held on May 6, 2019, and that the meeting was conducted and public notice of the meeting was given pursuant to Act No. 267, Public Acts of Michigan, 1976, and that the minutes of the meeting were kept and will be or have been made available as required by the Act.

Cherilynn Mynsberge
City Clerk

EXHIBIT A

PARKING STRUCTURE BOND PROPOSAL

Shall the City of Birmingham, Oakland County, Michigan, borrow the principal sum of not to exceed Fifty-Seven Million Four Hundred Thousand Dollars (\$57,400,000) and issue its unlimited tax general obligation bonds in one or more series, payable over a period not to exceed thirty (30) years from the date of issuance, to be used by the City for the purpose of paying part of the cost of acquiring and constructing a new parking structure to replace the North Old Woodward parking structure, including related demolition, street and site improvements? The primary source of revenue intended to retire the bonds shall consist of revenues from the City's Automobile Parking System.

YES ☐

NO ☐

33444363.2\008626-00029



Zaruhi Broglin
JLL- Project and Development Services
226 E. Hudson, Suite 200
Royal Oak, MI, 48067
May 3, 2019

T +1 313 244 4881
Zarah.broglin@jll.com

Tiffany Gunter
City of Birmingham
151 Martin St.
Birmingham, MI, 48009

Dear Ms. Gunter,

JLL was retained by the City of Birmingham to review GMP documents for the North Old Woodward/Bates Street Parking and Site Development Project. We reviewed the Original GMP Document (dated 4/12/2019) and the Revised GMP Document (dated 4/29/2019) that also include three Alternate Options for Cost Save purposes. The purpose of the report was to uncover any issues and inconsistencies in the proposed GMP amount and provide recommendations for the most economical and viable option for the city.

JLL performed thorough review of the developed Original and Revised GMP documents and proposed Alternates. JLL participated in all GMP document review meetings and reviewed all the drawings, subcontractors' bids, GMP cost breakdowns developer proposed exclusions, current market conditions, market escalation trends and the schedule.

1. **The Original GMP (4/12/2019)** includes costs for 450,000SF, 10 Level parking structure (3 levels below grade and 7 levels above grade) with no parking under Building 2, that provided total of 1,2 parking spots. The GMP was populated from 75% Design Documents and competitive bids.

JLL Review Comment: JLL believes that the costs are consistent with the developer's presented concept costs that were part of Developer's Original Proposal. The GMP reflects subcontractor hard numbers from far developed Design set of drawings. The market escalation rates and the DTE cost were captured in GMP along with contingency amount for additional risk coverage for the contractor.

2. **The Revised GMP (4/29/2019)** includes costs for 489,000SF, 10 Level parking structure (3 levels below grade and 7 levels above grade) with 70ft deep setback and includes parking under Building 2. This option provides total of 1,260 parking spots. The GMP was populated from 75% Design Documents and competitive bids and 30% Design Documents for the modified areas.

JLL Review Comment: JLL confirms that the costs are consistent with the developer's presented concept costs that were part of Developer's Original Proposal. The GMP reflects subcontractor hard numbers from far developed Design set of drawings and 30% Drawings for the modified areas. The market escalation rates and the DTE cost were captured in GMP along with slightly higher contingency amount for the modified area pricing since the drawings were not as detailed.

- 2.1 Alternate 1/Cost Save Option 1-** Includes cost reduction for eliminating one above ground level, which brings the structure down to 417,566SF and results in total of 1,153 parking spots. The cost reduction was populated based on concept sketch.



2.2 Alternate 2/Cost Save Option 2- Includes cost reduction for eliminating one below ground level, which brings the structure down to 404,848SF and results in total of 1,092 parking spots. The cost reduction was populated based on concept sketch.

2.3 Alternate 3/Cost Save Option 3- Includes cost reduction for eliminating below grade parking beneath Building #2 (LL3, LL2, LL1), which brings the structure down to 431,484SF and results in total of 1,138 parking spots. The cost reduction was populated based on concept sketch.

JLL Review Comment on Alternates: All the Alternate costs were populated from concept sketch, therefore JLL recommends further developing the drawings and soliciting bids for the proposed alternates.

JLL RECCOMENDATION:

Based on thorough review and evaluation of the costs and validation with 3rd Party Developer, JLL confirms the Revised GMP amount, dated 4/29/2019 is an accurate number and is compatible with current and future projected market escalation. JLL recommends securing bonds for the Revised GMP amount and exploring Alternate #3 for potential cost reduction with least impact to overall size and parking count of the structure.

Please feel free to reach out to me if you have any additional questions.

Thank you.

Zarah Broglin

A handwritten signature in black ink, appearing to read "Zarah Broglin", written in a cursive style.

GMP COST ANALYSIS

Date: 5/3/2019

	PARKING QTY/SPACES	ESTIMATED BUILDING TOTAL SF	PARKING/ INFRA- STRUCTURE COSTS-LESS ROAD AND DTE	COST PER PARKING SPACE	ROAD WORK AND DTE	PRE-DEVELOPMENT and DEVELOPMENT COSTS	TOTAL DEVELOPMENT COST	ALL IN CONSTRUCTION COST PER SF
Original GMP 4/12/19	1,260	450,000	\$44,499,852	\$35,317	\$2,200,000	\$11,224,734	\$57,924,562	\$128.72
Revised GMP 4/29/19	1,260	489,674	\$50,982,523	\$40,462	\$2,200,000	\$11,667,823	\$64,850,365	\$132.44
Alternate 1- Eliminate One Floor Above Ground	1,136	417,566	\$48,899,411	\$43,045	\$2,200,000	\$11,286,954	\$62,386,365	\$149.40
Alternate 2- Eliminate One Floor Bellow Ground	1,092	404,848	\$47,752,708	\$43,730	\$2,200,000	\$11,180,457	\$61,133,165	\$151.00
Alternate 3- Eliminate LL1,2 and 3 Under Building 2	1,138	431,484	\$43,472,935	\$38,201	\$2,200,000	\$11,108,269	\$56,781,204	\$131.60

City of Birmingham Parking Structure GMP

Birmingham, MI
Estimate Type: DD GMP 450,000 SQFT 489,674 SQFT 417,566 SQFT 404,848 SQFT 431,484 SQFT Date: 5/3/2019

Division	Description		Design Build GMP		Revised DB GMP	Alternates No.1	DB GMP - ALT 1	Alternate No.2	DB GMP - ALT 2	Alternate No.3	DB GMP - ALT 3	
			4/12/2019	70' Bldg.2 with 3 levels parking below	4/29/2019	Remove 1 elevated parked floor	Alternate No.1	Remove 1 below grade parked floor	Alternate No.2	Remove all parking below building 2	Alternate No.3	Comments/Notes
01	General Requirements		\$2,425,663	\$361,038	\$2,786,701	(\$221,738)	\$2,564,963	(\$221,738)	\$2,564,963	(\$361,038)	\$2,425,663	
01	DTE Allowance		\$1,000,000		\$1,000,000		\$1,000,000		\$1,000,000		\$1,000,000	
02	Existing Conditions		\$740,000		\$740,000		\$740,000		\$740,000		\$740,000	
03	Concrete		\$20,159,910	\$3,716,000	\$23,875,910	(\$786,058)	\$23,089,852	(\$1,509,119)	\$22,366,791	(\$4,248,587)	\$19,627,323	
03	Precast		\$5,291,000	(\$625,000)	\$4,666,000	(\$375,000)	\$4,291,000		\$4,666,000		\$4,666,000	
04	Masonry		\$435,470	\$591,687	\$1,027,157	(\$68,912)	\$958,245		\$1,027,157		\$1,027,157	
05	Metals		\$494,570	\$75,264	\$569,834	(\$35,010)	\$534,824	(\$30,110)	\$539,724	(\$95,110)	\$474,724	
06	Wood, Plastics & Composites		\$531,000	\$10,000	\$541,000	(\$5,963)	\$535,037	(\$5,963)	\$535,037	(\$31,960)	\$509,040	
07	Thermal & Moisture Protection		\$603,000	\$229,450	\$832,450	(\$217,550)	\$614,900	(\$183,600)	\$648,850	(\$329,450)	\$503,000	
08	Openings		\$649,500	\$0	\$649,500	(\$35,221)	\$614,279		\$649,500		\$649,500	
09	Finishes		\$265,000	\$16,512	\$281,512	(\$5,300)	\$276,212	(\$5,300)	\$276,212	(\$28,365)	\$253,147	
10	Specialties		\$250,678		\$250,678	(\$15,667)	\$235,011	(\$12,100)	\$238,578	(\$5,050)	\$245,628	
11	Equipment		\$175,000		\$175,000		\$175,000		\$175,000		\$175,000	
12	Furnishings		N/A		N/A		N/A		N/A		N/A	
13	Special Construction		N/A		N/A		N/A		N/A		N/A	
14	Conveying Equipment		\$795,000		\$795,000	(\$60,122)	\$734,878	(\$60,122)	\$734,878		\$795,000	
21	Fire Protection		\$485,000	\$128,440	\$613,440	(\$128,440)	\$485,000	(\$128,440)	\$485,000	(\$144,440)	\$469,000	
22	Plumbing		\$803,300	\$66,432	\$869,732	(\$14,000)	\$855,732	(\$66,432)	\$803,300	(\$66,432)	\$803,300	
23	HVAC		Included Above		Included Above		Included Above		Included Above		Included Above	
25	Integrated Automation		N/A		N/A		N/A		N/A		N/A	
26	Electrical		\$2,279,000	\$124,700	\$2,403,700	(\$57,200)	\$2,346,500	(\$60,800)	\$2,342,900	(\$145,700)	\$2,258,000	
27	Communications		N/A		N/A		N/A		N/A		N/A	
28	Electronic Safety & Security		N/A		N/A		N/A		N/A		N/A	
31	Earthwork (incl new road)		\$3,751,571	\$547,380	\$4,298,951		\$4,298,951	(\$697,000)	\$3,601,951	(\$669,000)	\$3,629,951	
31	ERS, Tiebacks & Auger cast piles		\$4,067,000	\$902,000	\$4,969,000		\$4,969,000	(\$175,000)	\$4,794,000	(\$1,052,000)	\$3,917,000	
32	Exterior Improvements		\$138,000		\$138,000		\$138,000		\$138,000		\$138,000	
33	Site & U.G. Utilities		Included Above		Included Above		Included Above		Included Above		Included Above	
Construction Costs - Direct			\$45,339,662		\$51,483,565	(\$2,026,181)	\$49,457,384	(\$3,155,724)	\$48,327,841	(\$7,177,132)	\$44,306,433	
Construction Contingency			\$3,053,185	\$561,899	\$3,615,085	(\$128,699)	\$3,486,386	(\$182,360)	\$3,432,722	(\$588,889)	\$3,026,196	
Total Construction Costs Direct and Contingency			\$48,392,847		\$55,098,650	(\$2,154,877)	\$53,033,770	(\$3,338,084)	\$51,760,563	(\$7,766,021)	\$47,332,629	
Woodward Bates - Engagement Agreement - Cost Breakdown (Exhibit C)												
Budget and Construction Planning			\$225,000		\$225,000		\$225,000		\$225,000		\$225,000	
Development Administrative Coordination			\$40,000		\$40,000		\$40,000		\$40,000		\$40,000	
Architectural, Master Planning			\$700,000		\$700,000		\$700,000		\$700,000		\$700,000	
Parking Structure Design, Engineering			\$840,000	\$60,000	\$900,000		\$900,000		\$900,000		\$900,000	
Structural-Bridge, plaza ERS			\$50,500		\$50,500		\$50,500		\$50,500		\$50,500	
MEP Engineering			\$175,000		\$175,000		\$175,000		\$175,000		\$175,000	
Civil Engineering			\$146,000	\$14,000	\$160,000		\$160,000		\$160,000		\$160,000	
Landscaping Architect/Plaza Design			\$300,000	(\$50,000)	\$250,000		\$250,000		\$250,000		\$250,000	
Legal			\$100,000		\$100,000		\$100,000		\$100,000		\$100,000	
Public Education			\$20,000		\$20,000		\$20,000		\$20,000		\$20,000	
Reproduction			\$5,000		\$5,000		\$5,000		\$5,000		\$5,000	
Miscellaneous			\$20,000		\$20,000		\$20,000		\$20,000		\$20,000	
Contingency			\$108,000		\$108,000		\$108,000		\$108,000		\$108,000	
Total Woodward Bates - Engagement Agreement - (Exhibit C)			\$2,729,500		\$2,753,500		\$2,753,500		\$2,753,500		\$2,753,500	
Construction Costs - Indirect												
Plan Review & Building Permit			\$851,951	\$105,918	\$957,869	(\$34,608)	\$923,261	(\$34,608)	\$923,261	(\$115,918)	\$841,951	
Subcontractor Insurance Program (SIP)			1.10%	\$298,343	\$50,165	(\$11,502)	\$337,006	(\$18,943)	\$329,565	(\$57,871)	\$290,637	
Design Build Management Personal & C			1 LPSM	\$2,857,282	\$3,239,098	(\$130,000)	\$3,109,098	(\$130,000)	\$3,109,098	(\$401,816)	\$2,837,282	
Builders Risk Insurance			0.1495%	\$83,969	\$10,568	(\$10,000)	\$94,536	(\$10,000)	\$84,536	(\$23,050)	\$71,486	
GL Insurance			0.40%	\$225,002	\$28,317	(\$9,077)	\$244,241	(\$13,693)	\$239,625	(\$32,433)	\$220,885	
Design Build Fee			5%	\$2,687,295	\$354,173	(\$113,915)	\$2,927,553	(\$171,853)	\$2,869,615	(\$407,034)	\$2,634,434	
Bonds				N/A	N/A							
Total Construction Costs - Indirect			\$7,003,841		\$7,934,797	(\$309,101)	\$7,625,695	(\$379,097)	\$7,555,699	(\$1,038,122)	\$6,896,675	
Total Construction Cost			\$58,126,189		\$65,786,946	(\$2,463,981)	\$63,322,965	(\$3,717,181)	\$62,069,765	(\$8,804,143)	\$56,982,804	
Additional Developer Controlled Costs												
WBP Contribution in a P3 Development towards Public Component			(\$201,600)	\$0	(\$201,600)		(\$201,600)		(\$201,600)		(\$201,600)	
Foundations for Building No.2				(\$735,000)	(\$735,000)		(\$735,000)		(\$735,000)	\$735,000	\$0	
Furniture, Fixtures & Equipment			N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Technology Equipment			N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Total Controlled Costs												
2-1/2 Years Escalation from Budget Period			15%									
Total Project Cost			\$57,924,589	\$6,925,758	\$64,850,346	(\$2,463,981)	\$62,386,365	(\$3,717,181)	\$61,133,165	(\$8,069,143)	\$56,781,203	
			4/12/2019 Design Build GMP w/Received Bids	70' Bldg.2 with 3 levels parking below	4/29/2019 Revised GMP w/Received Bids	Remove 1 elevated parked floor	GMP Incl Alternate No.1	Remove 1 below grade parked floor	GMP Incl Alternate No.2	Remove all parking below building 2	GMP Incl Alternate No.3	

