

BIRMINGHAM CITY COMMISSION AGENDA

FEBRUARY 10, 2020

MUNICIPAL BUILDING, 151 MARTIN

7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor

II. ROLL CALL

Cheryl Arft, Acting City Clerk

III. PUBLIC COMMENT

The City of Birmingham welcomes public comment limited at the Mayor's discretion on items that do not appear in the printed agenda in order to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, please step to the microphone, state your name for the record, and direct all comments or questions to the presiding officer.

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

ANNOUNCEMENTS:

- Commissioner Nickita's birthday
- The City Clerk's Office reminds you that Absent Voter ballots are available now for the March 10, 2020 Presidential Primary election. Voters are required to complete a written and signed application prior to receiving a ballot. We also want to remind voters that this is a Closed Primary which means you must designate the type of ballot you wish to vote: Democrat, Republican, or a ballot for the proposals only. Sample ballots will be available on our website and at our office in the next week.
- On Wednesday, February 12th at 7:30 PM Room 205 in City Hall, the Planning Board will meet to review and discuss Master Plan Premises and The Future City (vision). The public is encouraged and invited to attend. If you are unable to attend, the meeting will be televised, and you may submit comments or questions by calling the Community Development office at 248-530-1850 during regular business hours, or email to jecker@bhamgov.org.
- The Birmingham Museum is launching its new exhibit, "Beyond Suffrage: Empowering Birmingham's Women" in February. The exhibit, which is a celebration of the centennial of the 19th Amendment giving women the right to vote, will run through 2020 and features the stories of remarkable women in Birmingham's history.

A. RECOGNITION OF 2019 STUDENT REPRESENTATIVES TO CITY BOARDS AND COMMITTEES

1. Resolution recognizing the following seven student representatives for their service in 2019 on Birmingham boards and committees and awarding each student a certificate in appreciation for their civic involvement:
 - John Utley – Planning Board – Seaholm
 - Sophia Trimble – Planning Board – Seaholm
 - John Butcher – Parks & Recreation Board – Seaholm
 - Meredith Weddell – Museum Board – Seaholm
 - Bennett Pompei – Multi-Modal Transportation Board – Seaholm
 - Chris Capone – Multi-Modal Transportation Board – Seaholm
 - Klea Shmet – Historic District Commission and Design Review Board - Seaholm

APPOINTMENTS:

- B. 2020 Student Appointments to City Board and Committees
 1. To appoint the following students as non-voting members to the Planning Board for the calendar year 2020:
 - a. James Watkinson – Seaholm
 - b. Mallory Windsor – Seaholm
 2. To appoint the following students as non-voting members to the Parks & Recreation Board for the calendar year 2020:
 - a. June Lee- Seaholm
 - b. Rachel Hester - Seaholm

V. 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 City Commission Long Range Planning meeting minutes of January 25, 2020.
- B. Resolution approving the regular City Commission meeting minutes of January 27, 2020.
- C. Resolution approving the City Commission Goal Setting workshop minutes of January 29, 2020.
- D. Resolution approving the City Commission Special meeting minutes of February 1, 2020.
- E. Resolution approving the warrant list, including Automated Clearing House payments, dated January 29, 2020 in the amount of \$1,837,821.74.
- F. Resolution approving the warrant list, including Automated Clearing House payments, dated February 1, 2020 in the amount of \$ 223,397.40.
- G. S.E.-2020 Village Fair (Arft)
- H. Resolution approving a request from the Michigan Parkinson Foundation to hold the “I gave my sole to Parkinsons” walk at Seaholm High School and on the surrounding streets on June 6, 2020 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.
- I. Resolution approving the appointment of election inspectors, absent voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City

Clerk for the March 10, 2020 Presidential Primary Election pursuant to MCL 168.674(1), setting 10:00 a.m. as the start time for the Absent Voter Counting Board, and granting the City Clerk authority to make emergency appointments of qualified candidates should circumstances warrant to maintain adequate staffing in the various precincts, counting boards and receiving boards.

- J. Resolution approving the purchase and installation of LED lights from Smart Lighting, LLC for the lighting project at the Birmingham Ice Sports Arena at a total project cost not to exceed \$17,850. Funds are available from the Capital Projects Fund-Ice Arena. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City, contingent upon all required insurances.
- K. Resolution confirming the City Manager's authorization for the emergency expenditure related to the repair of vehicle #211 by Cummins Bridgeway for \$14,031.33 to be charged to the Auto Equipment account #641-441.006-933.0200, pursuant to Sec. 2-286 of the City Code.
- L. Resolution confirming the City Manager's authorization for the emergency expenditure related to the repair of two garage hoists by Allied Incorporated for \$10,258.66 from the Auto Equipment Fund account #641-441.006-933.0200, pursuant to Sec. 2-286 of the City Code.
- M. Resolution approving the 2020 annual flower purchase from Croswell Greenhouse Inc. in the amount not to exceed \$20,589.55. Funds are available from the General Fund – Property Maintenance – Operating Supplies account #101-441.003-729.0000.
- N. Resolution awarding the 2019-2020 Public Services contract totaling \$10,827.00 for Yard Services and Senior Outreach Services to NEXT under the Community Development Block Grant Program; and further, authorizing the Mayor to sign the contract on behalf of the City.
- O. Resolution approving the Addendum to the Public Services contract between NEXT and the City to include Minor Home Repair and extending the contract until June 30, 2020, and authorizing the Mayor to sign the Addendum on behalf of the City.
- P. Resolution approving the assignment of the Bob Adams Towing City contract for the towing and storage of impounded, abandoned, accident and other motor vehicles to Jake's Automotive (Jake's Towing) pursuant to all the terms and conditions of the existing agreement.
- Q. Resolution setting Monday, March 9, 2020 at 7:30 PM for a public hearing to consider the proposed lot combination of 1680 and 1698 S. Bates Street.

VI. UNFINISHED BUSINESS

- A. Ordinance amending Part II of the City Code, Chapter 74 Offenses, Article I. – General, Sec 74-6, to replace the current ordinance to include Bicycling and Electric Personal Assistive Mobility Devices in the (Central Business District / Birmingham Shopping District). Furthermore, authorizing the Mayor and City Clerk to sign the ordinance on behalf of the city.

-OR-

Ordinance amending Part II of the City Code, Chapter 74 Offenses, Article I. – General, Sec 74-6, to replace the current ordinance to include Electric Personal Assistive Mobility Devices in the (Central Business District / Birmingham Shopping District). Furthermore, authorizing the Mayor and City Clerk to sign the ordinance on behalf of the city.

VII. NEW BUSINESS

- A.. Resolution urging the state legislature and federal government to initiate a study of the health effects of small cell towers built to accommodate 5G technology and to develop installation guidelines protecting the health and welfare of residents.

- B. Resolution scheduling a hearing of the Birmingham Firefighters Association Local 911 grievance of November 5, 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 Birmingham Firefighters Association Local 911 grievance of November 5, 2019.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
 - 1. Notices of Intent to appoint the Parks and Recreation Board, Multi-Modal Transportation Board, Planning Board and Cablecasting Board on March 9, 2020.
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
 - 1. Public Arts Board annual report
- D. Legislation
- E. City Staff
 - 1. 2nd Quarter Financial Report, submitted by Finance Director Gerber
 - 2. 2nd Quarter Investment Report, submitted by Finance Director Gerber

INFORMATION ONLY

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).



MEMORANDUM

Office of the City Manager

DATE: February 10, 2020

TO: Joseph A. Valentine, City Manager

FROM: James Gallagher, Assistant to the City Manager

SUBJECT: 2019 Student Representative Certificates of Appreciation

INTRODUCTION:

In appreciation of their service as a student representative on City boards and committees during 2019, the following Birmingham Public School students will be recognized with a service award for their civic involvement over the past year at the February 24, 2020 Commission meeting:

Student	Board/ Commission
John Utley	Planning Board
Sophia Trimble	Planning Board
John Butcher	Parks & Recreation Board
Meredith Weddell	Museum Board
Bennett Pompei	Multi-Modal Transportation Board
Chris Capone	Multi-Modal Transportation Board
Klea Ahmet	Historic District Commission and Design Review Board

BACKGROUND:

In 1996, the City Commission approved a Birmingham Public Schools (BPS) program placing student representatives who are residents of the city on city boards and commissions. This program was designed to establish an educational partnership that has been very successful since its inception. Students wanting to serve as representatives to city boards and commissions complete an application and go through a selection process by a school district pre-screening committee. The committee membership reviews student applications based on specific criteria and then forwards approved applications to the city for appointment consideration.

LEGAL REVIEW:

N/A

FISCAL IMPACT:

N/A

PUBLIC COMMUNICATIONS:

N/A

SUMMARY

The seven Birmingham Public Schools students mentioned above have participated in monthly meetings of their respective advisory boards and engaged in public discussions that afforded them direct input into areas that affect their community. This program partnership with the Birmingham Public Schools has been successful for the City, the schools and the students. The City congratulates the seven student representatives and looks forward to the student's continued interest in civic involvement.

ATTACHMENTS:

N/A

SUGGESTED RESOLUTION:

To recognize the following seven student representatives for their service in 2019 on Birmingham boards and committees and award each student a certificate in appreciation for their civic involvement:

Planning Board	John Utley - Seaholm Sophia Trimble – Seaholm
Parks & Recreation Board	John Butcher – Seaholm
Museum Board	Meredith Weddell – Seaholm
Multi-Modal Transportation Board	Bennett Pompei - Seaholm Chris Capone – Seaholm
Historic District Commission and Design Review Board	Klea Ahmet - Seaholm



MEMORANDUM

Office of the City Manager

DATE: February 10, 2020

TO: Joseph A. Valentine, City Manager

FROM: James Gallagher, Assistant to the City Manager

SUBJECT: 2020 Student Appointments to City Boards and Committees

INTRODUCTION:

The following students are being recommended by Birmingham Public Schools for appointment to their respective board by the City Commission for calendar year 2020. The students will receive agenda packets and are able to participate in all discussions, but will serve as non-voting members of the boards to which they are appointed.

STUDENT	BOARD / COMMISSION
James Watkinson	Parks & Recreation Board
Mallory Windsor	Parks & Recreation Board
June Lee	Planning Board
Rachel Hester	Planning Board

BACKGROUND:

In 1996, the City Commission approved a Birmingham Public Schools (BPS) program placing student representatives who are residents of the city on city boards and commissions. This program was designed to establish an educational partnership that has been very successful since its inception.

Students wanting to serve as representatives to city boards and commissions complete an application and go through a selection process by a school district pre-screening committee. The committee membership reviews student applications based on specific criteria and then forward approved applications to the city for appointment consideration.

Attached is a copy of the BPS program with the city along with application materials submitted by the students in the course of the application process.

LEGAL REVIEW:
N/A

FISCAL IMPACT:
N/A

SUMMARY:

Four Seaholm students have submitted applications for appointment as student representatives on city boards for consideration by the City Commission during the Feb. 24, 2020 meeting.

ATTACHMENTS:

- The following is a list of attachments related to this report:
 - Birmingham Public Schools Program Guidelines
 - Student applications and essays

SUGGESTED RESOLUTION:

To appoint the following students as non-voting members for the calendar year 2020.

Planning Board

James Watkinson – Seaholm
Mallory Windsor – Seaholm

Parks & Recreation Board

June Lee- Seaholm
Rachel Hester - Seaholm



A PARTNERSHIP BETWEEN:

THE CITY OF BIRMINGHAM AND BIRMINGHAM PUBLIC SCHOOLS
Student Representatives on City Boards and Commissions

PROGRAM GUIDELINES

I. PURPOSE:

To promote citizenship and student leadership and to encourage future citizen participation in government. The interaction between student representatives and appointed members of city boards and commissions will produce a greater understanding of adult decision making in addition to lending the perspective and ideas of youth. The majority of citizens who volunteer in their later years report that they have done so because of a volunteer experience in their youth. By investing in efforts to support and promote service and volunteerism now, we will be able to count on these individuals to volunteer later in life.

II. BENEFITS TO STUDENTS AND COMMUNITY:

Students will:

- Learn how local city government operates and makes decisions.
- Learn practical ways of helping the community...makes government real.
- Establish a service and volunteer habit for the future.
- Learn how to research data before making community decisions.
- Learn from contact with adult members of city boards and commissions.

Community:

- Will have the unique perspective of youth in decision making.
- Students will learn valuable lessons about public service...grooming them for future public service.
- May have a longer term participation of the student in community affairs.

III. SELECTION PROCESS:

Students wishing to serve as representatives to city boards and commissions should take the following steps:

1. If you have questions and would like to talk with a fellow student, contact student organizers Dounia Senawi at Groves High School or Todd Hertzler at Seaholm High School.
2. Complete a STUDENTS on CITY BOARDS and COMMISSIONS application available in the office of the community service organizer (Groves; Mrs. Dana Cunningham 203-3509 & Seaholm; Mrs. Sheila Brice 203-3725).
3. Submit the application along with two letters of recommendation and a brief personal essay to your school's community service organizer no later than NOVEMBER 22, 1996 at 3 p.m.

All applications will be reviewed by a school district screening committee where one applicant will be chosen to serve on each selected city board or commission.

The screening committee will include the following individuals:

- An administrator from both Groves and Seaholm High Schools (2)
- A student from both Groves and Seaholm High Schools (2)
- The high school community service organizers (2)
- A teacher (1)
- A member of the board of education (1)
- A member of the school district central administration (1)

Note: Administrators from both The City of Birmingham and the Village of Beverly Hills are involved in the development of the Students on City Boards and Commissions project. (The Village of Beverly Hills may also choose to participate at a later date.)

IV. APPOINTMENT PROCESS:

- Each student will be paired up with an adult board member who will serve as their mentor. The mentor will help the student become oriented to issues being addressed throughout their term on the board or commission.
- Each participating board or commission will monitor the attendance and participation of the student representative on their respective boards and commissions, and reserve the right (if necessary) to replace student members from the previously submitted list of qualified students.

V. TERMS:

- Each selected board/commission may have a high school junior as a student representative.

- The application, selection and appointment process shall begin in the fall (this first year being an exception), with the appointment becoming effective on the first day of January. The term of the student representatives shall end on the last day in December.

VII. DUTIES OF STUDENT REPRESENTATIVES:

Student representatives to city boards/commissions will:

- Attend an orientation session on local government and student roles and responsibilities as representatives.
- Attend all meetings scheduled for the specific board/commission to which they have been designated to serve as a student representative.
- Respond to the inquiries of other students regarding the function and role of the particular board/commission on which they serve.
- Prepare a written or oral synopsis on a monthly basis as to the progress of their activities as a citizen board/commission student representative. Meet with other student representatives.
- Perform other duties as identified at the time of appointment.

VII. RESPONSIBILITIES OF PARTICIPATING HIGH SCHOOLS

- The participating schools shall provide options that would enable students to earn credit from their experience on city boards and commissions.
- The participating schools shall designate a program coordinator who shall distribute information and applications to interested students:

Groves High School: Dana Cunningham 203-3509
Seaholm High School: Sheila Brice 203-3725

- The schools shall actively seek student applicants for the participating boards/commissions wishing to sponsor student representatives.
- Each participating school shall participate in an annual review of the program with participating units of government and student representatives.

VIII. RESPONSIBILITIES OF THE PARTICIPATING UNITS OF GOVERNMENT:

- The participating units of government shall provide a list of those boards/commissions selected as appropriate for student representation, the purpose of those boards/commissions, and the meeting locations, dates and times.
- The participating units of government shall provide an orientation session for all student representatives selected to serve on certain boards and commissions.
- The participating units of government shall monitor the attendance and participation of individual student representatives and report any major concerns to the appropriate school program coordinators.
- Each participating unit of government shall be responsible for the formal appointment and termination of student representatives to their designated boards and commissions.
- Each participating unit of government shall participate in an annual review of this program with the cooperating schools and student representatives.



Birmingham Public Schools
Community Relations Office

STUDENT REPRESENTATIVES ON
CITY BOARDS AND COMMISSIONS

Application Form
Due: January 10, 2020

31301 Evergreen • Beverly Hills, MI 48025

Name: Rachel Hester Grade: [redacted] Age: [redacted]
Address: [redacted]
Zip Code: [redacted] Email: [redacted]
Telephone: [redacted] School: Seaholm

On the attached listing of city boards and commissions, please rank your order of preference for appointment from 1 to 3 (1 being the highest and 3 being the lowest):

1. Planning Board
2. Parks and Recreation Board
3. Historic District Commission and Design Review Board

What school activities and/or classes have you participated in which would qualify you to sit on the board or commission which you have chosen?

DECA, Black Student Union, African American History, Debate, Oakland Technical campus - Advanced Marketing and Entrepreneurship

Please list your involvement in non-school activities:

Volunteering at Gleaners my neighborhood mobile grocery, Church youth group

What personal skills and characteristics do you possess that would make you a good representative?

Creative, Public Speaking

NATIONALLY RECOGNIZED FOR



EXCELLENCE
IN
EDUCATION

BIRMINGHAM
SEAHOLM
HIGH SCHOOL

2436 WEST LINCOLN - BIRMINGHAM, MI 48009
248-203-3700 FAX 248-203-3706

January 10, 2020

To the City of Birmingham-Student Representatives City Board/Commissions Program,

Please allow the following to serve as a letter of recommendation for Planning Board applicant Rachel Hester.

I had the pleasure of having Rachel in English 11A last trimester. She was a dedicated student who was passionate about bringing in current events with our classic non-fiction literature. The focus of the class is to teach argumentation, and Rachel (having also taken Seaholm's debate class) flourished at both argumentation and civil discourse. Rachel is kind and thoughtful; she is the type of student who looks out for her peers and encourages them to be positive throughout their high school journey. Rachel also has a unique perspective in that she is one of only a few African-American students at Seaholm High School, and she excels in gently bringing that unique perspective to the table when having dialogues with her peers. In short, I believe Rachel is a wonderful choice as a student representative on the Planning Board for the City of Birmingham as it helps all residents and businesses prepare for the future.

Thank you for your time and consideration in reading this letter for Rachel. If you have any questions, please don't hesitate to contact me via the methods listed below.

Cordially,

A handwritten signature in black ink, appearing to read "Robin A. Moten".

Robin A. Moten

English Department, Ernest W. Seaholm High School



Seaholm High School

Kristin Ziebell • 248.203.3700 • Fax: 248.203.3706 • KZiebell@birmingham.k12.mi.us
2436 West Lincoln Street, Birmingham, MI 48009

January 2, 2020

To whom it may concern,

I am writing on behalf of Rachel Hester, a student at Seaholm High School in Birmingham, Michigan. I have known Rachel for the past three years and she has become a positive role model among the Black Student Union.

Rachel is passionate and stands up for what she believes in. She has contributed to the Martin Luther King assembly planning for the last three years. During this time, she has demonstrated several leadership qualities that I am positive will transfer to her dedication on the City Boards and Commissions Programs.

In addition to this, Rachel is an active participant in Distributive Education Club of America (DECA). This year, Rachel is competing in the area of Principles of Marketing. Also, she is the Team Bonding Coordinator where she has to plan activities/gatherings for almost 30 students.

Outside of school, Rachel is extremely involved with her church. She competes with her youth program called Auxiliaries in Ministry (AIMS) and also leads a group called Biblical Bowl. Preparing for the competition is about a yearlong and requires excessive research, planning and dedication.

Rachel has high dreams and I am confident one day she will make herself known. Quite simply, it has been a pleasure to work with this young woman and it was a real joy to be able to help her be the student she is today.

Without question, Rachel would make an outstanding candidate to work alongside of the Board. I highly recommend Rachel Hester! Please feel free to contact me for any additional information.

Respectfully,



Kristin Ziebell
Seaholm High School
Birmingham, Michigan 48009

Student Representatives on City Boards and Commissions Essay

January 10,2020

I believe that I would be a great addition to the student representative board or commission. By choosing me you would have a fresh perspective. One reason for that is because I would offer a different and diverse viewpoint. Being an African American female gives me a diverse viewpoint of things that most other candidates don't have. For example attending Seaholm, where there's not a lot of diversity, I advocate for my race. Often in class discussion I help give a different viewpoint of situations. I do this because I feel that it is extremely important for others to know what I am going through and how certain situations affect people differently. This helps others see what it would be like if they were in my shoes. Often times, many people do not consider an African American woman's perspective. I feel it is my job to educate others. By selecting me, I feel that will be one of my main roles. .

Additionally, I have held various leadership positions. For example, I'm currently the Team Bonding coordinator for DECA at Oakland Technical Campus Southeast. My job is to throw parties and have team bonding activities for my DECA chapter. I'm also very active in my church where yearly we help out at A.I.M's(Auxiliaries In Ministries). We watch over five hundred kids from 8am- 2pm at Children's Ministry. We help take them to the bathrooms and make sure they're safely with their parents at the end of the day. Also, our church group participates in competitions For example, there is a talent show where we sing or dance, Bible Bowl, and Oratorical.

Choosing me will help me to be able to get a better understanding of how the Birmingham government works. I am a very creative person, who is used to thinking on my feet and I enjoy coming up with ideas. I also enjoy being around different people. Lastly, you should choose me because being an African American female I can help advocate for the other African Americans and make sure that it is welcoming and accepting for everyone.

Sincerely,

A handwritten signature in black ink that reads "Rachel Hester". The signature is written in a cursive, flowing style.

Rachel Hester

How would you be able to schedule your time to function effectively as a student representative?

I would make the student representative position a priority. The meeting times do not conflict with my job and I would use the weekends for any other work that the position requires. Managing school, the swim team, and band at the same time was a big commitment and I was always able to manage my my schedule and fulfill my other responsibilities.

Would you be interested in being considered for any other boards if you are not selected for any of your top three choices?

Yes x No _____

From Principal:

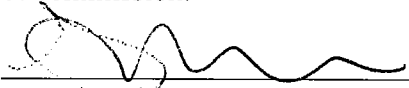
I believe that this student would responsibly serve as a member of a city board or commission.


Principal's Signature

1-3-20
Date

Parent(s) Permission:

I give my permission for my son/daughter to seek the position of a representative to a city board or commission.


Parent(s) Signature(s)

1/2/2020
Date

Include an essay (typed) to convince the selection committee that you should be chosen as a student representative to a board or commission. If selected, your essay will be a part of your introduction to your board or commission.

Please **include two letters of recommendation** from adults who know you at school and who know your activities outside of school.

Return application by Friday, January 10, 2020 to:

Pam Davis at Seaholm High School _____
Sara Molloy at Groves High School _____

Student Representative on City Boards and Commissions -- Essay

Applicant: Mallory Windsor

I believe that I would be a great student representative for one of the boards or commissions. I have lived in Birmingham for my entire life. I have grown up playing in the parks, taking field trips to the museums, shopping in town, and enjoying the restaurants. It is very important to me as a member of this community that Birmingham continues to thrive.

As a high school student, I feel I can bring a different prospective to the group. For example, I spend a lot of my free time at the parks, ice rink and tennis courts and I am very interested in providing feedback on recreation programs. Also, I am a new driver and I am learning to navigate downtown Birmingham. I think my viewpoint may provide insights related to transportation in and around Birmingham.

I am a hardworking student and very dedicated to both academics and extracurricular activities. I am an honor student and scholar athlete. I was also on the Seaholm State Championship swim team this past season. In addition, I started working last year and I have learned a lot with the increased level of responsibility. I like being busy, learning new things, and challenging myself. I think I do a good job staying organized, prioritizing, and ensuring I have balance in my life.

I think I would be a good addition as a student representative for one of the boards or commissions. I am passionate about our community and would really like to contribute in any way I can.



Jeremy Barber

48765 Villa Dioro • Shelby Twp, MI 48315
jbarber@birmingham.k12.mi.us

Date: January 4th, 2020

To Whom It May Concern:

I am writing this letter in regards to Mallory Windsor. I have had the pleasure of getting to know Mallory over the course of the last few years. I have gotten to know Mallory as a student and as an individual.

As a student, Mallory has excellent work ethics and she takes her academic success extremely serious. I have had the opportunity to watch Mallory excel academically and personally. It doesn't matter if it is in the classroom or outside of school; she still gives a great effort. I am thrilled that she plans to take her work ethic and apply it to something outside the classroom. I feel that her hard work and perseverance will assist her work with the city board and commissions.

As an individual, Mallory is a kind, caring, friendly individual. She certainly seems to have a very healthy balance between her academics and personal life. She seems to get along with everyone and she cares about others and her school. Mallory exemplifies the characteristics as a leader, while also listening to the ideas of others, which is expected from any type job.

I can recommend Mallory Windsor with absolutely no reservations. I think you will be getting a true role model in Mallory. If I can be any further help please don't hesitate to contact me.

Sincerely,

Jeremy Barber, M.A.
Birmingham Seaholm High School Math Teacher

Seaholm High School

Kyle Hall, *Principal* • 248.203.3700 • Fax: 248.203.3706 • khall@birmingham.k12.mi.us
2436 West Lincoln Street, Birmingham, MI 48009

January 7, 2020

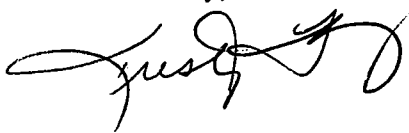
To Whom It May Concern:

It is a pleasure to write a letter of recommendation for Mallory Windsor. Mallory is generous in compassion, time, leadership, spirit, and talent. She participates on many athletic teams, maintains a rigorous academic course load, and achieves at a high level. Mallory is a scholar athlete. To achieve this status a student must earn a varsity letter in their sport and earn a cumulative weighted GPA of 3.5 or higher.

Outside of Seaholm-related activities, Mallory works as a lifeguard, volunteers, and babysits for a family three days a week. Mallory has a great sense of balance; she is an outstanding example of how to effectively manage academics, athletics and personal life.

As I mentioned, Mallory has been an amazing student here at Seaholm High School. She is talented, responsible, and independent. She is well-respected by her peers, and well-liked by the teaching staff. In my opinion, she has the academic background and the intrinsic motivation to be a successful Student Representative on the City Boards and Commissions. It is without reservation that I enthusiastically recommend Mallory Windsor for your consideration. If you would any additional information, please contact me at kfekaris@birmingham.k12.mi.us.

Sincerely,



Kristy Fekaris



Birmingham Public Schools
Community Relations Office

STUDENT REPRESENTATIVES ON
CITY BOARDS AND COMMISSIONS

Application Form

Due: January 10, 2020

31301 Evergreen • Beverly Hills, MI 48025

Name: James Watkinson Grade: [redacted] Age: [redacted]

Address: [redacted]

Zip Code: [redacted] Email: [redacted]

Telephone: [redacted] School: [redacted]

On the attached listing of city boards and commissions, please rank your order of preference for appointment from 1 to 3 (1 being the highest and 3 being the lowest):

1. Parks and Recreation Board
2. Planning Board
3. Multi-Modal Transportation Board

What school activities and/or classes have you participated in which would qualify you to sit on the board or commission which you have chosen?

I have spent a lot of time in many of our wonderful parks as a baseball player and umpire, I feel like my knowledge of the parks would be helpful. I'm not sure if anything else I've done directly relates to the planning or multi-modal transportation boards, however I believe that the multitude of AP and Honors courses I've taken will allow me to learn fast.

Please list your involvement in non-school activities:

I am a member of two seasonal sports teams: Baseball (every year) and Cross Country (began this fall). I am in my second year on the debate team, I am a part of National Honors Society, and I am the Vice President of Chess Club. I also umpire for the Birmingham Little League. I am a helper at math enrichment at Berkshire on Saturdays, and a UBS volunteer at my church.

What personal skills and characteristics do you possess that would make you a good representative?

(Generally I feel like I have good people skills) and the ability to talk to adults. I think this is important as if you don't have these people skills it would be hard to communicate your ideas.

How would you be able to schedule your time to function effectively as a student representative?

Throughout high school I have been very good at
managing my time, I don't believe this would
change,

Would you be interested in being considered for any other boards if you are not selected for any of your top three choices?

Yes No

From Principal:

I believe that this student would responsibly serve as a member of a city board or commission.

[Signature]
Principal's Signature

1-10-20
Date

Parent(s) Permission:

I give my permission for my son/daughter to seek the position of a representative to a city board or commission.

[Signature]
Parent(s) Signature(s)

1-9-2020
Date

Include an essay (typed) to convince the selection committee that you should be chosen as a student representative to a board or commission. If selected, your essay will be a part of your introduction to your board or commission.

Please **include two letters of recommendation** from adults who know you at school and who know your activities outside of school.

Return application by Friday, January 10, 2020 to:

Pam Davis at Seaholm High School _____
Sara Molloy at Groves High School _____

Hayden Watkinson

12/22/2019

City Board Application Essay

Mount Rushmore National Memorial is a large sculpture depicting the faces of Abraham Lincoln, Thomas Jefferson, Abraham Lincoln, and Theodore Roosevelt carved into Mount Rushmore in southwest South Dakota. Three of them, excluding Jefferson, have something in common, and that is that they at one point worked in municipal government. Local government is one of the most important institutions in the United States. From putting out fires, to building and maintaining our roads, the local government manages several systems that are crucial to our everyday lives. Municipal government is also the level where the citizens are the most involved. In general, local officials are just people who want to help out their town, not necessarily career politicians with large campaign staffs and loads of money to spend. Due to several of my character traits, I would be a positive addition to any city board or commission.

My intelligence is a factor that I believe would play a big part in my being an effective city board member. I am a good chess player; in chess, you need to make decisions while considering the short term and long term effects of your moves. This is similar to decisions in government, where you need to weigh short term and long term consequences of your decisions. For instance, in the event of a budget surplus a government official would need to come up with an effective way to use the excess funds without binding them into any future spending on that item, providing short term benefits with no long term cost. The fact that I have had success in advanced classes throughout high school also factor into this, as my grades indicate that I have the ability to understand complex material, which would be important for something such as a planning board where new developments could be complicated and have a multitude of

economic or other consequences. The development that was recently negated by referendum in an example of this, people had to weigh the economic impacts of the increase in parking and the restoration hardware against the money the city would have to spend. The city needs people who can look at these issues from all angles on its boards.

The second reason I believe I would be a good choice for one of these boards is my confidence. I just wrote a paragraph telling you that I am smart, if that doesn't demonstrate confidence, nothing does. This trait is extremely important for a young adult who is going to serve on one of these boards, as many would feel overwhelmed by meaningful adult discussion. In order to be an effective member of one of these boards, you can't be afraid to express your opinion in a confident, strong, yet respectful manner. I will not be.

Open mindedness is another trait of mine I believe would allow me to serve effectively on a city board. The problem with debate in today's country is that people become attached to their original beliefs, and are more focused on proving their side than engaging in real discussion. When I was eleven, I went to a baseball coach whose teachings contradicted what I had been told for the last five years of playing baseball. Rather than stressing your legs and your hips while batting, he wanted me to only think about how fast my hands were getting through the zone. At first I thought of some of his teachings as silly, however over time as I continued to work with him I saw some significant improvements. I have been attending Mark Avery Baseball camps and clinics ever since, because I opened my eyes to his ideas and improved as a player. This is an example of open-mindedness impacting my life in a positive way, as I have improved as a baseball player because I was willing to listen to different ideas.

Another character trait I believe makes me a good candidate to serve on one of the city boards is my passion and love for this city. I have spent my whole life living in Birmingham, going to Birmingham Public Schools, playing and umpiring for Birmingham Little League, watching movies at the Birmingham 8, etc. I have been to so many of our great events such as the Fair in the spring, or the dream cruise every August. I have eaten at restaurants, shopped in stores, and played in parks all over our great downtown area. I love this city, and I would love to make a positive difference here before leaving for college.

No I am not George Washington, I am not Theodore Roosevelt, and I am not Abraham Lincoln. However, I do share their desire to do great things, and I believe that local government could be a place for me to learn and grow as it was for those great men.

NATIONALLY RECOGNIZED FOR



EXCELLENCE
IN
EDUCATION

BIRMINGHAM SEAHOLM HIGH SCHOOL

2436 WEST LINCOLN – BIRMINGHAM, MI 48009

248-203-3700

FAX 248-203-3706

January 3, 2020

To Whom It May Concern:

I am writing this letter on behalf of Hayden Watkinson, a student here at Seaholm High School, about his scholastic work ethic and motivation. My name is Ed Caughell, a high school math teacher. During the 2018-2019 school year, I had the pleasure of teaching Hayden Watkinson in Honors Algebra 2.

Hayden Watkinson is self-motivated to learn as much as possible. His goal is to understand the process of solving problems. Hayden has developed a wonderful ability to reason through a complicated problem and utilize a variety of math tools from his repertoire. Simply getting the correct answer is never sufficient for Hayden. He understands that building a good foundation of knowledge is imperative as he continues on through his academic career. If he ever happens to struggle, Hayden never hesitates to seek out my assistance. Hayden gets great joy out of learning and mastering difficult material. Hayden is among the most dedicated students I have ever had the pleasure of teaching.

Hayden Watkinson is a genuinely nice person who brings a wonderful attitude and willingness to learn to class every day. He is always a positive influence on peers, especially when we were covering challenging material. Over this past school year and a half, he and I have developed a good rapport. We like to chat about a variety of topics both school and non-school related. Hayden and I both share a passion for baseball. Hayden plays it and I used to coach it, which is a source of countless conversations we have. I find him to be a well-rounded individual with high aspirations with many interests.

Hayden is a student who works very hard, is extremely focused and driven, desires to learn, and will succeed given the opportunity. He knows how to keep himself organized and to prioritize his commitments so that everything gets completed properly in a timely fashion. I consider him to be a terrific student and person.

I gladly write this letter and offer up my strongest recommendation for him. I urge you to consider Hayden's application very seriously. He would make a wonderful addition as a Non-Voting Member on a Student Board or Commission.

Respectfully,

Ed Caughell

Math Teacher

Seaholm High School

Kyle Hall, Principal • 248.203.3702 • Fax: 248.203.3706 • khall@birmingham.k12.mi.us
2436 West Lincoln Street, Birmingham, MI 48009

January 3, 2020

To Whom It May Concern,

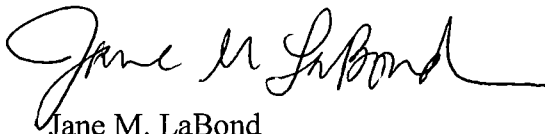
I write this letter in strong support of Hayden Watkinson's participation on any of the City of Birmingham's boards. I have known Hayden since he was a freshman here at Seaholm and have had him in several English classes I teach. He is also mentor for our school's freshman mentoring program, Make Me a Maple, for which I am an advisor. Over the last several years, I have known Hayden to be an articulate young man who enjoys working with others.

Hayden would make an excellent member on any of the City's committees because he has a strong passion for being part of a community. In class, Hayden contributes his own ideas and encourages others around him to do the same. While he is confident in his opinions and is not afraid to share them, Hayden also welcomes new ideas and perspectives. He works well in groups and is often the leader because his peers trust him to help guide them in their assigned tasks. Hayden is an excellent student and successfully strives for and maintains high grades.

As a mentor for freshmen, Hayden displays his commitment to helping those around him and helping his community. The purpose of Make Me a Maple's program is to help welcome freshmen into our Maple nation and ease their transition to high school. Hayden has been an invaluable part of this group as he guides his freshmen through sharing his own experiences.

Hayden displays commitment, dedication, and integrity in all he does. I know Hayden will bring these outstanding qualities to any one of the Birmingham City Boards on which he serves.

Sincerely,



Jane M. LaBond
English Instructor



Birmingham Public Schools
Community Relations Office

STUDENT REPRESENTATIVES ON
CITY BOARDS AND COMMISSIONS

Application Form
Due: January 11, 2019

31301 Evergreen • Beverly Hills, MI 48025

Name: June Lee Grade: [redacted] Age: [redacted]

Address: [redacted]

Zip Code: [redacted] Email: [redacted]

Telephone: [redacted] School: [redacted]

On the attached listing of city boards and commissions, please rank your order of preference for appointment from 1 to 3 (1 being the highest and 3 being the lowest):

1. Planning Board.
2. Historic District Commission and DRB.
3. Multi-Modal Transportation Board.

What school activities and/or classes have you participated in which would qualify you to sit on the board or commission which you have chosen?

District Level Development Committee, Student Voice Advisory Board, Seaholm Character Education Committee, Link Crew - Academic Commissioner, Club SOS, Student Congress, New Student Welcome group, Student Rep. on BPS Strategic Meeting, Varsity Soccer (Captain), Leadership class.

Please list your involvement in non-school activities:

Regular volunteer at Farmington Habitat for Humanity.

What personal skills and characteristics do you possess that would make you a good representative?

I believe that I am open-minded - able to consider both sides of the argument and come to an agreeable solution. Also, I am able to criticize. I will offer my opinion when I believe that something can be improved and will not shy away from doing so.

Seaholm High School

Dr. Omar Hakim, *Assistant Principal* • 248.203.3732 • Fax: 248.203.3706 • OHakim@birmingham.k12.mi.us
2436 West Lincoln Road, Birmingham, MI 48009



January 9, 2020

Dear Selection Committee Members:

It is with great enthusiasm that I offer my recommendation for June Lee to participate in the Birmingham Student Council Student Representatives on City Boards program. June Lee, a current junior at Seaholm High School, is an exceptional student who will serve this council faithfully, honorably, and with high distinction.

I met June last year when he scheduled a meeting to discuss leadership opportunities at Seaholm High School. I was immediately impressed with June's insight, initiative, and authenticity to engage in meaningful school leadership work. At that time, I shared with him an opportunity to serve on our District's District Learning and Development Council (DLDC). Since then, June has been an active member on the council which partners students and staff in the district to ensure a meaningful and relevant curriculum for all students. In addition, June has been a Student Voice Representative in our newly formed Student Voice Advisory Board at Seaholm High School. June was chosen as one of ten members from his class to work specifically on our School Improvement Goals with other students and staff. June has dedicated his time to learn, collect data, and share insights with our staff during professional development sessions. His work has been instrumental to our initial launch of the Student Voice Advisory Board.

Because of June's specific interest and success serving our school in these leadership capacities, June attended a district-wide summit last month for select middle and high school members from the district to engage in a full day of strategic planning work with our newly appointed Superintendent, Mr. Mark Dziatczak. Consistent across June's participation in all of this work is a deep rooted commitment for positive and collaborative change. June is a well-reasoned and articulate young man who brings people together, challenges them to think, and inspires collective action as a result. We could not be prouder of him.

June is the kind of student for whom programs like this were made. I am certain that June will serve as an integral member of this council and enhance the program's outcomes. He will contribute as much as he would receive. I offer my highest recommendation with the highest distinction and without qualification. Should you need additional information regarding June's candidacy, please do not hesitate to contact me directly via e-mail (OHakim@birmingham.k12.mi.us) or phone (248-203-3732).

Sincerely,

Dr. Hakim
Assistant Principal

Jeremy Barber

48765 Villa Dioro • Shelby Twp, MI 48315
jbarber@birmingham.k12.mi.us

Date: January 9th, 2020

To Whom It May Concern:

I am writing this letter in regards to June Lee. I have had the pleasure of getting to know June over the course of the last three years. I have gotten to know June as a student and as an individual.

As a student, June has excellent work ethics and he takes his academic success extremely serious. I have spoken to many of June's teachers and have heard nothing less than perfection. Every teach speaks to June's resilience and dedication to their subjects. I am thrilled that he plans to take his work ethic and apply it to something outside the classroom. I feel that his hard work and perseverance will assist him work with the city board and commissions.

As an individual, June is a kind, caring, friendly individual. He certainly seems to have a very healthy balance between his academics and personal life. He seems to get along with everyone and he cares about others and his school. June is not only a leader on the soccer field, but one off the field. June has taken a lot of his time this past year to be a mentor to incoming freshmen at Seaholm High School on the Make Me A Maple program. In this program June exemplifies the characteristics of a leader, while also listening to the ideas of others, which is expected from any type job.

I can recommend June Lee with absolutely no reservations. I think you will be getting a true role model in June. If I can be any further help please don't hesitate to contact me.

Sincerely,

Jeremy Barber, M.A.
Birmingham Seaholm High School Math Teacher
Seaholm Soccer Coach
Make Me A Maple Coordinator

June Lee
1/9/2020

Dear Selection Committee Members:

I am very grateful for your consideration of me regarding the opportunity to serve on the City Boards program as a Student Representative.

If selected, I pledge that I will represent the views of students to the best of my abilities and contribute greatly for the improvement of the city of Birmingham.

Personally, I am a firm believer that all opinions matter greatly and must be taken into account. Thus, I have worked tremendously hard to voice the opinions of myself and of other students that I represent on various committees. I have no doubt that my work within Seaholm High School and Birmingham Public Schools has contributed to the improvement of the organization. As Margaret Mead once said, "Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has." I truly believe that I am one of the committed people that can change the world through the thoughtful consideration of and insight into the challenges that we may face.

If selected to serve on the City Boards, I will fulfill my responsibility as a member through bringing a new perspective, rigorously debating possible solutions to problems, and offering constructive criticism whenever needed. I will always offer my views directly and clearly, but also keep an open mind when considering all possible solutions and coming to an agreement. I also understand the level of responsibility that I will take on the City Boards. I will give my undivided attention and maximum effort to the tasks at hand as a Student Representative.

Once again, thank you for your consideration,

June Lee

**BIRMINGHAM CITY COMMISSION
LONG RANGE PLANNING MINUTES
JANUARY 25, 2020
MUNICIPAL BUILDING, 151 MARTIN
8:30 A.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor called the meeting at 8:30 am

II. ROLL CALL

ROLL CALL: Present: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita (arrived at 8:34)
Commissioner Sherman
Absent: None

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, City Attorney Kucharek, Acting City Clerk Arft, Human Resource Manager Myers, Assistant to the City Manager Gallagher, Fire chief Wells, DPS Director Wood, Finance Director/Treasurer Gerber, Assistant Finance Director Wickenheiser, City Engineer Fletcher, Assistant City Engineer Bridges, Police Chief Clemence, Police Commander Grewe, City Planner Ecker, Building Official Johnson, Baldwin Library Director Koschik, Museum Director Pielack, Parks & Recreation Carrie Laird, and Assistant Fire Chief Bartalino

III. PUBLIC COMMENT

The City of Birmingham welcomes public comment limited at the Mayor's discretion on items that do not appear in the printed agenda in order to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, please step to the microphone, state your name for the record, and direct all comments or questions to the presiding officer.

Mayor Boutros explained the new public comment section.

- David Bloom commented on the new public comment section location.
- Paul Reagan commented on parking.

IV. DISCUSSION ITEMS

I. 8:30 AM – 9:10 AM Finance

A. Five-Year Financial Forecast

Mark Gerber gave an overview of the Five-Year Financial Forecast. He reminded everyone that what he was presenting was not a budget and the numbers will change. It is a working document:

- Tim St. Andrews, of Plante Moran, discussed Head lee Limit v Operating Millage
- Water/sewer rates

II. 9:10 AM – 10:00 AM Public Services

A. Parks & Recreation Improvement Plan

DPS Director Wood presented the Improvement Plan

City Manager Joseph Valentine explained the funding opportunity available.

B. Ice Arena Facility Analysis

Robert Stempien, Plante Moran reviewed components:

- Built in 1973
- Equipment Inventory complete

C. Maple/Eton Bridge Enhancements

DPS Director Wood presented the history of the project and gave a status update.

D. Lead Water Line Improvement Plan

DPS Director Wood and Engineer Fletcher presented an action plan.

- 728 identified properties
- 8 critical properties identified and a change order is out for approval to mitigate the problem.
- Anticipated 5 weeks to complete.
- City Manager Valentine expressed that there is a consortium of communities to find funding for this anticipated expenditure.

Public Comment:

Matt Wilde, S. Poppleton Homeowners Assoc., lives near Adams Park:

- It has been on a list since 2006
- Concept plan in 2016, thrilled to see phase 1
- Likes the idea of a bond and is in support.

Mike C., 1351 Bennaville

- Thanked everyone for the planning.
- Presented the idea of walking paths thru parks especially Kenning park.

Ann Bray, 1269 Buckingham-

- Commented on developing parks and encouraged the teams to work with the land.

Larry Bertolini, Webster Street, commented on Kenning Park being the only park for that area of town.

David Bloom, commented on:

- Phase III of the library and thought the parks and rec board should work with the library.
- One off elections

Gary Petrovich, Birmingham Unified High Schools Hockey, commented on requesting a room at the ice arena.

III. 10:00 AM – 11:30 AM Planning

A. City-wide Master Plan Update

Planning Director Ecker gave a comprehensive overview:

- Reviewed draft Master Plan
 - Summarized main concepts of each section.

B. Alley Regulations

City Planner Nick Dupuis discuss possible remedies for current alley regulations.

C. Multi-Modal Initiatives

Planning Director Ecker described the issues of transit development.

D. Green Infrastructure

City Planner Nick Dupuis presented this item.

E. Downtown Overlay Amendments

Planner Brooks Cowan presented this item.

- Commissioner Hoff asked about additional cost relative to this amendment.
- Commissioner Hoff expressed that she would like to see cemetery historical preservation.
- Commissioner Nickita suggested that keeping existing property is more sustainable and should be a goal of the administration.
- Commissioner Hoff commented on yoga studios location
- Commissioner Nickita commented on frontage ordinances
- Ann Bray, Buckingham Street commented.
- Mike Kopmeyer, 1351 Bennaville commented on bikes on Eton Street and green initiatives.
- Elaine Mclain commented
- Larry Bertolini, Webster St., commented on storm water drainage.
- Resident Reagan commented.
- David Bloom commented.
- Scott Klein commented.

IV. 11:30 AM – 12:15 PM Engineering

A. Backyard Sewer and Water Master Plan

Engineer Fletcher and James Surhey, HRC, presented a status update.

B. Major Streets

Engineer Fletcher and Mr. Longe presented the plan.

C. SAW Grant Initiative

- James Surhey, HRC, described the program and accomplishments.
- Engineer Fletcher commented that it is great timing for this program for our current needs.

D. Maple Road – Phase 2

Engineer Fletcher discussed key dates of upcoming events.

V. 12:15 PM – 12:30 PM Lunch Break

VI. 12:30 PM – 12:45 PM Birmingham Shopping District

A. Downtown Retail Attraction Program

BSD Director Tighe recognized the board, gave the history of BSD development, and described the district.

B. Maple Project Mitigation Plan

Paul Reagan commented on parking.

David Bloom asked about loss of business during the Woodward reconstruction project.

BSD Director Tighe holds regular merchant meetings to talk about best practices that businesses used. She reported that some businesses did better. There were no reports of losing any retailers during that time.

VII. 12:45 PM – 1:00 PM Fire Department

A. Departmental Enhancements

Chief Wells discussed risk reductions

VIII. 1:00 PM – 1:15 PM Police Department

A. Departmental Enhancements

Chief Clemence presented information about the City's active shooter response; and police accreditation processes.

IX. 1:15 PM – 1:30 PM Building Department

A. Online Permit Program

Bruce Johnson, introduced online permit processing and acceptance.

X. 1:30 PM – 1:45 PM Library

A. Building Renovations - Phase 3 Plan

Doug Koschik presented an update on the Library construction project.

- City Manager Valentine clarified that the request is to be included in the upcoming budget.
- Commissioner Hoff supports phase 3, and likes everything so far.
- Commissioner Sherman asked about timing
- Commissioner Baller disappointed that Plaze is being taken out, commented that he would support doing it.
- Commissioner Nickita commented.
- Commissioner Host asked why the Café is important. He noted that it is also controversial.
- Bob Ziegelman commented.
- Mr. Suhay commented.
- David Bloom commented
- Mayor Boutros commented on the building renovations at the Library.

XI. 1:45 PM – 2:00 PM Birmingham Museum

A. Strategic Plan Update

Leslie Pielack presented a strategic plan with a 3-year cycle.

B. Heritage Zone Improvement Plan

Commissioner Hoff commented on historic preservation of cemetery.

Commissioner Nickita asked about the status of digitizing; Ms. Pielack updated everyone. Commissioner Nickita went on the express that the goal is to be able to access cemetery information online and advised that Copyright issues exist.

XII. 2:00 PM – 2:30 PM Manager's Office

A. Unimproved Street Planning

Assistant City Manager Gunter gave an overview of draft policy document.

B. Adult Services Planning

Assistant City Manager Gunter advised that membership has increased.

C. Enhanced Email Communications

D. Parking Planning

Assistant City Manager Gunter reviewed current issues, and plans for parking. Commissioner Baller commented on unimproved streets.

V. ADJOURN

Adjourned at 2:57pm

BIRMINGHAM CITY COMMISSION MINUTES

JANUARY 27, 2020

MUNICIPAL BUILDING, 151 MARTIN

7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Pierre Boutros called the meeting to order at 7:30 P.M.

II. ROLL CALL

Present: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman

Absent: None

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Acting City Clerk Arft, Human Resource Manager Myers, DPS Director Wood, City Engineer Fletcher, Assistant City Engineer Bridges, Police Commander Grewe, Police Chief Clemence, City Planner Ecker, IT Director Brunk, BSD Executive Director Tighe, Building Official Johnson

III. PUBLIC COMMENT

The City of Birmingham welcomes public comment limited at the Mayor's discretion on items that do not appear in the printed agenda in order to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, please step to the microphone, state your name for the record, and direct all comments or questions to the presiding officer.

- Louis Meldman, 1925 Yosemite, commented on Public Comments placement on the Agenda.
- Betty Gusho, 1195 Lyonhurst, commented on small cell towers relative to 5G infrastructure.
- Stacy Barnes, Beverly Hills, commented on small cell towers relative to 5G infrastructure.
- Ann Kozel, Royal Oak, commented on small cell towers relative to 5G infrastructure.

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

01-017-20 ANNOUNCEMENTS

Restaurant week continues this week through January 31st, then continues Monday, February 3rd through Friday, February 7th. Please visit www.allinbirmingham.com for more information or call 248-530-1200.

01-018-20 APPOINTMENT TO THE PUBLIC ARTS BOARD

City Manager Valentine presented Jason Eddleston for re-appointment to the Public Arts Board as a regular member.

MOTION: Motion by Mayor Pro Tem Longe:
To appoint Jason Eddleston to the Public Arts Board as a resident member to complete a three-year term to expire January 18, 2022.

VOTE: Ayes, 7
Nays, 0

01-019-20 APPOINTMENT TO THE STORM WATER UTILITY APPEALS BOARD

The City Commission interviewed existing member James Partridge for re-appointment to the Storm Water Utility Appeals Board.

MOTION: Motion by Commissioner Sherman:
To appoint James Partridge to the Storm Water Utility Appeals Board as a regular member for a three-year term to expire January 31, 2023.

VOTE: Ayes, 7
Nays, 0

01-020-20 ADMINISTRATION OF OATHS

Acting City Clerk Arft administered the oath of office to the new appointees.

V. 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.

01-021-20 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Hoff Item A, Approval of the January 13, 2020 City Commission Meeting Minutes.
Item O, Professional Services Agreement with Hubbell, Roth & Clark, Inc.
- Commissioner Nickita Item G, BSD Farmer’s Market
- Commissioner Baller Item N, IT System Improvements

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the Consent Agenda, with the exception of Items A, G, N, and O.

ROLL CALL VOTE: Ayes: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller

Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman

Nays: None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated January 15, 2020 in the amount of \$7,000,316.24.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated January 22, 2020 in the amount of \$325,763.51.
- D. Resolution authorizing the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Bus Bar, LLC that requests a transfer of Ownership and Location of an Original 550 Resort Class C and SDM Liquor License with Sunday Sales (AM and PM) to be issued under MCL 436.1531(2) with Outdoor Service (2 Area), New Entertainment Permit and 3 New Additional Bar Permits to be located at 2159 E. Lincoln, 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 Bar Bus, LLC approving the liquor license transfer request of Bus Bar, LLC that requested a Resort Class C and SDM Liquor License with Sunday Sales (AM and PM) be transferred under MCL 436.1531(2) with Outdoor Service (2 Area), New Entertainment Permit and 3 New Additional Bar Permits to be located at 2159 E. Lincoln, Birmingham, Oakland County, MI 48009.
- E. Resolution approving the split award of the MITN cooperative bid of unleaded gasoline and diesel fuel for truck transport deliveries to RKA Petroleum Companies, Inc., 28340 Wick Road, Romulus, MI 48174 and Petroleum Traders Corporation, 7120 Inverness Way, Fort Wayne, IN 46804; and further, approving the award for tank wagon deliveries to RKA Petroleum Companies, 28340 Wick Rd., Romulus, MI, 48174 and Atlas Oil Company, 24501 Ecorse Road, Taylor, MI 48180; based on bid factors included in the respective bids for a two-year period from February 1, 2020 through February 1, 2022, with the option to extend the terms and conditions an additional two years, upon mutual consent. Funds for this purchase of gasoline and diesel fuels are budgeted in Auto Equipment Fund – Fuel Expense account #641-441.006-737.0000.
- F. Resolution approving a request from the Huntington Disease Society of America-MI Chapter to hold Yoga in the Park in Shain Park on June 27, 2020 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.
- H. Resolution approving a request from the Birmingham Shopping District to hold the 2020 Day on the Town special event on Saturday, July 25, 2020, using either Plan A or Plan B dependent on Maple Rd. construction as submitted in the application, and 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.
- I. Resolution approving a request from the Birmingham Shopping District to hold the 2020

Birmingham Cruise special event, on Saturday, August 15, 2020 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.

- J. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2020 Movie Nights on Fridays, June 12, July 17, and August 21, 2020, with rain dates scheduled on Saturdays, June 13, July 18, and August 22, 2020. Approval is 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 a request from Common Ground to hold the Art Fair in Shain Park and on the surrounding streets on September 26 & 27, 2020 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.
- L. Resolution authorizing the IT department to purchase the Security Subscription, Support and License renewals for the Palo Alto Firewall and Traps Server and endpoint clients from AmeriNet. The purchase price not to exceed \$27,690.40. Funds are available in the IT Computer Maintenance fund account # 636-228.000-933.0600.
- M. Resolution authorizing the IT department to purchase the License and support renewal for the ArcGIS software from ESRI Inc. Total cost not to exceed \$9,332.19. Funds are available in the Computer Maintenance fund account # 636-228.000-933.0600.

01-022-20 APPROVAL OF THE JANUARY 13, 2020 CITY COMMISSION MEETING MINUTES (ITEM A).

Commissioner Hoff noted, on page 6, the vote on D5 Zoning reflected three ayes in error. The actual vote was four ayes. On page 5, she corrected the spelling of the attorney's name representing 555 from Rick Radner to Rick Rattner.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:
To approve the regular City Commission meeting minutes of January 13, 2020 as corrected.

VOTE: Ayes, 7
 Nays, 0

01-023-20 APPROVAL FOR THE 2020 FARMERS MARKET (ITEM G).

Commissioner Nickita asked about the process of setting up the Farmers Market. He also asked if there are any new configurations planned due to recent expansion of the lot. Executive Director Tighe explained the process and expressed that the team conducted an after action review and is planning to activate the spare space to offer healthy initiatives that are attractive to Birmingham residents.

Commissioner Hoff suggested that the BSD recruit more vendors to revitalize this event. Director Tighe expressed that the team is actively seeking ways to incentivize vendors to participate.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Hoff:
To approve a request from the Birmingham Shopping District to hold the 2020 Farmers Market season beginning Sunday, May 3rd, 2020 to October 25th, 2020 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

VOTE: Ayes, 7
 Nays, 0

01-024-20 APPROVAL AUTHORIZING THE IT DEPARTMENT TO PURCHASE DARKTRACE ENTERPRISE IMMUNE SYSTEM (ITEM N).

Commission Baller pulled this item to express the importance of this very large expenditure and asked the City Manager to explain this item. City Manager Valentine gave an overview of the necessity for this expenditure to keep the City's critical assets secure from ransomware attacks.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To approve the resolution authorizing the IT department to purchase the Darktrace enterprise immune system from SHI international using Michigan Master Computing Program Contract - 071B6600113-MiDEAL with a total purchase price not to exceed \$239,292.00. Paid in 4 annual installments of \$59,823.00 beginning 2020, and ending in 2023; purchase to be charged to account #636-228.000-973.0400; and further approving the appropriation and amendment to the fiscal year 2019-2020 Computer Equipment Fund budget.

VOTE: Ayes, 7
 Nays, 0

01-025-20 PROFESSIONAL SERVICES AGREEMENT WITH HUBBELL, ROTH & CLARK, INC. (ITEM O).

Commissioner Hoff pulled this item because it is an outside firm being hired to do residential site evaluation reviews previously done by City staff. She wanted to understand how the staff would be using their time in lieu of doing site evaluation reviews. Commissioner Hoff also asked would this service agreement only cover new builds. If not, what other type of work would be covered in the agreement. She also expressed concerns about the increase in fees being proposed.

Assistant City Engineer Bridges explained that the increase in construction activities and recent loss of staff to retirement has put a strain on current staff. This is an opportunity for the City to support staff in performing duties in a timely manner. She went on to say that the services will be primarily for new builds until it is established how much of the additions or accessory structures will be offered in this agreement. In terms of the increase in fees, Assistant City Engineer Bridges expressed that if this service remains in-house, it would cost more to provide than the fee for service would bring in to the City. The proposed fees in this service agreement is comparable to other communities to review and revise plans used in new builds.

City Manager Valentine clarified that the City was not covering cost previously and an adjustment was needed. In using this outside consultant, fees are adjusted to cover the cost. In addition, the City would be able to provide a guarantee of turnaround time on project reviews and demonstrate improved efficiencies.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman: Approving the resolution for the Professional Services Agreement with Hubbell, Roth & Clark, Inc. for Residential Site Evaluation Services for a 1-year term, extendable at the discretion of the City Commission up to three years. Further, to direct the Mayor and City Clerk to sign the agreement on behalf of the City.

AND

Resolution amending the Schedule of Fees, Charges, Bonds, and Insurance, in the Community Development section as indicated by the consultant fee proposal.

VOTE: Ayes, 7
 Nays, 0

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

**01-026-20 ORDINANCE AMENDING PART II OF THE CITY CODE, CHAPTER 74
 OFFENSES, ARTICLE I – GENERAL, SEC. 74-6**

Commander Scott Grewe presented the proposed amendment, which would replace the current ordinance with an updated version to include electric personal assistive mobility devices.

Commissioner Nickita expressed concerns that this amendment would mandate use of motorized devices to the sidewalk. As an urban designer, he found that bikes on the sidewalk are problematic especially in active pedestrian areas, and felt that motorized devices would be more problematic on the sidewalk.

Mayor Boutros and City Manager Valentine clarified the existing ordinance and the proposed amendment.

Commissioner Baller expressed that he would like to see a presentation clarifying the use of all motorized and non-motorized devices prior to a vote. His concern was being able to communicate the ordinance to the public with clarity.

Commissioner Hoff commented on the definitions and felt a diagram defining the devices and where they should be operated would be helpful.

Commissioner Nickita would like the street boundaries referenced to be defined and would need more clarity overall to support the suggested resolution.

City Manager Valentine offered to seek counsel to make the amendment clearer and bring it back to the commission later with more detail.

Mayor Boutros suggested that no action be taken and the commissioners agreed.

Commissioner Hoff noted that the current ordinance was not attached to the amendment. She felt it would be more helpful if it were included, with the changes highlighted when brought back to the commission.

Commissioner Baller expressed while safety is important, he does not want to discourage a good safe alternative form of transportation.

Commissioner Nickita suggested looking at the zoning ordinance to better align the amendment.
Public Comment:

Mary Neff, has a son who rides an electric skateboard, commented on the conflict he has had in using the device in the City.

**01-027-20 ORDINANCE AMENDING PART II OF THE CITY CODE, CHAPTER 74
 OFFENSES, ARTICLE VII.**

Commander Scott Grewe presented this amendment and stated that it would be in line with current State laws.

Commissioner Baller asked if the ordinance was a boilerplate or written by the City specifically for the Birmingham community.

Mary Kucharek, City Attorney's office, expressed that it is in line with the State law. The language was not created by the City, but the City is duty bound to follow the new regulations regarding the use of marihuana.

Commissioner Hoff asked if this amendment is in addition to the existing City Code and asked why there is a different spelling of marihuana.

Ms. Kurcharek affirmed that it is in addition to the existing code and that both spellings of marihuana/marijuana are correct.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
Approving an ordinance amending Part II of the City Code, Chapter 74–Offenses Against Public Morals, Division 5 – Controlled Substances, shall be amended to add Sec. 74-310 Marihuana Regulations. Furthermore, authorizing the Mayor and City Clerk to sign the ordinance on behalf of the city.

VOTE: Ayes, 7
 Nays, 0

**01-028-20 CHANGE ORDER #1 FOR THE OAK STREET SEWER
 REHABILITATION PROJECT.**

City Engineer Fletcher presented this item.

Mayor Boutros clarified that Bidigare Contracting is currently under contract with the City. This change order reflects additional worked requested by the City.

Commissioner Hoff reflected that at the last commission meeting, lead and copper compliance testing was approved for an amount that is very close to what is being proposed tonight. She asked what the difference is between the two services. She also asked if this is what it would cost to mitigate all identified properties.

City Engineer Fletcher explained that the first request was for testing and this request is for actual work to become compliant.

City Manager Valentine explained that testing revealed that the action level on the identified properties needed to be mitigated quickly and it is a relatively small project. However, moving forward, there will be a much larger project specified and the City would be working with multiple communities and the cost will drop considerably for the next round of abatements.

Commissioner Baller questioned if this is in fact the best price. City Manager Valentine affirmed that it is the best price.

MOTION: Motion by Commissioner Nickita, seconded by Mayor Pro Tem Longe: Approving Change Order #1 for the Oak Street Sewer Rehabilitation Project, Contract #11-19(S), to Bidigare Contracting, Inc., in the amount of \$66,500, to be charged to account number 591-537.005-811.0000; and further approving the appropriation and amendment to the 2019-2020 Water Supply System Receiving Fund budget.

VOTE: Ayes, 7
 Nays, 0

01-029-20 RESOLUTION TO MEET IN CLOSED SESSION

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

ROLL CALL VOTE:

Ayes,	Mayor Boutros Mayor Pro Tem Longe Commissioner Baller Commissioner Hoff Commissioner Host Commissioner Nickita Commissioner Sherman
Nays,	None

No action is anticipated as a result of the closed session.

(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.)

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
- B. Commissioner Comments
 - Commissioner Host commented on:
 - 5G, and referenced Europe's experience with this technology

- Annual Audit RFP
- Commissioner Baller commented on:
 - Status of the North Bates Street site and including it in the Master Plan.
- Mayor Boutros commented on:
 - Commissioner Baller's plan for that site in lieu of a failed bond.
- Commissioner Hoff:
 - Requested clarification and Mayor Boutros clarified that the project is what the City referred to as the NOW project.
 - She commented that there has to be a discussion among the commission to set forth a plan for North Bates Street with a purpose. The initial plan was to address parking needs and expand parking; but the bond failed.
- Mayor Pro Tem Longe commented on:
 - Including North Bates Street in the 20/40 Draft
- City Manager Valentine offered to get a proposal from DPZ to bring back before the commission with a clear understanding of the scope.
- Commissioner Nickita commented:
 - The commission is not prepared to discuss a plan for Bates Street at this meeting. The commission would have to be caught up with the background studies used to develop a plan to move forward.
- Commissioner Sherman:
 - Found it interesting that a commissioner who was firmly opposed to any development on this site and two other commissioners against the project that was in place.
 - He questioned what type of uses these commissioners have in mind and, advised that a RFP would not lead to a plan before the commission has an opportunity for discussion.
- Commissioner Baller commented that a community consensus, not just a commission consensus is required to identify the site use. Commissioner Sherman agreed.
- Mayor commented on the desire to develop that land and wants direction on how to move forward.
- Commissioner Hoff commented that DPZ was directed not to work on that piece of land as part of the Master Plan.
- City Manager Valentine offered that if the intent is to start a discussion on this property, this commission before moving forward with the consultant should define what is to be accomplished. Expectations must be clear.
- Commissioner Nickita commented:
 - That there is a deficiency of 750 parking spaces in the City and there is no plan to address it. While many options were analyzed, Bates Street was the best option to address the needs of the City. He went on to say that, the driver for new development must make sense and meet the demands and needs of the community. To do this properly, the discussion must continue with the City's Planning Board so that all of the elements are being considered in planning a 4-acre parcel responsibly.
 - He noted that Birmingham has received accolades recently being identified among nearly 200 cities studied as the **#1 City in Michigan to live.** He went on the commend City Manager Valentine, department heads, and staff for doing an exceptional job. He also, commended the former commissioners who were instrumental in getting Birmingham to this point.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

Mayor Boutros recessed to closed session at 9:18

XI. ADJOURN

Mayor Boutros adjourned the meeting at 10 p.m.

**BIRMINGHAM CITY COMMISSION WORKSHOP SESSION
MINUTES
JANUARY 29, 2020
DEPARTMENT OF PUBLIC SERVICE
851 S. ETON, BIRMINGHAM 48009
4:00 – 9:00 PM**

WORKSHOP SESSION

This will be considered a workshop session of the City Commission. No formal actions will be taken. The purpose of this workshop is to discuss leadership expectations and review City Commission goals. Each commissioner will have an opportunity to share their perspective and thoughts with a professional facilitator.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor

II. ROLL CALL

ROLL CALL: Present: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Absent: None

Facilitator: Lewis G. Bender, PhD

Administration: City Manager Valentine, City Attorney Currier, Cheryl Arft, Acting City Clerk

III. PUBLIC COMMENT

Cindy Rose expressed some concerns she has with the City Commission and the discord she has observed in the past few months. She encouraged the commissioners to work together for the good of the city.

IV. FACILITATION

City Manager Valentine explained the format for this workshop meeting, the expectations for this evening, and a review of the City Commission goals, and introduced Lew Bender to the commission.

Mr. Bender provided his background and experience as a facilitator in municipal government.

Mr. Bender interviewed each of the commissioners as to their motivation for running for office, and their expectations as to the contributions they believe they can make in this term. City Manager described his role as City Manager.

At 5:30 PM, break-out sessions were conducted and concluded at 6:20 PM. The commissioners and City Manager were asked to list their:

- Expectations of the Mayor and City Manager
- Expectations of each Commissioner
- Ground rules to follow when agreement is difficult to achieve
- What to do differently to be more effective

Those present discussed the lists and provided their closing thoughts.

V. ADJOURN

The workshop adjourned at 8:10 PM.

**BIRMINGHAM CITY COMMISSION
SPECIAL MEETING MINUTES
FEBRUARY 1, 2020
MUNICIPAL BUILDING, 151 MARTIN
12:00 PM**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor
12:00 PM

II. ROLL CALL

ROLL CALL: Present: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Sherman
Absent: Commissioner Nickita

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier,
Acting City Clerk Arft

III. PUBLIC COMMENTS

The City of Birmingham welcomes public comment limited at the Mayor's discretion on items that do not appear in the printed agenda in order to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, please step to the microphone, state your name for the record, and direct all comments or questions to the presiding officer.

None

IV. NEW BUSINESS

01-030-20 N. OLD WOODWARD PARKING STRUCTURE REPAIRS

City Manager Valentine presented this item explaining the need to move forward with the suggested resolution in a timely manner. Options have been evaluated and the primary objective, at this time, is to repair the façade and preserve public safety.

Assistant City Manager Gunter provided additional detail of the structure failure and repair options available to the City. She also assured the commission that the contractor is prepared to move forward and is able to mobilize immediately.

Commissioner Hoff asked if any commissioners went over to look at the failing structure and asked if it is unusual that chunks of concrete would fall off.

Mayor Boutros did drive by the structure and witnessed the fallen concrete.

Assistant City Manager Gunter affirmed that the driveways and parking spaces are solid; she went on to say that, the façade system surrounding the structure is a vehicle barrier and safety design

feature that is not a part of the structure, but a substructure. It has been subject to erosion from precipitation in its individual pieces, which are held together by steel components that are failing due to accumulated rust, and expansion and contraction from the elements.

Commissioner Hoff asked are any of the City's other structures constructed in this way.

Assistant City Manager Gunter replied no. The façade on this structure is unique and is not used anywhere else.

Commissioner Hoff asked about taking the structure down as an option.

City Manager Valentine felt that the time frame required to plan a demolition project is months and perhaps years away. In the current environment and interest of public safety, it would be prudent to act now.

Commissioner Baller asked how long would the project take and how many parking spaces would be taken out of service during the construction.

Assistant City Manager Gunter offered the best-case scenario of 2 months, and worst case would be 3 months depending on the extent of difficulty anticipated in removing the corroded brackets. There would be approximately 120 parking spaces out of service at any given time.

Mayor Pro Tem Longe asked if the cabling system is intended to be a temporary or permanent fix, and will it prohibit us from doing something down the road to the exterior façade.

City Manager Valentine affirmed that it is intended to be a permanent fix that is being done on the inside. Options to improve the exterior façade down the road is available and a separate project.

Commissioner Sherman commented that by way of an emergency meeting being held, this is a public health, safety and welfare issue. It is the administration's duty to protect the community therefore; there is not a lot to discuss as far as what has to be done. He would expect that information, as it becomes available, would be circulated to the commission and appear on upcoming agendas; whether it is a regular meeting or special meeting. He went on to say that this is not a meeting to discuss aesthetics,

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host: Authorizing the agreement with DRV Contractors to replace the existing barrier façade system surrounding the N. Old Woodward parking structure and install a new cable barrier system for an amount not to exceed \$591,000 from account #585-538.005-977.0000. Further, directing the City Mayor and City Clerk to sign the agreement on behalf of the City.

AND

Resolution authorizing the agreement with WJE Engineers and Architects, PC to design the barrier cable system for the N. Old Woodward parking structure and to provide construction observation services for an amount not to exceed \$25,000 from account #585-538.005-977.0000. Further directing the City Mayor and City Clerk to sign the agreement on behalf of the City.

Commissioner Baller commented that he has a problem moving the resolution quickly because design authority is not included in the resolution. He went on to say that, he could only support the resolution if architects are involved and the City Commission has input.

Assistant City Manager Gunter expressed that the contractor, WJE, is a team of engineers and architects. The capacity to advance the full team is available. She also share that there has been discussions on the awareness of aesthetics and the goal is to develop a scalable design.

Commissioner Hoff reiterated that the suggested resolution is a safety issue and does not include design; so it should not be a part of the discussion. She went on to say that the focus should be the emergency at hand.

Commissioner Baller expressed that there are many instances where cable systems are the façades; and it is possible that the City could end up with this type of façade. In order to support this motion, he wants to make sure that the façade ultimately is aesthetically pleasing.

City Manager Valentine went on to say that, nothing would be installed until the commission has an opportunity to review it.

Public Comment:

- Michael Poris, Architect, commented on the cost of installing facades, and stabilizing the structure in the meantime.
- Chris Longe, Architect, commented on Mr. Poris statements and the current condition of the parking structure.
- Cindy Rose commented on securing the sculpture purchase on the site.

Commissioner Hoff commented on additional options to create a barrier.

VOTE:	Ayes,	6
	Nays,	0
	Absent,	1

V. ADJOURN

Adjourn 12:59.