Bates Parking Structure Alternate Layout Evaluation

	Description of change from Base GMP	Levels of Parking Below Grade	Levels of Parking at grade and above	Total Parked levels	Roof level Parapet Height Elevation	* Number of spaces	Reduced number of spaces from Base GMP	Schedule Duration in Months Starting 11/4/2019	Cost Impact	Total Cost
4/12/19 GMP		3	7	10	66'-0"	1277	0	27	\$ -	\$ 57,924,589
4/29 /19 Revised GMP	Modified footprint of building 1 - added parking beneath building 2	3	7	10	66'-0"	1277	0	30	\$ 6,925,758	\$ 64,850,346
Alternate 1	Remove 1 level of elevated parking	3	6	9	55'-0"	1153	124	29	\$ (2,463,981)	\$ 62,386,365
Alternate 2	Remove 1 level of below grade parking	2	7	9	66'-0"	1109	168	29	\$ (3,717,181)	\$ 61,133,165
Alternate 3	Eliminate all below grade parking beneath Building #2 (Levels LL3, LL2 & LL1)	3	7	10	66'-0"	1155	122	27	\$ (8,069,143)	\$ 56,781,203

* Total number of spaces includes 7 on-street & 10 surface lot parking spaces.

4/12/19 GMP

CAR COUNT SUMMARY				
LEVEL	STANDARD	BARRIER FREE	COMPACT	TOTAL
LL3	106	-	6	112
LL2	127	4	6	137
LL1	127	4	6	137
1	63	4	2	69
2	125	4	6	135
3	127	4	6	137
4	127	4	6	137
5	133	-	6	139
6	131	-	6	137
ROOF	114	-	6	120
TOTAL	1180	24	56	1260

4/29/19 Revised GMP

CAR COUNT SUMMARY - BASE GMP				
LEVEL	STANDARD	BARRIER FREE	COMPACT	TOTAL
LL3	143	-	5	148
LL2	156	4	6	166
LL1	146	4	6	156
1	57	4	1	62
2	113	4	4	121
3	115	4	4	123
4	115	4	4	123
5	120	-	4	124
6	119	-	4	123
7 (ROOF)	110	-	4	114
TOTAL	1194	24	42	1260

Alternate 1

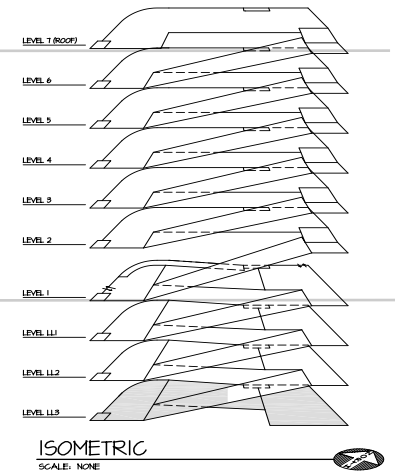
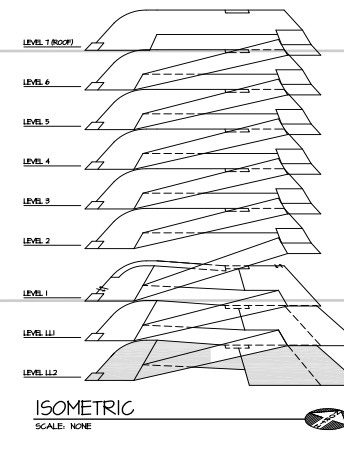
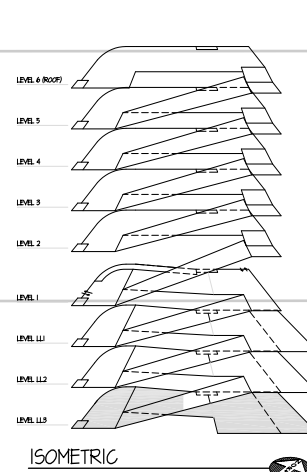
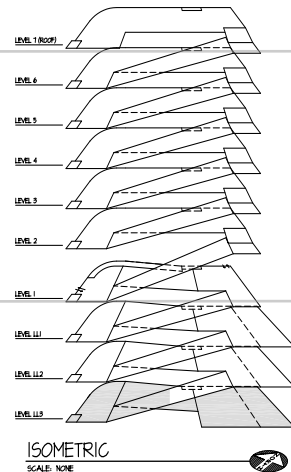
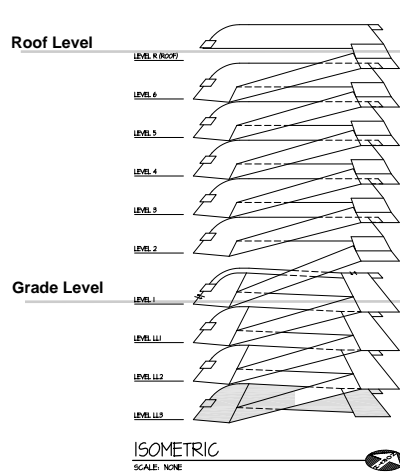
CAR COUNT SUMMARY - ALT. 1				
LEVEL	STANDARD	BARRIER FREE	COMPACT	TOTAL
LL3	143	-	5	148
LL2	156	4	6	166
LL1	146	4	6	156
1	57	4	1	62
2	113	4	4	121
3	115	4	4	123
4	115	4	4	123
5	119	-	4	123
6 (ROOF)	110	-	4	114
TOTAL	1074	24	38	1136

Alternate 2

CAR COUNT SUMMARY - ALT. 2				
LEVEL	STANDARD	BARRIER FREE	COMPACT	TOTAL
LL2	137	4	5	146
LL1	146	4	6	156
1	57	4	1	62
2	113	4	4	121
3	115	4	4	123
4	115	4	4	123
5	120	-	4	124
6	119	-	4	123
ROOF	110	-	4	114
TOTAL	1032	24	36	1092

Alternate 3

CAR COUNT SUMMARY - ALT. 3				
LEVEL	STANDARD	BARRIER FREE	COMPACT	TOTAL
LL3	103	-	3	106
LL2	114	4	4	122
LL1	112	4	4	120
1	57	4	1	62
2	113	4	4	121
3	115	4	4	123
4	115	4	4	123
5	120	-	4	124
6	119	-	4	123
7 (ROOF)	110	-	4	114
TOTAL	1078	24	36	1138