City of Birmingham
Warrant List Dated 01/29/2020

Meeting of 02/10/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
271388		MISC	4-EVER-WATER-TITE LLC	100.00
271389	*	000855	48TH DISTRICT COURT	100.00
271390	*	000855	48TH DISTRICT COURT	100.00
271391	*	000855	48TH DISTRICT COURT	100.00
271392	*	000855	48TH DISTRICT COURT	100.00
271393	*	000855	48TH DISTRICT COURT	100.00
271394	*	000855	48TH DISTRICT COURT	100.00
271395	*	000855	48TH DISTRICT COURT	100.00
271396	*	000855	48TH DISTRICT COURT	100.00
271397	*	000855	48TH DISTRICT COURT	100.00
271398	*	007266	AETNA BEHAVIORAL HEALTH LLC	920.92
271399		003708	AIRGAS USA, LLC	225.62
271400	*	MISC	ALEXANDER ROOT	1,151.88
271401	*	003946	ARAMARK	96.96
271402	*	006759	AT&T	173.97
271403	*	006759	AT&T	78.90
271404		003703	AT&T MOBILITY	142.44
271405		MISC	AUGUST LLC	5,000.00
271406	*	004027	AUTOMATED BENEFIT SVCS INC	15,698.53
271407		MISC	B & B POOL SERVICE & SUPPLY CO	300.00
271408	*	006534	BADER AND SONS CO	1,879.92
271409		006316	BAHL & GAYNOR, INC	4,726.64
271412		003012	BATTERIES PLUS	43.20
271413		MISC	BENINATI POOL AND SPA	200.00
271414	*	MISC	BRIAN ELLIOTT	2,447.55
271415	*	007772	BRIXNSTONE LLC	2,800.00
271416		009078	CANON SOLUTIONS AMERICA INC	163.20
271417	*	000444	CDW GOVERNMENT INC	8,337.82
271418		MISC	CEDAR PRESERVATION SYSTEMS LLC	100.00
271419		000605	CINTAS CORPORATION	128.61
271420	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,384.67
271421		004188	COFFEE BREAK SERVICE, INC.	219.90
271422	*	004026	COFINITY	3,006.00
271423	*	007774	COMCAST BUSINESS	1,233.96
271424		000979	COMERICA BANK	17,459.00
271426		002668	CONTRACTORS CLOTHING CO	310.43
271427		008582	CORE & MAIN LP	512.78
271428		003923	CUMMINS BRIDGEWAY LLC	12,173.81
271429	*	MISC	DANIEL J MILLER	3,482.38
271430		MISC	DANIEL J SEBOLD	1,560.00
271431	*	006999	CHRISTOPHER DEMAN	621.00
271432	*	006907	DENTEMAX, LLC	298.80

City of Birmingham
Warrant List Dated 01/29/2020

Meeting of 02/10/2020

Check Number	Early Release	Vendor #	Vendor	Amount
271433		MISC	DIVERSIFIED HOUSEHOLD	200.00
271434	*	000179	DTE ENERGY	13.53
271435	*	000179	DTE ENERGY	73.86
271436	*	000179	DTE ENERGY	5,806.73
271437	*	000179	DTE ENERGY	1,599.81
271438	*	000179	DTE ENERGY	5,128.55
271439	*	000179	DTE ENERGY	4,033.75
271440	*	000179	DTE ENERGY	2,056.51
271441	*	000179	DTE ENERGY	44.71
271442	*	000179	DTE ENERGY	124.19
271443	*	000179	DTE ENERGY	112.99
271444	*	000179	DTE ENERGY	109.15
271445	*	000179	DTE ENERGY	596.87
271446	*	000179	DTE ENERGY	60.25
271447	*	000179	DTE ENERGY	224.00
271448	*	000179	DTE ENERGY	420.72
271449	*	000179	DTE ENERGY	57.00
271450	*	000179	DTE ENERGY	1,510.27
271451	*	000179	DTE ENERGY	42.19
271452	*	000179	DTE ENERGY	253.11
271453		MISC	ESSCO DEVELOPMENT	200.00
271454		000936	FEDEX	60.09
271455	*	009138	FIREHOUSEDECALS, INC.	421.00
271456	*	007366	FIRST ADVANTAGE OCCUPATIONAL	42.84
271457		007212	FOSTER BLUE WATER OIL	136.02
271458		006384	GEOGRAPHIC INFORMATION SERVICES, IN	100.07
271459	*	MISC	GOKCE DONAT	3,103.80
271460		MISC	GREAT DAY IMPROVEMENTS	200.00
271461	*	008007	GREAT LAKES WATER AUTHORITY	7,633.73
271462		MISC	HANDLER, LAWRENCE	100.00
271464		MISC	JEFFREY JOSEPH WILLIAMS	100.00
271465		007423	K/E ELECTRIC SUPPLY	329.40
271466	*	007827	HAILEY R KASPER	162.75
271467		MISC	KASTLER CONSTRUCTION INC	200.00
271468		MISC	KENNY Y KOZA	2,000.00
271469		004085	KONE INC	264.12
271470		MISC	KOZA, KENNY Y	500.00
271471		MISC	KRAMER, JOSHUA	500.00
271472	*	000362	KROGER COMPANY	85.27
271473		002635	LAZARD ASSET MANAGEMENT LLC	12,048.77
271474	*	008158	LOGICALIS INC	9,700.00
271475		MISC	LUTHER, JOSEPH	500.00
271476		008551	M & K TRUCK CENTERS	639.94

City of Birmingham
Warrant List Dated 01/29/2020

Meeting of 02/10/2020

Check Number	Early Release	Vendor #	Vendor	Amount
271477		MISC	MAC CONSTRUCTION, INC.	200.00
271478		MISC	MASSIMO D AGOSTINO	200.00
271479		MISC	MELLOS, PETER	889.22
271480		MISC	MEROLLA, ANTHONY J	100.00
271481		MISC	MERRILLWOOD COLLECTION	200.00
271482	*	004663	MGIA-MICHIGAN GREEN INDUSTRY ASSOC.	804.00
271483		001058	MHPN	80.00
271484	*	009104	MICHIGAN INSTITUTE FOR NEUROLOGICAL	150.00
271485	*	000377	MICHIGAN MUNICIPAL LEAGUE	65.64
271486	*	001387	MICHIGAN MUNICIPAL LEAGUE	44,191.00
271487	*	002089	MICHIGAN-SHIGA SISTER STATE BOARD	65.00
271488		006461	MID AMERICA RINK SERVICES	60.24
271490	*	MISC	MIKE MORSE LAW FIRM PLLC	62.50
271491		000230	MIKE SAVOIE CHEVROLET INC	457.00
271492		MISC	MILLCREEK PROPERTY GROUP LLC	900.00
271493	*	000649	MML WORKERS' COMP FUND	2,122.00
271494		008160	MPARKS	1,250.00
271496		MISC	NATHAN A ZACK TRUST	93.75
271498	*	004370	OCCUPATIONAL HEALTH CENTERS	304.50
271499	*	000481	OFFICE DEPOT INC	369.07
271501		001626	OXFORD OVERHEAD DOOR SALES CO.	829.00
271502		009084	PARTNR HAUS	2,982.94
271503		MISC	PELLA WINDOWS & DOORS, INC.	500.00
271504		MISC	PETCOFF, JAMES G	40,000.00
271506		001830	PLUMBING INSPECTORS ASSOC.OF MI INC	100.00
271507		009153	PRODUCT DRIVE REPAIRS INC	180.00
271508		MISC	RENEWAL BY ANDERSEN	500.00
271509		MISC	RESTORE A DECK INC	100.00
271510		MISC	ROBERT R BRAND	100.00
271511		MISC	SCHUSTER CONSTRUCTION	4,960.00
271512	*	MISC	SCOTT RUSSELL	8,584.08
271513		009009	SIGNATURE CLEANING LLC	4,899.00
271513	*	009009	SIGNATURE CLEANING LLC	120.00
271514		002021	SMAFC	500.00
271515	*	001824	SOCIETY FOR HUMAN RESOURCE MGMNT	219.00
271516	*	001824	SOCIETY FOR HUMAN RESOURCE MGMNT	647.00
271517	*	007907	SP+ CORPORATION	5,350.00
271518		008713	STEFAN SYTS	105.99
271519		MISC	STERLING DEVELOPMENT CORP	200.00
271520		000256	SUBURBAN BUICK GMC INC	1,082.16
271521	*	008507	SUPERFLEET MASTERCARD PROGRAM	300.86
271522		MISC	T G HOMES	2,000.00
271523		MISC	T G HOMES LLC	500.00

City of Birmingham
Warrant List Dated 01/29/2020

Meeting of 02/10/2020

Check Number	Early Release	Vendor #	Vendor	Amount
271524		MISC	THOMAS SEBOLD & ASSOCIATES, IN	1,000.00
271525		MISC	THREE C'S LANDSCAPING	1,380.00
271526		MISC	TODDS SERVICES INC	100.00
271527	*	009144	RICHARD TRUDO	2,100.00
271528	*	000293	VAN DYKE GAS CO.	119.10
271529	*	000158	VERIZON WIRELESS	964.97
271530	*	000158	VERIZON WIRELESS	667.36
271531	*	000158	VERIZON WIRELESS	126.76
271532	*	000158	VERIZON WIRELESS	50.99
271533		006491	VILLAGE AUTOMOTIVE	40.62
271534	*	009010	WCI CONTRACTORS INC	73,982.32
271535		MISC	WILLIAM E. GREGG	1,000.00
271536	*	005794	WINDSTREAM	769.69
271537		005657	WINTER EQUIP CO, INC	2,154.79
271538		007620	WJE-WISS, JANNEY, ELSTNER ASSOC.INC	19,930.80
SUBTOTAL PAPER CHECK				\$381,086.23

ACH TRANSACTION

1983	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	35,047.26
1984		008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	934,829.38
1985		008843	OAKLAND COUNTY TREASURER- TAX PYMNT	379,193.74
1986	*	002284	ABEL ELECTRONICS INC	1,554.99
1988		008667	APOLLO FIRE APPRATUS REPAIR INC	788.50
1989	*	007345	BEVERLY HILLS ACE	28.79
1990	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	227.32
1991	*	003282	LISA MARIE BRADLEY	227.50
1992	*	006380	C & S ICE RESURFACING SERVICES, INC	410.26
1993		007875	CANFIELD EQUIPMENT SERVICE INC.	340.00
1995	*	000956	DELTA TEMP INC	311.91
1996	*	000565	DORNBOS SIGN & SAFETY INC	258.80
1997	*	001077	DUNCAN PARKING TECH INC	984.24
1998	*	000207	EZELL SUPPLY CORPORATION	125.92
1999	*	000243	GRAINGER	205.28
2000		001672	HAYES PRECISION INC	30.50
2001		000331	HUBBELL ROTH & CLARK INC	1,578.72
2002	*	007465	IN-HOUSE VALET INC	6,150.00
2003		000261	J.H. HART URBAN FORESTRY	19,627.00
2004	*	003458	JOE'S AUTO PARTS, INC.	193.31
2005	*	007837	LARYSSA R KAPITANEC	85.50
2006	*	000891	KELLER THOMA	1,531.25
2007	*	005550	LEE & ASSOCIATES CO., INC.	967.02
2009	*	001864	NOWAK & FRAUS ENGINEERS	4,472.00
2010	*	006359	NYE UNIFORM COMPANY	936.00
2011		008269	PREMIER SAFETY	515.00

City of Birmingham
Warrant List Dated 01/29/2020

Meeting of 02/10/2020

Check Number	Early Release	Vendor #	Vendor	Amount
2012		000254	SOCRRA	65,978.00
2013	*	001255	TEKNICOLORS INC	52.32
2014	*	000969	VIGILANTE SECURITY INC	85.00
SUBTOTAL ACH TRANSACTION				\$1,456,735.51
GRAND TOTAL				\$1,837,821.74

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 02/05/2020

Meeting of 02/10/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
271539	*	000855	48TH DISTRICT COURT	500.00
271540	*	000855	48TH DISTRICT COURT	100.00
271541	*	000855	48TH DISTRICT COURT	100.00
271542	*	008226	KATHERINE ABELA	351.00
271544		000167	ANDERSON ECKSTEIN WESTRICK INC	631.45
271545		MISC	ANDYS LAWCARE AND LANDSCAPING	100.00
271546		007033	APPLIED IMAGING	1,748.69
271547		MISC	APS RESIDENTIAL SERVICES	100.00
271548		003946	ARAMARK	92.96
271549		000500	ARTECH PRINTING INC	456.00
271550	*	006759	AT&T	1,909.48
271551	*	006759	AT&T	259.52
271552	*	007216	AT&T	96.59
271553		008368	ATOMIC CLEANING SYSTEMS INC.	633.04
271554		006534	BADER AND SONS CO	705.53
271557		008059	BALL EQUIPMENT	1,541.36
271558		003012	BATTERIES PLUS	3.98
271559		MISC	BILLY W CONSTRUCTION	100.00
271562		MISC	BOWEN PAVING	100.00
271563	*	000569	JOEL CAMPBELL	80.00
271564		009078	CANON SOLUTIONS AMERICA INC	214.74
271565	*	000444	CDW GOVERNMENT INC	2,458.74
271566		007134	CERTIFIED POWER, INC	240.68
271567		MISC	CHRIS SCOTT	100.00
271568		000605	CINTAS CORPORATION	270.86
271570		002234	CMP DISTRIBUTORS INC	1,724.90
271571	*	MISC	COLLINS, CHRISTIAN D	385.00
271572	*	008955	COMCAST	635.51
271573		002668	CONTRACTORS CLOTHING CO	8.57
271574		002125	CRANDALL-WORTHINGTON INC	625.00
271575		003923	CUMMINS BRIDGEWAY LLC	14,031.33
271576		000233	DEAN SELLERS	1,088.40
271577		000177	DELWOOD SUPPLY	2.55
271578	*	006999	CHRISTOPHER DEMAN	350.00
271580		MISC	DEN-MAN CONTRACTORS	2,500.00
271581	*	006700	DRV CONTRACTORS, LLC	7,200.00
271582	*	000179	DTE ENERGY	144.79
271583	*	000179	DTE ENERGY	56.64
271584	*	000179	DTE ENERGY	15.09
271585	*	000179	DTE ENERGY	69.77
271586		MISC	EASTERN MICHIGAN UNIVERSITY	3,250.00
271587		000493	ED RINKE CHEVROLET BUICK GMC	202.42

City of Birmingham
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Meeting of 02/10/2020

Check Number	Early Release	Vendor #	Vendor	Amount
271588		MISC	EDISON, NADYNE	225.39
271590		004671	ELDER FORD	37.50
271591		008970	ENCODEPLUS, LLC	5,382.18
271592		001495	ETNA SUPPLY	4,320.00
271593		001223	FAST SIGNS	184.56
271594		008161	FIERA CAPITAL INC	7,580.44
271595	*	MISC	GARY BREWER &	4,192.75
271596	*	004604	GORDON FOOD	59.88
271598	*	MISC	GURUDATH S NARAYAN	2,627.61
271599	*	006153	HARRY'S ARMY SURPLUS	90.00
271600	*	001956	HOME DEPOT CREDIT SERVICES	1,676.38
271601		000342	IBS OF SE MICHIGAN	361.90
271602		MISC	JONNA RENOVATIONS LLC	200.00
271603	*	MISC	KEVIN & IVY HICKEY	200.00
271604		000353	KNAPHEIDE TRUCK EQUIPMENT	4,250.44
271605	*	000352	JILL KOLAITIS	1,102.00
271606	*	000362	KROGER COMPANY	18.08
271607		MISC	KROLL CONSTRUCTION CO	100.00
271608		MISC	LADUC SIDING COMPANY	100.00
271609		004362	LEATHERS & ASSOCIATES INC	426.37
271610	*	007800	GREG LELITO	53.79
271614	*	008570	BRENT MACUMBER	152.27
271615		001417	MAJIK GRAPHICS INC	395.00
271616		MISC	MATTHEW W ROSS CONST LLC	200.00
271617		MISC	MAZURA CUSTOM CLOTHIERS	100.00
271618		MISC	MCCOMB CONSTRUCTION CO INC	500.00
271619		MISC	MCCS LLC	200.00
271621	*	004738	MGFOA	240.00
271622		001660	MICHIGAN CAT	53.07
271625	*	001783	MMTA	150.00
271626		MISC	MOSHER DOLAN	100.00
271627		005110	MTS SAFETY PRODUCTS, INC	121.76
271628		MISC	N S CONNECTION VENTURES	100.00
271630	*	008687	NORTH BREATHING AIR, LLC	120.00
271631		MISC	OAKES ROOFING SIDING & WINDOWS INC	200.00
271632	*	000477	OAKLAND COUNTY	7,996.25
271633	*	008198	OCAAO	20.00
271634	*	000481	OFFICE DEPOT INC	605.86
271635	*	001753	PEPSI COLA	619.05
271636		MISC	PERFORMANCE RESIDENTIAL REMODELING	100.00
271637		009154	POWERDMS INC	73.96
271638		MISC	PYTIK & COMPANY	200.00
271639		002852	QMI GROUP INC	15.75

City of Birmingham
Warrant List Dated 02/05/2020

Meeting of 02/10/2020

Check Number	Early Release	Vendor #	Vendor	Amount
271640	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
271641		MISC	REA & SON CEMENT CO	100.00
271643		008852	REDGUARD FIRE & SECURITY	2,000.00
271644		000218	ROYAL OAK P.D.Q. LLC	78.00
271645		MISC	SAPPHIRE BUILDING INC	2,000.00
271646		007142	SHERWIN-WILLIAMS COMPANY	96.18
271646	*	007142	SHERWIN-WILLIAMS COMPANY	90.52
271647		MISC	SINKO DEVELOPMENT	100.00
271648		MISC	SOMERSET PAINTING & HOME IMPROVEMEN	200.00
271649		MISC	SOURCE ONE CONSTRUCTION	200.00
271651	*	MISC	SVENSKA CAFE	360.00
271652		008944	THE PRINT STOP, INC.	108.00
271653		MISC	TOCCO & MANNINO LANDSCAPING	100.00
271654	*	002358	TRA ART GROUP	330.00
271655		005331	UBS FIN SERVICES, INC	16,460.69
271656	*	000293	VAN DYKE GAS CO.	138.95
271658	*	000158	VERIZON WIRELESS	152.97
271660	*	000158	VERIZON WIRELESS	1,077.99
271661		006491	VILLAGE AUTOMOTIVE	423.80
271662		MISC	WALLSIDE INC	1,000.00
271663		005657	WINTER EQUIP CO, INC	656.47
SUBTOTAL PAPER CHECK				\$116,340.25

ACH TRANSACTION

2017	*	002284	ABEL ELECTRONICS INC	390.00
2018	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	44,889.13
2019		002909	ACOM SOLUTIONS, INC.	801.25
2021		007875	CANFIELD EQUIPMENT SERVICE INC.	5,753.57
2022		001077	DUNCAN PARKING TECH INC	5,332.50
2022	*	001077	DUNCAN PARKING TECH INC	2,411.09
2023	*	007314	FLEIS AND VANDENBRINK ENG. INC	1,051.00
2024	*	000243	GRAINGER	691.71
2025		001672	HAYES PRECISION INC	30.50
2026		000331	HUBBELL ROTH & CLARK INC	2,236.59
2027	*	008851	INSIGHT INVESTMENT	5,340.82
2028	*	002407	J & B MEDICAL SUPPLY	213.03
2029	*	007870	J.C. EHRLICH CO. INC.	48.00
2030	*	003458	JOE'S AUTO PARTS, INC.	717.57
2031	*	005550	LEE & ASSOCIATES CO., INC.	848.00
2032		001864	NOWAK & FRAUS ENGINEERS	2,576.00
2033	*	006359	NYE UNIFORM COMPANY	4,413.80
2034	*	003554	RKA PETROLEUM	7,180.13
2035	*	000478	ROAD COMM FOR OAKLAND CO	1,985.90
2036	*	001181	ROSE PEST SOLUTIONS	71.00

City of Birmingham
Warrant List Dated 02/05/2020

Meeting of 02/10/2020

Check Number	Early Release	Vendor #	Vendor	Amount
2037		005787	SOUTHEASTERN EQUIPMENT CO. INC	817.66
2038		000273	TERMINAL SUPPLY CO.	243.60
2039	*	002037	TOTAL ARMORED CAR SERVICE, INC.	736.27
2040	*	007374	WESTWOOD TRUST	16,647.22
2041	*	007278	WHITLOCK BUSINESS SYSTEMS, INC.	1,630.81
SUBTOTAL ACH TRANSACTION				\$107,057.15
GRAND TOTAL				\$223,397.40

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

Clerk's Office

DATE: February 5, 2020
TO: Joseph A. Valentine, City Manager
FROM: Cheryl Arft, Acting City Clerk
SUBJECT: 2020 Village Fair – May 27 – May 31, 2020

INTRODUCTION:

The Birmingham Bloomfield Chamber of Commerce has submitted a Special Event application to hold the Annual Village Fair in Shain Park, on Martin St. between Pierce and Chester, on portions of Bates and Henrietta Streets, and on the sidewalks along Martin, Bates, and Henrietta Streets. The event is requested to be held on the following dates and times:

Private Party

Wednesday, May 27th from 5:00 – 10:00 PM

Open to the Public

Thursday, May 28th – Sunday, May 31st (hours vary daily)

BACKGROUND:

After meeting with Chamber representatives, a revised street closure plan was developed, allowing for access needed by emergency vehicles and Maple Rd. businesses during the event. Both Henrietta and Bates streets will remain open to Martin Street from Maple Rd. DPS, Planning, Building, Police, Fire, and Engineering staff met and discussed the changes needed to accommodate the Maple Rd. and Baldwin Library construction projects, and indicated their approval to the revised street closure plan. SP+ Parking has been notified of the event for planning purposes. The revised street closure plan is included with this application.

The corner of Pierce and Martin will not be blocked. The intersections of Merrill & Henrietta will be open for one lane of traffic. Merrill will be blocked from Chester to Bates. Bates will be closed between Martin and Lot 6. Lot 6 will remain open.

Equipment will be delivered, as it has been in the past, on May 26th at 1:00 AM – 3 AM.

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

Hometown Parade & Party	Sunday, May 17	Shain Park/Downtown
Memorial Day service	Monday, May 27	Shain Park5
Farmers Market	Sundays	Lot 6

Lungevity 5K Walk

Saturday, May 30

Booth Park

LEGAL REVIEW:

n/a

FISCAL IMPACT:

n/a

SUMMARY

The City Commission is being asked to approve the 2020 Village Fair special event to be held May 27 to May 31, 2020.

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 January 23, 2023. Notification addresses are on file in the Clerk's Office
3. Hold Harmless Agreement signed by the Chamber of Commerce, and Certificate of Insurance
4. Department Approval page with comments and estimated costs

SUGGESTED RESOLUTION:

To approve a request from the Birmingham Bloomfield Chamber of Commerce to hold the Annual Village Fair and private party in Shain Park and on the surrounding streets and sidewalks, May 27th, through May 31st, 2020, 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.

20-00011721

**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 January 6, 2020

Name of Event 57th Annual Village Fair

Detailed Description of Event (attach additional sheet if necessary) Annual Community Fair with rides, food and games.

Location Shain Park on Martin Street between Pierce and Chester. Also on Bates and Henrietta Streets

Date(s) of Event May 27 - May 31 Hours of Event varies day to day

Date(s) of Set-up May 26 - 27 Hours of Set-up 1 am - 3 pm

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

Date(s) of Tear-down May 31 Hours of Tear-down 9 pm - 12 am

Organization Sponsoring Event Birmingham Bloomfield Chamber

Organization Address 725 S. Adams Rd., Suite 130, Birmingham, MI 48009

Organization Phone 248-644-1700

Contact Kelly Bennett or Joe Bauman Person _____

Contact 248-430-7688 Phone _____

Contact Email kellyb@bbcc.com

II. . EVENT INFORMATION

1. Organization Type Civic organization, fund-raiser for the Chamber & benefits local non-profit groups
(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.) TBD

3. Is the event a fundraiser? YES NO
List Primary beneficiary is the Birmingham Bloomfield Chamber beneficiary ___
List _____ expected Profit estimated to be \$25,000 - \$35,000 income ____
Attach information about the beneficiary.

4. First time event in Birmingham? YES NO
If no, describe 57th Annual Village Fair

5. Total number of people expected to attend per day Thousands per day - weather permitting

6. The event will be held on the following City property: (Please list)

Street(s) On Martin Street between Pierce and Chester. On Bates and Henrietta: the corner of Pierce & Martin
will not be blocked. Merrill and Henrietta and Bates and Merrill will be open for one lane of traffic.

Sidewalk(s) On Martin, Bates and Henrietta

Park(s) Shain Park

7. Will street closures be required? YES NO
(Police Department acknowledgement prior to submission of application is required) (initial here) ll

8. What parking arrangements will be necessary to accommodate attendance? Bags over meters on Martin, Bates & Henrietta. Attendees will be encouraged to use parking structures.

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 A paid crew is hired for maintenance and clean-up. Safety and security is hired by North American Midway Entertainment. Maintenance is coordinated by the Birmingham Bloomfield Chamber.

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

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

Describe North American Midway pulls a water permit and works directly with the fire Marshall.

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 _____

Time music will end _____

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 15 - 20

Size of signs/banners 18" x 24"

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?

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	12	6 for \$500.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles	30	\$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	0	\$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	Yes/TBD	\$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.
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)	TBD	10 x 10
Portable Toilets	6	
Rides	16	
Displays		
Vendors		
Temporary Structure (must attach a photo)		
Other (describe)		

SIGNATURE OF APPLICANT REQUIRED

EVENT NAME 57th Annual Village Fair

EVENT DATE May 27 - May 31

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.

Kelly Bennett Signature 01/06/2020 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.

Birmingham Map

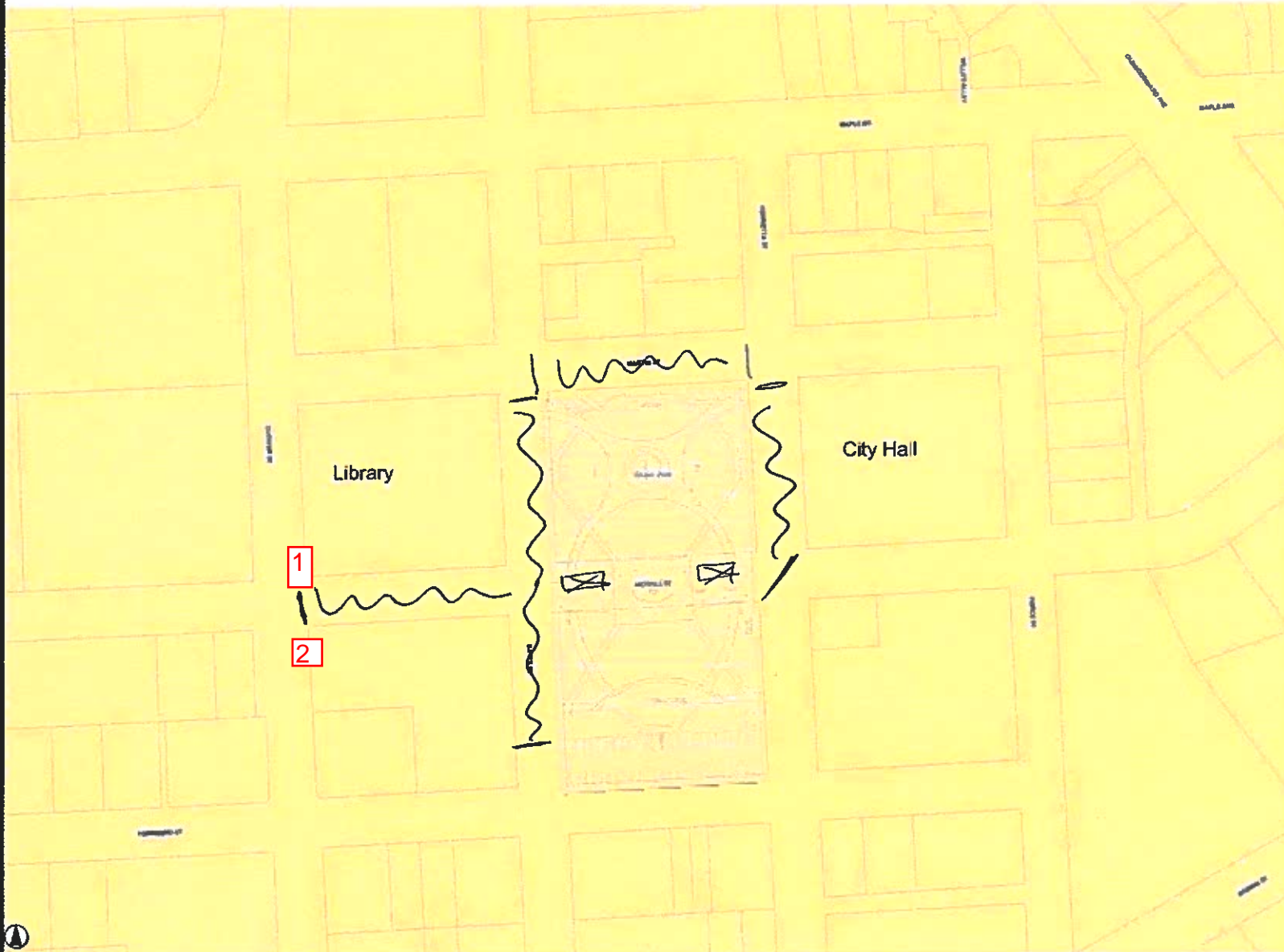
- Legend**
-  City Boundary
 -  Lakes and Rivers
 -  Streams
 -  Parcels

N



-  Fair, Rides + Games
-  Food Trucks
-  Barricades

- 1 - Office trailer
- 2 - Dumpster

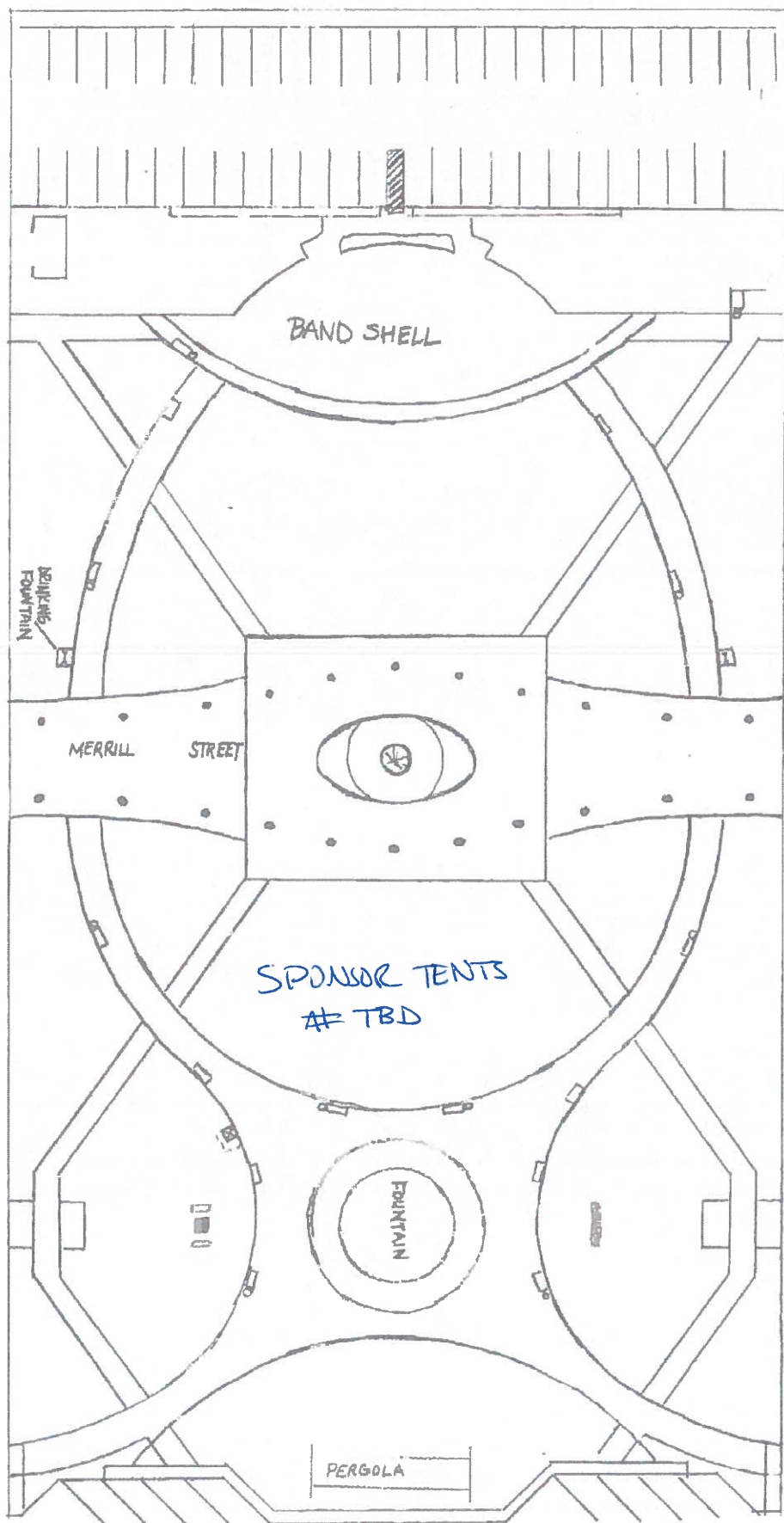


DISCLAIMER

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.

TOWNSEND STREET

HENRIETTA STREET



MARTIN STREET



HOLD-HARMLESS AGREEMENT

"To the fullest extent permitted by law, the **Birmingham Bloomfield Chamber** and any entity or person for whom the **Birmingham Bloomfield Chamber** is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this activity/event. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the City of Birmingham, its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham."

Kelly Bennett

01/06/2020

Applicant's signature

Date



BIRMBLO-01

KMCCANN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/6/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: Emerson-Prew, 30600 Telegraph Road, Suite 3110, Bingham Farms, MI 48025. CONTACT NAME: Shari Hornyak. PHONE: (248) 203-1817. FAX: (A/C, No). E-MAIL ADDRESS: shornyak@epi-ins.com. INSURER(S) AFFORDING COVERAGE: INSURER A: West Bend Mutual Insurance Company (15350), INSURER B: Accident Fund Insurance Company of America (10166).

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liab, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) The City of Birmingham Including all Elected and Appointed Officials; All Employees & Volunteers; Board Members; Employees & Volunteers are Named as Additional Insured. This Coverage Shall be Primary and Non-Contributory.

Event: 57th Annual Birmingham Village Fair - May 27, 2020 Through May 31, 2020

CERTIFICATE HOLDER CANCELLATION

CERTIFICATE HOLDER: City of Birmingham, 151 Martin St., P. O. Box 3001, Birmingham, MI 48009. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: John M. Roberts



THE
**Birmingham
Bloomfield**
CHAMBER

SPECIAL EVENT REQUEST NOTIFICATION LETTER

DATE: Friday, November 08, 2019

TO: Residential Property or Business Owner

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

EVENT INFORMATION

NAME OF EVENT: 57th Annual Birmingham Village Fair

LOCATION: On Martin St. between Pierce and Chester. On Bates and Henrietta. See back for map.

DATE(S) & HOURS OF EVENT:

Wednesday, May 27, 2020	5-10 p.m. Private Pre-Party
Thursday, May 28, 2020	12-10 p.m. Open to the public
Friday, May 29, 2020	12-11 p.m. Open to the public
Saturday, May 30, 2020	11 a.m. - 11 p.m. Open to the public
Sunday, May 31, 2020	12-9 p.m. Open to the public

BRIEF DESCRIPTION OF EVENT/ACTIVITY: Community fair with rides, food and games.

DATE(S) OF SET-UP: Tuesday, May 26 & Wednesday, May 27

HOURS OF SET-UP: 1 a.m. - 3 p.m.

DATE(S) OF TEAR-DOWN: Sunday, May 31, 2020

HOURS OF TEAR-DOWN: 9 p.m. - 12 a.m.

DATE OF CITY COMMISSION MEETING: Monday, February 10, 2020; 7:30 p.m.

The City commission meets in room 205 of the Municipal Building at 151 Martin at 7:30 p.m. 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. Log on to www.bhamgov.org/events for a complete list of special events.

EVENT ORGANIZER: Birmingham Bloomfield Chamber

ADDRESS: 725 S. Adams, Suite 130, Birmingham MI 48009

PHONE: (248) 430-7688

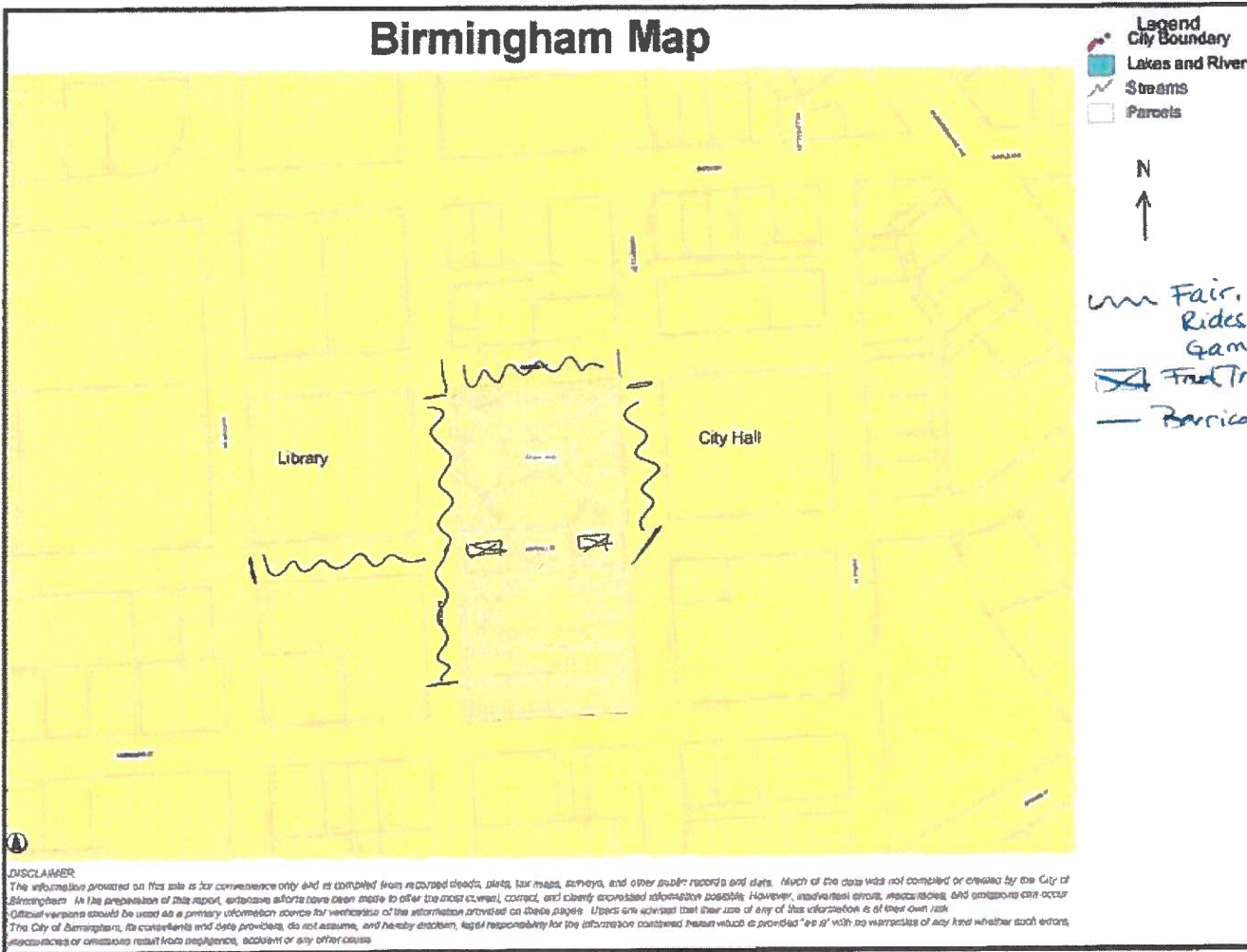
FOR QUESTIONS ON DAY OF EVENT, CONTACT:

Kelly Bennett

Birmingham Bloomfield Chamber

248-505-4149

Birmingham Map



DEPARTMENT APPROVALS

EVENT NAME 2020 VILLAGE FAIR

LICENSE NUMBER #20-00011721

COMMISSION HEARING DATE: FEBRUARY 10, 2020

NOTE TO STAFF: Please submit approval by **JAN. 20, 2020**

DATE OF EVENT: MAY 27-31, 2020
(set up: May 26-27, 2020)

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	TBC	No Cost No Comment			
BUILDING 101-000.000.634.0005 248.530.1850	MJM		Permits required for generators	\$387.59	
FIRE 101-000.000-634.0004 248.530.1900		<ol style="list-style-type: none"> 1. No Smoking in any tents or canopy. Signs to be posted. 2. All tents and Canopies must be flame resistant with certificate on site. 3. No open flame or devices emitting flame, fire or heat in any tents. Cooking devices shall not be permitted within 20 feet of the tents. 4. Tents and Canopies must be properly anchored for the weather conditions, no stakes allowed. 5. Clear Fire Department access of 12 foot aisles must be maintained, no tents, canopies or other obstructions in the access 		\$3096.60	

aisle unless approved by the Fire Marshal.

6. Pre-event site inspection required.
7. A prescheduled inspection is required for food vendors through the Bldg. dept. prior to opening.
8. All food vendors are required to have an approved 5lbs. multi-purpose (ABC) fire extinguisher on site and accessible.
9. Cords, hoses, etc. shall be matted to prevent trip hazards.
10. Exits must be clearly marked in tents/structures with an occupant load over 50 people.
11. Paramedics will respond from the fire station as needed. Dial 911 for fire/rescue/medical emergencies.
12. A permit is required for Fire hydrant usage.
13. Do Not obstruct fire hydrants or fire sprinkler connections on buildings.
14. Provide protective barriers between hot surfaces and the public.
15. All cooking hood systems that capture grease laden vapors must have an approved suppression system and a K fire extinguisher in addition to the ABC Extinguisher.
16. Suppression systems shall be inspected, tested, and properly tagged prior to the event. All Sprinkler heads shall be of the 155 degree Quick Response type unless serving an area of high heat and approved by the Fire

		<p>Marshal. The suppression system shall have a continuous water supply as well as a secondary back up supply. Activation of the suppression system will shut down the ride and cause illumination of the exits.</p>			
<p>POLICE 101-000.000.634.0003 248.530.1870</p>	SG	Personnel and barricades.		\$3400	
<p>PUBLIC SERVICES 101-000.000-634.0002 248.530.1642</p>	Carrie Laird 1/8/2019	<p>Will provide: 1). The event coordinator is outsourcing the dumpsters. 2). 30 PSD boxes/Bags 3). 12 Picnic Tables 4). Delivery/Removal of barricades 5). Vendors are responsible for cleaning the area, including the granite pavers. Any cleanup not done will be arranged for by DPS and billed to event in addition to the estimated cost. This includes grease, trash and anything else related to the event. 6). Hydrant permit for water usage. Does not include water that will be used for the event. Applicant will be responsible for paying for the power washing or tree work if needed after the event. DPS will hire/oversee the work.</p>		\$2,300	
<p>ENGINEERING 101-000.000.634.0002 248.530.1839</p>	A.F.	<p>Note: The Maple Road project will likely be underway during this time and may cause the parking structures to be busier than usual. This event would also likely affect the proposed valet. The proposed layout of the event will limit and/or prevent access to the alleys between Martin & Maple in the area (access to the alley between Pierce & Henrietta will be limited and there will be NO access to</p>	NONE	\$0	\$0

		the alley between Henrietta & Bates during the event). Also, the Baldwin Library project will still likely be under construction. Consideration should be given to modifying the proposed layout especially in the area of Bates & Martin.			
SP+ PARKING					
INSURANCE 248.530.1807	CA	APPROVED	None	\$0	\$0
CLERK 101-000.000-614.0000 248.530.1803		Notification letters to be mailed by applicant no later than 1/25/20. Notification addresses on file in the Clerk's Office.	Applications for vendors license must be submitted no later than 5/22/20.	\$165 pd	
				TOTAL DEPOSIT REQUIRED \$9,184.19	ACTUAL COST

FOR CLERK'S OFFICE USE

Deposit paid _____

Actual Cost _____

Due/Refund _____



MEMORANDUM

Clerk's Office

DATE: February 5, 2020
TO: Joseph A. Valentine, City Manager
FROM: Cheryl Arft, Acting City Clerk
SUBJECT: 2020 "I Gave My Sole for Parkinson's" Walk – June 6, 2020

INTRODUCTION:

The Michigan Parkinson Foundation has submitted a Special Event application to hold the 2020 "I Gave My Sole for Parkinson's" Walk at Seaholm High School and on surrounding neighborhood streets on Saturday, June 6th, 2020. Set-up for the event is scheduled for Saturday, June 6th from 7 am to 9 am. The event begins at 9 am and ends at 1 pm, with tear-down scheduled to end at 2 pm.

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
In the Park concerts	Friday, June 12	Shain Park
Movies in Booth Park	Friday, June 12	Booth Park
Yoga in the Park	Saturday, June 27	Shain Park

LEGAL REVIEW:

n/a

FISCAL IMPACT:

n/a

SUMMARY

The City Commission is being asked to approve the 2020 Michigan Parkinson Foundation's special event to be held June 6th, 2020 from 9 am to 1 pm, with set-up to begin June 6th between 7 am and 9 am. Tear-down will begin at the conclusion of the event on June 6th and is scheduled to end at 2 pm.

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 January 15, 2020. Notification addresses are on file in the Clerk's Office
3. Hold Harmless Agreements signed by the Michigan Parkinson Foundation (updated Certificate of Insurance due on or before May 22, 2020)
4. Department Approval page with comments and estimated costs

SUGGESTED RESOLUTION:

To approve a request from the Michigan Parkinson Foundation to hold the "I gave my sole to Parkinsons" walk at Seaholm High School and on the surrounding streets on June 6, 2020 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.

II. . . . EVENT INFORMATION

1. Organization Type Non-profit
(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.) _____
Please refer to attached listing of 2019 Sponsors. As in prior years, many will return in 2020.
Sponsors were contacted the last week of December 2019 with Sponsorship Opportunities.

3. Is the event a fundraiser? YES NO
List Beneficiary is Michigan Parkinson Foundation beneficiary ____
List expected Expected Income \$225,000 income ____
Attach information about the beneficiary. (see attached)

4. First time event in Birmingham? YES NO
If no, describe 2020 will be MPF's 4th walk event at Seaholm HS.

5. Total number of people expected to attend per day 1,000 +

6. The event will be held on the following City property: (Please list)
 Street(s) _____
 Sidewalk(s) (see attached map) _____
 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? Seaholm HS parking lots will be utilized.

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 MPF Staff (5), Committee Members (6), and volunteers (50). Staff from Birmingham School Facility Dept will be on-site day of event. Each area will have a LEAD that will instruct other volunteers. All LEADS will be provided with cell #'s for all MPF Staff.

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

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

Describe MPF will request safety personnel on the walk route to ensure participants safety while crossing two different locations on Maple Road (see attached map - route is same as 2019).

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 Loudspeakers

Recorded Time music will begin 9:30 am

Time music will end 12:00 noon

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 150+ Hero Signs along walk route, 20 directional signs, 2 Sponsor signs

Size of signs/banners 18" x 24" Hero and directional signs, 36" x 24" Sponsor signs

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?
n/a	n/a	n/a	n/a

III. I. 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	N/A	6 for \$500.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles	Type text here N/A	\$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	N/A	\$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)	_ 0 # of vendors requiring utilities	Varies	Charges according to final requirements of event.
Water/Fire Hydrant	N/A	\$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.
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)	25	10' x 10'
Portable Toilets	N/A	
Rides	N/A	
Displays	N/A	
Vendors	N/A	
Temporary Structure (must attach a photo)	N/A	
Other (describe)	N/A	

SIGNATURE OF APPLICANT REQUIRED

EVENT NAME Michigan Parkinson Foundation "I Gave My Sole for Parkinson's" Walk

EVENT DATE Saturday, June 6, 2020

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.

Mary Sue Longor 1/3/2020
Signature Date

*By providing your e-mail to the City, you agree to receive news and notifications from the City.
If you do not wish to receive these messages, you may unsubscribe at any time.*

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.



City of Birmingham
Application for Special Event Permit - 2020
Additional Information
January 3, 2020

II. EVENT INFORMATION

Question 2 - Additional Sponsors

Potential 2020 Event Sponsors (Sponsorship Levels TBD):

Acadia Pharmaceutical
12925 Springbrooke Trail
South Lyon, MI 48178
Stephan Meekhof

Thomas and Carol Cracchiolo Foundation
100 Maple Park Blvd Ste 130
St. Clair Shores, MI 48081
Lisa C. Peracchio

Adamas Pharmaceuticals, Inc.
37824 N. Laurel Park Dr.
Livonia, MI 48152
Ken Juroff

Gazelle Sports
99 W. Maple
Birmingham, MI 48009
Kelly McLeod, Store Manager

US World Meds, LLC
118 Hubb Cross Rd.
Bloomfield Hills, MI 48301
Stephanie Belf

Medtronic
2262 Hampton St.
White Lake, MI 48386
Phil Dannewitz

Ascension Health System
Centers of Excellence Marketing
18000 W. Nine Mile Rd., Suite 1220
Southfield, MI 48075-3728
Nadine Cook

Henry Ford Health System
Department of Neurology
6777 W. Maple
West Bloomfield, MI 48322
Cynthia Lang

CAPS Remodeling
826 West 11 Mile Rd.
Madison Heights, MI 48071
Jeff Cates

Question 3 - Additional Information about Michigan Parkinson Foundation:

For the past 37 years, the Michigan Parkinson Foundation has attempted to keep pace with the needs of people with Parkinson's, their families and health professionals. Through a strategic planning process, the following have been developed as guiding principles:

Our Mission:

- To educate and provide support to people with Parkinson's and related disorders, their loved ones and care partners, and the physicians and other allied health professionals who diagnose and treat those affected by the illness.
- To support research into the mechanisms underlying the disease and therapeutic strategies aimed at reducing the burden of illness.
- To engage and enlist the support of institutions and individuals whose activities impact the needs of people with Parkinson's and related disorders.

Our Vision:

MPF will be the premier education and support organization in Michigan for people with PD, their care partners, and the physicians and allied health professionals that diagnose and treat PD patients.

Every person with Parkinson's and related disorders shall receive responsive compassionate quality care and support.

Our Goal:

No person with Parkinson's should be without responsive, quality care and support.

Our Services and Programs:

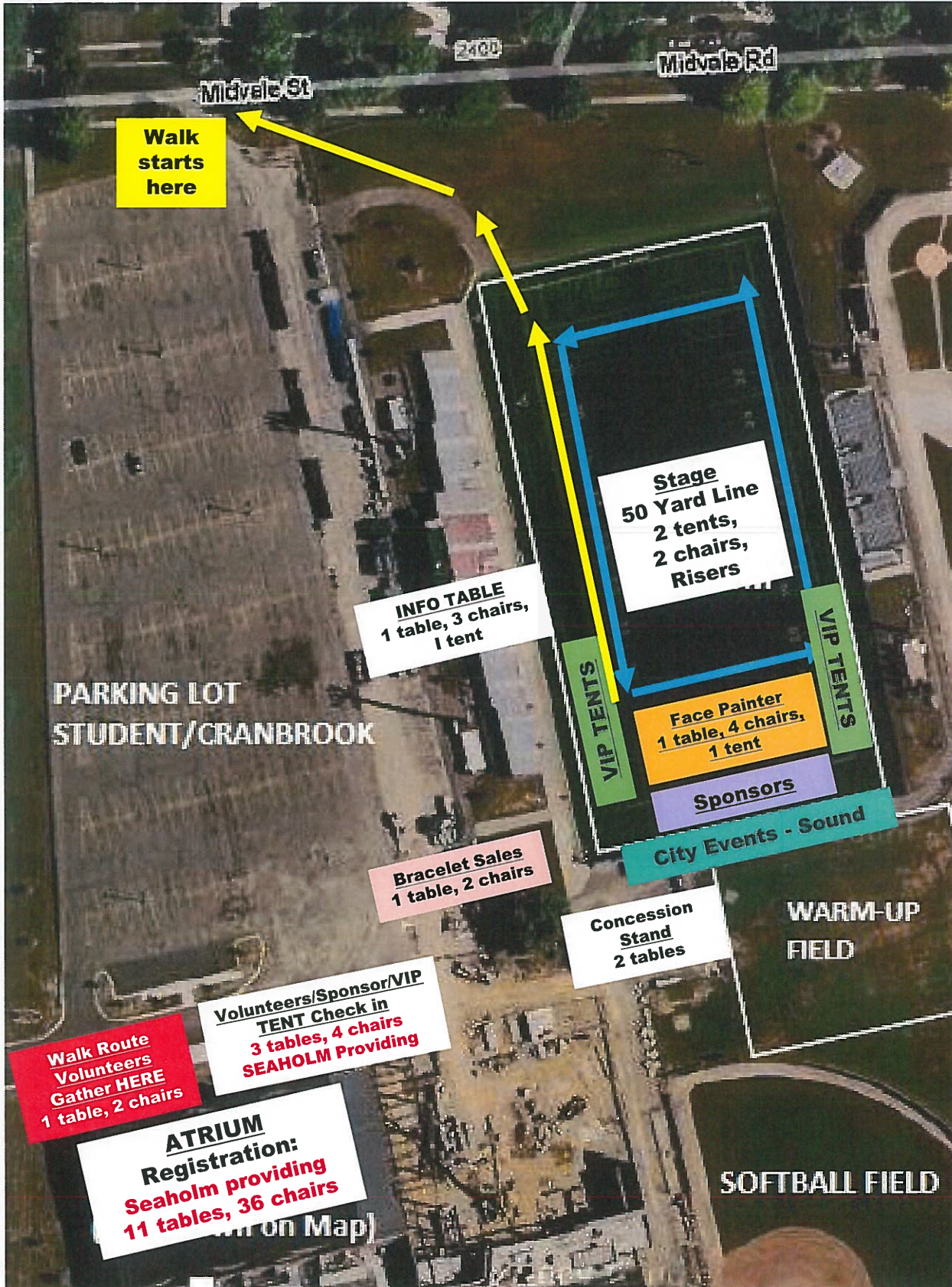
Direct Patient Services

- Information and neurologist referral.
- Financial assistance for Parkinson medications.
- Financial assistance for Respite Care Services, both in-home and at an adult day care facility.
- Legal assistance with obtaining medical disability, estate and trust planning, long term medical guardianship, etc.
- Parkinson Exercise Programs (i.e. Yoga for PD)
- MPF Website
- MPF YouTube Channel which has videos of past educational programs and symposiums.
- Social media presence on Facebook
- Research Grants

Education Programs

- Orientation to Parkinson's: a two-hour program for those newly diagnosed.
- Living with Parkinson's: a five-week workshop address the care, treatment and management of Parkinson's disease. There are (4) workshops planned in 2020 at various locations in Michigan.
- Parkinson Symposiums (Metro Detroit Area and Hancock/Houghton Area in 2020).
- Caregiver Retreat in Metro Detroit Area.
- Support Group Facilitator Training
- Support Groups: Currently, there are 76 Support Groups throughout Michigan.

Event Organizer: Michigan Parkinson Foundation
30400 Telegraph Rd., Suite 150
Bingham Farms, MI 48025
248-433-1011



MPF has 28 tents

Bob B's Party Rental:
30 6' tables
75 chairs

Seaholm (Atrium):
11 6' tables
40 chairs

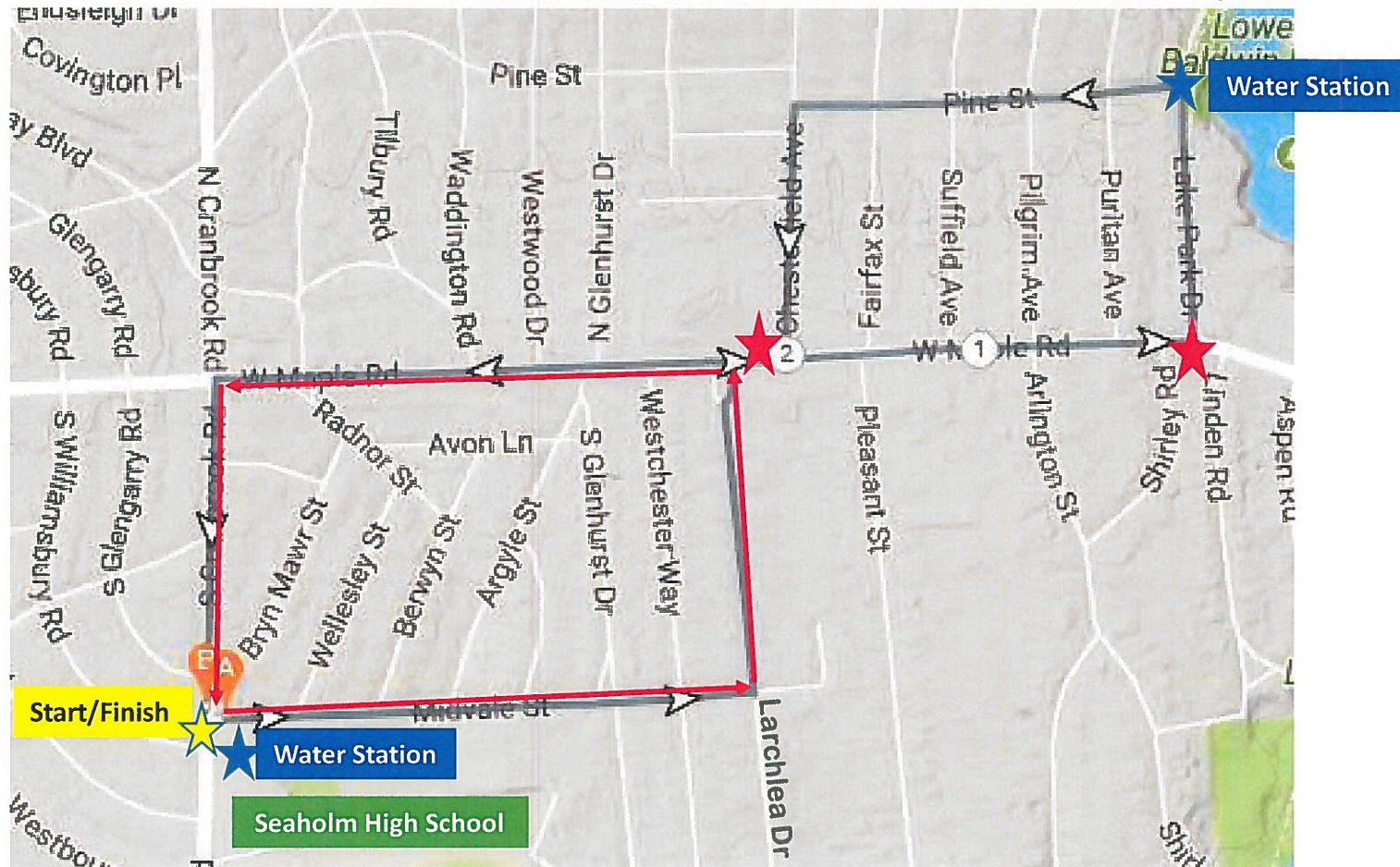
Sponsors
(as of x/xx/xx)
xx Sponsors
xx Tents, Tables

VIP TENTS
(as of x/xx/xx)
xx VIPs, xx Demo
xx Tables, xx Chairs,
xx Tents

Blue arrow → Walk Around Football Field

Yellow arrow → Walk Out of Football Field to Start Line at Cranbrook and Midvale

"I Gave My Sole for Parkinson's" 2020 Metro Detroit Area WALK Routes – Saturday, June 6, 2020



3 Mile Route (blue lines)

Walk begins on corner of Cranbrook & Midvale

- Right (east) on Midvale to Larchlea
 - Left (north) on Larchlea to W. Maple
 - Right (east) on W. Maple to Lake Park
 - Left (north) on Lake Park (at traffic light) to Pine
 - Left (west) on Pine to Chesterfield
 - Left (south) on Chesterfield to W. Maple (cross at traffic light)
 - Right (west) on W. Maple to S. Cranbrook
 - Left (south) on S. Cranbrook to Midvale
- Return to Seaholm High School.

1 Mile Route (red lines)

Walk begins on corner of Cranbrook Rd. & Midvale St.

- Right (east) on Midvale to Larchlea
 - Left (north) on Larchlea to W. Maple
 - Left (west) on W. Maple to Cranbrook
 - Left (south) on S. Cranbrook to Midvale
- Return to Seaholm High School.

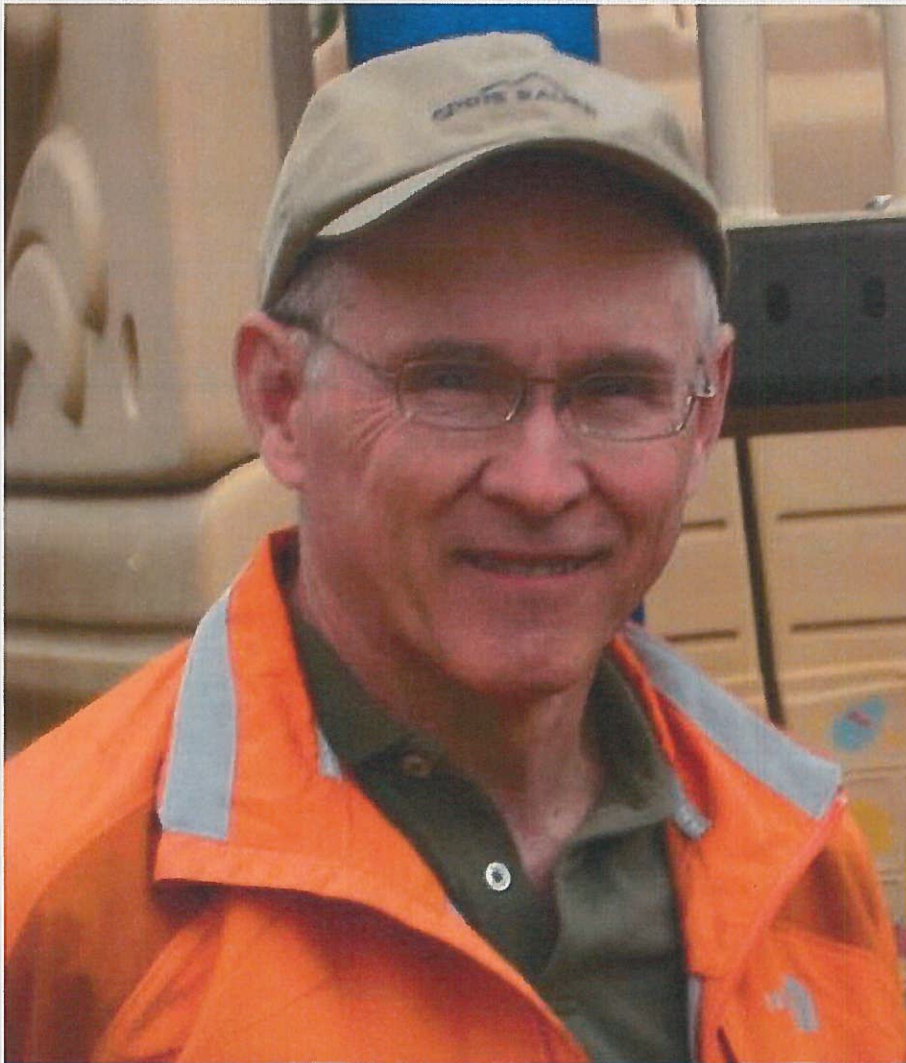


★ Police Officers stationed here during walk.



Hero Sign 18" X 24"

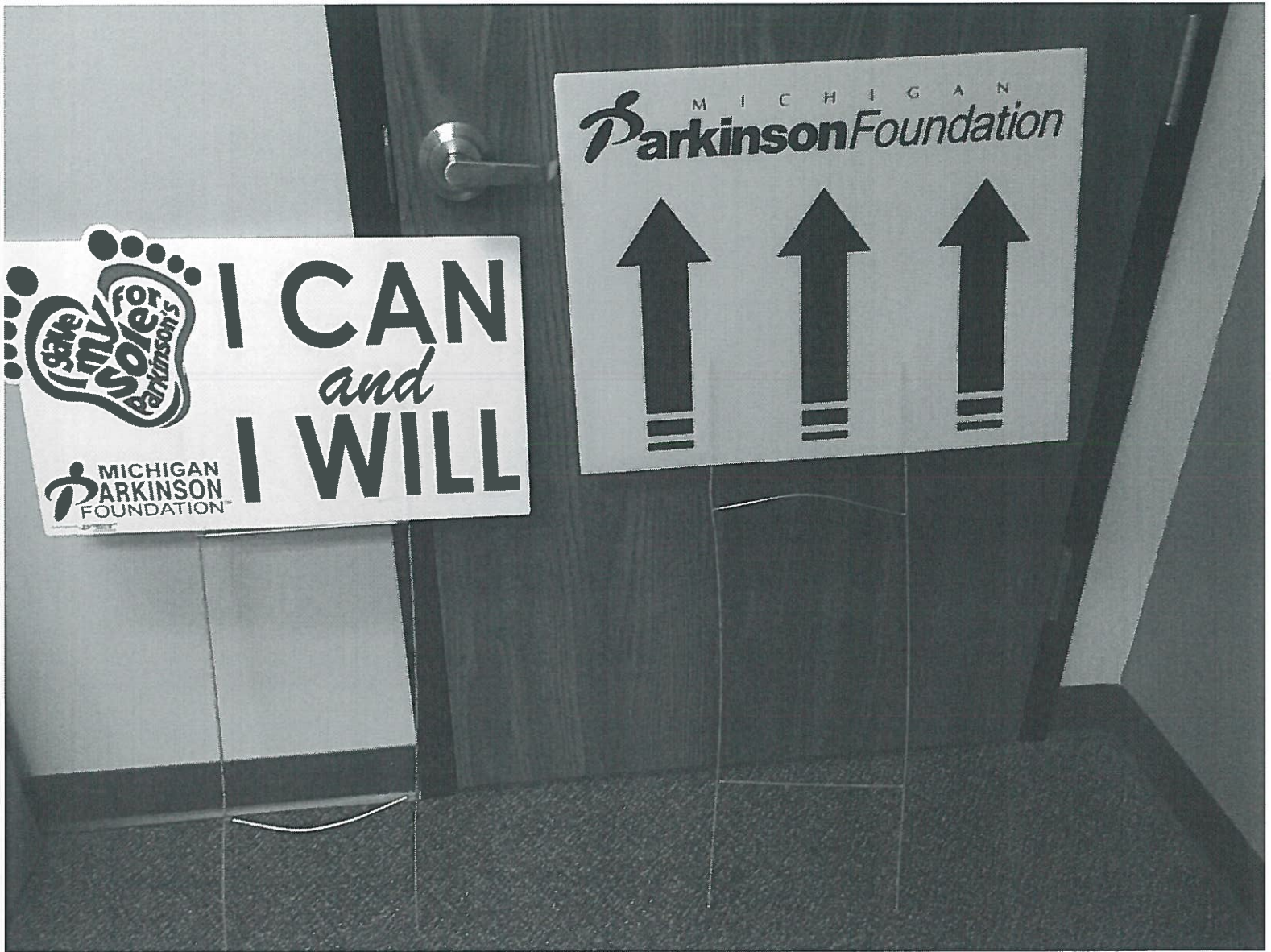
A HERO FOR THE PARKINSON'S COMMUNITY



TOM WRIGHT
LANSING, MICHIGAN
DIAGNOSED WITH PARKINSON'S AT AGE 55

*I did not know how strong I was until I realized
being strong was the only choice I have.*





Signs are 18" x 24" with
Wire Stacks.

In Memoriam

Founding President
Raymond B. Bauer, MD

Board of Directors

Chairman
Jeff Laethem

President
Paul A. Cullis, MD

Vice-Chair
Brian True

Secretary
Richard Merson, PhD, CCC-SLP

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Chief Executive Officer

Mary Sue Lanigan

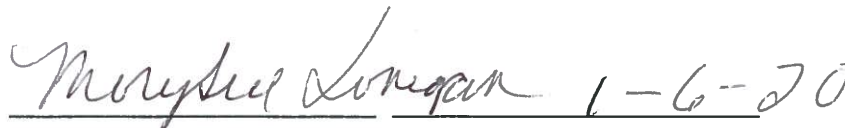
Founding Chairman

Thomas A. Cracchiolo



HOLD-HARMLESS AGREEMENT

"To the fullest extent permitted by law, the Michigan Parkinson Foundation and entity or person for whom the Michigan Parkinson Foundation is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this activity/event. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the City of Birmingham, its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham."

A handwritten signature in black ink, appearing to read "Mary Sue Lanigan", followed by the date "1-6-20".

Mary Sue Lanigan Date
Executive Director
Michigan Parkinson Foundation

Dedicated to People Living with Parkinson's

30400 Telegraph Road • Suite 150 • Bingham Farms, MI 48025
248.433.1011 • Fax: 248.433.1150 • 800.852.9781 • www.parkinsonsmi.org



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/17/2019

2020, copy of certificate will be issued 1/14/2020.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ralph C. Wilson Agency, Inc Box 5069 Southfield MI 48086-5069	CONTACT NAME: Lisa Case PHONE (A/C, No, Ext): (248) 355-1414 FAX (A/C, No): (248) 304-0877 E-MAIL ADDRESS: lisac@rcwa.net																				
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A :</td> <td>Selective Insurance Company of America</td> <td>12572</td> </tr> <tr> <td>INSURER B :</td> <td>Accident Fund Insurance Company of America</td> <td>10166</td> </tr> <tr> <td>INSURER C :</td> <td></td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A :	Selective Insurance Company of America	12572	INSURER B :	Accident Fund Insurance Company of America	10166	INSURER C :			INSURER D :			INSURER E :			INSURER F :	
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INSURER F :																					
INSURED Michigan Parkinson Foundation 30400 Telegraph Road Suite 150 Bingham Farms MI 48025																					


COVERAGES **CERTIFICATE NUMBER:** 19/20 - GL/Auto/WC/Umb **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

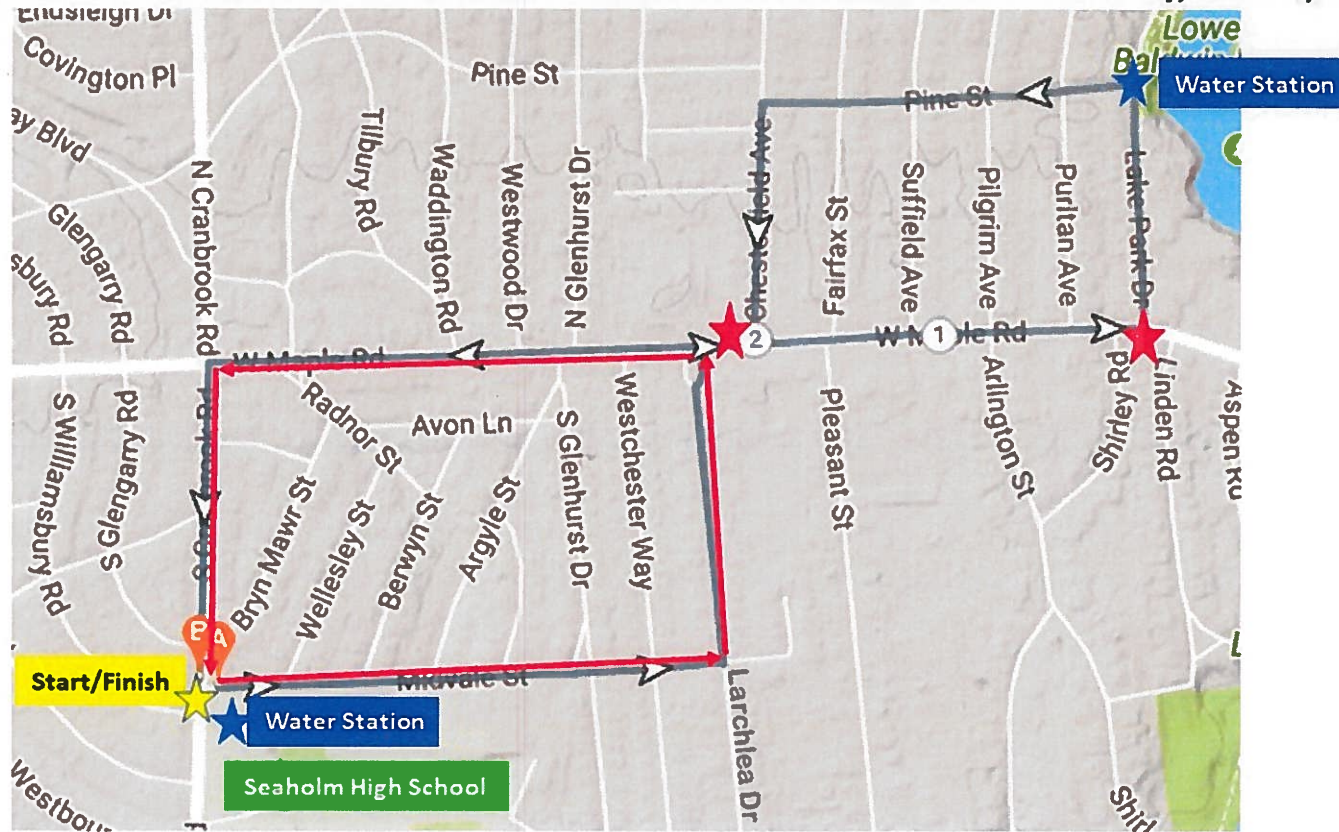
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			S2198583	01/14/2019	01/14/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/>			S2198583	01/14/2019	01/14/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			S2198583	01/14/2019	01/14/2020	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WCV8003224	01/14/2019	01/14/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: I Gave My Sole for Parkinson's Walk-A-Thon & 5K Run - Seaholm High School, Birmingham; June 8, 2019
 Certificate holder is added as Additional Insured (General Liability) with respect as per written contract/agreement.