\$50,425,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

ESTIMATE OF COST - BASE GMP

	Amount
CONSTRUCTION, ENGINEERING, AND CONTINGENCIES	\$ 57,924,589
MISCELLANEOUS PRELIMINARY COSTS	\$ 148,000
OWNER REPRESENTATIVE	\$ 1,900,000
COST OF ISSUANCE	
Bond Counsel	\$ 76,883
Registered Municipal Advisor	75,425
Official Statement	4,000
Rating Fees	40,000
MAC Fee	400
Bond Discount (0.5%)	252,125
Printing and Publishing	2,500
Michigan Treasury Fee (.02% of par \$1,000 max)	1,000
Rounding Amount	78
TOTAL COST OF ISSUANCE	\$ 452,411
TOTAL PROJECT COST	\$ 60,425,000
LESS:	
City Contribution	\$ 7,000,000
Parking Special Assessment (Paid upfront by the City)	3,000,000
	\$ 10,000,000
AMOUNT OF BOND ISSUE	\$ 50,425,000

17000 Kercheval Ave. Suite 230, Grosse Pointe, Michigan 48230
PHONE: (313) 961-8222 FAX: (313) 961-8220

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\$50,425,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - BASE GMP

On a Fiscal Year Basis - 25 Years

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 1,008,500 *	\$ 1,008,500
2020	-	4.000%	1,008,500	1,008,500	2,017,000
2021	-	4.000%	1,008,500	1,008,500	2,017,000
2022	1,375,000	4.000%	1,008,500	981,000	3,364,500
2023	1,430,000	4.000%	981,000	952,400	3,363,400
2024	1,490,000	4.000%	952,400	922,600	3,365,000
2025	1,550,000	4.000%	922,600	891,600	3,364,200
2026	1,610,000	4.000%	891,600	859,400	3,361,000
2027	1,675,000	4.000%	859,400	825,900	3,360,300
2028	1,745,000	4.000%	825,900	791,000	3,361,900
2029	1,810,000	4.000%	791,000	754,800	3,355,800
2030	1,885,000	4.000%	754,800	717,100	3,356,900
2031	1,960,000	4.000%	717,100	677,900	3,355,000
2032	2,040,000	4.000%	677,900	637,100	3,355,000
2033	2,120,000	4.000%	637,100	594,700	3,351,800
2034	2,205,000	4.000%	594,700	550,600	3,350,300
2035	2,295,000	4.000%	550,600	504,700	3,350,300
2036	2,385,000	4.000%	504,700	457,000	3,346,700
2037	2,480,000	4.000%	457,000	407,400	3,344,400
2038	2,580,000	4.000%	407,400	355,800	3,343,200
2039	2,680,000	4.000%	355,800	302,200	3,338,000
2040	2,790,000	4.000%	302,200	246,400	3,338,600
2041	2,900,000	4.000%	246,400	188,400	3,334,800
2042	3,015,000	4.000%	188,400	128,100	3,331,500
2043	3,140,000	4.000%	128,100	65,300	3,333,400
2044	3,265,000	4.000%	65,300	-	3,330,300
	<u>\$ 50,425,000</u>		<u>\$ 15,836,900</u>	<u>\$ 15,836,900</u>	<u>\$ 82,098,800</u>

Assumptions:

Bonds Dated: 10/01/2019
First Interest Payment: 04/01/2020
Number of Days: 180 *
Subsequent Interest Payment: 10/01/2020
Number of Days: 180
First Principal Payment: 10/01/2022
Projected Interest Rate: 4.00%

17000 Kercheval Ave. Suite 230, Grosse Pointe, Michigan 48230

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\$50,425,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - BASE GMP

On a Fiscal Year Basis (25 Installments)

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 1,008,500 *	\$ 1,008,500
2020	-	4.000%	1,008,500	1,008,500	2,017,000
2021	-	4.000%	1,008,500	1,008,500	2,017,000
2022	1,210,000	4.000%	1,008,500	984,300	3,202,800
2023	1,260,000	4.000%	984,300	959,100	3,203,400
2024	1,310,000	4.000%	959,100	932,900	3,202,000
2025	1,360,000	4.000%	932,900	905,700	3,198,600
2026	1,415,000	4.000%	905,700	877,400	3,198,100
2027	1,475,000	4.000%	877,400	847,900	3,200,300
2028	1,530,000	4.000%	847,900	817,300	3,195,200
2029	1,595,000	4.000%	817,300	785,400	3,197,700
2030	1,655,000	4.000%	785,400	752,300	3,192,700
2031	1,725,000	4.000%	752,300	717,800	3,195,100
2032	1,790,000	4.000%	717,800	682,000	3,189,800
2033	1,865,000	4.000%	682,000	644,700	3,191,700
2034	1,940,000	4.000%	644,700	605,900	3,190,600
2035	2,015,000	4.000%	605,900	565,600	3,186,500
2036	2,095,000	4.000%	565,600	523,700	3,184,300
2037	2,180,000	4.000%	523,700	480,100	3,183,800
2038	2,265,000	4.000%	480,100	434,800	3,179,900
2039	2,360,000	4.000%	434,800	387,600	3,182,400
2040	2,455,000	4.000%	387,600	338,500	3,181,100
2041	2,550,000	4.000%	338,500	287,500	3,176,000
2042	2,655,000	4.000%	287,500	234,400	3,176,900
2043	2,760,000	4.000%	234,400	179,200	3,173,600
2044	2,870,000	4.000%	179,200	121,800	3,171,000
2045	2,985,000	4.000%	121,800	62,100	3,168,900
2046	3,105,000	4.000%	62,100	-	3,167,100
	<u>\$ 50,425,000</u>		<u>\$ 17,153,500</u>	<u>\$ 17,153,500</u>	<u>\$ 84,732,000</u>

Assumptions:

Bonds Dated:	10/01/2019
First Interest Payment:	04/01/2020
Number of Days:	180 *
Subsequent Interest Payment:	10/01/2020
Number of Days:	180
First Principal Payment:	10/01/2022
Projected Interest Rate	4.00%

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\$57,400,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

ESTIMATE OF COST - REVISED BASE GMP

	Amount
CONSTRUCTION, ENGINEERING, AND CONTINGENCIES	\$ 64,850,365
MISCELLANEOUS PRELIMINARY COSTS	\$ 148,000
OWNER REPRESENTATIVE	\$ 1,900,000
COST OF ISSUANCE	
Bond Counsel	\$ 83,160
Registered Municipal Advisor	82,400
Official Statement	4,000
Rating Fees	40,000
MAC Fee	400
Bond Discount (0.5%)	287,000
Printing and Publishing	2,500
Michigan Treasury Fee (.02% of par \$1,000 max)	1,000
Rounding Amount	1,175
TOTAL COST OF ISSUANCE	\$ 501,635
TOTAL PROJECT COST	\$ 67,400,000
LESS:	
City Contribution	\$ 7,000,000
Parking Special Assessment (Paid upfront by the City)	3,000,000
	\$ 10,000,000
AMOUNT OF BOND ISSUE	\$ 57,400,000

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\$57,400,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - REVISED BASE GMP

On a Fiscal Year Basis - 25 Years

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 1,148,000 *	\$ 1,148,000
2020	-	4.000%	1,148,000	1,148,000	2,296,000
2021	-	4.000%	1,148,000	1,148,000	2,296,000
2022	1,565,000	4.000%	1,148,000	1,116,700	3,829,700
2023	1,630,000	4.000%	1,116,700	1,084,100	3,830,800
2024	1,695,000	4.000%	1,084,100	1,050,200	3,829,300
2025	1,765,000	4.000%	1,050,200	1,014,900	3,830,100
2026	1,835,000	4.000%	1,014,900	978,200	3,828,100
2027	1,905,000	4.000%	978,200	940,100	3,823,300
2028	1,985,000	4.000%	940,100	900,400	3,825,500
2029	2,065,000	4.000%	900,400	859,100	3,824,500
2030	2,145,000	4.000%	859,100	816,200	3,820,300
2031	2,230,000	4.000%	816,200	771,600	3,817,800
2032	2,320,000	4.000%	771,600	725,200	3,816,800
2033	2,415,000	4.000%	725,200	676,900	3,817,100
2034	2,510,000	4.000%	676,900	626,700	3,813,600
2035	2,610,000	4.000%	626,700	574,500	3,811,200
2036	2,715,000	4.000%	574,500	520,200	3,809,700
2037	2,825,000	4.000%	520,200	463,700	3,808,900
2038	2,935,000	4.000%	463,700	405,000	3,803,700
2039	3,055,000	4.000%	405,000	343,900	3,803,900
2040	3,175,000	4.000%	343,900	280,400	3,799,300
2041	3,300,000	4.000%	280,400	214,400	3,794,800
2042	3,435,000	4.000%	214,400	145,700	3,795,100
2043	3,570,000	4.000%	145,700	74,300	3,790,000
2044	3,715,000	4.000%	74,300	-	3,789,300
	<u>\$ 57,400,000</u>		<u>\$ 18,026,400</u>	<u>\$ 18,026,400</u>	<u>\$ 93,452,800</u>

Assumptions:

Bonds Dated: 10/01/2019
First Interest Payment: 04/01/2020
Number of Days: 180 *
Subsequent Interest Payment: 10/01/2020
Number of Days: 180
First Principal Payment: 10/01/2022
Projected Interest Rate: 4.00%

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\$57,400,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - REVISED BASE GMP

On a Fiscal Year Basis (25 Installments)

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 1,148,000 *	\$ 1,148,000
2020	-	4.000%	1,148,000	1,148,000	2,296,000
2021	-	4.000%	1,148,000	1,148,000	2,296,000
2022	1,380,000	4.000%	1,148,000	1,120,400	3,648,400
2023	1,435,000	4.000%	1,120,400	1,091,700	3,647,100
2024	1,490,000	4.000%	1,091,700	1,061,900	3,643,600
2025	1,550,000	4.000%	1,061,900	1,030,900	3,642,800
2026	1,615,000	4.000%	1,030,900	998,600	3,644,500
2027	1,675,000	4.000%	998,600	965,100	3,638,700
2028	1,745,000	4.000%	965,100	930,200	3,640,300
2029	1,815,000	4.000%	930,200	893,900	3,639,100
2030	1,885,000	4.000%	893,900	856,200	3,635,100
2031	1,960,000	4.000%	856,200	817,000	3,633,200
2032	2,040,000	4.000%	817,000	776,200	3,633,200
2033	2,120,000	4.000%	776,200	733,800	3,630,000
2034	2,205,000	4.000%	733,800	689,700	3,628,500
2035	2,295,000	4.000%	689,700	643,800	3,628,500
2036	2,385,000	4.000%	643,800	596,100	3,624,900
2037	2,485,000	4.000%	596,100	546,400	3,627,500
2038	2,580,000	4.000%	546,400	494,800	3,621,200
2039	2,685,000	4.000%	494,800	441,100	3,620,900
2040	2,795,000	4.000%	441,100	385,200	3,621,300
2041	2,905,000	4.000%	385,200	327,100	3,617,300
2042	3,020,000	4.000%	327,100	266,700	3,613,800
2043	3,140,000	4.000%	266,700	203,900	3,610,600
2044	3,265,000	4.000%	203,900	138,600	3,607,500
2045	3,395,000	4.000%	138,600	70,700	3,604,300
2046	3,535,000	4.000%	70,700	-	3,605,700
	<u>\$ 57,400,000</u>		<u>\$ 19,524,000</u>	<u>\$ 19,524,000</u>	<u>\$ 96,448,000</u>