CERTIFICATE HOLDER City of Birmingham 151 Martin Street Birmingham MI 48012	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
---	---

"I Gave My Sole for Parkinson's" 2020 Metro Detroit Area WALK Routes – Saturday, June 6, 2020



3 Mile Route (blue lines)

Walk begins on corner of Cranbrook & Midvale

- Right (east) on Midvale to Larchlea
 - Left (north) on Larchlea to W. Maple
 - Right (east) on W. Maple to Lake Park
 - Left (north) on Lake Park (at traffic light) to Pine
 - Left (west) on Pine to Chesterfield
 - Left (south) on Chesterfield to W. Maple (cross at traffic light)
 - Right (west) on W. Maple to S. Cranbrook
 - Left (south) on S. Cranbrook to Midvale
- Return to Seaholm High School.

1 Mile Route (red lines)

Walk begins on corner of Cranbrook Rd. & Midvale St.

- Right (east) on Midvale to Larchlea
 - Left (north) on Larchlea to W. Maple
 - Left (west) on W. Maple to Cranbrook
 - Left (south) on S. Cranbrook to Midvale
- Return to Seaholm High School.

★ Police Officers stationed here during walk.





Michigan Parkinson Foundation
30400 Telegraph Road - Suite #150 - Bingham Farms MI 48025
(248) 433-1011 or (800) 852-9781 - Fax: (248) 433-1150 - www.parkinsonsmi.org

Michigan Parkinson Foundation (MPF) is a non-profit 501(c) (3) organization in Michigan whose mission is to educate and provide support to people with Parkinson's and related disorders, their loved ones and care partners, and the physicians and other allied health professionals who diagnose and treat those affected by the illness.

In 2019 our programs and services reached people with Parkinson's in the following ways:

- 25,260 individuals received patient education material through the mail
- 2,200 participated in a MPF Parkinson patient education program
- 1,645 participated in a MPF Parkinson Support Group meeting
- 710 MPF Parkinson support group meetings held in 74 cities
- 156 Parkinson Support Group leaders participated in MPF-funded, two day training program
- 2,583 participated in MPF special events
- 640 hours of paid respite care provided in a pilot program initiated in 2018

PROGRAMS & SERVICES OFFERED BY THE MICHIGAN PARKINSON FOUNDATION

Information and Referral: For patients and families alike, a diagnosis of Parkinson's often results in fear, misinformation and lots of questions. MPF is there with needed help. We provide a toll-free help line (800-852-9781), a website, a newsletter, educational brochures, a library of books and videos, and referrals to neurologists and other community resources.

Website: www.parkinsonsmi.org 104,000 page views in 2019

- Information on the symptoms, diagnosis and treatment of Parkinson's disease (PD)
- Schedule of Parkinson patient education programs throughout the state
- Calendar of events
- PD exercise and dance programs listed by region
- 76 support groups listed by county
- Articles about various aspects of Parkinson's written by experts in Movement Disorders
- List of PD Medications, indications and side effects
- Neurology Referral List
- Electronic version of the Messenger Newsletter

2019 Professional Education: Programs for health care professionals to help improve patient care.

Symposium on Caring for the Parkinson Patient on June 14, 2019 at the Suburban Showcase Diamond Center. CME awarded for physicians and nurses, CEU's awarded to social workers, physical therapists, occupational therapists and speech pathologists. This program is for health care professionals and patient caregivers.

Facilitator Training June 13 and 14, 2019 - MPF holds a two-day training event at which Facilitators (support group leaders) are invited to come together for training and updates on Parkinson's disease. MPF provides training, lodging and meals for up to four representatives from each support group. This program is offered free of charge by invitation only.

2019 Movement Disorders Conference on September 20, 2019 at the Kellogg Center at Michigan State University. This program offers workshops for physicians and patients and their families. *CME credits provided*

Parkinson Symposium in Iron Mountain on September 27, 2019

Medication Assistance: Medications taken by people with Parkinson's cost between \$1,000 and \$20,000 out of pocket each year! For many who cannot afford this expense, it is a choice of food or treatment. In response, MPF helps pay for prescription medications for qualifying individuals with Parkinson's disease. **We provide up to \$600 per year per person.**

PROGRAMS & SERVICES OFFERED BY THE MICHIGAN PARKINSON FOUNDATION (cont)

Subsidized Respite Care Services: Families become round-the-clock caregivers for those with Parkinson's. MPF helps by providing financial assistance for **in home respite care, short term overnight care at a facility or day time Adult Day Care service.**

Education:

Orientation to Parkinson's, a two hour program for the newly diagnosed. This program is delivered by health care professionals throughout the state.

Living with Parkinson's, a series of five workshops addressing the care, treatment and management of Parkinson's disease. Topics include, *An Overview of PD, Medications, Non-Motor Symptoms, the Role of Physical and Occupational Therapy, Mental Health Issues, Captain of Your Own Ship, and Speech & Swallowing Issues.* This program is offered free of charge and is delivered by health care professionals.

Lansing Symposium: Sept. 20, 2019
Alpena, August 8, 9, 2019

Metro Detroit LWP (west side): November 2019
Muskegon Orientation: September 2019

PD Self Efficacy: A program for the newly diagnosed (under three years) that meets once a month for four hours for nine months. The program is taught by an occupational therapist and individual who has lived with PD for eight years. **Starts Wednesday September 18, 2019 and meets the third Wednesday of each month from 11:00 am -3:00pm** at the MPF office building conference room.

Yoga Adapted for Parkinson's every Monday at 11:00 am starting on September 9 through December 18

Subsidized Exercise Stipends funded by LucasStrong: For people with Parkinson's who live in Northern Oakland and Genesee counties.

Mobility Equipment Lending Program: The MPF receives donations of wheelchairs, electric wheelchairs, electric scooters, U-Step Walkers. We then loan the equipment to those in need.

MPF YouTube Channel: Educational programs, symposiums and forums on Parkinson's are videotaped and posted to our own YouTube channel. Visit www.parkinsonsmi.org.

Legal Assistance: Attorneys on our volunteer board provide assistance and direction on various legal issues that people with Parkinson's encounter such as remaining in the work force, obtaining medical disability, estate and trust planning, long term medical guardianship, and power of attorney.

Research Grants: MPF awards an annual grant to a scientist in Michigan.

Support Groups: MPF sponsors 76 Parkinson's support groups throughout Michigan. These groups provide individuals with Parkinson's disease, their families and friends, a network of information, fellowship and understanding. The MPF provides financial assistance for each group, advertises the group's meetings and maintains an updated list of current support group calendar of events on the website. A hard copy list of all support groups is included in each patient information packet.

Virtual Support Group offered via telephone conference call. The group meets every other Tuesday evening at 7:00 pm from September through June. This group is for those who are not able to attend a support group in person but want to connect with others who are dealing with the challenges of living with PD.

Social Media Presence: MPF Facebook Page had 3070 active followers at the time of printing.

2019 Fundraising Events:

- **Metro Detroit** Parkinson Walk - Saturday, June 8, 2019 at Seaholm High School in Birmingham
- **Southwest Michigan Parkinson Walk** - Saturday, September 28, 2019 at Binder Park Zoo in Battle Creek
- **Lansing Parkinson Walk** on Saturday, October 5, 2019 at Michigan State University Campus
- **Everybody Vs. Parkinson's Gala** on Saturday, October 19, 2019 at the Motor City Casino Soundboard presented in conjunction with the Kirk Gibson Foundation for Parkinson's.

DEPARTMENT APPROVALS

EVENT NAME: Parkinson's Foundation's "I Gave My Sole for Parkinson's" Walk

LICENSE NUMBER #20-00011723

COMMISSION HEARING DATE: FEB. 10, 2020

NOTE TO STAFF: Please submit approval by JANUARY 17, 2020

DATE OF EVENT: JUNE 6, 2020

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	TBC	No Cost No Comment			
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	PD	Personnel to assist at crossing locations.		\$322	
PUBLIC SERVICES 101-000.000-634.0002 248.530.1642	Carrie Laird	No DPS Department Involvement		\$0	
ENGINEERING 101-000.000.634.0002 248.530.1839	A.F.	Approved	None	\$0	
SP+ PARKING					

INSURANCE 248.530.1807	CA	Hold Harmless in file; COI must be updated to include event date	None	\$0	\$0
CLERK 101-000.000-614.0000 248.530.1803		Notification letters mailed by applicant on 1/3/2020. 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 5/22/2020.	Applications for vendors license must be submitted no later than 5/22/2020.	\$165 pd	
				TOTAL DEPOSIT REQUIRED \$322.00	ACTUAL COST

FOR CLERK'S OFFICE USE

Deposit paid _____

Actual Cost _____

Due/Refund _____



MEMORANDUM

City Clerk's Office

DATE: February 5, 2020
TO: Joseph A. Valentine, City Manager
FROM: Cheryl Arft, Acting City Clerk
SUBJECT: Appointment of Election Inspectors for March 10, 2020
Presidential Primary Election

As the official Election Commission for the City of Birmingham, election law requires the City Commission to appoint at least three election inspectors, to include at least one election inspector from each major political party, for each precinct. Under MCL 168.16 only the Republican and Democratic parties qualify as a "major party".

The deadline to appoint election inspectors for the March 10, 2020 Presidential Primary Election is February 18, 2020. Attached is a list of inspectors that have been assigned to serve for the March 10, 2020 Election.

SUGGESTED RESOLUTION:

Resolution approving the appointment of election inspectors, absent voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the March 10, 2020 Presidential Primary Election pursuant to MCL 168.674(1), setting 10:00 a.m. as the start time for the Absent Voter Counting Board, and granting the City Clerk authority to make emergency appointments of qualified candidates should circumstances warrant to maintain adequate staffing in the various precincts, counting boards and receiving boards.

LAST NAME	FIRST NAME	PARTY
Barnes	Jean	Republican
Barnes	Webb	Republican
Bernhardt	Doreen	Republican
Brown	Ginger	Democrat
Brunhofer	Margaret	Democrat
Chandler	Alicia	Democrat
Cin	Pamela	Republican
Connery	Thomas	Republican
CONYERS	STEVEN	DEMOCRAT
Cook	Helen	Republican
Corcoran	Gail	REPUBLICAN
Cwikiel-Glavin	Annie	Democrat
DARMODY	SUANN	DEMOCRAT
Davison	Mark A.	Republican
Davison	Mary Ann	Republican
DEGRAFF	DRIEKA	DEMOCRAT
Dreer	Gerald	Republican
Duff	Denise	Republican

Ecker	Charles	Democrat
FISHER	PATRICIA	DEMOCRAT
Fisher	Jack	
Flores-Velasio	Andrea	Democrat
FLYNN	CAMERON	DEMOCRAT
Foerster	Valerie	Republican
Folin	Robert	Republican
Folin	Carolyn	Republican
Friedman	Allison (Jane)	Democrat
George	Kristin	REPUBLICAN
GONZALEZ	MARIA A.	DEMOCRAT
Goodwin	Allison	Democrat
Guilmet	Chester	Democrat
Hansen	Kristi	Democrat
Haugen	Daniel	Republican
Hodge	Martha	D
Hoff	Lindsey J.	Democrat
Hoff	Rackeline	Democrat
Hueni	Jennifer P.	Democrat
Johnson	William	Republican

Keefers	Judith	Democrat
KHOURY	PRISCILLA	Democrat
Killiany	Andrew	Republican
Larson	Ann	Republican
Linnell	Karen	Democrat
LUCIK	SHARON	DEMOCRAT
LUNDAL	SUSAN J.	DEMOCRATIC
Mansour-Winn	Intessar	Republican
Martin	Taneka M.	Democrat
Martis	Pamela	Republican
MCELROY	DEBRA	REPUBLICAN
McGillivray	Michael J.	Green
Meredith	Marie	Republican
Millman	Jodi	Republican
Mio	Leslie	DEMOCRAT
Otis	Charles F.	Democrat
Partyka	Janet	US Taxpayers
PICEU	JACQUELINE	REPUBLICAN
Pieprzyk	Stanley J..	Republican

PIFER	KAREN	REPUBLICAN
Pinson	Janice	Republican
Popyk	Barbara	Republican
Reese	Oberia	Democrat
Richey	Lester	Republican
Roberts	Mary	Democrat
Rogers	Curtis	Student Inspector
ROGOWSKI	ANTHONY J.	REPUBLICAN
Romanelli	Constance	Democrat
Rose	Cynthia	Democrat
Rosenberg	Harvey	Republican
ROUSH	JENNIFER	REPUBLICAN
Roush-Logue	Martha	Republican
Sanders	Greta	Democrat
Sayed	Hadin	Student Inspector
Schlesinger	Francine	Democrat
Schreiner	Laura	Republican
Shapiro	Shira	Democrat
Shaw	Cynthia	Democrat
Silverman	Geoffrey L.	Democrat
SIMON	SHELDON S.	DEMOCRAT

SIMON	SUZANNE C.	DEMOCRAT
Simons	Hugo	Democrat
Stoessel	Robert	Republican
Stoessel	Mary Lee	Republican
Swain	Marcia	Republican
Tate	Taneka	Democrat
Tellier	Anneke	Republican
Torner	Maryanne	Republican
Trimble	Sofia	Democrat
TURNEY	SHEILA	DEMOCRAT
Von Storch	Gisela	Republican
WANDY EZ	PHILLIP WEST	DEMOCRAT
Warner	Betty	Democrat
WHITE	HEIDI	DEMOCRAT
Wilson	Scott	Republican
Wu Wilson	Shirley	UST
Zane	Heather	Democrat



MEMORANDUM

Department of Public Services

DATE: January 31, 2020
TO: Joseph A. Valentine, City Manager
FROM: Lauren A. Wood, Director of Public Services
SUBJECT: Birmingham Ice Sports Arena LED Lights Replacement

INTRODUCTION:

The City of Birmingham received sealed bids that were opened on Tuesday, December 17, 2019 for professional firms to perform installation of LED light fixtures at the Birmingham Ice Sports Arena. The request for proposal (RFP) was entered into the Michigan Inter-Governmental Trade Network (MITN) purchasing system.

BACKGROUND:

The Birmingham Ice Sports Arena was built in 1973 and the lighting system at the time consisted of sixty-four aluminum domes each with a 1,000-watt mercury vapor bulb, which are not energy efficient. Upon completion of an energy review with DTE in 2008, the fixtures were replaced with T-8 six lamps and fixtures that provided an improved quality of light for the main and studio arenas. Since the T-8 replacement project, LED's have become the industry standard as LED fixtures have risen to the top because of their brightness and efficiency. In 2013, the Ice Arena lobby, concession stand, offices, restrooms and locker room lights were replaced as part of a larger LED replacement grant project that also included the Department of Public Services facility.

This purchase will include providing and the installation of LED light fixtures and bulbs that will replace the T-8 six lamps and fixtures that were installed in 2008 in the main and studio ice arena. The City will replace the existing fluorescent lights in the arena with LEDs that require less maintenance, use less energy, and put out better light. The upgrade will make lighting at the rink more consistent. As part of the recent facility assessment performed by Plante Moran Cresa, lighting needs were taken into consideration and a recommendation was made to go to LED lights, which will not be impacted by any future improvements to the ice arena facility.

Four (4) bidders responded to the request for proposal. The result of the sealed bids follows in the table below.

Bidder	Base Bid	Deviations?
Smart Lighting, LLC	\$17,850	No
Allied Building Service Company of Detroit, Inc.	\$19,900	No
Amcomm Telecommunication Inc.	\$25,000	No
Energyware	\$46,240	No

Smart Lighting, LLC is able to supply and install the LED lights at the Birmingham Ice Sports Arena and perform all work as requested. Smart Lighting, LLC estimates cost savings of \$4,575.45 per year or a 3.9-year return on investment (ROI). In addition, an estimated \$1,400 rebate will be given to the City of Birmingham through DTE.

LEGAL REVIEW:

The City Attorney has completed a review of this contract agreement and approved with signature.

FISCAL IMPACT:

This project is included in the 2019-2020 approved Budget. This project will be under budget by \$14,000. Funds are available from the Capital Projects Fund-Ice Arena Restoration account #401-901.001-977.0000.

PUBLIC COMMUNICATIONS:

This does not apply for this project.

SUMMARY:

The Department of Public Services recommends awarding the LED lights replacement for the Birmingham Ice Sports arena to Smart Lighting, LLC; they are the lowest responsible and responsive bidder for the Birmingham Ice Sports Arena LED lights replacement project. The Parks and Recreation Board is aware of this upcoming project to be initiated once the season is over at the ice arena facility.

ATTACHMENTS:

The Agreement including the required Insurance Certificate, Bidder's Agreement, Cost Proposal, Site Visit and Iran Sanctions Act Vendor Certification Form are attached for your review.

SUGGESTED RESOLUTION:

To approve the purchase and installation of LED lights from Smart Lighting, LLC for the lighting project at the Birmingham Ice Sports Arena at a total project cost not to exceed \$17,850. Funds are available from the Capital Projects Fund-Ice Arena Restoration account #401-901.001-977.0000. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City, contingent upon all required insurances.

ATTACHMENT A - AGREEMENT

Birmingham Ice Sports Arena LED Lights Replacement

This AGREEMENT, made this _____ day of _____, 2020, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and Smart Lighting, LLC, having its principal office at 1061 John R Road, Rochester Hills, MI 48307 (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, through its Department of Public Services, is desirous perform installation of replacement LED light fixtures at the Birmingham Ice Sports Arena

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to perform installation of replacement LED light fixtures at the Birmingham Ice Sports Arena, herein described in the specifications. and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to perform installation of LED light fixtures at the Birmingham Ice Sports Arena.

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform installation of LED light fixtures at the Birmingham Ice Sports Arena and the Contractor's cost proposal dated Tuesday, December 17, 2019 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.
2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed \$17,850.00, as set forth in the Contractor's Tuesday, December 17, 2019 cost proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.
4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status.

The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement.

The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.
- E. Professional Liability: Professional liability insurance with limits of not less than \$1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.

- F. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than \$1,000,000, per occurrence preferred, but claims made accepted.
- G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than \$3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be "Name Insured" on said coverage. Thirty (30) days Notice of Cancellation shall apply to this policy.
- H. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.
- I. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.
- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
 - 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
 - 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
 - 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
 - 5) If so requested, Certified Copies of all policies mentioned above will be furnished.
- J. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.
- K. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.
13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on

behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

15. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham
Attn: Carrie A. Laird
851 South Eton, Birmingham, MI 48009
248-530-1714
claird@bhamgov.org

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute

between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESSES:

CONTRACTOR

By: _____

Its: LLC MEMBER

CITY OF BIRMINGHAM

By: _____

Pierre Boutros
Its: Mayor

By: _____

Cheryl Arft
Its: Acting City Clerk

Approved:



Lauren A. Wood
(Approved as to substance)



Mark Gerber, Director of Finance
(Approved as to financial obligation)



Timothy J. Currier, City Attorney
(Approved as to form)



Joseph A. Valentine, City Manager
(Approved as to substance)

ATTACHMENT B - BIDDER'S AGREEMENT
Birmingham Ice Sports Arena LED Lights Replacement

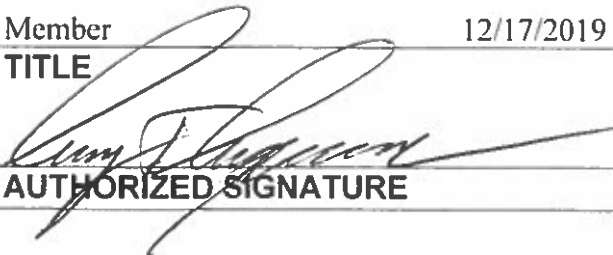
In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

Greg Thompson	12/17/2019
BID PREPARED BY (Print Name)	DATE

Member	12/17/2019
TITLE	DATE

	savemoney@smartlightingllc.net
AUTHORIZED SIGNATURE	E-MAIL ADDRESS

Smart Lighting, LLC
COMPANY

1061 John R Road Rochester Hills, MI 48307	248-805-1877
ADDRESS	PHONE

NAME OF PARENT COMPANY	PHONE
-------------------------------	--------------

ADDRESS

ATTACHMENT C - COST PROPOSAL
Birmingham Ice Sports Arena LED Lights Replacement

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

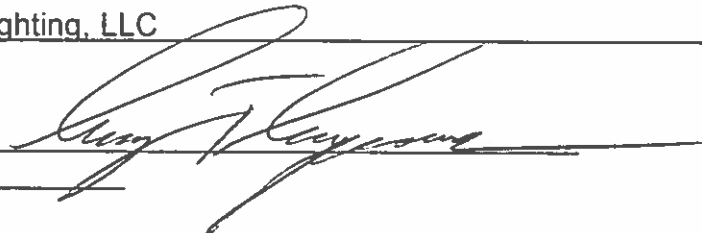
	Completion Date	Service Cost	Cost Savings
Inventory & Assessment of Existing Interior Lighting	December 6, 2019	\$0	\$0
Selection of LED Replacement Fixtures and Controls, Replacement Schedule and ROI Analysis	June 26, 2020		Estimate 16H/365 Days \$4,575.45 /Yr ROI 3.9 Yr
Installation of New Replacement LED Lighting	June 26, 2020	\$17,850.	

The project timeline must occur Monday, May 18, 2020 – June 26, 2020.

Firm Name Smart Lighting, LLC

Authorized signature _____

Date 12/17/19



ATTACHMENT D – SITE VISIT
Birmingham Ice Sports Arena LED Lights Replacement

In order to the bid to be considered valid, a site visit to Birmingham Ice Sports Arena must be completed by the contractor.

Contact Connie J. Folk @ 248-530-1642, Monday – Friday, 8am -5pm to set-up an appointment.

SITE VISIT

Our company visited the job site on December 6, 2019

Our company did not visit the job site

Reason: _____

ATTACHMENT E - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM
Birmingham Ice Sports Arena LED Lights Replacement

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

Greg Thompson	12/17/19
PREPARED BY (Print Name)	DATE
Member	12/17/19
TITLE	DATE
	savemoney@smartlightingllc.net
AUTHORIZED SIGNATURE	E-MAIL ADDRESS
Smart Lighting, LLC	
COMPANY 1061 John R Road Rochester Hills, MI 48307	248-805-1877
ADDRESS	PHONE
NAME OF PARENT COMPANY	PHONE
ADDRESS 47-2864066	
TAXPAYER I.D.#	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER BRIAN LANE AGENCY/FARM BUREAU INSURANCE 21250 HALL ROAD SUITE 100 CLINTON TWP., MI 48038		CONTACT NAME: BRIAN LANE	
		PHONE (A/C, No, Ext): 586-412-8700	FAX (A/C, No): 586-412-2267
		E-MAIL ADDRESS: blane@fbinsmi.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: FARM BUREAU	NAIC #
INSURED SMART LIGHTING, LLC 1061 JOHN R RD ROCHESTER HILLS, MI 48307		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR VWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X		S-2991799	04/27/2019	04/27/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPI/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY			BAP-3189826	03/15/2019	03/15/2020	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ 1,000,000 BODILY INJURY (Per accident) \$ 1,000,000 PROPERTY DAMAGE (Per accident) \$ 1,000,000 \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N Y	WCC-3221906	04/27/2019	04/27/2020	PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members including employees and volunteers thereof are included as additional insureds under the commercial general liability portion of the excess liability policy and automobile liability policy for services performed by Smart Lighting, Inc. as their interest may appear if required by written contract a with the named insured subject to the terms and conditions of the policies. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage be primary, contributing or excess. A 30 day notice of cancellation will be given.

CERTIFICATE HOLDER CITY OF BIRMINGHAM ATTN: CITY FINANCE DIRECTOR ATTN: CITY FINANCE DIRECTOR PO BOX 3001 BIRMINGHAM, MI 48012	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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MEMORANDUM

Department of Public Services

DATE: January 30, 2020
TO: Joseph A. Valentine, City Manager
FROM: Lauren A. Wood, Director of Public Services
SUBJECT: Emergency Repair – Sweeper Vehicle #211

INTRODUCTION:

City vehicle #211 is a 2013 Elgin Whirlwind Vacuum Street Sweeper, recently came in running poorly and the check engine light was on. It would not restart and had a code for excessive water in fuel. The water/fuel separator was full of water. The secondary fuel filter was full of debris and cloudy fuel. After replacing both filters, the engine still would not start. We had it towed to Cummins Bridgeway of Mount Clemens where they diagnosed rust particles in the fuel rails and reported the entire fuel system needs replacement. They are concerned if a tiny bit of debris gets into a fuel injector, that injector could stick open, flood the cylinder with fuel, and cause permanent engine damage. With the engine not running at this time, there is no way to determine what if any damage has occurred. On January 13, 2020, the Department of Public Services (DPS) requested emergency authorization to proceed with the repairs for this critical piece of equipment.

BACKGROUND:

A Street Sweeper is special duty equipment as part of our fleet and needs to be replaced every 8-10 years. This critical piece of equipment is used by DPS 6-7 days per week to maintain the cleanliness of our City streets. It has both a front motor and rear motor. It is one of two sweepers the City of Birmingham has in its fleet to perform regular cleaning of residential and downtown streets. This vehicle has been repaired accordingly and is back in service.

In 2013, the cost for this new piece of equipment was \$260,335.00. The repair cost is \$14,031.33, which will be charged to the Auto Equipment Fund account #641-441.006-933.0200.

LEGAL REVIEW:

No legal review is required for this item.

FISCAL IMPACT:

Cummins Bridgeway Sales and Service, the sole-source service provider, estimated the repairs to be \$14,545.23, but it came in under at \$14,031.33. Funds are available in the Auto Equipment Fund account #641-441.006-933.0200.

PUBLIC COMMUNICATIONS:

This does not apply for this purchase.

SUMMARY:

The Department of Public Services requests City Commission confirmation of the City Manager's authorization to proceed with emergency repairs related to vehicle #211.

ATTACHMENTS:

There are no attachments for this item.

SUGGESTED RESOLUTION:

To confirm the City Manager's authorization for the emergency expenditure related to the repair of vehicle #211 by Cummins Bridgeway for \$14,031.33 to be charged to the Auto Equipment account #641-441.006-933.0200, pursuant to Sec. 2-286 of the City Code.



MEMORANDUM

Department of Public Services

DATE: January 31, 2020
TO: Joseph A. Valentine, City Manager
FROM: Lauren A. Wood, Director of Public Services
SUBJECT: Emergency Repair – Repairs to Garage Hoists

INTRODUCTION:

An annual inspection is performed on the four garage hoists. A sole source vendor performs the repairs to the hoists, on an as needed basis. Two hoists are in need of repair. The operation of the hoists are critical to fleet maintenance for all City vehicles. The estimate from Allied Incorporated for the work is for \$10,258.66.

The Department of Public Services (DPS) requested emergency authorization to proceed with the repairs for this critical piece of equipment.

BACKGROUND:

The mechanics garage located at the DPS has four vehicle hoists. All hoists are regulated by the State of Michigan to have annual inspections. During the past inspection, two hoists were found to need repair. Since these are vital to garage operations, an emergency purchase was requested to proceed with the work. The repair cost is \$10,258.66 to be charged to the Auto Equipment Fund account # 641-441.006-933.0200.

LEGAL REVIEW:

No legal review is required for this item.

FISCAL IMPACT:

Allied Incorporated, the sole-source service provider, estimates the repairs will be \$10,258.66. Funds are available in the Auto Equipment Fund account #641-441.006-933.0200.

PUBLIC COMMUNICATIONS:

This does not apply for this purchase.

SUMMARY:

The Department of Public Services requests City Commission confirmation of the City Manager's authorization to proceed with emergency repairs for hoists #2 and #3. Funds are available for this purchase

ATTACHMENTS:

There is no attachment for this item.

SUGGESTED RESOLUTION:

To confirm the City Manager's authorization for the emergency expenditure related to the repair of two garage hoists by Allied Incorporated for \$10,258.66 from the Auto Equipment Fund account #641-441.006-933.0200, pursuant to Sec. 2-286 of the City Code.



MEMORANDUM

Department of Public Services

DATE: January 31, 2020
TO: Joseph A. Valentine, City Manager
FROM: Lauren A. Wood, Director of Public Services
SUBJECT: 2020 Annual Flower Purchase

INTRODUCTION:

The Department of Public Services (DPS) designs flower beds, orders material to grow the plugs and seeds in the greenhouse before delivery of the flowers for planting by DPS staff on public property throughout the City of Birmingham. The annual flower bid quantity remains constant, but this year additional flowers are included for the enhanced areas of Woodward Avenue, between Brown and Oakland.

BACKGROUND:

The request for proposal (RFP) for this purchase was entered into the Michigan Inter-Governmental Trade Network (MITN) purchasing system. Sealed bids were opened on Tuesday, January 28, 2020 for the purchase of annual flowers for the spring planting. One bid was submitted for this project. The result of the sealed bid is below:

Bidder	Complete Bid	Deviations Exceptions	Total
Croswell Greenhouse Inc.	Yes	No	\$20,589.55

After reviewing the submitted bid, Croswell Greenhouse Inc. was complete, offering substitutions for impatiens with similar growth habit. They are the only bidder this time. Other vendors bidding on this in the past, could not always provide us with the flower types requested in the bid specifications. Other past bidders submitted bids with deviations and exceptions to the requested plant materials.

This material is grown specially for us by the nursery we select. We are not ordering just run of the mill material, as it is customized specifically for our needs. The City of Birmingham requests a variety of unique flowers and not every grower is able to meet our material requirements.

We have purchased annual flowers from Croswell Greenhouse over the past six years and are very pleased with the material. The cost for the 2019 flower program was \$17,812.85. This purchase does not include the hanging flower baskets around downtown, which is provided by the Birmingham Shopping District. Croswell Greenhouse is the same supplier that provides our hanging baskets in the downtown.

The cost for the 2018 flower program was \$20,053.85 and had two bidders, the cost for the 2017 flower program was \$17,150 with one bidder and the 2016 flower program cost \$15,860 with two bidders. Because of the specialty nature of this bid, traditionally we do not get many bidders. Our landscape team with the Department of Public Services is comfortable with this pricing.

LEGAL REVIEW:

There has been no legal review for this annual purchase over the years.

FISCAL IMPACT:

We have funds budgeted for this purchase in the General Fund – Property Maintenance – Operating Supplies account #101-441.003-729.0000.

PUBLIC COMMUNICATIONS:

This does not apply for this purchase.

SUMMARY:

The Department of Public Services recommends the purchase of the 2020 annual flowers from Croswell Greenhouse at a total cost not to exceed \$20,589.55. Money is budgeted for this purchase in General Fund – Property Maintenance – Operating Supplies account #101-441.003-729.0000.

ATTACHMENTS:

Attached is the Bidder's Agreement, Cost Proposal and Iran Sanctions Act Vendor Certification Form.

SUGGESTED RESOLUTION:

To approve the 2020 annual flower purchase from Croswell Greenhouse Inc. in the amount not to exceed \$20,589.55. Funds are available from the General Fund – Property Maintenance – Operating Supplies account #101-441.003-729.0000.



MEMORANDUM

Finance Department

DATE: January 13, 2020

TO: Joseph A. Valentine, City Manager

FROM: Mark Gerber, Director of Finance/Treasurer
Kathryn Burrick, Senior Accountant

SUBJECT: PY 2019 Community Development Block Grant (CDBG)
Public Services Contract

INTRODUCTION:

The City has been notified by Oakland County that funding from the federal government for the program year 2019 Community Development Block Grant (CDBG) has been secured and the City may start spending these funds. The City contracts with an outside agency to administer the public services portion of the grant. The public services contract must be approved by the City and submitted to Oakland County in order for those funds to be spent.

BACKGROUND:

The City Commission approved the program year 2019 CDBG grant application on December 3, 2018 which provided estimated funding for yard services and senior outreach services in the amount of \$6,786.30 and \$3,300, respectively. At the City Commission meeting on November 25, 2019, the City Commission approved the Subrecipient Agreement which included an increase in funding for Yard Services of \$540.70 to \$7,327 and Senior Services of \$200 to \$3,500 based on finalized funding amounts. On December 10, 2019, the City received notification from Oakland County that the City could start expending these funds.

In order to spend the funding for yard services and senior outreach services, the City needs to contract with an outside agency to provide these services to its residents. On June 9, 2019, a request for proposal (RFP) for yard services and senior outreach services was advertised in the Observer & Eccentric Newspaper and sent to three potential agencies using a Public Service Directory provided by Oakland County.

On Friday, July 12, 2019, sealed bid proposals entitled, "CDBG Bid Proposal" were opened and read. The City received one bid as follows:

Bid Results:

Agency	Bid
NEXT	\$7,300 Yard Services, \$3,300 Senior Services Total bid: \$10,600
Oakland Livingston Human Services Agency (OLHSA)	No bid was received
Community Services of Oakland (CSO)	No bid was received

The bid was evaluated on a point rating system as required by Oakland County’s procurement guidelines. This system allows the decision to be based on the best service provider not solely based on the lowest price. The criteria and points rating system was established before the RFP was issued and all potential bidders were informed of this process.

In evaluating the bid, NEXT received an average point score of 100 based on NEXT’s past experience with the City, availability of qualified personnel, capability, and familiarity with the CDBG program. Currently, NEXT is administering the City’s 2018-2019 CDBG Yard Service and Senior Outreach Service programs.

LEGAL REVIEW:

The attached contract between NEXT and the City is based on a template provided by Oakland County CDBG requirements and was reviewed by the City’s attorney. There are no legal issues pertaining to this contract.

FISCAL IMPACT:

The 2019-2020 budget was amended at the City Commission meeting on November 25, 2019, to include the extra funding for yard services. No other amendments are necessary at this time.

SUMMARY:

It is recommended that the Public Services Contract be awarded to NEXT for the 2019-2020 Program Year with an ending contract date of December 31, 2020 which is the maximum 1.5 year contract date allowable by Oakland County. This will allow NEXT until December 31, 2020 to expend their grant balance.