Assumptions:

Bonds Dated:	10/01/2019
First Interest Payment:	04/01/2020
Number of Days:	180 *
Subsequent Interest Payment:	10/01/2020
Number of Days:	180
First Principal Payment:	10/01/2022
Projected Interest Rate	4.00%

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\$54,920,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

ESTIMATE OF COST - ALTERNATE 1

	Amount
CONSTRUCTION, ENGINEERING, AND CONTINGENCIES	\$ 62,386,365
MISCELLANEOUS PRELIMINARY COSTS	\$ 148,000
OWNER REPRESENTATIVE	\$ 1,900,000
COST OF ISSUANCE	
Bond Counsel	\$ 80,928
Registered Municipal Advisor	79,920
Official Statement	4,000
Rating Fees	40,000
MAC Fee	400
Bond Discount (0.5%)	274,600
Printing and Publishing	2,500
Michigan Treasury Fee (.02% of par \$1,000 max)	1,000
Rounding Amount	2,287
TOTAL COST OF ISSUANCE	\$ 485,635
TOTAL PROJECT COST	\$ 64,920,000
LESS:	
City Contribution	\$ 7,000,000
Parking Special Assessment (Paid upfront by the City)	3,000,000
	\$ 10,000,000
AMOUNT OF BOND ISSUE	\$ 54,920,000

17000 Kercheval Ave. Suite 230, Grosse Pointe, Michigan 48230
PHONE: (313) 961-8222 FAX: (313) 961-8220

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\$54,920,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - Alternate 1

On a Fiscal Year Basis - 25 Years

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 1,098,400 *	\$ 1,098,400
2020	-	4.000%	1,098,400	1,098,400	2,196,800
2021	-	4.000%	1,098,400	1,098,400	2,196,800
2022	1,500,000	4.000%	1,098,400	1,068,400	3,666,800
2023	1,560,000	4.000%	1,068,400	1,037,200	3,665,600
2024	1,620,000	4.000%	1,037,200	1,004,800	3,662,000
2025	1,685,000	4.000%	1,004,800	971,100	3,660,900
2026	1,755,000	4.000%	971,100	936,000	3,662,100
2027	1,825,000	4.000%	936,000	899,500	3,660,500
2028	1,900,000	4.000%	899,500	861,500	3,661,000
2029	1,975,000	4.000%	861,500	822,000	3,658,500
2030	2,055,000	4.000%	822,000	780,900	3,657,900
2031	2,135,000	4.000%	780,900	738,200	3,654,100
2032	2,220,000	4.000%	738,200	693,800	3,652,000
2033	2,310,000	4.000%	693,800	647,600	3,651,400
2034	2,400,000	4.000%	647,600	599,600	3,647,200
2035	2,495,000	4.000%	599,600	549,700	3,644,300
2036	2,595,000	4.000%	549,700	497,800	3,642,500
2037	2,700,000	4.000%	497,800	443,800	3,641,600
2038	2,810,000	4.000%	443,800	387,600	3,641,400
2039	2,920,000	4.000%	387,600	329,200	3,636,800
2040	3,040,000	4.000%	329,200	268,400	3,637,600
2041	3,160,000	4.000%	268,400	205,200	3,633,600
2042	3,285,000	4.000%	205,200	139,500	3,629,700
2043	3,420,000	4.000%	139,500	71,100	3,630,600
2044	3,555,000	4.000%	71,100	-	3,626,100
	<u>\$ 54,920,000</u>		<u>\$ 17,248,100</u>	<u>\$ 17,248,100</u>	<u>\$ 89,416,200</u>

Assumptions:

Bonds Dated: 10/01/2019
First Interest Payment: 04/01/2020
Number of Days: 180 *
Subsequent Interest Payment: 10/01/2020
Number of Days: 180
First Principal Payment: 10/01/2022
Projected Interest Rate: 4.00%

17000 Kercheval Ave. Suite 230, Grosse Pointe, Michigan 48230

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\$54,920,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - Alternate 1

On a Fiscal Year Basis (25 Installments)

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 1,098,400 *	\$ 1,098,400
2020	-	4.000%	1,098,400	1,098,400	2,196,800
2021	-	4.000%	1,098,400	1,098,400	2,196,800
2022	1,320,000	4.000%	1,098,400	1,072,000	3,490,400
2023	1,370,000	4.000%	1,072,000	1,044,600	3,486,600
2024	1,425,000	4.000%	1,044,600	1,016,100	3,485,700
2025	1,485,000	4.000%	1,016,100	986,400	3,487,500
2026	1,545,000	4.000%	986,400	955,500	3,486,900
2027	1,605,000	4.000%	955,500	923,400	3,483,900
2028	1,670,000	4.000%	923,400	890,000	3,483,400
2029	1,735,000	4.000%	890,000	855,300	3,480,300
2030	1,805,000	4.000%	855,300	819,200	3,479,500
2031	1,875,000	4.000%	819,200	781,700	3,475,900
2032	1,950,000	4.000%	781,700	742,700	3,474,400
2033	2,030,000	4.000%	742,700	702,100	3,474,800
2034	2,110,000	4.000%	702,100	659,900	3,472,000
2035	2,195,000	4.000%	659,900	616,000	3,470,900
2036	2,285,000	4.000%	616,000	570,300	3,471,300
2037	2,375,000	4.000%	570,300	522,800	3,468,100
2038	2,470,000	4.000%	522,800	473,400	3,466,200
2039	2,570,000	4.000%	473,400	422,000	3,465,400
2040	2,670,000	4.000%	422,000	368,600	3,460,600
2041	2,780,000	4.000%	368,600	313,000	3,461,600
2042	2,890,000	4.000%	313,000	255,200	3,458,200
2043	3,005,000	4.000%	255,200	195,100	3,455,300
2044	3,125,000	4.000%	195,100	132,600	3,452,700
2045	3,250,000	4.000%	132,600	67,600	3,450,200
2046	3,380,000	4.000%	67,600	-	3,447,600
	<u>\$ 54,920,000</u>		<u>\$ 18,680,700</u>	<u>\$ 18,680,700</u>	<u>\$ 92,281,400</u>

Assumptions:

Bonds Dated:	10/01/2019
First Interest Payment:	04/01/2020
Number of Days:	180 *
Subsequent Interest Payment:	10/01/2020
Number of Days:	180
First Principal Payment:	10/01/2022
Projected Interest Rate	4.00%

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\$53,660,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

ESTIMATE OF COST - ALTERNATE 2

	Amount
CONSTRUCTION, ENGINEERING, AND CONTINGENCIES	\$ 61,133,165
MISCELLANEOUS PRELIMINARY COSTS	\$ 148,000
OWNER REPRESENTATIVE	\$ 1,900,000
COST OF ISSUANCE	
Bond Counsel	\$ 79,794
Registered Municipal Advisor	78,660
Official Statement	4,000
Rating Fees	40,000
MAC Fee	400
Bond Discount (0.5%)	268,300
Printing and Publishing	2,500
Michigan Treasury Fee (.02% of par \$1,000 max)	1,000
Rounding Amount	4,181
TOTAL COST OF ISSUANCE	\$ 478,835
TOTAL PROJECT COST	\$ 63,660,000
LESS:	
City Contribution	\$ 7,000,000
Parking Special Assessment (Paid upfront by the City)	3,000,000
	\$ 10,000,000
AMOUNT OF BOND ISSUE	\$ 53,660,000

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\$53,660,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - Alternate 2

On a Fiscal Year Basis - 25 Years

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 1,073,200 *	\$ 1,073,200
2020	-	4.000%	1,073,200	1,073,200	2,146,400
2021	-	4.000%	1,073,200	1,073,200	2,146,400
2022	1,465,000	4.000%	1,073,200	1,043,900	3,582,100
2023	1,525,000	4.000%	1,043,900	1,013,400	3,582,300
2024	1,585,000	4.000%	1,013,400	981,700	3,580,100
2025	1,650,000	4.000%	981,700	948,700	3,580,400
2026	1,715,000	4.000%	948,700	914,400	3,578,100
2027	1,780,000	4.000%	914,400	878,800	3,573,200
2028	1,855,000	4.000%	878,800	841,700	3,575,500
2029	1,930,000	4.000%	841,700	803,100	3,574,800
2030	2,005,000	4.000%	803,100	763,000	3,571,100
2031	2,085,000	4.000%	763,000	721,300	3,569,300
2032	2,170,000	4.000%	721,300	677,900	3,569,200
2033	2,255,000	4.000%	677,900	632,800	3,565,700
2034	2,345,000	4.000%	632,800	585,900	3,563,700
2035	2,440,000	4.000%	585,900	537,100	3,563,000
2036	2,535,000	4.000%	537,100	486,400	3,558,500
2037	2,640,000	4.000%	486,400	433,600	3,560,000
2038	2,745,000	4.000%	433,600	378,700	3,557,300
2039	2,855,000	4.000%	378,700	321,600	3,555,300
2040	2,970,000	4.000%	321,600	262,200	3,553,800
2041	3,085,000	4.000%	262,200	200,500	3,547,700
2042	3,210,000	4.000%	200,500	136,300	3,546,800
2043	3,340,000	4.000%	136,300	69,500	3,545,800
2044	3,475,000	4.000%	69,500	-	3,544,500
	<u>\$ 53,660,000</u>		<u>\$ 16,852,100</u>	<u>\$ 16,852,100</u>	<u>\$ 87,364,200</u>

Assumptions:

Bonds Dated: 10/01/2019
First Interest Payment: 04/01/2020
Number of Days: 180 *
Subsequent Interest Payment: 10/01/2020
Number of Days: 180
First Principal Payment: 10/01/2022
Projected Interest Rate: 4.00%

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\$53,660,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - Alternate 2

On a Fiscal Year Basis (25 Installments)

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 1,073,200 *	\$ 1,073,200
2020	-	4.000%	1,073,200	1,073,200	2,146,400
2021	-	4.000%	1,073,200	1,073,200	2,146,400
2022	1,290,000	4.000%	1,073,200	1,047,400	3,410,600
2023	1,340,000	4.000%	1,047,400	1,020,600	3,408,000
2024	1,395,000	4.000%	1,020,600	992,700	3,408,300
2025	1,450,000	4.000%	992,700	963,700	3,406,400
2026	1,505,000	4.000%	963,700	933,600	3,402,300
2027	1,565,000	4.000%	933,600	902,300	3,400,900
2028	1,630,000	4.000%	902,300	869,700	3,402,000
2029	1,695,000	4.000%	869,700	835,800	3,400,500
2030	1,765,000	4.000%	835,800	800,500	3,401,300
2031	1,835,000	4.000%	800,500	763,800	3,399,300
2032	1,905,000	4.000%	763,800	725,700	3,394,500
2033	1,985,000	4.000%	725,700	686,000	3,396,700
2034	2,065,000	4.000%	686,000	644,700	3,395,700
2035	2,145,000	4.000%	644,700	601,800	3,391,500
2036	2,230,000	4.000%	601,800	557,200	3,389,000
2037	2,320,000	4.000%	557,200	510,800	3,388,000
2038	2,415,000	4.000%	510,800	462,500	3,388,300
2039	2,510,000	4.000%	462,500	412,300	3,384,800
2040	2,610,000	4.000%	412,300	360,100	3,382,400
2041	2,715,000	4.000%	360,100	305,800	3,380,900
2042	2,825,000	4.000%	305,800	249,300	3,380,100
2043	2,935,000	4.000%	249,300	190,600	3,374,900
2044	3,055,000	4.000%	190,600	129,500	3,375,100
2045	3,175,000	4.000%	129,500	66,000	3,370,500
2046	3,300,000	4.000%	66,000	-	3,366,000
	<u>\$ 53,660,000</u>		<u>\$ 18,252,000</u>	<u>\$ 18,252,000</u>	<u>\$ 90,164,000</u>

Assumptions:

Bonds Dated:	10/01/2019
First Interest Payment:	04/01/2020
Number of Days:	180 *
Subsequent Interest Payment:	10/01/2020
Number of Days:	180
First Principal Payment:	10/01/2022
Projected Interest Rate	4.00%

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\$49,275,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

ESTIMATE OF COST - ALTERNATE 3

	Amount
CONSTRUCTION, ENGINEERING, AND CONTINGENCIES	\$ 56,781,203
MISCELLANEOUS PRELIMINARY COSTS	\$ 148,000
OWNER REPRESENTATIVE	\$ 1,900,000
COST OF ISSUANCE	
Bond Counsel	\$ 75,850
Registered Municipal Advisor	74,275
Official Statement	4,000
Rating Fees	40,000
MAC Fee	400
Bond Discount (0.5%)	246,375
Printing and Publishing	2,500
Michigan Treasury Fee (.02% of par \$1,000 max)	1,000
Rounding Amount	1,397
TOTAL COST OF ISSUANCE	\$ 445,797
TOTAL PROJECT COST	\$ 59,275,000
LESS:	
City Contribution	\$ 7,000,000
Parking Special Assessment (Paid upfront by the City)	3,000,000
	\$ 10,000,000
AMOUNT OF BOND ISSUE	\$ 49,275,000

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\$49,275,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - Alternate 3

On a Fiscal Year Basis - 25 Years

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 985,500 *	\$ 985,500
2020	-	4.000%	985,500	985,500	1,971,000
2021	-	4.000%	985,500	985,500	1,971,000
2022	1,345,000	4.000%	985,500	958,600	3,289,100
2023	1,400,000	4.000%	958,600	930,600	3,289,200
2024	1,455,000	4.000%	930,600	901,500	3,287,100
2025	1,515,000	4.000%	901,500	871,200	3,287,700
2026	1,575,000	4.000%	871,200	839,700	3,285,900
2027	1,640,000	4.000%	839,700	806,900	3,286,600
2028	1,705,000	4.000%	806,900	772,800	3,284,700
2029	1,770,000	4.000%	772,800	737,400	3,280,200
2030	1,840,000	4.000%	737,400	700,600	3,278,000
2031	1,915,000	4.000%	700,600	662,300	3,277,900
2032	1,990,000	4.000%	662,300	622,500	3,274,800
2033	2,070,000	4.000%	622,500	581,100	3,273,600
2034	2,155,000	4.000%	581,100	538,000	3,274,100
2035	2,240,000	4.000%	538,000	493,200	3,271,200
2036	2,330,000	4.000%	493,200	446,600	3,269,800
2037	2,425,000	4.000%	446,600	398,100	3,269,700
2038	2,520,000	4.000%	398,100	347,700	3,265,800
2039	2,620,000	4.000%	347,700	295,300	3,263,000
2040	2,725,000	4.000%	295,300	240,800	3,261,100
2041	2,835,000	4.000%	240,800	184,100	3,259,900
2042	2,950,000	4.000%	184,100	125,100	3,259,200
2043	3,065,000	4.000%	125,100	63,800	3,253,900
2044	3,190,000	4.000%	63,800	-	3,253,800
	<u>\$ 49,275,000</u>		<u>\$ 15,474,400</u>	<u>\$ 15,474,400</u>	<u>\$ 80,223,800</u>

Assumptions:

Bonds Dated: 10/01/2019
First Interest Payment: 04/01/2020
Number of Days: 180 *
Subsequent Interest Payment: 10/01/2020
Number of Days: 180
First Principal Payment: 10/01/2022
Projected Interest Rate 4.00%

17000 Kercheval Ave. Suite 230, Grosse Pointe, Michigan 48230

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\$49,275,000
CITY OF BIRMINGHAM
COUNTY OF OAKLAND, STATE OF MICHIGAN
PARKING DECK BONDS, SERIES 2019
(UNLIMITED TAX GENERAL OBLIGATION)

SCHEDULE OF DEBT SERVICE REQUIREMENTS - Alternate 3

On a Fiscal Year Basis (25 Installments)

Fiscal Year Beginning July 1	Principal Due October 1	Interest Rate	Interest Due October 1	Interest Due April 1 <i>NEXT</i>	Total Principal & Interest Requirements
2019	\$ -	4.000%	\$ -	\$ 985,500 *	\$ 985,500
2020	-	4.000%	985,500	985,500	1,971,000
2021	-	4.000%	985,500	985,500	1,971,000
2022	1,185,000	4.000%	985,500	961,800	3,132,300
2023	1,230,000	4.000%	961,800	937,200	3,129,000
2024	1,280,000	4.000%	937,200	911,600	3,128,800
2025	1,330,000	4.000%	911,600	885,000	3,126,600
2026	1,385,000	4.000%	885,000	857,300	3,127,300
2027	1,440,000	4.000%	857,300	828,500	3,125,800
2028	1,495,000	4.000%	828,500	798,600	3,122,100
2029	1,555,000	4.000%	798,600	767,500	3,121,100
2030	1,620,000	4.000%	767,500	735,100	3,122,600
2031	1,685,000	4.000%	735,100	701,400	3,121,500
2032	1,750,000	4.000%	701,400	666,400	3,117,800
2033	1,820,000	4.000%	666,400	630,000	3,116,400
2034	1,895,000	4.000%	630,000	592,100	3,117,100
2035	1,970,000	4.000%	592,100	552,700	3,114,800
2036	2,050,000	4.000%	552,700	511,700	3,114,400
2037	2,130,000	4.000%	511,700	469,100	3,110,800
2038	2,215,000	4.000%	469,100	424,800	3,108,900
2039	2,305,000	4.000%	424,800	378,700	3,108,500
2040	2,395,000	4.000%	378,700	330,800	3,104,500
2041	2,495,000	4.000%	330,800	280,900	3,106,700
2042	2,595,000	4.000%	280,900	229,000	3,104,900
2043	2,695,000	4.000%	229,000	175,100	3,099,100
2044	2,805,000	4.000%	175,100	119,000	3,099,100
2045	2,915,000	4.000%	119,000	60,700	3,094,700
2046	3,035,000	4.000%	60,700	-	3,095,700
	<u>\$ 49,275,000</u>		<u>\$ 16,761,500</u>	<u>\$ 16,761,500</u>	<u>\$ 82,798,000</u>

Assumptions:

Bonds Dated:	10/01/2019
First Interest Payment:	04/01/2020
Number of Days:	180 *
Subsequent Interest Payment:	10/01/2020
Number of Days:	180
First Principal Payment:	10/01/2022
Projected Interest Rate	4.00%

17000 Kercheval Ave. Suite 230, Grosse Pointe, Michigan 48230
PHONE: (313) 961-8222 FAX: (313) 961-8220

The information contained herein was derived from sources generally recognized as reliable and does not make any representations as to correctness or completeness and has in no way been altered except to the extent that some information may be summarized, and is in no way intended to be a solicitation for orders.

MEMORANDUM

Human Resources

DATE: April 24, 2019

TO: Joseph A. Valentine, City Manager

FROM: Benjamin I. Myers, HR Manager

SUBJECT: City Commission Consideration of Teamsters Local 214 DPS Union
February 8, 2019 Grievance

I have attached a request by the Teamsters Local 214 DPS Union for City Commission consideration of the grievance of February 8, 2019 concerning overtime compensation. A copy of the grievance procedure up to this point has been provided under separate cover.

Step 5 of the grievance procedure contained in the current Collective Bargaining Agreement provides that the City Commission may:

1. Render a decision on the grievance with or without a hearing of the grievance; or,
2. Waive consideration of the grievance.

Should the City Commission waive consideration, or render a decision which the Union finds to be unsatisfactory, the Union may submit the grievance to binding arbitration.

If the City Commission elects to hear the grievance, a mutually agreeable hearing date would be established. Appearances would be made by the Union business agent and the City's labor counsel. In keeping with the previous practice, it is suggested that City general counsel Tim Currier would be designated to chair the hearing with regard to procedural matters.

If the City Commission elects to waive consideration of the grievance, the Union may then submit the grievance to binding arbitration.

SUGGESTED RESOLUTION:

To schedule a hearing of the Teamsters Local 214 DPS Union grievance of February 8, 2019 on a mutually agreeable hearing date. Further, to designate City Counsel Tim Currier to chair the hearing for procedural matters.

- OR -

To waive consideration of the Teamsters Local 214 DPS Union grievance of February 8, 2019.

CITY OF BIRMINGHAM

APR 24 2019

HUMAN RESOURCES

Date: April 23, 2019

Step: Move to step 5

Union: Teamsters, Local 214

Grievant: Bryan Hardy

Date of Grievance: February 8, 2019

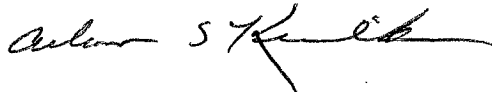
For the Union: Adam Kulinski, Steward

For the City: Aaron J Filipski, Public Service Manager

Shon Jones, SSW Foreman

On behalf of Bryan Hardy and the Teamster Union, we would like to proceed with the next step in the grievance process. After speaking with our Union Representation, we would like to move forward with step five of the grievance process. We would like to present this grievance to the City Commission for their review. Thank you for your time and effort. Looking forward to hearing back from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kulinski", with a stylized flourish at the end.

Adam Kulinski



NOTICE OF INTENTION TO APPOINT TO HISTORIC DISTRICT STUDY COMMITTEE

At the regular meeting of Monday, June 3, 2019, the Birmingham City Commission intends to appoint three regular members to the Historic District Study Committee to serve three-year terms to expire June 25, 2022, and one regular member to serve the remainder of three-year terms to expire June 25, 2020.

The goal of the Historic District Study Committee is to conduct historical research regarding the proposed designation of historic landmarks or districts in the City of Birmingham.

A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation, although city residency is not required if an expert on the potential historic district topic is not available among city residents. The committee shall include representation of at least one member appointed from one or more duly organized local historic preservation organizations. The meetings are held by resolution of the City Commission.