ATTACHMENTS:

- 1) Oakland County Letter to Spend
- 2) NEXT/City Public Services Contract

SUGGESTED RESOLUTION:

To award the 2019-2020 Public Services contract totaling \$10,827.00 for Yard Services and Senior Outreach Services to NEXT under the Community Development Block Grant Program; and further, to authorize the Mayor to sign the contract on behalf of the City.



COMMUNITY &
HOME IMPROVEMENT

OAKLAND COUNTY EXECUTIVE DAVID COULTER

Karry L. Rieth, Manager
(248) 858-0493

December 10, 2019

Dear Community Development Block Grant (CDBG) Administrator:

The Community & Home Improvement Division is pleased to inform you that you may now obligate and expend program year (PY) 2019 Community Development Block Grant (CDBG) funds.

The attached materials including this letter, Subrecipient Agreement, Funding Approval/Agreement, Project Summary and Area Wide Benefit Map should be maintained in your PY 2019 application file to document the official release of funds.

The enclosed Subrecipient Agreement is required under federal regulation and specifies your record keeping, auditing, monitoring, property disposition, environmental and other responsibilities under the Oakland County CDBG program. The Subrecipient Agreement is in effect until all PY 2019 funds are expended and record keeping, record retention and audit responsibilities are satisfied as specified. Please file your signed copy of the Subrecipient Agreement with your PY 2019 application.

Please review the PY 2019 Project Summary carefully. It is the official description of your community's approved 2019 CDBG activities and takes precedence over the PY 2019 CDBG application submitted to this office in the fall of 2018.

All CDBG funds must be expended in compliance with applicable federal, state and county laws and regulations, and with any restrictions listed on the project summary. The following comments and/or instructions constitute part of your project summary:

- No projects funded in whole or in part by CDBG funds may take place within wetlands areas unless an eight-step* environmental review process is followed to determine that no practicable alternative to the project exists and all necessary state permits have been obtained.
- No categorically excluded or environmentally assessed project (coded 2 or 3 respectively on the project summary) funded in whole or in part by CDBG funds, may take place within a 100 or 500-year floodplain as identified by the Federal Emergency Management Agency (FEMA) unless an eight-step* process is followed to determine that no practicable alternative to the project exists.

* Eight-step environmental reviews must be approved by Cherri Janeczek, Environmental Officer, at time of application.

As part of the County's environmental review record procedures, various local, state and federal agencies received a copy of the 2019 CDBG application for review. If an agency commented on activities their remarks are also enclosed as attachments. These comments constitute part of your PY 2019 Project Summary.

If you have questions regarding the enclosed information, please contact Carla Spradlin, Grant Compliance and Program Coordinator, at (248) 858-5312. We look forward to working with you during this new program year.

Sincerely,

Karry L. Rieth
Manager

**COMMUNITY DEVELOPMENT BLOCK GRANT
PUBLIC SERVICE CONTRACT
PY 2019**

CITY OF BIRMINGHAM

Municipality

NEXT

Service Agency

Effective Date: **July 1, 2019** Ending Date: **December 31, 2020**

This contract shall be effective for 1.5 years from the beginning effective date or when funding has been expended, whichever comes first. Contracts should not exceed 1.5 years in duration.

CONTRACT FUNDING SOURCES:

CDBG Program Year: 2019-2020 **Account Name:** Yard Services, Senior Services

Total CDBG Dollar Amount of Contract: \$ 10,827.00

Yard Services \$7,327.00 (20% NEXT Admin \$1,465.40)

Senior Services \$3,500.00 (20% NEXT Admin \$700.00)

Section I. AGREEMENT

This contract is made this day, ___/___/___, between NEXT,
(Name of Service Agency)

hereinafter designated as the "Service Agency", having its principal office at
2121 Midvale Avenue, Birmingham, MI 48009

(Service Agency Address)

and, CITY OF BIRMINGHAM, hereinafter designated as the "Municipality",
(Name of Municipality)

having its principal office at 151 Martin Street, Birmingham, MI 48009.
(Municipality Address)

Section II. PURPOSE

A) The purpose of this contract shall be: (List a detailed description of services to be provided, for whom and at what cost. Include a specific unit of measure to document how costs are derived. Include attachments as needed) Providing Yard Services and Senior Services to low and moderate income homeowners, including senior citizens and persons with disabilities, of the City. The City of Birmingham has designated program year 2019-2020 CDBG funds in the amounts of \$7,327 for Yard

Services (20% Admin \$1,465.40) and \$3,500.00 (20% Admin \$700) for Senior Services. These programs will be administered for the City through NEXT and a volunteer board appointed by NEXT for the 2019-2020 program year beginning July 1, 2019 and ending December 31, 2020. Costs are derived using the number of low-moderate income persons with new access to service.

B) Federal CDBG Performance Measures are pre-determined for public service activities and include: Goal - Improve Quality of Life; Objective - Suitable Living Environment; Indicator - # of Low/Moderate Income Persons with New Access to Service as reported in the Direct Benefit Activity Report; Outcome - Improved Availability/Accessibility.

Section III. THE SERVICE AGENCY'S RESPONSIBILITIES

The Service Agency shall:

- A) Maintain records pertaining to the monies received and services provided in accordance with this agreement for a minimum of four years from the completion of this agreement. Allow the County of Oakland, the U.S. Department of Housing and Urban Development (HUD), the Comptroller General of the United States and any of their authorized representative's access to financial records pertaining to Community Development Block Grant Funds and this agreement for the purpose of audit or examination.
- B) Provide the Municipality and Oakland County Community & Home Improvement Division a specific unit(s) of measure for all services. NEXT will bill administrative costs 20% of the contract amount.
- C) Provide the Municipality invoices for services rendered based on actual costs.
- D) Submit payment requests that include required supporting documentation monthly or quarterly. Required documentation includes the "Direct Benefit Activity Report" to capture client information.
- E) Provide management and personnel to adequately perform the services prescribed by this agreement.
- F) Be solely responsible for any and all taxes (federal, state and/or local); worker's compensation insurance; disability payments; social security payments; unemployment insurance payments; insurance, and/or any similar type of payments for the Agency or any employee thereof; and shall hold the Municipality harmless from any and all such payments.
- G) Provide insurance in the kind and amount specified by the Municipality. The Municipality shall be named as an additional insured thereon and furnished with a certificate thereof when applicable.
- H) The Agency will not solicit or apply funds from any other source for the services reimbursed under this agreement.

Section IV. THE MUNICIPALITY'S RESPONSIBILITIES

The Municipality shall:

- A) In consideration for services rendered by the Service Agency, pay a total sum not to exceed the CDBG program year funded amount specified above.
- B) The municipality shall require written documentation of the client benefit qualification to be kept on site with the agency.
- C) The municipality must monitor the service agency at least once during the contract period.
- D) Recompose the Service Agency upon receipt of a payment request that includes accurate required supporting documentation from the Service Agency in amounts and time intervals as specified here.

Payment requests from the Service Agency are to be received monthly, quarterly, or annually.

Section V. COMPLIANCE

- A) The Service Agency shall comply with applicable laws, ordinances, codes and regulations of the Federal, State and local governments.
- B) Client Eligibility: All clients served under this agreement shall be qualified via either the HUD section 8 income verification or the HUD “presumed benefit” verification.

Section VI. DISCRIMINATION PROHIBITED

The Service Agency shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, condition or privileges of employment on a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status pursuant to the Elliot Larsen Civil Rights Act, 1976, P.A. 453. The Service Agency and the Municipality shall also comply with the provisions of the Michigan Handicappers Civil Rights Act, 1976, P.A. 220 and the Federal Rehabilitation Act of 1973, P.A. 93-112, 87 Stat. 394, which require that no employee or client or otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance. No person shall, on the grounds of race, creed, color, sex, age, national origin, height, weight, handicap, marital status, sexual orientation, or gender identity be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this contract.

Section VII. PROHIBITION OF POLITICAL AND RELIGIOUS ACTIVITY

There shall be no religious worship, instruction or proselytization as part of, or in connection with, the performance of this agreement. None of the funds, materials, property or services under this agreement shall be used in the performance of this agreement for any partisan political activity, including lobbying, as specified in Federal Circular A-122 Cost Principles for Nonprofit Organizations -- lobbying revisions, or to further the election, defeat, recall, impeachment, appointment or dismissal of any candidate for or from any public office.

Section VIII. GENERAL CONTRACT PROVISIONS

- A) Merger or Integration: This agreement constitutes the entire agreement between the Service Agency and the Municipality with respect to the subject matter hereof; there are no other further written or oral understandings or agreements with respect hereto.
- B) Modification, Assignment or Subcontracting Absent Prior Written Consent: No variation or modification of this agreement and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of the Service Agency and the Municipality. Any alterations, additions or deletions to the terms of this agreement, which are required by the enactment of legislation, regulations and directives, are automatically incorporated into this agreement on the date designated by law, regulation or directive.

- C) Termination: Either party may, at any time during the life of this agreement, terminate this agreement by giving thirty (30) days written notice to the other party and Oakland County Community & Home Improvement Division of its intention to terminate and an opportunity for consultation prior to termination. In the event of a termination, the Municipality's obligation shall only be to reimburse the Service Agency for services rendered up to notification of termination.
- D) Addendum: A contract duration may be extended or shortened, funds may be added or subtracted via an addendum signed by a representative from the Municipality and the Service Agency indicating the exact changes. The Municipality shall provide a copy to Oakland County Community & Home Improvement.
- E) Hold Harmless: To the fullest extent permitted by law, the Service Agency agrees to indemnify, pay in behalf of, and hold harmless the Municipality, Oakland County Community & Home Improvement, their elected and appointed officials, employees, volunteers, boards, commissions and others working in behalf of the Municipality and/or County, against any and all claims, demands, suits, losses, including all costs connected therewith for any damages which may be asserted, claimed or recovered against or from the Municipality and/or County, by reason of personal injury, including bodily injury and death, and/or property damage, including loss of use thereof, which arises out of, or is in any way connected or associated with the activity authorized by this contract.
- F) Confidentiality: The use or disclosure of information by the Municipality or Service Agency concerning services, applicants or recipients obtained in connection with the performance of the agreement shall be restricted to the purposes directly connected with the administration of the services provided under this agreement. Such information shall not be used for any other purpose unless required by law, statute or other legal process and is disclosed to Oakland County Community & Home Improvement.
- G) Disputes: The Municipality shall notify the Service Agency in writing of its intent to pursue a claim against the Service Agency for breach of any terms of this agreement. No suit may be commenced by the Municipality for breach of the agreement prior to the expiration of ninety (90) days from the date of such notification. Within this ninety (90) day period, the Municipality at the request of the Service Agency must meet with an appointed representative of the Service Agency for the purpose of attempting to resolve the dispute. The Service Agency shall be given the opportunity to cure or remedy any breach within such ninety (90) day period.
- H) Notices: Whenever under this agreement a provision is made for notice of any kind, unless otherwise herein expressly provided, it shall be in writing and shall be served personally or sent by registered or certified mail with postage prepaid to the designated representatives at the addresses supplied below. A copy shall be provided to Oakland County Community & Home Improvement.
- I) Equal Employment Opportunity: The Service Agency shall comply with Executive Order 11246 of Sept. 24, 1965, entitled "Equal Employment Opportunity, "as amended by Executive Order 11375 October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

- J) Copeland "Anti-Kickback" Act: The Service Agency shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C.874) as supplemented in Department of Labor regulations (29 CFR part 3). (Applies to contracts and sub grants for construction or repair)_
- K) Reporting/Monitoring Requirements: The Municipality shall monitor the operations of vendor activities under this contract to assure compliance with applicable Federal requirements, contract provisions and that performance goals are being achieved on an annual basis.
- L) Patent Regulations: The Service Agency shall comply with the Municipality's requirements pertaining to patent rights with respect to any discovery or invention, copyrights and rights in data which arise or is developed in the course of or under such contract.
- M) Debarment, Suspension, Ineligibility and Voluntary Exclusion
The Service Agency shall comply with the provisions of 24 CFR Part 24 that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract. Additionally, the Contractor shall not use, directly or indirectly, any of the funds provided by this contract to employ, award contracts to, or otherwise engage the services of, or fund any contractor/subcontractor during any period that the contractor/subcontractor is debarred, suspended or ineligible under the provisions of 24 CFR Part 24. Using the Excluded Parties Listing System (<http://epls.arnet.gov>), Oakland County Community & Home Improvement Division has determined, as of the date of this contract that the Contractor is not excluded from Federal Procurement and Non-procurement Programs.
- N) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

IX. SERVICE AGENCY AND MUNICIPALITY CONTACT INFORMATION

SERVICE AGENCY

MUNICIPALITY

Name: NEXT

Name: CITY OF BIRMINGHAM

Representative Name: Cris Braun

Representative Name: Cheryl Arft

Phone #: (248) 203-5270

Phone #: (248) 530-1803

Address: 2121 Midvale Avenue

Address: 151 Martin Street

Birmingham, Michigan 48009

Birmingham, Michigan 48009

E-mail Address: cbraun@birmingham.k12.mi.us

E-mail Address: carft@bhamgov.org

IRS #: 38-2280601

IRS #: 38-6004664

X. CONTRACT ACCEPTANCE

The undersigned indicate by their signatures that they are authorized to act on behalf of their respective party in this capacity. CDBG funds may not be legally obligated until after the municipality has received the official award of funds letter for this program year.

SERVICE AGENCY

MUNICIPALITY

Name: NEXT

Name: CITY OF BIRMINGHAM

Officer Name: Cris Braun

Officer Name: Pierre Boutros

Officer Title: Executive Director

Officer Title: Mayor

Signature: 

Signature:

Witnessed: 

Witnessed:

Date: Jan 16, 2020

Date:

**THE CITY OF BIRMINGHAM
IS ACCEPTING BID PROPOSALS
FROM QUALIFIED SERVICE PROVIDERS
TO MANAGE AND ADMINISTER
A PUBLIC SERVICES PROGRAM FOR
YARD SERVICES AND SENIOR SERVICES
FOR QUALIFIED LOW AND MODERATE-LOW INCOME
RESIDENTS
OF THE CITY OF BIRMINGHAM
FOR THE PROGRAM YEAR
JULY 1, 2019 THROUGH JUNE 30, 2020**

Bid proposals must include a detailed explanation of the bidder's ability to manage and administer the Public Services Program for Yard Services and Senior Services, the capability of provider having available contractors and staff to do the work required, a detailed cost and/or fees charged to run the above program, and provide reference letters of experience. This program will be funded with Community Development Block Grant (CDBG) funds; therefore, all CDBG program requirements will apply.

All bid proposals will be evaluated by a committee on a **100-point scale** using the following criteria:

1. **CAPABILITY** – Provider's ability to have and maintain qualified contractors and staff on hand to do required CDBG Yard Services and Senior Services. All service work is to be completed in an efficient and well-organized manner. **(25 points)**
2. **EXPERIENCE** – Provider's past experience regarding this type of administration of service will be considered under this criterion. Please include a minimum of three (3) reference letters of experience with the bid proposal request. **(20 points)**
3. **FAMILIARITY (CDBG requirements)** – Provider's familiarity with the Community Development Block Grant (CDBG) program requirements and ability to comply with all CDBG required guidelines. **(20 points)**
4. **METHODOLOGY** – Provider's method of approach or work plan summary to meet municipality requirements for the scope of work specified. **(10 points)**
5. **REFERENCES** – Provide a list of sources. **(10 points)**
6. **COST** – Costs and/or fees charged by Provider to manage and administer the CDBG Public Services Program for Yard Services and Senior Services to the residents of the City of Birmingham. **(15 points)**

ALL BID PROPOSALS ARE DUE BY FRIDAY, JULY 12, 2019 AT 2:00 P.M. AT THE CITY OF BIRMINGHAM CLERK OFFICE. BIDS CAN BE EITHER SUBMITTED ELECTRONICALLY TO: KBURRICK@BHAMGOV.ORG OR BIDS CAN BE IN A SEALED ENVELOPE ADDRESSED TO:

**CITY OF BIRMINGHAM
CDBG Bid Proposal
ATTN: Kathryn Burrick
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012**

The City of Birmingham is an equal opportunity employer. Businesses owned by women or minorities are strongly encouraged to apply. If you have any questions regarding this bid request, please contact Kathryn Burrick in the Finance Department at (248) 530-1815.

DATE: January 13, 2020

TO: Joseph A. Valentine, City Manager

FROM: Mark Gerber, Director of Finance/Treasurer
Kathryn Burrick, Senior Accountant

SUBJECT: PY 2018-2019 Community Development Block Grant (CDBG)
Minor Home Repair Funding and Contract Extension with NEXT

INTRODUCTION:

The City reallocated program year 2018-2019 CDBG funds for minor home repair. The City needs to amend its contract with NEXT to include funding for minor home repair and extend the period of time of the contract to June 30, 2020.

BACKGROUND:

On November 25, 2019 the City Commission held a public hearing to approve the reprogramming of the remaining 2018-2019 CDBG program year funds to minor home repair. NEXT has administered these funds on behalf of the City in prior years. The City currently has a contract with NEXT to provide public services for the 2018-2019 program year. The County has approved the reprogramming request and has given the City until June 30, 2020 to spend the remaining funds.

LEGAL REVIEW:

The attached addendum to the existing contract between NEXT and the City has been reviewed and approved by the County and the City's attorney.

FISCAL IMPACT:

No amendments are necessary at this time.

SUMMARY:

It is recommended that the addendum to the contract with NEXT to provide Minor Home Repair services through June 30, 2020 be approved.

ATTACHMENTS:

- 1) Addendum to NEXT/City Contract

SUGGESTED RESOLUTION:

To approve the Addendum to the Public Services contract between NEXT and the City to include Minor Home Repair and to extend the contract until June 30, 2020 and to authorized the mayor to sign the Addendum on behalf of the City.

ADDENDUM TO COMMUNITY DEVELOPMENT BLOCK GRANT
PUBLIC SERVICE CONTRACT
FOR YARD SERVICES AND SENIOR OUTREACH SERVICES
FOR PROGRAM YEAR 2018-2019

THIS AGREEMENT, made as of this ___ day of _____, 2020, by and between the City of Birmingham and NEXT provides as follows:

WHEREAS, the City and NEXT entered into a Yard Services and Senior Outreach Services on January 14, 2019 for the Community Development Block Grant program year 2018-2019 to provide for Yard Services and Senior Outreach Services to resident homeowners of the City of Birmingham;

WHEREAS, the City and NEXT desire to include Minor Home Repair Services in the amount of \$2,335 to this Contract through December 31, 2019.

WHEREAS, the City and NEXT desire to extend this Contract through June 30, 2020 for purposes of expending remaining 2018-2019 Community Development Block Grant Funds.

NOW, THEREFORE for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. The parties agree to include Minor Home Repair Services in the amount of \$2,335 to this Contract.
2. The parties agree to further extend the Contract until June 30, 2020.
3. All other terms of the original and amended contract that do not conflict with this Agreement shall remain in full force and in effect throughout the term of this extension.

CITY OF BIRMINGHAM

Pierre Boutros, Mayor

Date

NEXT



Cris Braun, Executive Director



Date



MEMORANDUM

Police Department

DATE: January 29, 2020

TO: Joseph A. Valentine, City Manager

FROM: Mark H. Clemence, Chief of Police

SUBJECT: Purchase of Bob Adams Towing by Jakes Automotive (Jake's Towing) - Contract Assignment

INTRODUCTION:

Bob Adams Towing is under contract with the City of Birmingham to provide towing and storage of impounded, abandoned, accident and other motor vehicles (see attached contract). The City Commission approved the contract on January 8, 2018 for a three-year term, expiring on February 25, 2021. As part of the contract, there is an option to extend, the contract at the same rate for (2) additional years through mutual consent (February 25, 2023). Bob Adams Towing has been purchased by Jake's Automotive (1080 N. Opdyke, Suite 101, Auburn Hills, MI 48236). Jake's Automotive is seeking the City's permission, pursuant to the City's contract with Bob Adams Towing, for assignment of the existing contract.

BACKGROUND:

Bob Adams Towing is under contract to provide towing and storage services to the City of Birmingham and has been the City's provider for a number of years. According to the current contract, Bob Adams Towing cannot assign the contract to another party without the prior written consent of the City. Jake's Automotive has purchased Bob Adams Towing and has agreed to assume all of the conditions of the existing contract. Jake's Automotive will retain the name of Bob Adams Towing and all operations of Bob Adams Towing will remain in place, including operating at their current location of 2499 Cole Street, Birmingham, MI. Jake's Automotive has supplied the police department with insurance documents that meet the terms of the contract.

Jake's Automotive is a family owned and operated company. The owners are Joe Jacob and his wife Jennifer and Joe's brother, Gary. The company was established in 1988 and has locations in Sterling Heights, Troy and Auburn Hills. Jake's Towing, under the name Jake's Automotive, began service in 2014 is currently handling all towing and storage services for the City of Auburn Hills, MI. Chief Baker of the Auburn Hills Police Department submitted a letter of reference detailing his support of the work performed by Jake's Towing (see attached letter).

LEGAL REVIEW:

The City Attorney reviewed the request and confirmed that the City Commission must approve any assignment of the Bob Adams Towing contract. Joe Jacob has submitted a letter indicating that he is the buyer of Bob Adams Towing and that he agrees to all that terms contained in the current contract and will continue to work with the police department under the current system

of operations (fees collection, hours of operation, auctions and auction paperwork (see attached letter).

FISCAL IMPACT: None

SUMMARY:

Jake's Automotive has purchased Bob Adams Towing. The owners of Jake's Automotive have agreed to all of the terms of the existing City contract with Bob Adams Towing to provide towing and storage of impounded, abandoned, accident and other motor vehicles. Jake's Automotive has obtained and provided documentation of insurance coverage as required by the contract. The new owners are going to retain the name "Bob Adams Towing" and all operations, including the location of the business, will remain intact.

ATTACHMENTS:

- Towing and storage of impounded, abandoned, accident and other motor vehicles contract with Bob Adams Towing, dated January 8, 2018
- Letter of reference – Chief Jeff Baker, Auburn Hills Police Department
- Letter from owners of Jake's Automotive

RESOLUTION:

To approve the assignment of the Bob Adams Towing City contract for the towing and storage of impounded, abandoned, accident and other motor vehicles to Jake's Automotive (Jake's Towing) pursuant to all the terms and conditions of the existing agreement.

ATTACHMENT A - AGREEMENT

For TOWING AND STORAGE OF IMPOUNDED, ABANDONED, ACCIDENT AND OTHER MOTOR VEHICLES

This AGREEMENT, made this 8th day of January, 2018, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151st Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and Bob Adams Towing Inc., having its principal office at 2499 Cole Street, Birmingham MI (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City is desirous of selecting a towing services contractor in the City of Birmingham and has heretofore advertised for bids for the procurement and performance of services required to perform **TOWING AND STORAGE OF IMPOUNDED, ABANDONED, ACCIDENT AND OTHER MOTOR VEHICLES**, and in connection therewith has prepared an invitation to bid ("ITB"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to perform **TOWING AND STORAGE OF IMPOUNDED, ABANDONED, ACCIDENT AND OTHER MOTOR VEHICLES**.

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Invitation to Bid to perform **TOWING AND STORAGE OF IMPOUNDED, ABANDONED, ACCIDENT AND OTHER MOTOR VEHICLES** and the Contractor's cost proposal dated December 4, 2017 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the ITB.
2. The City shall pay the Contractor for the performance of this Agreement in a sum not to exceed the amount proposed for towing and storage of impounded, abandoned, accident and other motor vehicles, as set forth in the Contractor's December 4, 2017 cost proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Invitation to Bid.
4. The City reserves the right to review and investigate all aspects of the Contractor's operations including but not limited to site inspections, equipment inspections, background checks on employees / owners and reference checks.
5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor's role in providing services to the City pursuant to this

Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.
- E. Professional Liability: Professional liability insurance with limits of not less than \$1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.
- F. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.

G. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
- 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
- 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
- 5) If so requested, Certified Copies of all policies mentioned above will be furnished.

H. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

I. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

15. If the Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham
Attn: Ellen DeView
151 Martin Street
Birmingham, MI 48009
(248) 530-1869

Contractor
Bob Adams Towing, Inc.
2499 Cole Street
Birmingham, MI 48009
(249) 644-5000

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.


18. Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESSES:




CONTRACTOR

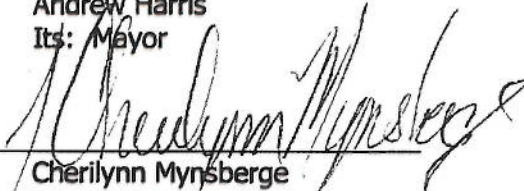

By: TERENCE J ADAMS
Its: PRESIDENT

CITY OF BIRMINGHAM



By: 
Andrew Harris
Its: Mayor



By: 
Cherilynn Mynsberge
Its: City Clerk

Approved:



Mark H. Clemence, Chief of Police
(Approved as to substance)



Timothy J. Currier, City Attorney
(Approved as to form)



Mark Gerber, Director of Finance
(Approved as to financial obligation)



Joseph A. Valentine, City Manager
(Approved as to substance)

ATTACHMENT B – CONTRACTOR’S REFERENCES AND EQUIPMENT LIST
For TOWING AND STORAGE OF IMPOUNDED, ABANDONED, ACCIDENT AND
OTHER MOTOR VEHICLES

BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT

1. REFERENCES:

List at least three references for which you have provided towing services during the past year on a continuous basis.

- A. Company or City: Bloomfield Township
Contact name, etc.: Chief Scott Mc CANHAM
- B. Company or City: City of Bloomfield Hills
Contact name, etc.: DIRECTOR Chief NOEL CLASON
- C. Company or City: VILLAGE OF FRANKLIN
Contact name, etc.: Chief DAN ROBERTS

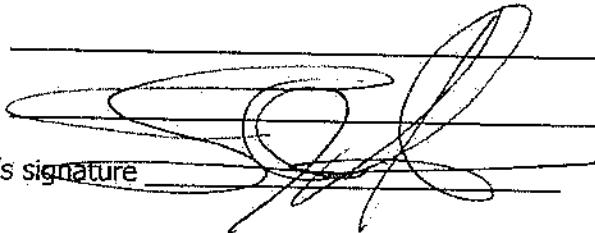
2. EQUIPMENT LIST:

List equipment (type, quantity, condition, year, etc.) that you will make available to perform this contract, if so awarded. If insufficient space below, list separately and attach to your proposal.

SEE ATTACHED
PAPER

Attachment #2

Bidder's signature



Date

12-4-17

EQUIPMENT LIST

ATTACHMENT # 2

Bob Adams Towing has equipment that will be able to handle any type situation that is requested. As our list below will show we have equipment for towing cars, trucks and construction equipment. We also have equipment for clean-up of lost material on road way, hi-lo's, skid loaders.

We have contacts for under water recovery, scuba divers that are experienced in vehicle recovery.

LIGHT DUTY BOOM TRUCK

2001 CHEVROLET WRECKER
1999 CHEVROLET WRECKER

FLATBEDS

2009 CHEVROLET FLATBED
2014 FORD FLATBED
2016 FORD FLATBED
2018 FORD FLATBED

HEAVY DUTY

1992 FORD (30 TON WRECKER)

TRACTOR

2007 INTERNATIONAL TRACTOR

TRAILERS

1997 LANDOLL 50 TON
2001 LANDOLL 35 TON

SERVICE TRUCK

1997 FORD SERVICE TRUCK

MISC EQUIPMENT

8,000 LB HYSTER HI-LO
2-MOTOR CYCLE CARTS

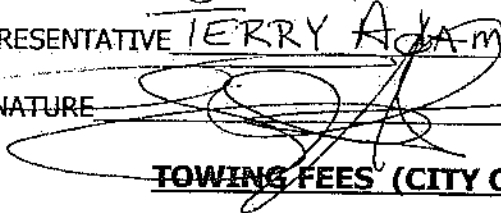
1990 GEHL SKID LOADER-FORKS
BUCKET-PLOW, BROOM
GAS POWER MOBIL AIR
COMPRESSOR

ATTACHMENT C - COST PROPOSAL BID FORM

For TOWING AND STORAGE OF IMPOUNDED, ABANDONED, ACCIDENT AND OTHER MOTOR VEHICLES

The undersigned hereby declares that he/she has carefully examined the instructions and specifications and will furnish towing and storage of impounded, abandoned, accident, and other motor vehicles for the price set forth in this bid.

It is understood and agreed that all bid prices shall remain in effect for at least ninety (90) days from the date of bid opening to allow for the award of the bid, and that if chosen the successful vendor, the prices bid, will remain firm throughout the length of the contract.

COMPANY BOB ADAMS TOWING TELEPHONE 248-644-5000
ADDRESS 2499 COLE ST
CITY BIRMINGHAM STATE MI ZIP 48009
REPRESENTATIVE TERRY ADAMS TITLE President
SIGNATURE  DATE 12-4-17

TOWING FEES (CITY OWNED VEHICLES) - PART 1

CITY OWNED VEHICLES

Towing of vehicles under 10,000 pounds GVW	<u>30.00</u>
Towing of vehicles over 10,000 pounds GVW	<u>55.00</u>
Change tire on City owned vehicle within the City limits (includes picking up tire at DPS facility)	<u>25.00</u>
Charge per mile for above (over one (1) mile outside City limits only)	<u>2.50</u>

EVIDENTIARY AND FORFEITURE VEHICLES

Per diem storage charges in instances where the police department causes a vehicle to be impounded and stored at the Contractor's facility for evidentiary, forfeiture, or similar purposes.

2.00

TOWING FEES (PRIVATELY OWNED VEHICLES) – PART 2

PRIVATELY OWNED VEHICLES

Accident or Impound Tow Vehicles 9,000 pounds GVW and under (wheel lift or sling tow)	<u>155.⁰⁰</u>
Flatbed Tow (SUV or AWD Vehicles)	<u>155.⁰⁰</u>
Accident or Impound Tow Vehicles 9,001 pounds GVW to 15,000 pounds GVW	<u>325.⁰⁰ per hr</u>
Accident or Impound Tow Vehicles Over 15,001 pounds GVW	<u>625.⁰⁰ per hr</u>
Motorcycles	<u>190.⁰⁰</u>

STORAGE AND MISCELLANEOUS FEES – PART 3

Dollies (additional to tow charge)		<u>55.⁰⁰</u>
Storage outside (CITY OWNED VEHICLES)	PER DAY	
8' x 20'		<u>2.⁰⁰</u>
8' x 40'		<u>4.⁰⁰</u>
Storage inside (CITY OWNED VEHICLES)	PER DAY	
8' x 20'		<u>2.⁰⁰</u>
Storage outside (PRIVATELY OWNED VEHICLES)	PER DAY	
8' x 20'		<u>25.⁰⁰</u>
8' x 40'		<u>50.⁰⁰</u>
Storage inside (PRIVATELY OWNED VEHICLES)	PER DAY	
8' x 20'		<u>35.⁰⁰</u>
Clean up at scene of accident (no tow needed)		<u>25.⁰⁰</u>

(Page 2 of 2 Attachment C pages)

SEE ATTACHMENT #1

Attachment # 1.

All towing prices in bid are from hook up location to 2499 Cole St, and only includes towing charges.

Storage charges are per calendar day.

Clean up charges at accidents are for cleaning of roadway and disposal of debris. When hazardous materials are involved charges will show on invoice.

Administrative charge will be charged on all accident vehicles to cover land contamination and other property expenses of \$ 25.00

All other charges will be broken down on invoices.

Bob Adams Towing will collect city administrative charge and forward all payments to city monthly.

ATTACHMENT D - BIDDER'S AGREEMENT

**For TOWING AND STORAGE OF IMPOUNDED, ABANDONED, ACCIDENT AND
OTHER MOTOR VEHICLES**

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Invitation to Bid and all other provisions of this document and understand the meaning, intent, and requirement of it.
2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

TERRY Adams 12-4-17
PREPARED BY DATE
(Print Name)

President 12-4-17
TITLE DATE

 tobadamstowing@aol.com
AUTHORIZED SIGNATURE E-MAIL ADDRESS

BOB Adams Towing
COMPANY

2199 COLE St 248 644-5000
ADDRESS PHONE

N/A
NAME OF PARENT COMPANY PHONE

N/A
ADDRESS


ATTACHMENT E - IRAN SANCTIONS ACT

VENDOR CERTIFICATION FORM

For TOWING AND STORAGE OF IMPOUNDED, ABANDONED, ACCIDENT AND OTHER MOTOR VEHICLES

Pursuant to Michigan law and the Iran Economic Sanctions Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

PREPARED BY (Print Name) <u>TERRY ADAMS</u>	DATE <u>12-4-17</u>
TITLE <u>President</u>	DATE <u>12-4-17</u>
AUTHORIZED SIGNATURE 	E-MAIL ADDRESS <u>bobadamstowing@aol.com</u>
COMPANY <u>BOB ADAMS TOWING</u>	
ADDRESS <u>2499 COLE ST</u> <u>BIRMINGHAM, MI 48209</u>	PHONE <u>248 644 5000</u>
NAME OF PARENT COMPANY <u>N/A</u>	PHONE <u>N/A</u>
ADDRESS <u>N/A</u>	
TAXPAYER I.D.# <u>38-165-0904</u>	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/17/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Kapnick Insurance Group P.O. Box 1801 Adrian MI 49221-7801	CONTACT NAME: Misty Riley PHONE (A/C No. Ext.): 517-266-6543 E-MAIL ADDRESS: misty.riley@kapnick.com	FAX (A/C No.): 517-263-6658
	INSURER(S) AFFORDING COVERAGE	
INSURED ADAMT-1 Bob Adams Towing, Inc. Terrance Adams & Sandra Adams 2499 Cole Street Birmingham MI 48009	INSURER A: The Netherlands Insurance Co.	NAIC # 24171
	INSURER B: Indiana Insurance Company	22659
	INSURER C: Accident Fund General Insurance Com	12304
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 1244099199 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATION MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	CBP 8939745	12/15/2016	12/15/2017	EACH OCCURRENCE	\$1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
						MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$3,000,000
						PRODUCTS - COMPIOP AGG	\$3,000,000
							\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	BA 8930546	12/15/2016	12/15/2017	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000		CU 8935046	12/15/2016	12/15/2017	EACH OCCURRENCE	\$1,000,000
						AGGREGATE	\$1,000,000
							\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	WCV0283662	4/30/2017	4/30/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
						E.L. EACH ACCIDENT	\$500,000
						E.L. DISEASE - EA EMPLOYEE	\$500,000
						E.L. DISEASE - POLICY LIMIT	\$500,000
A	Cargo / On Hook Garagekeepers		CBP 8939745 BA 8930546	12/15/2016 12/15/2016	12/15/2017 12/15/2017	Per Truck Limit Loc. #1	250,000 120,000

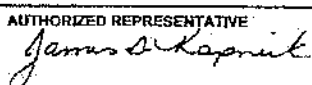
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Cargo On Hook Deduct: \$1,000

Garagekeepers' Comp Deduct: \$500 per auto; \$2,500 max per claim

Garagekeepers' Coll Deduct: \$500

See Attached...

CERTIFICATE HOLDER City of Birmingham Police Department Services Coordinator - Attn Ellen DeViv PO Box 3001 Birmingham MI 48012-3001	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
---	--



ADDITIONAL REMARKS SCHEDULE

AGENCY Kapnick Insurance Group		NAMED INSURED Bob Adams Towing, Inc. Terrance Adams & Sandra Adams 2499 Cole Street Birmingham MI 48009	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

AUTOMATIC STATUS POLICY FORMS (WHEN REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT WITH NAMED INSURED, PER POLICY TERMS & CONDITIONS)

GENERAL LIABILITY

- Additional Insureds
- 22-45 (12/02) -- Commercial General Liability Extension Endorsement
- Additional Insured -- By Contract, Agreement or Permit
- Additional Insured -- Vendors

AUTO LIABILITY

- Additional Insureds
- 16-59 (03/99) -- Business Auto Extension Endorsement -- Additional Insured by Contract, Agreement or Permit

UMBRELLA LIABILITY - Following Form

The City of Birmingham, all elected and appointed officials, all employees and volunteers, all boards, commission and/or authorities and board members, including employees and volunteers thereof, are listed as Additional Insured and coverage is primary and non contributory as required by written contract.