Interested parties may submit an application available at the City Clerk's Office on or before noon on Wednesday, May 29, 2019. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall have a clearly demonstrated interest in or knowledge of historic preservation.	5/29/2019	06/03/2019

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.



NOTICE OF INTENTION TO APPOINT TO THE BOARD OF ETHICS

At the regular meeting of Monday, June 3, 2019, the Birmingham City Commission intends to appoint one regular member to the Board of Ethics to serve a three-year term to expire June 30, 2022.

Board members are to serve as an advisory body for the purposes of interpreting the Code of Ethics. The board consists of three members who serve without compensation. The members shall be residents and have legal, administrative or other desirable qualifications.

Interested citizens may submit an application available at the City Clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, May 29, 2019. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointment.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall be residents and have legal, administrative or other desirable qualifications.	5/29/2019	06/03/2019

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.



NOTICE OF INTENTION TO APPOINT HEARING OFFICER

At the regular meeting of Monday, June 3, 2019, the Birmingham City Commission intends to appoint the hearing officer to serve a three-year term to expire June 30, 2022. The Hearing Officer shall be responsible for hearing disputes to a fee or bill that a property owner or resident of the city shall receive pursuant to the fee collection ordinances (section 1-17).

The hearing officer and alternate shall be residents of the City of Birmingham who have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties in accordance with provisions of the applicable code. The hearing officer and the alternate hearing office shall serve without compensation.

The hearing officer or alternate shall schedule periodic meetings for hearings as needed.

Interested citizens may submit an application available at the City Clerk's office on or before noon on Wednesday, May 29, 2019. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointment.

All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall be residents of the city who have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties of the hearing officer.	5/29/2019	06/03/2019



NOTICE OF INTENTION TO APPOINT TO BOARD OF ZONING APPEALS

At the regular meeting of Monday, June 3, 2019 the Birmingham City Commission intends to appoint one regular member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire October 10, 2020.

Interested parties may recommend others or themselves for these positions by submitting a form available from the City Clerk's office. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, May 29, 2019. Applications will appear in the public agenda at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

Duties of Board

The Board of Zoning Appeals acts on questions arising from the administration of the zoning ordinance, including the interpretation of the zoning map. The Board hears and decides appeals from and reviews any order, requirement, decision or determination made by the Building Official.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall be property owners of record and registered voters.	5/29/2019	06/03/2019

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.



MEMORANDUM

Finance Department

DATE: April 26, 2019

TO: Joseph A. Valentine, City Manager

FROM: Mark Gerber, Director of Finance/Treasurer

SUBJECT: Third Quarter Financial Reports

Background

Chapter 7, section 3(b) of the City charter requires the Director of Finance to report on the condition of the City quarterly. Quarterly reports are prepared for the first 3 quarters of the year with the annual audit serving as the 4th quarter report. Only the following funds are reported quarterly because by state law they require a budget: General Fund, Greenwood Cemetery Perpetual Care Fund, Major and Local Street Funds, Solid Waste Fund, Community Development Block Grant Fund, Law and Drug Enforcement Fund, Baldwin Public Library Fund, Principal Shopping District Fund, Brownfield Redevelopment Authority Fund, Triangle District Corridor Improvement Authority Fund, and the Debt Service Fund.

Overview

Attached is the third quarter 2018-2019 fiscal year financial reports. The reports compare budget to actual for the current fiscal year and the prior fiscal year for the same quarter. This allows comparisons between fiscal years as well as percentage of budget received/spent for the year. The budget categories used for each fund are the same ones approved by the Commission when they adopted the budget. Budget discussions that follow will focus on each fund individually.

At this point, 75% of the fiscal year has lapsed.

General Fund

Revenues are approximately \$2,500,000 higher than last year as a result of an increase in property tax revenue, building permits and fines and forfeitures. The increase in property tax revenue of approximately \$1,350,000 is primarily the result of an increase in taxable value from the prior year. Licenses and Permits are up approximately \$500,000 from the previous year primarily as a result of large commercial permit fees received in the first and third quarter of 2018-2019 compared to 2017-2018. Fines and forfeitures are approximately \$240,000 higher in 2018-2019 due the timing of court revenue distributions from the 48th District Court. Fines and Forfeitures are at 47% of budget due to timing of distributions from the 48th District Court. Other Revenue is at 16% of budget due to slower collection of special assessments than anticipated for Old Woodward Streetscape.

Current year expenditures in total for the General Fund are approximately \$5,000,000 higher than the prior year. Public Safety is approximately \$800,000 higher than the prior year as a result of increase in personnel costs and equipment rental costs. Engineering and Public Services is approximately \$1,500,000 more than the prior year as a result of sidewalk improvements made as part of the Old Woodward project. Transfers Out is approximately \$2,200,000 higher than the

previous year as a result of higher budgeted transfers to other funds in fiscal year 2018-2019 and 4 quarterly advances paid to the 48th District Court in fiscal year 2018-2019 through March 31st versus 3 quarterly advances paid in fiscal year 2017-2018 at March 31st.

Greenwood Cemetery Fund

Cemetery plot sales (Charges for Services) was slightly higher than the previous year. Third quarter plot sales are not received until after March 31st. No expenditures have been made so far this fiscal year.

Major Street Fund

Total revenues are approximately \$400,000 higher than the previous year. Intergovernmental revenue is higher by approximately \$60,000 than the previous year as a result of higher Act 51 funding from the State. Transfers In increased approximately \$380,000 as a result of a budgeted increase in funding from the General Fund for this fund.

Overall expenditures are similar to the previous fiscal year, except for Traffic Controls and Engineering and Maintenance of Roads and Bridges. Traffic Controls and Engineering is approximately \$370,000 higher than the previous year due to signal work associated with the Old Woodward project. Maintenance of Roads and Bridges is approximately \$90,000 higher than the previous year due to a cape seal project in the summer of 2018.

Local Street Fund

Total revenues for the year are approximately \$330,000 more than the prior year as a result of an increase in transfers from the General Fund.

Total expenditures are approximately \$900,000 more than the prior year mainly as a result of an increase in Maintenance of Roads and Bridges of \$300,000 and an increase in Construction of Roads and Bridges of \$580,000. The increase in Maintenance of Roads and Bridges is the result of cape seal work performed. The increase in Construction of Roads and Bridges is the result of construction projects planned.

Solid Waste Fund

Revenues and expenditures are comparable to the prior fiscal year. Personnel costs are at 73% as a result of leaf collecting.

Brownfield Redevelopment Authority Fund

Revenues are approximately \$100,000 higher compared to the prior year as a result of an increase in taxable values captured.

Expenditures are approximately \$175,000 lower than the previous year as a result of lower reimbursements payments to developers.

Principal Shopping District

Total revenues are approximately \$150,000 higher than the previous fiscal year as a result of an increase in special assessment rates to the second floor businesses. Expenditures are slightly higher than the previous year as a result of valet services and other marketing efforts while Old Woodward was under construction.

Community Development Block Grant Fund

Expenditures are higher in the current fiscal year as a result of work performed on the exterior ADA door to the police department.

Triangle District Corridor Improvement Authority

Development opportunities are ongoing with private land owners and developers in the Triangle District.

Law and Drug Enforcement Fund

Revenues are comparable to the previous year. Expenditures are higher in the current fiscal year as a result of new laptop computers and radar units for patrol cars.

Baldwin Library

Revenue has increased approximately \$180,000. This is the result of an increase in the property tax revenue as a result of an increase in taxable value.

Expenditures are approximately \$406,000 higher than the prior fiscal year as a result of architectural fees, furniture and library materials (books and online services).

Debt Service Fund

Revenues and expenditures are comparable to the prior year. All debt payments for the year have been made as of March 31st.

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 GENERAL FUND
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	3,228,947	-	0%	2,023,589	-	0%
TAXES	24,941,490	24,961,769	100%	23,591,500	23,619,298	100%
LICENSES AND PERMITS	3,173,150	2,383,450	75%	3,134,260	1,885,914	60%
INTERGOVERNMENTAL	2,130,740	1,355,494	64%	2,014,620	1,247,385	62%
CHARGES FOR SERVICES	3,356,410	2,367,896	71%	2,873,130	2,191,763	76%
FINES AND FORFEITURES	1,838,990	867,987	47%	1,744,940	624,317	36%
INTEREST AND RENT	398,230	402,892	101%	294,290	245,956	84%
OTHER REVENUE	536,410	84,557	16%	108,090	60,184	56%
TRANSFERS IN	100,000	75,000	75%	100,000	75,000	75%
TOTAL REVENUES	<u>39,704,367</u>	<u>32,499,045</u>	82%	<u>35,884,419</u>	<u>29,949,817</u>	83%
EXPENDITURES:						
GENERAL GOVERNMENT	5,778,818	3,696,607	64%	5,520,831	3,471,157	63%
PUBLIC SAFETY	13,788,395	9,952,881	72%	12,741,161	9,139,802	72%
COMMUNITY DEVELOPMENT	3,541,404	2,067,205	58%	3,441,202	1,806,411	52%
ENGINEERING AND PUBLIC SERVICES	7,227,076	4,783,219	66%	7,474,655	3,285,340	44%
TRANSFERS OUT	<u>9,368,657</u>	<u>7,277,857</u>	78%	<u>6,706,570</u>	<u>5,089,302</u>	76%
TOTAL Expenditures	<u>39,704,350</u>	<u>27,777,770</u>	70%	<u>35,884,419</u>	<u>22,792,012</u>	64%

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 GREENWOOD CEMETERY FUND
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
CHARGES FOR SERVICES	80,000	58,500	73%	200,000	36,000	18%
INTEREST AND RENT	12,000	11,907	99%	11,600	8,572	74%
TRANSFERS IN	<u>-</u>	<u>-</u>	0%	<u>20,000</u>	<u>20,000</u>	100%
TOTAL REVENUES	<u>92,000</u>	<u>70,407</u>	77%	<u>231,600</u>	<u>64,572</u>	28%
EXPENDITURES:						
OTHER CHARGES	<u>-</u>	<u>-</u>	0%	<u>20,000</u>	<u>-</u>	0%
TOTAL EXPENDITURES	<u>-</u>	<u>-</u>		<u>-</u>	<u>-</u>	