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 days written notice, (10 days for non-payment of premium), to the certificate holder named, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents, or representatives.



October 25, 2019

Re: Jakes Towing

To Whom It May Concern:

The Auburn Hills Police Department utilizes Jakes Towing to serve our community. We have always been able to count on them to provide our community with excellent, timely and reasonably priced service. We have found them to be professional, well trained, and properly equipped to quickly clear any type of crash in a safe and efficient manner making the roads safer for commuters and first responders. We have also found that they value good customer service in towing situations which alleviates situations where police need to intervene following the transaction. They have also long been good corporate citizens in our community.

Jakes Towing has proven to us many times that they have the ability to handle anything from towing a vehicle to successfully managing large scale crash scenes on the expressway, and take the extra time at crash scenes to thoroughly cleanup spills and debris.

We have an excellent working relationship with the employees of Jakes Towing and would highly recommend their complete services to your community.

Please contact me with any questions at 248.364.6850.

Sincerely,

Jeff Baker
Chief of Police

POLICE DEPARTMENT
1899 N. Squirrel Road
Auburn Hills, Michigan 48326



WWW.AUBURNHILLS.ORG
Phone - 248.370.9460
Fax - 248.370.9365



Date: January 13, 2020

TO: Joseph A. Valentine, City Manager

To: Mark H. Clemence, Chief of Police

Subject: Towing Contract

This letter is to acknowledge the buyer of Bob Adams Towing, Joseph Jacob agrees to all that is contained in the current contract and will continue to work with the police department under the current system of operations (fees collection, hours of operation, auctions, and auction paperwork etc.)

Respectfully,

A handwritten signature in black ink, appearing to read "Joe Jacob", is written over the typed name.

Joe Jacob

DATE: February 10th, 2020

TO: Joseph A. Valentine, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Set a Public Hearing for a Lot Combination of 1680 S. Bates Street, Parcel # 19-36-331-038 - T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 194 EXC E 2 FT & S 5 FT OF LOT 195 EXC E 2 FT and 1698 S. Bates Street, Parcel # 19-36-331-039 – T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 193 EXC E 2 FT.

INTRODUCTION:

The owner of 1680 and 1698 S. Bates is seeking approval for a lot combination of two parcels into one.

BACKGROUND:

The subject properties are located on the southwest corner of S. Bates Street and W. Southlawn Blvd. The owner of both properties has applied to combine the two lots into one in order to demolish the northern house at 1680 S. Bates to create a larger yard space with a patio and sport court for the existing house at 1698 S. Bates Street. According to Article 2.07(C)(1)(j) Accessory Permitted Uses, Items such as patios and sport courts are considered accessory uses "*incidental to the permitted principal use,*" and therefore are not permitted on a vacant lot without a principal use.

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 R2, Single Family Residential. The applicant constructed their new, two-story home on 1698 S. Bates in 2008 where the applicant lives, and is proposing to continue to live in the same home. No changes to the building envelope at 1698 S. Bates are proposed.

In regards to lot size, the minimum lot area per unit in the R2 Zone is 6,000 SF. The applicant has proposed a lot combination that would total 13,750 SF of lot area which conforms to the Zoning Ordinance standards for minimum lot area. The maximum lot coverage for the R2 Zone is 30%, which would be 4,125 SF for the combination of the two proposed lots. The applicant

will maintain their current building envelope on 1698 S. Bates with a lot coverage of 1,191 SF which conforms to the Zoning Ordinance standards for lot coverage.

In regards to setbacks, the applicant is maintaining their front setback of 41.58 feet which conforms to the minimum front setback regulation of 39.78 for the subject property. The applicant has also proposed to maintain their rear setback of 64.60 feet which conforms to the minimum rear setback requirement of the Zoning Ordinance. In regards to accessory uses in the rear yard, the applicant has proposed an extended patio and sport court in the rear yard area. Such uses will be subject to Impervious Surface and Open Space standards review by the Engineering and Building Departments if the lot combination is approved.

The applicant is required to maintain a total side yard setback of 21.92 feet. The proposed sideyard setback has increased from 17.06 feet to 61.88 feet; 11.22 on the southern side and 50.60 on the northern side which satisfies the requirements of the Zoning Ordinance. There are no accessory uses proposed in the side yard.

In regards to the character of the area, the 1980 Master Plan recommends the area as a single family residential zone. The applicant has proposed to maintain a single-family residential use on the corner of S. Bates and Southlawn. The corner property across the street from the subject site has a similar sized lot as the applicant's proposal, but has a larger footprint. The proposed lot satisfies all use and setback requirements of the R2 Residential Zone requirements. Therefore, the proposed lot size 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 45.17 feet, making the maximum lot width 90.33 feet. The applicant is proposing a lot width of 87.68 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 6,257 square feet, making the maximum lot area 12,515 square feet. The applicant is proposing a combined lot area of 13,750 square feet. **Accordingly, the proposal does not meet this requirement.**

It is of note that the subject property, as well as all other properties on the east side of S. Bates for this block have a lot depth of 156.79 which is the longest lot depth of properties within 500 feet, therefore the larger lot area. The surrounding properties within 500 feet have lot depths between 119 feet to 140 feet.

- (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.

The applicant is proposing to remove one home at 1680 S. Bates Street, but they are not proposing to expand the existing envelope of their home at 1698 S. Bates Street. The Planning Division refers to the Zoning Ordinance as the standard for rhythm and pattern of development as it provides the guidelines for lot size and setbacks. Lots in the R2 Residential Zone may not be smaller than 6,000 square feet and may not have lot widths less than 30 feet. Buildings may not be closer than 14 feet and are subject to the setbacks of the R2 Residential Zone. It is of note that although the space between two homes may be increasing, the current Zoning Ordinance requirements for the R2 Residential Zone does not regulate the maximum lot size or maximum building setback standards. Although the applicant is not proposing to expand their existing building envelope, if they were to do so, it would be consistent with the home directly across the street from them at 1698 S. Bates. The proposed lot size and building footprint appears to satisfy all of the Zoning Ordinance requirements for the R2 Residential Zone. **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.

PUBLIC COMMUNICATIONS:

The applicant has spoken with her neighbors prior to submitting the lot combination request, and has included letters of support, which are attached to this memo. In addition, prior to the application being considered by the City Commission, the City Clerk's office will send out notices to all property owners and tenants within 300' of both 1680 and 1698 S. Bates seeking public comment on the proposal.

SUMMARY:

The Planning Division requests that the City Commission set a public hearing for the date of **March 9th, 2020** to consider the proposed combination, pursuant to the procedures set forth in Section 102-83 of the Combination of Land Parcels Ordinance.

ATTACHMENTS:

- Letter to the City
- Application
- Proof of ownership
- Applicant's summary of project
- Letters from Residents
- Registered Land Survey & Landscaping Drawings

In addition, the applicant has provided a short video which will be shown during the public presentation by staff at the time of the public hearing.

SUGGESTED ACTION:

To set a public hearing for March 9th, 2020 to consider the proposed lot combination of 1680 and 1698 S. Bates Street.

January 23, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates Lot Combination Application

To whom it may concern:

My name is Katherine Pearce and I live at 1698 S. Bates with my husband Harry and our two young sons. We have lived in our home for 12 years and intend to stay here for many decades more. Harry's family has lived in the area since the 1980's and my family has been in the metro Detroit area since the 1800's. My grandmother was raised at a farmhouse on 12 Mile & Telegraph back in the 1940's when that area still had a Birmingham mailing address. We love Michigan, we love Detroit, and we especially love Birmingham. Our children are in Kindergarten and 4th Grade in Birmingham Public Schools, at Pierce and Covington. I am the PTA Treasurer at Birmingham Covington School, the Chairman of Cub Scout Pack 1007 at Pierce, and founder of the neighborhood playgroup GoPlay!-Birmingham, which has hosted over 30 outdoor playground meet-ups at City of Birmingham parks since 2018. Harry and I share a common goal of providing the best childhood possible to our sons, and we intend to do that here in Birmingham.

We recently purchased the rental property directly north of us, at 1680 S. Bates. We respectfully request approval from the City to combine 1680 and 1698 S. Bates into one lot, for the purpose of improving the property by providing an outdoor patio space with a gas fireplace, a sports court, a concrete pad and post for our hot tub, and a safe usable yard for our growing sons to play sports. The combination of these two lots will allow our family to continue to enjoy our home and outdoor space for many years to come.

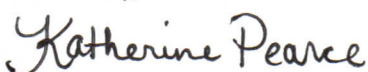
Upon approval of this application, we will work closely with the Community Development department to ensure our plans meet all required standards. We will submit for the necessary permits so that our family can begin using the improved property as soon as possible.

Please find attached:

- Presentation detailing our proposal
- 20 letters of support from neighbors
- Landscaping plans
- 6 short traffic videos
- Application forms
- Proof of ownership and tax information
- Registered surveys
- Additional supporting documents

In conclusion, we hope our proposal is found to be reasonable and acceptable. Thank you kindly for your time reviewing these materials and also for serving our beautiful City.

Sincerely,



Katherine Pearce



Combination of Platted Lots Application Planning Division

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

1. Applicant

Name: Katherine Pearce
 Address: 1698 S. Bates St.

 Phone Number: 248-444-9146
 Fax Number: _____
 Email address: katherine_alice@yahoo.com

2. Property Owner

Name: Harry & Katherine Pearce
 Address: 1698 S. Bates St., Birmingham, MI 48009

 Phone Number: 248-444-9146
 Fax Number: _____
 Email address: katherine_alice@yahoo.com

3. Applicant's Attorney/Contact Person

Name: As above
 Address: _____

 Phone Number: _____
 Fax Number: _____
 Email address: _____

4. Project Designer/Developer

Name: As above
 Address: _____

 Phone Number: _____
 Fax Number: _____
 Email address: _____

5. Project Information

Address/Location of Property: _____
1680 and 1698 S. Bates
 Sidwell #: _____
 Parcel #: 1680: 19-36-331-038 and 1698: 19-36-331-039
 Current Zoning: _____

Legal Description: 1680: T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 194 EXC E 2FT & S 5 FT OF LOT 195 EXC E 2 FT

1698: T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 193 EXC E 2 FT

6. Required Attachments

- | | |
|---|---|
| <p>I. Two (2) copies of a <i>registered</i> land survey showing:</p> <ul style="list-style-type: none"> i. All existing and proposed platted lot lines; ii. Legal descriptions of proposed lots; iii. Locations of existing/surrounding structures for at least 500 ft. in all directions; iv. Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked; | <ul style="list-style-type: none"> II. One (1) digital copy of plans; III. Proof of ownership; IV. Written statement of reasons for request; V. A letter of authority or power of attorney in the event the application is made by a person other than the property owner; VI. Sketches of proposed development (<i>optional</i>); VII. Other data having a direct bearing on the request. VIII. Any other data requested by the Planning Board, Planning Department, or other City Departments. |
|---|---|

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

We respectfully request approval from the City to combine 1680 and 1698 S. Bates into one lot, maintaining the R-2 zoning designation,
for the purpose of improving the property by providing an outdoor patio space with gas fireplace, a sports court for basketball,
a concrete pad and post for our existing hot tub, and a safe usable yard for our growing sons to play sports.
The combination of these two lots will allow our family to continue to enjoy our home and outdoor living space for many years to come. Please see attached.

(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.

By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Property Owner: Katherine Pearce Date: 1/23/2020

Print Name: Katherine Pearce

Signature of Applicant: Katherine Pearce Date: 1/23/2020

Print Name: Katherine Pearce

Office Use Only

Application#: _____ Date Received: _____ Fee: _____
Date of Approval: _____ Date of Denial: _____ Reviewed By: _____



Notice Sign Rental Application Community Development

1. Applicant

Name: Katherine Pearce
 Address: 1698 S. Bates St., Birmingham, MI 48009
 Phone Number: 248-444-9146
 Fax Number: _____
 Email address: katherine_alice@yahoo.com

2. Property Owner

Name: Harry and Katherine Pearce
 Address: 1698 S. Bates St., Birmingham, MI 48009
 Phone Number: 248-444-9146
 Fax Number: _____
 Email address: katherine_alice@yahoo.com

3. Project Information

Address/Location of Property: 1680 & 1698 S. Bates
 Name of Development: Lot Combination
 Area in Acres: 0.16 acres & 0.155 acres

Name of Historic District, if any: N/A
 Current Use: Residential
 Current Zoning: R2

4. Date of Board/Commission Review

City Commission: _____
 Planning Board: _____
 Historic District Commission: _____
 Design Review Board: _____

Board of Zoning Appeals: _____
 Board of Building Trades Appeals: _____
 Housing Board of Appeals: _____
 Other: _____

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: *Katherine Pearce* Date: 1/23/2020

Office Use Only

Application#: _____	Date Received: _____	Fee: _____
Date of Approval: _____	Date of Denial: _____	Reviewed By: _____

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.

NOV 27 2007

1.00 DF PATRICK M. DOHANY, County Treasurer
Sec. 125, Act 208, 1893 as amended

247467
LIBER 39795 PAGE 156
\$10.00 DEED - COMBINED
\$4.00 REINUMENTATION
\$2,365.00 TRANSFER TX COMBINED
11/29/2007 10:15:25 A.M. RECEIPT# 120408
PAID RECORDED - OAKLAND COUNTY
RUTH JOHNSON, CLERK/REGISTER OF DEEDS

010829

Warranty Deed

Know all men by these presents that **Randall P. Cline, Trustee of THE RANDALL P. CLINE TRUST**, under Agreement dated **May 25, 2001** Whose Street Number and Post Office Address is **572 W. Lincoln, Birmingham, MI 48009**

Warrants and conveys to **Harry M. Pearce and Katherine K. Pearce, husband and wife** Whose street Number and Post Office address is 3039 Camden Dr., Troy, MI 48084 R.P.C

Land in the City of Birmingham, Oakland County, Michigan, described as:
Lot 193, EXCEPT the Easterly 2.00 feet of THE RESUB OF LOTS 1 THROUGH 84, INCLUSIVE AND LOTS 104 THROUGH 149, INCLUSIVE OF BIRMINGHAM-LINCOLN LOTS SUBDIVISION, as recorded in Liber 37, Page 5 of Plats, Oakland County Records.

Commonly known as: 1694 S. Bates, Birmingham, MI 48009

For the sum of **Two Hundred Seventy Five Thousand and 00/100 Dollars, (\$275,000.00)** being the full consideration; subject to the existing building and use restrictions, easements, encroachments and zoning ordinances, if any.

Dated: 11/09/07

Signed and Sealed:

THE RANDALL P. CLINE TRUST, under Agreement dated May 25, 2001

[Signature]
Randall P. Cline, Trustee

[Handwritten initials]
R.P.C
K.K.P
H.M.P

STATE OF MICHIGAN)
COUNTY OF OAKLAND)SS.

On this 9th day of November, 2007 before me personally appeared **Randall P. Cline, Trustee of THE RANDALL P. CLINE TRUST, under Agreement dated May 25, 2001**, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that (s)he/they executed the same as his/her/their free act and deed.

Susan L. Fisher
Susan L. Fisher, Notary Public Oakland County Michigan
Acting in Oakland County
My Commission Expires: 02/08/13

STATE OF MICHIGAN REAL ESTATE TRANSFER TAX
OAKLAND \$302.50 CO
11/29/2007 \$2,062.50 ST
120408 492719 ★

Prepared by: **Randall P. Cline**
572 W. Lincoln, Birmingham, MI 48009

Tax I.D. No.: 19-36-331-039
Recording Fee: \$15.00
Transfer Tax: County: \$302.50
State: \$2,062.50

Return to and Send Tax Bills to:
Harry M. Pearce, 1694 S. Bates, Birmingham, MI 48009
3039 Camden Dr.
Troy, MI 48084
R.P.C H.M.P
K.K.P

File No. FA07110960

RECEIVED
NOV 28 2007
Ruth Johnson Register of Deeds
Oakland County, MI

CHECKING COMPLETED
AT REGISTER OF DEEDS
NOV 28 2007
Ruth Johnson Register of Deeds
Oakland County, MI

O.K. - LG

Property Transfer Affidavit

This form is issued under authority of P.A. 415 of 1994. Filing is mandatory.

This form must be filed whenever real estate or some types of personal property are transferred (even if you are not recording a deed). **The completed Affidavit must be filed by the new owner with the assessor for the city or township where the property is located within 45 days of the transfer.** The information on this form is NOT CONFIDENTIAL.

JAN 13 2020
CONFIDENTIAL
BIRMINGHAM
TREASURER'S OFFICE

1. Street Address of Property 1680 S. Bates St., Birmingham, MI 48009	2. County Oakland	3. Date of Transfer (or land contract signed) January 10, 2020
4. Location of Real Estate (Check appropriate field and enter name in the space below.) <input type="checkbox"/> City <input type="checkbox"/> Township <input type="checkbox"/> Village City of Birmingham	5. Purchase Price of Real Estate 350,000.00	6. Seller's (Transferor) Name Harvard Dreams, LLC
7. Property Identification Number (PIN). If you don't have a PIN, attach legal description. PIN. This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice. 19-36-331-038	8. Buyer's (Transferee) Name and Mailing Address Harry Pearce and Katherine Pearce 1698 S Bates St., Birmingham, MI 48009	9. Buyer's (Transferee) Telephone Number

Items 10 - 15 are optional. However, by completing them you may avoid further correspondence.

10. Type of Transfer. **Transfers** include, but are not limited to, deeds, land contracts, transfers involving trusts or wills, certain long-term leases and business interest. See page 2 for list.

Land Contract Lease Deed Other (specify) _____

11. Was property purchased from a financial institution? 12. Is the transfer between related persons? 13. Amount of Down Payment

Yes No Yes No

14. If you financed the purchase, did you pay market rate of interest? 15. Amount Financed (Borrowed)

Yes No

EXEMPTIONS

Certain types of transfers are exempt from uncapping. If you believe this transfer is exempt, indicate below the type of exemption you are claiming. If you claim an exemption, your assessor may request more information to support your claim.

- Transfer from one spouse to the other spouse
- Change in ownership solely to exclude or include a spouse
- Transfer between certain family members *(see page 2)
- Transfer of that portion of a property subject to a life lease or life estate (until the life lease or life estate expires)
- Transfer between certain family members of that portion of a property after the expiration or termination of a life estate or life lease retained by transferor ** (see page 2)
- Transfer to effect the foreclosure or forfeiture of real property
- Transfer by redemption from a tax sale
- Transfer into a trust where the settlor or the settlor's spouse conveys property to the trust and is also the sole beneficiary of the trust
- Transfer resulting from a court order unless the order specifies a monetary payment
- Transfer creating or ending a joint tenancy if at least one person is an original owner of the property (or his/her spouse)
- Transfer to establish or release a security interest (collateral)
- Transfer of real estate through normal public trading of stock
- Transfer between entities under common control or among members of an affiliated group
- Transfer resulting from transactions that qualify as a tax-free reorganization under Section 368 of the Internal Revenue Code.
- Transfer of qualified agricultural property when the property remains qualified agricultural property and affidavit has been filed.
- Transfer of qualified forest property when the property remains qualified forest property and affidavit has been filed.
- Transfer of land with qualified conservation easement (land only - not improvements)
- Other, specify: _____

CERTIFICATION

I certify that the information above is true and complete to the best of my knowledge.

Printed Name Katherine Pearce		
Signature <i>Katherine Pearce</i>	Date 01/10/2020	
Name and title, if signer is other than the owner	Daytime Phone Number 248-444-9146	E-mail Address

CITY OF BIRMINGHAM

TAX CERTIFICATION
TAX SUMMARY FOR CALENDAR YEAR 2019

School: 63010

Property #: 08-19-36-331-039

CITY OF BIRMINGHAM
151 MARTIN STREET
P.O. BOX 3001
BIRMINGHAM, MI 48012-3001

SITE ADDRESS:

1698 S BATES ST

PEARCE, HARRY M
1698 S BATES ST
BIRMINGHAM MI 48009-1983

SEV 418,660
AV 418,660
TAXV 275,890

Mortgage Company of Record:
NONE

Prop Type : RESIDENTIAL IMPROVED
PRE/MBT %: 100

Summer Tax Bill

Winter Tax Bill

MILLS	TAX TYPE	TAX AMOUNT
4.04000	COUNTY OPERATING	1,114.59
0.19340	OIS ALLOCATED	53.35
3.06050	OIS VOTED	844.36
1.53030	OCC VOTED	422.19
6.00000	STATE EDUCATION	1,655.34
8.79110	SCHOOL OPERATING	0.00
3.80000	SCHOOL DEBT	1,048.38
0.59740	SCHOOL SUPPLEMNT	992.48
0.12060	CITY OPERATING	3,068.06
0.78030	REFUSE	215.27
1.37140	LIBRARY	378.35
1.08610	CITY DEBT	299.64
8.79110	SCHOOL OPER FC	0.00

MILLS	TAX TYPE	TAX AMOUNT
0.23290	COUNTY PK & REC	64.25
0.21170	HCMA	58.40
0.99270	OCPTA	273.87
9.20890	SCHOOL OPERATING	0.00
3.57870	SCHOOL SUPPLEMNT	987.32
0.09730	ZOO AUTHORITY	26.84
9.20890	SCHOOL OPER FC	0.00
0.19290	ART INSTITUTE	53.21

TOTAL TAXES 10,092.01
ADMIN FEE 0.00
INTEREST 0.00
TOTAL BILL 10,092.01

TOTAL TAXES 1,463.89
ADMIN FEE 0.00
INTEREST 0.00
TOTAL BILL 1,463.89

SUMMER
TOTAL PAID: 10,092.01
DATE PAID : 07/10/2019

WINTER
TOTAL PAID: 1,463.89
DATE PAID : 01/07/2020

DESCRIPTION
T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS
SUB LOT 193 EXC E 2 FT

Date Prepared: 01/13/2020

CITY OF BIRMINGHAM

TAX CERTIFICATION
TAX SUMMARY FOR CALENDAR YEAR 2019

School: 63010

Property #: 08-19-36-331-038

CITY OF BIRMINGHAM
151 MARTIN STREET
P.O. BOX 3001
BIRMINGHAM, MI 48012-3001

SITE ADDRESS:
1680 S BATES ST

HARVARD DREAMS LLC
667 HANNA
BIRMINGHAM MI 48009

SEV 170,780
AV 170,780
TAXV 100,510

Mortgage Company of Record:
NONE

Prop Type : RESIDENTIAL IMPROVED
PRE/MBT %: 0

Summer Tax Bill

MILLS	TAX TYPE	TAX AMOUNT
4.04000	COUNTY OPERATING	406.06
0.19340	OIS ALLOCATED	19.43
3.06050	OIS VOTED	307.61
1.53030	OCC VOTED	153.81
6.00000	STATE EDUCATION	603.06
8.79110	SCHOOL OPERATING	883.59
3.80000	SCHOOL DEBT	381.93
3.59740	SCHOOL SUPPLEMNT	0.00
1.12060	CITY OPERATING	1,117.73
0.78030	REFUSE	78.42
1.37140	LIBRARY	137.83
1.08610	CITY DEBT	109.16
8.79110	SCHOOL OPER FC	0.00

Winter Tax Bill

MILLS	TAX TYPE	TAX AMOUNT
0.23290	COUNTY PK & REC	23.40
0.21170	HCMA	21.27
0.99270	OCPTA	99.77
9.20890	SCHOOL OPERATING	925.58
3.57870	SCHOOL SUPPLEMNT	0.00
0.09730	ZOO AUTHORITY	9.77
9.20890	SCHOOL OPER FC	0.00
0.19290	ART INSTITUTE	19.38

TOTAL TAXES 4,198.63
ADMIN FEE 0.00
INTEREST 0.00
TOTAL BILL 4,198.63

SUMMER
TOTAL PAID: 4,198.63
DATE PAID : 07/05/2019

TOTAL TAXES 1,099.17
ADMIN. FEE 0.00
INTEREST 0.00
TOTAL BILL 1,099.17

WINTER
TOTAL PAID: 1,099.17
DATE PAID : 12/06/2019

DESCRIPTION

T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS
SUB LOT 194 EXC E 2 FT & S 5 FT OF LOT 195 EXC E 2
FT

Date Prepared: 01/13/2020

Lot Combination 1680 & 1698 S. Bates

Prepared by Katherine Pearce

January 2020

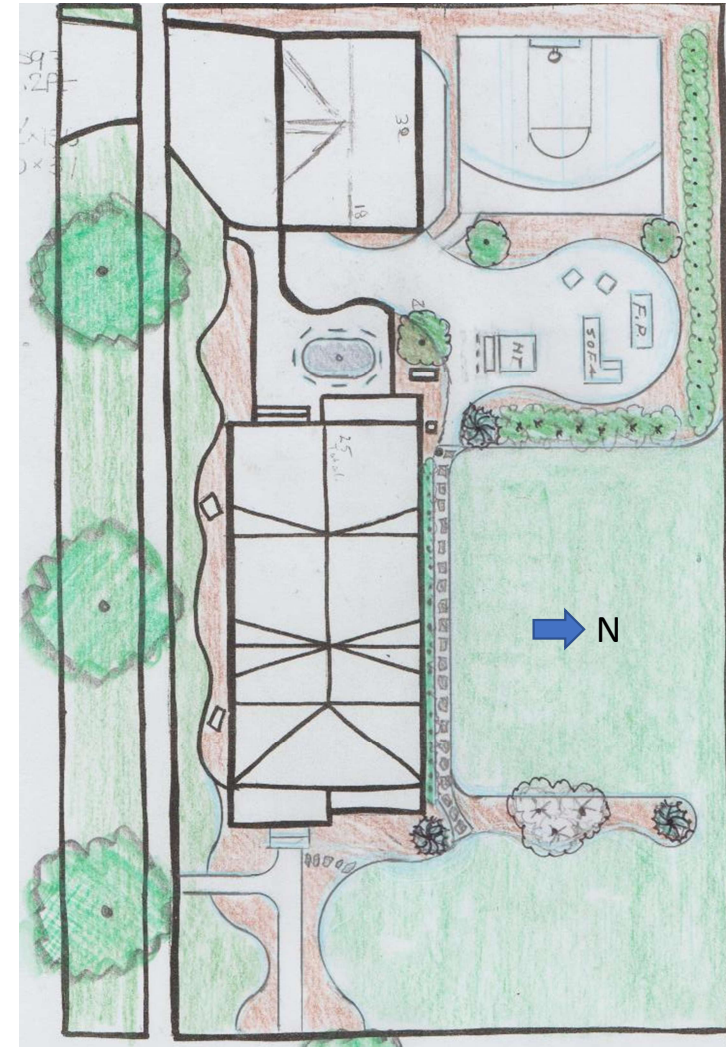
Summary

- We seek to combine our lots to enable the addition of a patio with fireplace, small sports court, and hot tub pad and post. These are accessory structures which cannot be built on a separate vacant lot.
- The combined lot will give our young children a safer and larger place to play.
- We will further address the area's flooding issue by re-grading.
- We would match the double lot directly across from us on Bates.
- Corner lots in our neighborhood are often larger than interior lots.
 - 25 nearby corner lots are wider than the interior lots on the same block.
 - Including the house across Bates and many along Southlawn.
 - City code supports larger corner lots.
- We meet the width criterion.
- We meet all other criteria except the 2x area criterion, which we exceed by 9.8% because the calculation includes smaller lots on the east side of Bates, which are in a different subdivision.
 - The main difference between the lots on the west side of Bates and the east side is lot depth. This difference is not noticeable when a person walks by or drives down our street and it does not affect the character of the neighborhood.
 - All homeowners on the west side of Bates would have a hardship trying to meet this criterion.
 - This lot depth hardship exists on at least 12 other streets throughout the city.
- We have over 20 letters of support from neighbors, including all adjacent neighbors.
- ***Thank you kindly*** for reviewing our proposal.

Our Plan

Combine our lot with our newly acquired lot to the north to provide a safe place for our children and their friends to play sports with a family-friendly outdoor patio dining area. The plan includes:

- Keep our existing home at 1698 S. Bates as is
- Take down the recently purchased rental property at 1680 S. Bates
- In the rear yard of 1680 S. Bates, install:
 - A stone patio for dining table and sofa
 - A gas fireplace to gather around
 - Concrete pad and electric shut-off post for our existing hot tub
 - A small sports court with concrete foundation and basketball post with backboard
 - Regrade lot to fix flooding problem; may require drainage system
- Add sprinklers and new sod to 1680 to create an area to play catch/soccer
- Plant attractive natural landscaping that maintains the welcoming and open feel in our neighborhood, while discreetly shielding the patio
- Maintain open visibility in the front yard by setting back the landscaping



Why Combine Lots?

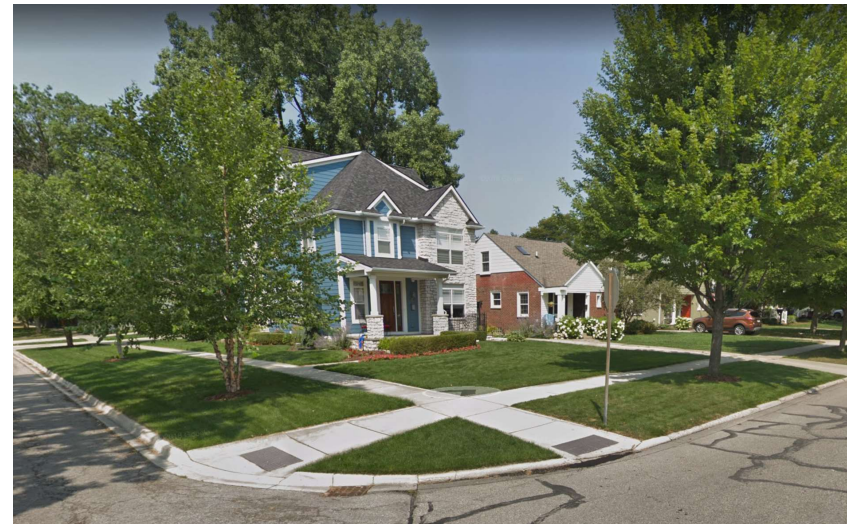
Longstanding Zoning Ordinance 2.07 C (j) prevents us from carrying out plan on an uncombined Lot

- The patio, sports court, basketball post, hot tub electrical post and concrete foundation, and gas fireplace are all **Accessory Structures**. Since a vacant lot has no Primary Building, per code, it can't have any Accessory Structures.
- One purpose of this ordinance is to prevent a vacant lot with accessories from being purchased by a non-Birmingham resident who intends to use the lot only for it's amenities without living there.
- This ordinance is not unique to Birmingham. For example, Beverly Hills, Bloomfield Twp, Franklin, and City of Rochester all have the same rule.
- Guidance from the Birmingham Building Official is that getting a variance to install accessory structures on a vacant lot would be extremely unlikely and our best path is to pursue lot combination.

See Appendix A for full explanation of ordinance and guidance from Birmingham Building Official, Mr. Bruce Johnson.

1698 S. Bates

- We built our 2,750 ft² home in 2008, with builder Thomas Sebold & Associates (TSA) and required no variances. Our 26% lot coverage is well below the 30% maximum. (Appendix B). We could have built a 4,000 ft² house on this lot, but chose not to.
- We changed the garage design to remove the proposed 2nd floor room to maintain charm.
- We have a 12ft side setback along Southlawn. The minimum required side setback for a corner is 10ft.
- Our landscape is open and welcoming to allow high visibility at the corner.
- We have invested approximately \$1M into our home at 1698 S. Bates and plan to live here for many, many years.
- Our boys have attended Birmingham Public Schools since pre-school and are now in Kindergarten and 4th grade at Pierce and Covington.



1680 S. Bates

- The house has seen minimal improvements over its 75 year history and is viewed as unsightly by neighbors, as noted in their letters of support.
- The basement leaks extensively in rains.
- The house has been a rental for 15 years and, as a non-owner occupied property, suffers from deferred maintenance.
- The backyard routinely floods.
- There have been a variety of tenants renting out the house in the 12 years we've lived here. None have ever had children attending BPS schools.
- Letters from neighbors support our plan to improve the property.



A rental for 15 years, the house has not been maintained in a manner consistent with the neighborhood.



The garage is covered with mold.



There are large cracks in the foundation and extensive leaking in the basement.

Combined Lot Criteria

- Our home is newer and fits well with the character of the neighborhood.
- Our combined width of 87.68 ft would be less than twice the average width of 90.33 ft and thus meet the criteria.
- Our combined area of 13,750 ft² would be more than twice the average area of 12,515 ft² and thus exceeds the criterion by 9.8%.
 - Our 2 lots are of average size for our subdivision, Birmingham Lincoln Lots (Appendix C-1). The issue is that Bates St. is on the edge of the subdivision and across the street from us is a different subdivision, Brightlawn, where there are some smaller lots (Appendix C-2). If average sized lots for our subdivision (Lincoln Lots) were used in the calculation, we would meet the criterion.
 - The main difference between the lots on the west side of Bates and the east side is lot depth. This difference in lot depth is not noticeable when a person walks by or drives down the street and does not affect the character of the neighborhood.
 - All homeowners on the west side of Bates would have a hardship trying to meet this criterion.
 - This lot depth hardship exists on at least 12 other streets. On these streets, lot width is consistent, but depth varies: Henrietta, Floyd, Fairfax, Clark, Cole, Lincoln, Knox, Rivenoak, Mohegan, Derby, Haynes, and Hanna (Appendix D).

We Want a Safer Yard for our Boys to Play

- We kept our front yard open to provide a play area, but it is too dangerous to play there.
- Our intersection has a 4-way stop, but drivers routinely disregard the stop signs. We often observe them driving through the intersection at speed. See below the 6 recent example videos from our surveillance system.
- This is a safety concern for our children as we have a narrow yard and they are constantly chasing balls into the street.

Grey SUV & Orange Pick-up disregard stop sign.



White SUV disregards stop sign on Bates.



Black Jeep disregards stop sign on Southlawn.



White SUV disregards stop sign on Bates.



Black SUV disregards stop sign on Southlawn.



Sedan disregards stop sign on Southlawn.



We Want to Further Address the Flooding Issue

- Our block drains from north to south. We are at the south end of the block.
- As noted in letters of support, neighbors to our north and west also experience flooding problems.
- The back yard of 1680 S. Bates experiences flooding after rain and snow melt.
- This excess water from 1680 S. Bates has caused cracks in our driveway at 1698 S. Bates.
- We've spent \$2000 on a drainage system but 1680 still floods. Our landscaper says it needs to be re-graded to permanently resolve.
- We will coordinate with our neighbors to the north and west when we re-grade 1680 to give multiple homeowners the opportunity to benefit.