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 MAJOR STREETS
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	1,333,380	-	0%	1,954,375	-	0%
INTERGOVERNMENTAL	1,205,910	1,013,829	84%	1,397,260	953,098	68%
INTEREST AND RENT	12,980	28,734	221%	8,100	18,164	224%
OTHER REVENUE	1,850	0	0%	56,370	55,353	98%
TRANSFERS IN	<u>2,579,900</u>	<u>1,954,900</u>	76%	<u>2,100,000</u>	<u>1,575,000</u>	75%
 TOTAL REVENUES	 <u>5,134,020</u>	 <u>2,997,463</u>	 58%	 <u>5,516,105</u>	 <u>2,601,615</u>	 47%
EXPENDITURES:						
ADMINISTRATIVE	18,980	15,121	80%	18,200	14,518	80%
TRAFFIC CONTROLS & ENGINEERING	839,453	493,047	59%	863,990	124,849	14%
CONSTRUCTION OF ROADS & BRIDGES	2,156,014	669,436	31%	3,499,755	829,848	24%
MAINTENANCE OF ROADS & BRIDGES	485,804	331,069	68%	377,140	245,911	65%
STREET CLEANING	158,549	99,193	63%	173,690	109,000	63%
STREET TREES	255,671	163,245	64%	241,870	161,827	67%
SNOW AND ICE REMOVAL	<u>322,820</u>	<u>145,156</u>	45%	<u>341,460</u>	<u>191,147</u>	56%
 TOTAL EXPENDITURES	 <u>4,237,290</u>	 <u>1,916,266</u>	 45%	 <u>5,516,105</u>	 <u>1,677,100</u>	 30%

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 LOCAL STREETS
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	1,366,403	-	0%	1,034,087	-	0%
INTERGOVERNMENTAL	492,550	318,548	65%	513,498	330,629	64%
INTEREST AND RENT	35,030	22,706	65%	36,330	15,742	43%
OTHER REVENUE	644,970	372,057	58%	396,000	260,102	66%
TRANSFERS IN	<u>2,500,000</u>	<u>1,875,000</u>	75%	<u>2,200,000</u>	<u>1,650,000</u>	75%
TOTAL Revenues	<u>5,038,953</u>	<u>2,588,311</u>	51%	<u>4,179,915</u>	<u>2,256,473</u>	54%
EXPENDITURES:						
ADMINISTRATIVE	26,730	20,933	78%	25,600	20,068	78%
TRAFFIC CONTROLS & ENGINEERING	70,020	50,169	72%	68,990	44,924	65%
CONSTRUCTION OF ROADS & BRIDGES	2,649,984	1,398,243	53%	1,812,028	814,188	45%
MAINTENANCE OF ROADS & BRIDGES	1,072,179	953,342	89%	1,344,617	659,135	49%
STREET CLEANING	180,272	110,836	61%	240,940	97,342	40%
STREET TREES	517,359	388,571	75%	498,640	382,318	77%
SNOW AND ICE REMOVAL	<u>181,670</u>	<u>110,951</u>	61%	<u>189,100</u>	<u>105,056</u>	56%
TOTAL Expenditures	<u>4,698,213</u>	<u>3,033,045</u>	65%	<u>4,179,915</u>	<u>2,123,031</u>	51%

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 SOLID WASTE
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	84,293	-	0%	85,720	-	0%
TAXES	1,875,000	1,880,045	100%	1,820,000	1,824,542	100%
INTERGOVERNMENTAL	4,450	4,224	95%	4,500	4,446	99%
CHARGES FOR SERVICES	17,600	13,763	78%	9,600	13,426	140%
INTEREST AND RENT	20,890	19,807	95%	14,460	11,783	81%
OTHER REVENUE	-	249	0%	-	190	0%
	<u>2,002,233</u>	<u>1,918,088</u>	96%	<u>1,934,280</u>	<u>1,854,387</u>	96%
TOTAL Revenues						
EXPENDITURES:						
PERSONNEL COSTS	162,820	137,176	84%	152,320	130,507	86%
SUPPLIES	12,000	4,701	39%	10,000	2,373	24%
OTHER CHARGES	1,809,138	1,297,203	72%	1,761,960	1,255,306	71%
CAPITAL OUTLAY	18,275	13,150	72%	10,000	6,711	67%
	<u>2,002,233</u>	<u>1,452,230</u>	73%	<u>1,934,280</u>	<u>1,394,897</u>	72%
TOTAL Expenditures						

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 BROWNFIELD REDEVELOPMENT FUND
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
TAXES	609,040	609,040	100%	516,000	514,547	100%
INTERGOVERNMENTAL	-	-	0%	-	-	0%
CHARGES FOR SERVICES	1,500	-	0%	3,000	0	0%
INTEREST AND RENT	1,620	6,196	382%	1,130	1,718	152%
OTHER REVENUE	20,000	7,924	40%	20,600	5,823	28%
TRANSFERS IN	-	-	0%	-	-	0%
TOTAL Revenues	<u>632,160</u>	<u>623,160</u>	99%	<u>540,730</u>	<u>522,088</u>	97%
EXPENDITURES:						
OTHER CHARGES	504,200	157,595	31%	489,400	332,110	68%
DEBT SERVICE	<u>27,560</u>	<u>-</u>	0%	<u>27,560</u>	<u>-</u>	0%
TOTAL Expenditures	<u>531,760</u>	<u>157,595</u>	30%	<u>516,960</u>	<u>332,110</u>	64%

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 BIRMINGHAM SHOPPING DISTRICT
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	135,330	-	0%	219,062	-	0%
INTEREST AND RENT	6,390	5,477	86%	3,900	3,914	100%
OTHER REVENUE	190,000	166,114	87%	190,000	173,978	92%
SPECIAL ASSESSMENTS	<u>897,300</u>	<u>982,075</u>	109%	<u>901,970</u>	<u>824,944</u>	91%
 TOTAL Revenues	 <u><u>1,229,020</u></u>	 <u><u>1,153,666</u></u>	 94%	 <u><u>1,314,932</u></u>	 <u><u>1,002,836</u></u>	 76%
 EXPENDITURES:						
PERSONNEL SERVICES	458,060	330,483	72%	418,460	290,386	69%
SUPPLIES	6,500	3,081	47%	6,500	1,843	28%
OTHER CHARGES	<u>764,460</u>	<u>601,869</u>	79%	<u>889,972</u>	<u>562,965</u>	63%
 TOTAL Expenditures	 <u><u>1,229,020</u></u>	 <u><u>935,432</u></u>	 76%	 <u><u>1,314,932</u></u>	 <u><u>855,194</u></u>	 65%

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 COMMUNITY DEVELOPMENT BLOCK GRANT
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
INTERGOVERNMENTAL	<u>64,778</u>	<u>38,305</u>	59%	<u>83,176</u>	<u>10,190</u>	12%
TOTAL Revenues	<u><u>64,778</u></u>	<u><u>38,305</u></u>	59%	<u><u>83,176</u></u>	<u><u>10,190</u></u>	12%
EXPENDITURES:						
OTHER CHARGES	<u>64,778</u>	<u>38,305</u>	59%	<u>83,176</u>	<u>10,190</u>	12%
TOTAL Expenditures	<u><u>64,778</u></u>	<u><u>38,305</u></u>	59%	<u><u>83,176</u></u>	<u><u>10,190</u></u>	12%

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	-	-	0%	-	-	0%
TAXES	-	-	0%	-	-	0%
INTEREST AND RENT	<u>290</u>	<u>234</u>	81%	<u>100</u>	<u>133</u>	133%
 TOTAL Revenues	 <u><u>290</u></u>	 <u><u>234</u></u>	 81%	 <u><u>100</u></u>	 <u><u>133</u></u>	 133%
 EXPENDITURES:						
 TOTAL Expenditures	 <u><u>-</u></u>	 <u><u>-</u></u>	 0%	 <u><u>-</u></u>	 <u><u>-</u></u>	 0%

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 LAW & DRUG ENFORCEMENT FUND
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	26,200	-	0%	-	-	0%
FINES AND FORFEITURES	35,000	41,197	118%	35,000	43,671	125%
INTEREST AND RENT	1,620	1,474	91%	1,020	951	93%
OTHER REVENUE	<u>-</u>	<u>3,260</u>	0%	<u>-</u>	<u>-</u>	0%
TOTAL Revenues	<u>62,820</u>	<u>45,931</u>	73%	<u>36,020</u>	<u>44,622</u>	124%
EXPENDITURES:						
PUBLIC SAFETY - SUPPLIES	-	-	0%	-	-	0%
PUBLIC SAFETY - CAPITAL OUTLAY	<u>62,820</u>	<u>59,594</u>	95%	<u>5,950</u>	<u>3,165</u>	53%
TOTAL Expenditures	<u>62,820</u>	<u>59,594</u>	95%	<u>5,950</u>	<u>3,165</u>	53%

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 BALDWIN LIBRARY
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	-	-	0%	-	-	0%
TAXES	3,234,870	3,249,947	100%	3,103,390	3,117,635	100%
INTERGOVERNMENTAL	1,001,380	502,161	50%	978,610	476,386	49%
CHARGES FOR SERVICES	82,600	71,405	86%	95,350	68,853	72%
INTEREST AND RENT	36,920	35,836	97%	11,000	15,285	139%
OTHER REVENUE	-	-	0%	-	-	0%
	<u>4,355,770</u>	<u>3,859,349</u>	89%	<u>4,188,350</u>	<u>3,678,159</u>	88%
TOTAL Revenues						
EXPENDITURES:						
	<u>3,729,790</u>	<u>2,931,047</u>	79%	<u>3,483,320</u>	<u>2,525,060</u>	72%
TOTAL Expenditures						

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 DEBT SERVICE FUND
 QUARTER ENDED: MARCH 31, 2019 AND MARCH 31, 2018
 % OF FISCAL YEAR COMPLETED: 75%

	2018-2019			2017-2018		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
TAXES	1,579,260	1,579,300	100%	1,648,700	1,648,293	100%
INTERGOVERNMENTAL	3,950	3,662	93%	4,000	3,947	99%
INTEREST AND RENT	4,290	1,812	42%	2,990	2,172	73%
OTHER REVENUE	<u>-</u>	<u>-</u>	0%	<u>-</u>	<u>-</u>	0%
TOTAL Revenues	<u>1,587,500</u>	<u>1,584,774</u>	100%	<u>1,655,690</u>	<u>1,654,412</u>	100%
EXPENDITURES:						
TOTAL Expenditures	<u>1,584,000</u>	<u>1,582,875</u>	100%	<u>1,650,950</u>	<u>1,650,185</u>	100%



MEMORANDUM

Finance Department

DATE: April 26, 2019
TO: Joseph A. Valentine, City Manager
FROM: Mark Gerber, Director of Finance/Treasurer
SUBJECT: March 2019 Investment Report

Public Act 213 of 2007 requires investment reporting on the City's general investments to be provided to the City Commission on a quarterly basis. This information is also required to be provided annually, which the City has and will continue to include within the audited financial statements.

General investments of the City are governed by state law and the City's General Investment Policy approved by the City Commission. The services of an outside investment advisor are utilized to assist the treasurer in determining which types of investments are most appropriate and permitted under the investment policy, maximize the return on the City's investments within investment policy constraints and provide for cash flow needs.

The two primary objectives for investment of City funds are the preservation of principal and liquidity to protect against losses and provide sufficient funds to enable the City to meet all operating requirements that might be reasonably anticipated. Investment activities include all City funds except the retirement and retiree health-care funds as follows:

- General Fund
- Permanent Funds
- Special Revenue Funds
- Capital Projects Fund
- Enterprise Funds
- Debt Service Funds
- Component Unit Funds
- Internal Service Funds

Overall, the City has \$75.3 million invested in various securities according to its general investment policy as of March 31, 2019.

The City has two pooled funds (CLASS Pool and J-Fund), which are used to meet payroll, contractor and other accounts payable needs. As indicated on the attached schedule, there is approximately \$11.1 million invested in pooled funds at the end of March. A maximum of 50% of the portfolio may be invested in pooled funds that meet state guidelines. The amount currently invested in pooled funds is 15%.

Currently there is approximately \$1.2 million, or 2%, of the City's portfolio invested in commercial paper. A maximum of 20% of the City's investments may be held in commercial paper with the highest rating of A-1/P-1 by at least two standard rating services.

The City also holds approximately \$29.1 million, or 38%, of its investments in government securities, which are obligations of the United States. The maximum amount of investments that may be held in government securities is 100%.

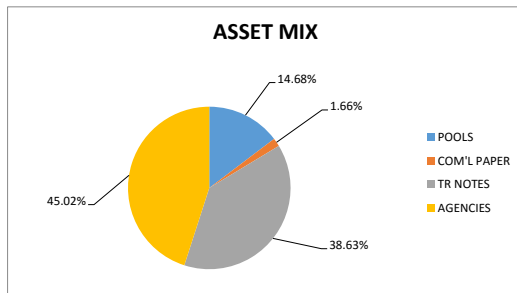
Investments in federal agencies total approximately \$33.9 million, or 45%, of the City's investments. The maximum amount of the portfolio that may be invested in federal agencies is 75%.

The Investment Policy requires that the average maturity of the portfolio may not exceed two and one-half years. The current average maturity of the portfolio is .99 years.

**CITY OF BIRMINGHAM
GENERAL INVESTMENT PORTFOLIO SUMMARY**

3/31/2019

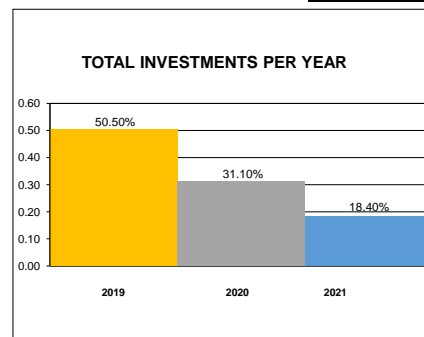
YEAR	MATURITY DATE	DESCRIPTION	% YIELD	*	ISSUER	PAR VALUE	COST	CURRENT MARKET VALUE	YEARLY TOTAL	% OF TOTAL
2019	3/31/2019	CLASS POOL	2.550%	CITY	MICHIGAN CLASS	2,108,445.83	2,108,445.83	2,108,445.83	38,036,908.94	50.50%
	3/31/2019	J FUND	2.288%	CITY	COMERICA BANK	8,951,960.76	8,951,960.76	8,951,960.76		
	4/1/2019	COM'L PAPER	2.800%	INSIGHT	J.P. MORGAN SECURITIES LLC	1,250,000.00	1,239,791.66	1,249,972.35		
	4/15/2019	AGENCY	1.090%	INSIGHT	FHLMC	1,000,000.00	1,001,060.00	999,480.00		
	4/28/2019	AGENCY	1.257%	INSIGHT	FNMA	2,000,000.00	1,999,600.00	1,986,160.00		
	4/30/2019	AGENCY	2.000%	INSIGHT	FHLB	1,500,000.00	1,500,000.00	1,485,480.00		
	5/15/2019	TR NOTE	2.347%	INSIGHT	U.S.	1,000,000.00	1,007,578.13	1,000,780.00		
	5/31/2019	TR NOTE	1.510%	INSIGHT	U.S.	1,500,000.00	1,499,765.63	1,497,600.00		
	6/14/2019	AGENCY	1.100%	INSIGHT	FHLB	1,000,000.00	1,015,560.00	998,420.00		
	6/15/2019	TR NOTE	2.501%	INSIGHT	U.S.	2,000,000.00	1,976,796.88	1,993,440.00		
	7/11/2019	AGENCY	1.075%	INSIGHT	FNMA	1,500,000.00	1,500,000.00	1,494,240.00		
	7/19/2019	AGENCY	1.023%	INSIGHT	FHLMC	1,500,000.00	1,493,850.00	1,492,845.00		
	8/15/2019	TR NOTE	2.558%	INSIGHT	U.S.	1,100,000.00	1,110,574.00	1,104,510.00		
	9/27/2019	AGENCY	1.193%	INSIGHT	FNMA	1,500,000.00	1,497,000.00	1,490,235.00		
	9/30/2019	TR NOTE	1.356%	INSIGHT	U.S.	1,750,000.00	1,764,150.39	1,743,647.50		
	10/21/2019	AGENCY	1.626%	INSIGHT	FHLB	1,500,000.00	1,496,295.00	1,492,035.00		
	10/28/2019	AGENCY	1.360%	INSIGHT	FFCB	1,500,000.00	1,497,300.00	1,491,540.00		
	11/15/2019	TR NOTE	2.531%	INSIGHT	U.S.	1,450,000.00	1,465,406.25	1,456,752.15		
	11/15/2019	TR NOTE	2.673%	INSIGHT	U.S.	2,000,000.00	2,015,631.70	2,011,705.35		
	12/31/2019	TR NOTE	1.385%	INSIGHT	U.S.	1,000,000.00	1,007,226.56	993,830.00		
	12/31/2019	TR NOTE	1.377%	INSIGHT	U.S.	1,000,000.00	1,008,787.77	993,830.00		
2020	1/17/2020	AGENCY	1.459%	INSIGHT	FHLMC	1,750,000.00	1,751,680.00	1,736,857.50	23,423,504.75	31.10%
	1/21/2020	AGENCY	1.084%	INSIGHT	FNMA	1,500,000.00	1,526,535.00	1,490,325.00		
	1/29/2020	AGENCY	2.721%	INSIGHT	FHLB	1,000,000.00	988,229.66	997,980.00		
	2/15/2020	TR NOTE	2.733%	INSIGHT	U.S.	2,000,000.00	2,024,147.33	2,020,000.00		
	3/27/2020	AGENCY	1.010%	INSIGHT	FNMA	2,000,000.00	2,044,860.00	1,984,320.00		
	3/31/2020	TR NOTE	1.448%	INSIGHT	U.S.	1,000,000.00	997,773.44	989,810.00		
	4/6/2020	AGENCY	1.396%	INSIGHT	FFCB	1,500,000.00	1,507,725.00	1,488,300.00		
	4/30/2020	TR NOTE	2.784%	INSIGHT	U.S.	1,000,000.00	993,671.88	999,650.00		
	5/8/2020	AGENCY	1.166%	INSIGHT	FHLMC	2,000,000.00	2,026,400.00	1,981,820.00		
	6/30/2020	AGENCY	1.300%	INSIGHT	FNMA	1,500,000.00	1,500,000.00	1,479,945.00		
	7/31/2020	TR NOTE	2.798%	INSIGHT	U.S.	2,000,000.00	1,993,756.70	2,006,400.00		
	10/13/2020	AGENCY	1.398%	INSIGHT	FFCB	1,325,000.00	1,322,018.75	1,304,767.25		
	10/26/2020	AGENCY	1.762%	INSIGHT	FFCB	1,500,000.00	1,499,490.00	1,486,590.00		
	11/30/2020	AGENCY	1.224%	INSIGHT	FNMA	2,000,000.00	2,021,902.00	1,971,500.00		
	12/31/2020	TR NOTE	1.601%	INSIGHT	U.S.	1,500,000.00	1,507,382.81	1,485,240.00		
2021	2/15/2021	TR NOTE	2.856%	INSIGHT	U.S.	2,000,000.00	2,043,121.51	2,047,900.00	13,860,184.00	18.40%
	2/23/2021	AGENCY	2.791%	INSIGHT	FFCB	2,000,000.00	1,995,800.00	2,009,760.00		
	3/15/2021	TR NOTE	2.754%	INSIGHT	U.S.	1,175,000.00	1,165,315.43	1,176,974.00		
	5/15/2021	TR NOTE	2.829%	INSIGHT	U.S.	1,500,000.00	1,510,610.49	1,525,545.00		
	9/10/2021	AGENCY	3.030%	INSIGHT	FHLB	1,500,000.00	1,498,830.00	1,522,995.00		
	10/12/2021	AGENCY	3.003%	INSIGHT	FHLB	1,500,000.00	1,499,955.00	1,525,830.00		
	11/15/2021	TR NOTE	2.438%	INSIGHT	U.S.	2,000,000.00	2,022,421.88	2,031,180.00		
	12/15/2021	TR NOTE	2.469%	INSIGHT	U.S.	2,000,000.00	2,008,444.20	2,020,000.00		
			1.998%			75,360,406.59	75,606,851.64	75,320,597.69	75,320,597.69	100.00%



POOLS	\$11,060,406.59	14.68%
COM'L PAPER	\$1,249,972.35	1.66%
TR NOTES	\$29,098,794.00	38.63%
AGENCIES	\$33,911,424.75	45.02%
TOTAL	\$75,320,597.69	100.00%

COMPARATIVE RETURNS			
	City Portfolio	1-Yr TR	2-Yr TR
Current Month	2.00%	2.52%	2.40%
Previous Month	2.00%	2.28%	2.28%
1 Year Ago	1.37%	2.04%	2.28%

AVERAGE MATURITY (YEARS): 0.99



* INSIGHT: \$64,260,191.10 85.32%
 * ASSIGNED TO CITY: \$11,060,406.59 14.68%
\$75,320,597.69 100.00%



MEMORANDUM

City Clerk's Office

DATE: April 30, 2019

TO: Joseph A. Valentine, City Manager

FROM: J. Cherilynn Mynsberge, City Clerk

SUBJECT: Village Fair – Cancelation of Pre-Party on May 29

Kelly Bennett, Marketing & Event Manager for the Birmingham Bloomfield Chamber, has notified us that they will not be hosting the traditional private pre-party on Wednesday before the fair opens to the public.

The Fair is open to the public Thursday, May 30 – Sunday, June 2. On Wednesday, May 29, the only activity will be set-up of the event.



April 15, 2019

Ms. Cherilynn Mynsberge
City Clerk
City of Birmingham
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012



Dear Ms. Mynsberge,

As part of our ongoing efforts to keep you informed of changes that impact our customers, I want to share an upcoming change in our channel line-up offering.

Effective on or after May 14th, 2019, Heroes and Icons (ch. 132) will be available as part of WOW! Small Cable.

As a result of this change, customers subscribing to WOW! Small Cable will have access to Heroes and Icons for no additional charge. We will communicate this change to our customers by placing a notice in the local newspaper and on our website.

Thank you for your continued support and cooperation. If you have any questions, please contact me at 248-677-9080.

Sincerely,

Terrell Priester
Everyone's Friend, Family Focused, Sports Fan
Director, Operations of WOW! Southeast Michigan
WOW! Internet, Cable and Phone

INFORMATION ONLY