1680 S. Bates routinely floods

Our Combined Lot Would Match the Double Lot Directly Across Bates

Combined Lot

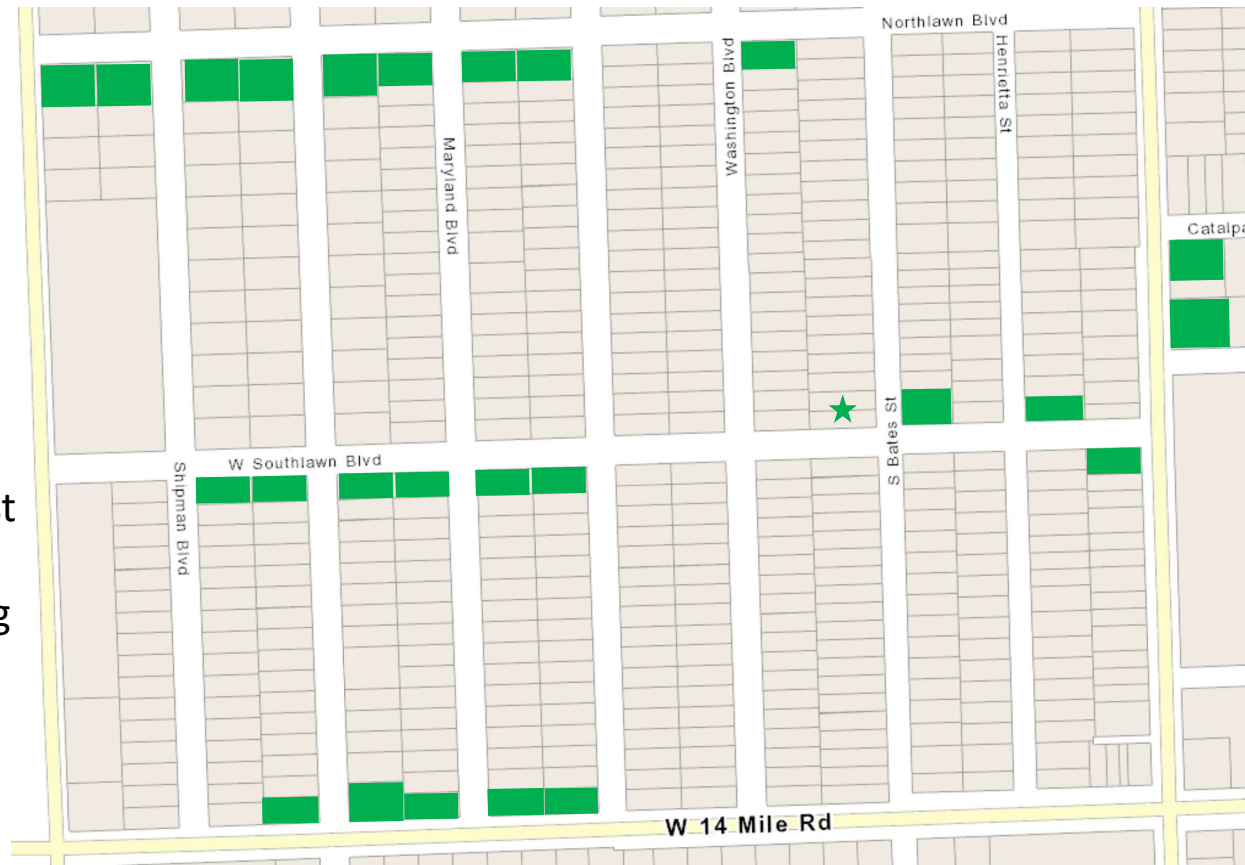


1695 S Bates



Corner Lots are Often Larger

- There are 25 corner lots in our part of the neighborhood that are significantly wider than standard interior lots on the same block (Appendix E)
 - Including the 81.3 ft wide double lot across from us on Bates.
 - Including many lots along Southlawn.
- City code supports larger corner lots. *Sec 102-31 states, "Corner lots in residential areas shall be platted a minimum of at least ten feet wider than interior lots."*
- At 42.68 ft, 1698 S. Bates is not only among the narrowest corner lots in the overall neighborhood, it is the narrowest of all 77 single family residential lots on the west side of Bates from 14 Mile to Maple.
 - *Source: Oakland County Property Gateway 7.2*



Legend
■ Nearby corner lots that are significantly larger than interior lots on the same block

We Have 20+ Letters of Support from Neighbors, Including All Adjacent

Immediately adjacent neighbor comments:

“...we live directly across the street and will certainly benefit from having a beautiful landscape to look at...”

“I welcome the opportunity to live next to green space...”

“We support the Pearce’s request and believe the proposed use is consistent with the neighborhood...”

“My wife and I are both in support of the Pearce family plans.”

“Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor fireplace feature is reasonable and should be approved...”

Nearby neighbor comments:

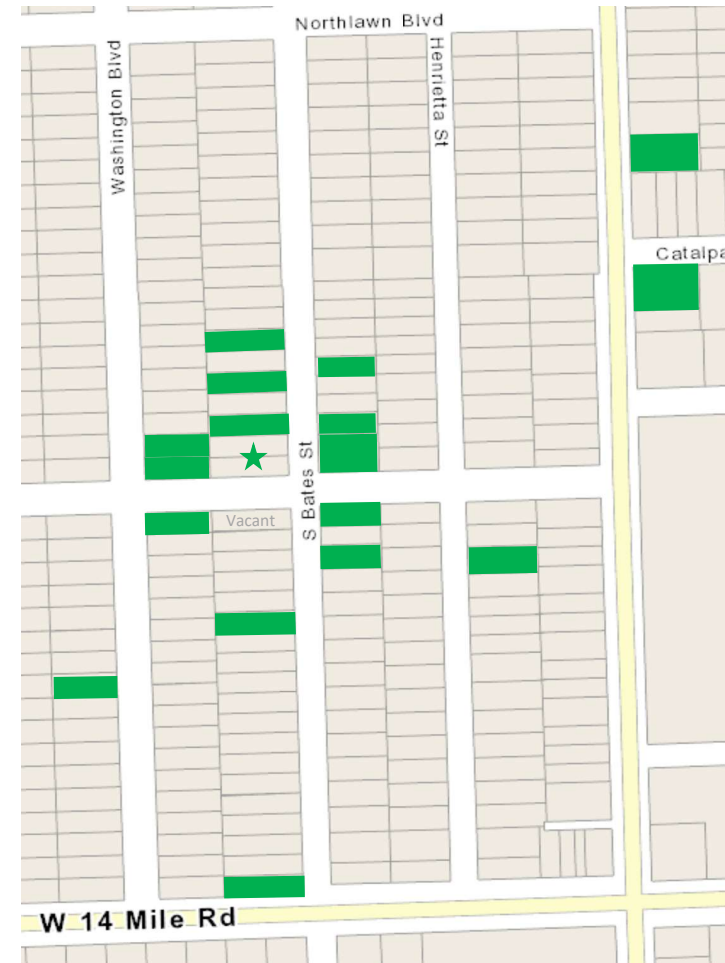
“Southlawn is not overly safe given that although there is a stop sign at Bates, there is only a yield at Washington and Southlawn...Katie and Harry take such pride in their home and property, beautifully maintaining the house itself as well as having immaculate landscaping. I am confident that anything they are allowed to do to the 1680 property will only elevate the beauty and charm of the neighborhood.”

“I think it would be a great addition to the neighbors.”

“...would be a great asset to our community and provide a safe oasis for their children to play.”

“I was delighted to hear the boys would have a safer space to enjoy.”

“...will be a wonderful addition to the neighborhood! ... We have nothing but excitement and enthusiasm for this project.”



Legend

■ Provided letter of support

Bruce Johnson - Birmingham Building Official

From: Katie Kennedy (katherine_alice@yahoo.com)

To: katherine_alice@yahoo.com

Date: Sunday, January 12, 2020, 08:59 AM EST

From: Bruce Johnson <bjohnson@bhamgov.org>

To: Katie Kennedy <katherine_alice@yahoo.com>

Sent: Friday, January 3, 2020, 05:39:18 PM EST

Subject: Re: Fw: Lot Combination 1680/1698 S. Bates

Hi Katie,

It was a pleasure meeting you this morning and discussing your project. I really appreciate how well versed you are in the City regulations regarding your situation. Below I will summarize our conversation about your project and answer the questions you asked in your email below.

You are in the process of purchasing the property to the north of yours with the intention of demolishing the existing house to utilize that lot as your own space. You would like to extend your existing patio onto the vacant lot, add a free standing gas fireplace, install a sports court and move your existing hot tub over to the vacant lot. Staff informed you that all of the above items are accessory structures per the Zoning Ordinance, and that accessory buildings or structures are not permitted on a lot without a principal building (house). I confirmed that these items are structures per the definition in the Zoning Ordinance. And I confirm that they are considered accessory structures that are permitted accessory uses per Article 2 Section 2.07(C)(J) of the ordinance. Finally, an accessory use would not be permitted on a property without a principal use already established. The provisions of the Zoning Ordinance including Section 2.07(C)(J) pertaining to permitted and accessory uses have been in place for several decades.

During our meeting we discussed the possibility of you seeking variances from the Board of Zoning Appeals to allow accessory structures and uses on the lot without a principal use. These would be a use variances that are rarely granted because establishing a hardship is extremely difficult. And the BZA would most likely require that you seek a lot combination first to exhaust all your remedies prior to making a ruling. I would like to clarify that the BZA only rules on the established regulations, it cannot change the ordinance. Only the City Commission can change the provisions of the Zoning Ordinance after public hearings conducted by the Planning Board.

We also discussed the application for a lot combination that you are preparing to submit to the City Commission as suggested by Brooks Cowan. I agree this is the first step you need to take in pursuing approval for your project. You have done excellent research into the City Code and Zoning Ordinance and I'm sure your application will be complete with all the necessary details. Please let me know if you have any more questions or need further assistance.

Best regards,

Bruce

Bruce R. Johnson, B.C.O. | Building Official | 248.530.1842 (office) | 248.530.1292 (fax)
Get the latest news from the City of Birmingham delivered to your inbox.

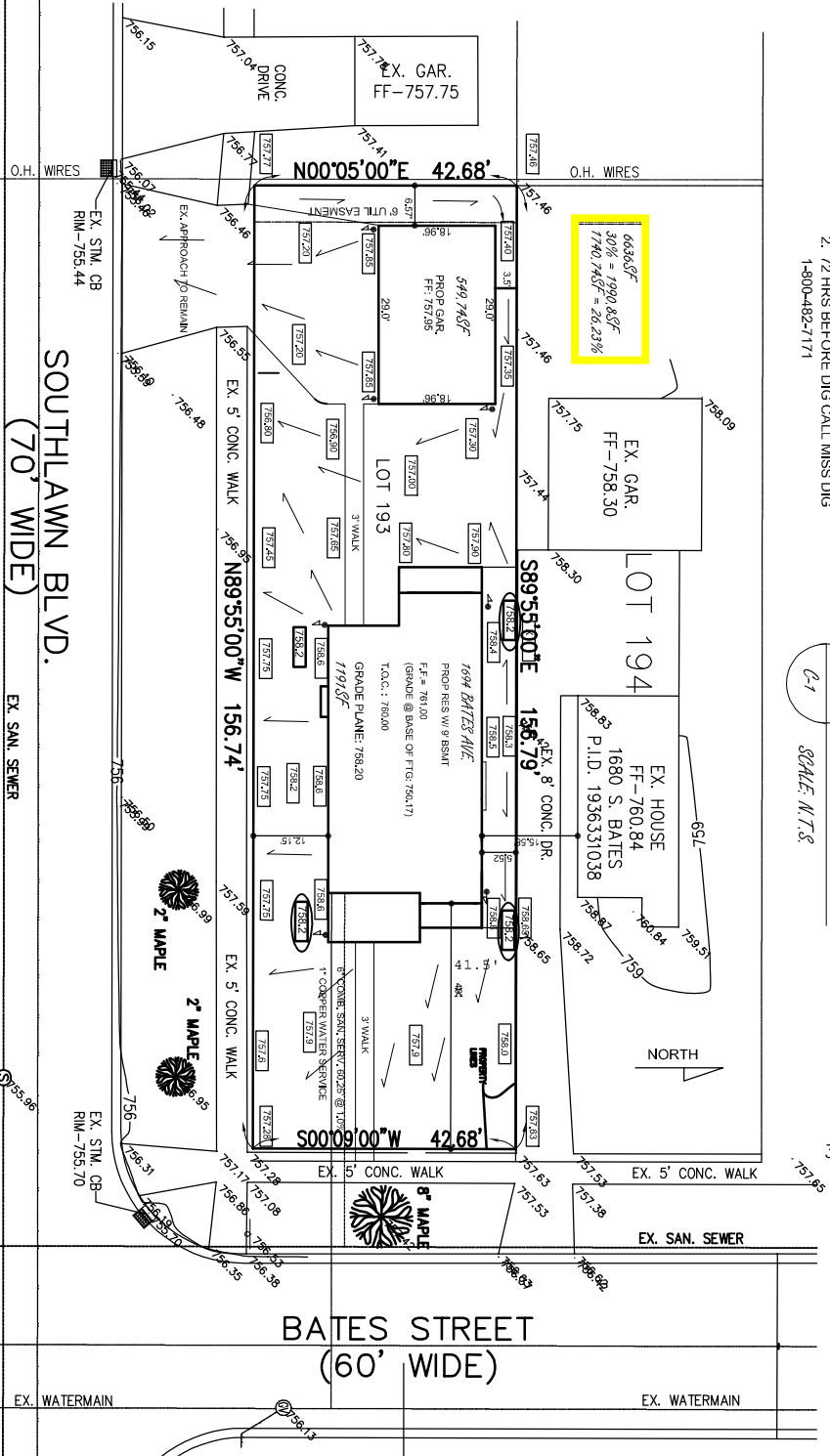
Visit <http://bhamgov.org/bhamnews> to sign up.

LOT #: 198	LOT #: 197	LOT #: 180	LOT #: 193	LOT #: 194	LOT #: 193
39.7	41.9	41.9	37.1	38.2	HSE# 1694

198.815 = 39.75
PROPOSED FRONT SETBACK = 40.0'

1. ALL DOWNSPOUTS TO BE DIRECTED TO STREET.
2. 72 HRS BEFORE DIG CALL MISS DIG
1-800-482-7171

02 SETBACK DETAIL
G-1 SCALE: N.T.S.



30' R/W LINE

1 inch = 20 ft.

LEGAL DESCRIPTION:

LOT 193, EXCEPT THE EASTERN 7.00 FEET OF THE RE-SUBDIVISION OF LOTS 1 TO 84 AS RECORDED IN DEED 57, PAGE 9 OF PLATS, OKMUND COUNTY RECORDS, AS RECORDED IN DEED 57, PAGE 9 OF PLATS, OKMUND COUNTY RECORDS.
BENCHMARK NO. 1
TOP OF ELEVATION BEARING MARKER LOCATED IN THE OPENWALK AT THE SOUTHWEST CORNER OF LINDEN STREET & PERCE STREET (PROVIDED BY CITY OF BIRMINGHAM ENGINEERING DEPARTMENT)
BENCHMARK NO. 2
FOUND NAIL IN NORTHEAST FACE OF UTILITY POLE LOCATED AT THE SOUTHWEST CORNER OF BATES STREET AND SOUTHLAWN BLVD. (ELEVATION-257.34 U.S.G.S. DATUM)

1694 BATES AVE.
BIRMINGHAM, MI 48009

ATTINGROUP . LLC

7640 DIXIE HWY., STE 115
GRANDSTON, MI 48346
248-575-5115
Fax: 248-575-5118

01 SITE PLAN
G-1 SCALE: 1" = 20'

PROJECT:
PERCE RESIDENCE
1694 BATES
BIRMINGHAM, MI 48009

PROJECT NUMBER:
7694
SHEET NUMBER:
G-1

SOUTHLAWN BLVD.
(70' WIDE)

BATES STREET
(60' WIDE)

APPENDIX C-1. Lincoln Lots Subdivision - Average Lot Size Calculation

For all 203 lots in Lincoln Lots Subdivision

Source: Oakland County Property Gateway v 7.2 (<https://gis.oakgov.com/PropertyGateway/Home.mvc>)

The average lot size of the 203 lots in Lincoln Lots Subdivision is 6627sqft. Our survey shows that our 2 lots are right around average, at 6692.4sqft and 7057.6sqft.

Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)	Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)	Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)
1	West side of Bates - 14 Mile to Southlawn	45	159	7155	65	East side of Washington - Northlawn to Southlawn	67.3	130	8749	132	East side of Stanley and West side of Washington - Northlawn to Southlawn	50	130	6500
2		45		7155	66		50		6500	133		50		6500
3		44		6996	67		50		6500	134		50		6500
4		43		6837	68		50		6500	135		50		6500
5		43		6837	69		50		6500	136		50		6500
6		43		6837	70		50		6500	137		50		6500
7		43		6837	71		48		6240	138		50		6500
8		43		6837	72		48		6240	139		50		6500
9		43		6837	73		47		6110	140		50		6500
10		43		6837	74		47		6110	141		50		6500
11		43		6837	75		47		6110	142		50		6500
12		43		6837	76		47		6110	143		50		6500
13		43		6837	77		47		6110	144		50		6500
14		43		6837	78		47		6110	145		50		6500
15		43		6837	79		47		6110	146		50		6500
16		43		6837	80		46		5980	147		50		6500
17		43		6837	81		46		5980	148		50		6500
18		43		6837	82		46		5980	149		50		6500
19		43		6837	83		46		5980	150		50		6500
20	West side of Bates - Southlawn to Northlawn	50	160	8000	84	East side of Washington - 14 Mile to Southlawn	45	130	5850	151	East side of Stanley and West side of Washington - Northlawn to Southlawn	50	130	6500
21		48	160	7680	85		45		5850	152		50		6500
22		48	160	7680	86		45		5850	153		50		6500
23		48	160	7680	87		45		5850	154		50		6500
24		47	160	7520	88		45		5850	155		50		6500
25		48	159	7632	89		45		5850	156		47		6110
26		48	159	7632	90		45		5850	157		47		6110
27		48	159	7632	91		45		5850	158		47		6110
28		48	159	7632	92		45		5850	159		47		6110
29		48	159	7632	93		46		5980	160		47		6110
30		43	159	6837	94		46		5980	161		47		6110
31		45	157	7065	95		46		5980	162		47		6110
32		45	157	7065	96		46		5980	163		47		6110
33		45	157	7065	97		46		5980	164		47		6110
34		45	157	7065	98		46		5980	165		47		6110
35		45	157	7065	99		46		5980	166		47		6110
36		45	157	7065	100		46		5980	167		47		6110
37		45	157	7065	101		46		5980	168		47		6110
38		45	157	7065	102		47		6110	169		47		6110
39	43	157	6751	103	47	6110	170	50	6500					
40	W Bates - Northlawn to Lincoln	55	160	8800	104	East side of Stanley and West side of Washington - Lincoln to Northlawn	47	130	6110	171	East side of Stanley and West side of Washington - Southlawn to 14 Mile	50	130	6500
41		55		8800	105		47		6110	172		50		6500
42		55		8800	106		47		6110	173		50		6500
43		55		8800	107		47		6110	174		50		6500
44		50		8000	108		47		6110	175		50		6500
45		50		8000	109		47		6110	176		50		6500
46		50		8000	110		47		6110	177		50		6500
47		50		8000	111		47		6110	178		50		6500
48		50		8000	112		47		6110	179		50		6500
49		50		8000	113		47		6110	180		50		6500
50		50		8000	114		47		6110	181		50		6500
51	80	129	10320	115	47	6110	182	50	6500					
52	80	129	10320	116	47	6110	183	50	6500					
53	East side of Washington - Lincoln to Northlawn	60	130	7800	117	East side of Stanley and West side of Washington - Lincoln to Northlawn	46	130	5980	184	East side of Stanley and West side of Washington - Southlawn to 14 Mile	50	130	6500
54		60		7800	118		46		5980	185		50		6500
55		60		7800	119		46		5980	186		50		6500
56		64		8320	120		46		5980	187		50		6500
57		65		8450	121		46		5980	188		50		6500
58		65		8450	122		46		5980	189		50		6500
59		65		8450	123		46		5980	190		50		6500
60		65		8450	124		46		5980	191		50		6500
61		50		6500	125		46		5980	192		46		5980
62		50		6500	126		46		5980	193		46		5980
63		48		6240	127		46		5980	194		46		5980
64		48		6240	128		46		5980	195		46		5980
					129		46		5980	196		46		5980
			130	47.35	6155.5	197	46	5980						
			131	48	6240	198	46	5980						
						199	46	5980						
						200	46	5980						
						201	46	5980						
						202	46	5980						
						203	46	5980						

Avg. Area of a lot in Lincoln Lots (sqft)	6627
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The proposed lot meets the area criterion if we use the average lot size for Lincoln Lots Subdivision

Modified Area Calculation

Address	Width(ft)	Depth(ft)	Area(sqft)
1786 S. Bates	43	158.00	6815
1776 S. Bates	43	158.00	6817
1754 S. Bates	43	158.00	6819
1740 S. Bates	43	159.00	6820
1726 S. Bates	43	159.00	6822
1708 S. Bates	44.5	158.00	7062
1668 S. Bates	45	157.00	7059
1646 S. Bates	45	157.00	7060
1622 S. Bates	45	157.00	7061
1610 S. Bates	45	157.00	7063
1590 S. Bates	45	157.00	7064
1570 S. Bates	45	157.00	7065
1562 S. Bates	45	157.00	7066
1695 S. Bates	81.3	120.00	9778
1763 S. Bates			6627
1751 S. Bates			6627
1737 S. Bates			6627
1721 S. Bates			6627
1717 S. Bates			6627
1675 S. Bates			6627
1657 S. Bates			6627
1635 S. Bates			6627
1619 S. Bates			6627
1607 S. Bates			6627
1587 S. Bates			6627
1561 S. Bates			6627
		Avg. Lot Area (sqft):	6919.0
		2x Avg. Lot Area (sqft):	13838.1
		Proposed Lot (sqft):	13750.0

Appendix C-2: Brightlawn Subdivision - Average Lot Size Calculation

For all 89 lots in Brightlawn Subdivision

Source: Oakland County Property Gateway v 7.2 (<https://gis.oakgov.com/PropertyGateway/Home.mvc>)

Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)
1	East side of Bates - North of Southlawn (1/2 block)	40	120	4800
2		40		4800
3		40		4800
4		40		4800
5		40		4800
6		40		4800
7		40		4800
8		44.5		5340
9		81.3		9756
10	East side of Bates - Southlawn to 14 Mile (1/2 block)	44	120	5280
11		40		4800
12		50		6000
13		50		6000
14		50		6000
15		50		6000
16		50		6000
17		50		6000
18		50		6000
19		50		6000
20		50		6000
21		50		6000
22		55		6600
23		55		6600
24		55		6600
25	55	6600		
26	West side of Henrietta - North of Southlawn	40	120	4800
27		40		4800
28		40		4800
29		40		4800
30		40		4800
31		50		6000
32		50		6000
33		50		6000
34		56.3		6756
35	West side of Henrietta - Southlawn to 14 Mile	42.65	120	5118
36		50		6000
37		50		6000
38		50		6000
39		50		6000
40		50		6000
41		50		6000
42		50		6000
43		50		6000
44		50		6000
45		50		6000
46		50		6000
47		50		6000
48		50		6000
49		55		6600
50	55	6600		

Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)
51	East side of Henrietta - North of Southlawn (1/2 block)	50	130	6500
52		50		6500
53		50		6500
54		50		6500
55		57		7410
56	West side of Pierce - North of Southlawn (1/2 block)	60	130	7800
57		54		7020
58		53		6890
59		53		6890
60		37		4810
61	East side of Henrietta - Southlawn to 14 Mile	42.5	140	5950
62		47		6580
63		57		7980
64		50		7000
65		40		5600
66		40		5600
67		40		5600
68		60		8400
69		60		8400
70		50		7000
71		50		7000
72		50		7000
73		50		7000
74		50		7000
75		55		7700
76	55	7700		
77	West side of Pierce - Southlawn to 14 Mile	61	130	7930
78		40		5200
79		40		5200
80		60		7800
81		40		5200
82		40		5200
83		60		7800
84		40		5200
85		40		5200
86		60		7800
87		40		5200
88		40		5200
89	40	5200		

Avg. Area of a lot in Brightlawn (sqft)	6143
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Note: As shown in gray, there are just a handful of 4800sqft lots in the Brightlawn subdivision, and 7 of them are included in our area calculation.

Note: The strip of land running between Henrietta and Bates is narrow, resulting in 120ft deep lots, which is uncharacteristic for the overall neighborhood. Only 3 out of 24 blocks in the 1/2 mile area have 120ft lots.

Appendix D: Example streets, or portions of streets, where standard lot width is consistent but depth varies from one side to the other.

Every lot on the deeper side of these streets would have a hardship trying to meet the 2x area criterion.

Street	Approx. Standard Lot depth (ft) (side A)	Approx. Standard Lot depth (ft) (side B)
Bates (14 to Lincoln)	120	157
Henrietta (14 to Lincoln)	120	131
Floyd	100	123
Fairfax (Pine to Oak)	150	160-212
Clark	126	135
Cole (Eton to Torry)	120	164
Lincoln (Taunton to Eton)	139	150
Knox	120	160
Rivenoak	130	140
Mohegan (Poppleton to Adams)	140	165
Derby (Coolidge to Eton)	127	150
Haynes (Eton to Columbia)	115	145
Hanna (Southfield to Watkins)	127	144

APPENDIX E:

25 EXAMPLES OF WIDER CORNER LOTS in our part of the neighborhood - From 14 to Northlawn, Southfield to Pierce

Table comparing Corner Lot Width to Width of Standard Interior Lots on the Same Block

Source: Oakland County Property Gateway Version 7.2

Address	Corner Lot Width (ft)	Interior Lot Widths (ft) for Same Block	How much wider is the corner lot?
1569 Pierce	120	50	140%
1407 Southfield Rd.	100	75	33%
1404 Shipman Blvd.	100	75	33%
1403 Shipman Blvd.	100	75	33%
1414 Birmingham Blvd.	100	75	33%
1415 Birmingham Blvd.	100	75	33%
1515 Pierce	93	50	86%
1991 Birmingham Blvd.	90.93	50	82%
1695 S Bates	81.3	No standard. 44% 40ft lots 50% 50ft lots, 6% 70ft lot. Weighted average 46.8ft	74%
1411 Maryland	75	50	50%
1414 Maryland	75	50	50%
1412 Stanley	75	50	50%
1405 Washington	67	50	34%
1990 Birmingham Blvd.	62.24	50	24%
1710 Pierce	61	Mixed. 75% 40ft lots, 25% 60ft lots. Weighted average 45ft.	36%
1990 Maryland	60.78	50	22%
1991 Maryland	60.47	50	21%
1720 Birmingham Blvd.	60	50	20%
779 Southlawn (at Shipman)	60	50	20%
1700 Maryland	60	50	20%
1701 Maryland	60	50	20%
1710 Stanley	60	50	20%
1992 Stanley	59.3	50	19%
1723 Birmingham Blvd.	58	50	16%
1699 Henrietta	57	50	14%



Bedient Construction Inc.

GRADING & EXCAVATING

2573 Leach • Rochester Hills, MI 48309 • Phone: (248) 853-0810 • Fax: (248) 853-6289

Katie Pearce
1680 S. Bates, Birmingham
December 16th, 2019

Description of work

Demo house, garage, front porch, bushes, tree, concrete & haul away debris	
Sewer disconnect	
Total	\$10,542.00

*Sewer & water will be capped at the same day of demolition if needed.

*A survey by a State of Michigan Asbestos Inspector must be provided to Bedient Construction prior to demolition.

*Concrete basement walls and standard footings (16" x 42") will be removed. Any footings larger than standard will be an additional cost.

*Concrete floors and slabs up to 6" will be removed. Any floors thicker than this will be an additional cost.

*Bedient Construction receives all salvageable materials from the structure listed above from the date of this bid.

*The owner is responsible for all utility disconnects.

The above price does not include:

- *Dewatering, dust control, engineering fees, permits or bonds if necessary.
- *The removal of any hazardous or contaminated materials in or around the structures.
- *No tires, shrubs or trees to be removed.
- *Capping of wells or pumping or removing of septic tanks.
- *Any materials left in building such as furniture, stove, washer, dryer, etc..

*Bid valid for 30 days.

Thank you for viewing the bid price we offer for this project. Please sign and fax back to 248-853-6289.
 If you have any questions or concerns please feel free to call me at 248-853-0810.

Sincerely,
 Jeff Bedient

 Authorized Signature

 Date

Terms: Net 30 days: Delays in payment shall be subject to interest charges of 18% per annum. If Bedient Construction is required to engage the service of a collection agency or attorney, the customer agree to reimburse Bedient Construction for any reasonable amounts expended in order to collect any unpaid balance.



+ \$3500 survey
 + \$200 register
 vacant property
 pending hearing

FEE SCHEDULE

Application	Fees
Administrative Approval	\$100
Administrative Sign Approval	\$100
Board of Zoning Appeals*	
• Single Family Residential	\$310
• All Other Zoning Districts	\$510
Community Impact Study Review*	\$2,050
Design Review*	\$350
Division/Combination of Platted Lots	$\$200 \times 2 = \400
Historic District Review*	
• Single Family Residential	No Charge
• All Other Zoning Districts	\$350
Public Notice Sign	
• Notice Sign Rental	\$50
• Returnable Sign Bond	\$100
	→ \$150 total
Preliminary/Final Site Plan Review	
• R4 – R8 Zoning District	\$850, plus \$50 per dwelling unit
• Nonresidential Districts	\$1,050, plus \$50 per acre or portion of acre
Special Land Use Permit*	\$800
• Plus Site Plan Review	\$1,050
• Plus Design Review	\$350
• Plus Publish of Legal Notice	\$450
• Plus Sign Rental and Deposit	\$150
	→ \$2,800 total
Special Land Use Permit Annual Renewal	\$200
Temporary Use Permit	\$100
Zoning Compliance Letter	\$50

***The fees for Board of Zoning Appeals, Community Impact Study Review, Design Review, Site Plan Review, Historic District Review and Special Land Use Permits shall be double the listed amounts in the event the work is commenced prior to the filing of an application for review by the City of Birmingham.**

Ordinance No. 1751 (Appendix A, Section 7.38 of the Birmingham City Code)

$\text{Total} : \$4,150$

Ralph & Christine Price

1695 S. Bates Street Birmingham MI 48009

January 8, 2020

Mr. Brooks Cowan
Community Development
City of Birmingham

Dear Mr. Cowan,

I live at 1695 S. Bates Street, directly across from neighbor Katie Pearce residing at 1698 S. Bates Street. Katie and her husband purchased the home next to theirs at 1680 S. Bates Street and plan to demolish the small bungalow on that property and improve the property by creating an attractive green living space that would expand the Pearce's property to the north.

I have seen the landscape plan and believe this will be a beautiful addition to the neighborhood. We are in full support of the Pearce's plan as we live directly across the street and will certainly benefit by having a beautiful landscape to look at instead of the unsightly small bungalow that is presently on the subject lot.

If you have any questions or require any additional information from me please feel free to contact me at 248-705-2521.

Thank you for your considerations.

Sincerely,

Ralph L. Price

1680/1698 s. Bates

From: Deborah Holfca (dcoughenour123@att.net)

To: bcowan@bhamgov.org

Date: Tuesday, January 14, 2020, 10:55 AM EST

To Whom It May Concern,

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Deborah Holfca and Paul Coughenour
1695 Washington Boulevard
Birmingham, MI. 48009

Sent from my iPad

1680 S. Bates

From: Andrew Kwietniewski (akwietni@yahoo.com)

To: bcowan@bhamgov.org

Cc: katherine_alice@yahoo.com

Date: Thursday, January 9, 2020, 08:59 PM EST

Hi Brooks,

My name is Drew Kwietniewski. I live at 1679 Washington Blvd. Recently, Katie Pearce stopped by our house and shared her family's plan to demolish the existing home and use that open space to add to their yard. In addition to explaining the details, she provided a diagram of what the plan look like. Everything Katie explained - a safer play space for her children, as well as improving the state of the yard to address flooding issues - seems logical to my wife and me.

My wife and I are both in support of the Pearce family plans.

If anything further is needed from us, please feel free to reach out.

Thanks,

Drew
586.557.0607

January 10, 2020

Mr. Brooks Cowan
City Planner
City of Birmingham
151 Martin St.
Birmingham, MI 48009

Cc: Ms. K. Pearce

Re: Lots 1680/1698 S. Bates Combination

Dear Mr. Cowan,

I have reviewed a draft rendering of Harry and Katie Pearce's outdoor living space expansion proposal. It is my understanding the combination of the lots would not be used to expand indoor living or storage (garage) structures. I welcome the opportunity to live next to additional "green" space in area where "big-foot" houses have become the norm.

I have no objection to the Pearce's proposal. Please feel free to contact me if you would like to discuss further.

Respectively,

/s/

Debra O'Hara
1668 S. Bates St.
Home: (248) 540-2917

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Martin Frenkel / Kimberly Miller

Address: 1709 Washington Blvd

Birmingham, MI
48009

Signature: Kimberly Miller . Martin Frenkel

Date: 1-10-, 2020

1-10-2020

We support the Pearce's request and believe the proposed use is consistent with the neighborhood.

January 7, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

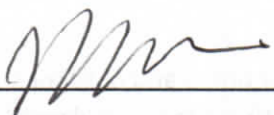
I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Julie Rosenfelder

Address: 1717 S. Bates

Birmingham, MI
48009

Signature:  - 248.227.8321

Date: 1/7, 2020

I hope this helps!!! Keep me posted, please!

From: Donna Rubin (donnarubin1@me.com)

To: katherine_alice@yahoo.com

Date: Monday, January 6, 2020, 07:21 AM EST

To Whom this may Concern,

I had the good fortune to live behind the Pearce family for over 7 years at 1695 Washington Blvd in Birmingham, before moving to Traverse city last summer. During that time I observed their family grow with two young boys playing in their front yard facing Bates Street. When I heard that they would like to purchase the neighboring home to the north of them for a backyard sport court and outdoor living space I was delighted to know that the boys would have a safer space to enjoy. I was always happy to see them playing ball in their front yard with their parents but worried about the safety next to the very busy intersection at Bates and Southlawn. To be able to utilize the new yard north would also benefit the neighborhood as they plan to finally correct the constant water leak that freezes on the south side of the sidewalk on Southlawn. The Pearce family have lived in their beautiful home for many years, longer than most neighbors, and are always maintaining the yard with beautiful flowers and landscaping...even planting seasonal vegetables with the boys. I feel certain that they would improve the current look of the proposed lot to make the neighborhood more appealing and unobtrusive to the cozy character of Bates Street. I hope the city will consider their creative use of the property that will allow them to continue living and thriving as a family with young children. As a retired 33 year elementary educator I know the importance of outdoor education and physical space. I have seen other neighbors leave our area due to the limited amounts of safe play for their own children and I would feel terrible to deprive the Pearce family of this much needed land. Please accept my recommendation for the Pearce project; my only concern is that I no longer have the privilege of being their neighbor and seeing this positive change come to fruition! Best of luck to them!

Donna Rubin
967 Lake Ridge Dr. #17
Traverse City MI 49684
817-675-8140
donnarubin1@me.com

Sent from my iPhone

Sent from my iPhone

1698/1680 South Bates

From: carolyn kidney (cmkidney@yahoo.com)

To: bcowan@bhamgov.org

Cc: katherine_alice@yahoo.com

Date: Friday, January 24, 2020, 12:28 AM EST

Dear Mr. Cowan,

I am Katie Pearce's old neighbor. My husband and I lived at 1709 Washington Blvd., kitty corner to the Pearce family home for 14 years, only moving last February to a home in Bloomfield Village to provide a safe, fenced yard for our own two children to play in. I am writing in support of the Pearce family perhaps being able to provide a safe yard for their two children Harry and Colton. I understand that they are purchasing what has been a rental property next door to their current home with the hopes of being able to have a place to put a sports court for their boys to play without continually having to worry about balls rolling out into the road with little boys close behind. Southlawn is not overly safe given that although there is a stop sign at Bates, there is only a yield at Washington and Southlawn. My husband and I had personally always hoped that the rental property beside our old home would one day come up for sale so that we too could have stayed in that lovely neighborhood in Birmingham, while having a safe yard for our kids too.

Unfortunately, we were not so lucky. I hope that you will see the benefits of giving Katie and Harry the opportunity to create a side yard to their home with the 1680 property thereby allowing them somewhere private to enjoy summer meals on a patio, while being able to relax knowing that their children are safe and protected. Katie and Harry take such pride in their home and property, beautifully maintaining the house itself as well as having immaculate landscaping. I am confident that anything they are allowed to do to the 1680 property will only elevate the beauty and charm of the neighborhood.

Thank you for your time,
Carolyn Kidney

[Sent from Yahoo Mail for iPhone](#)

Bates St - Pearce

From: Carey Larson (careylarson@gmail.com)

To: bcowan@bhamgov.org

Cc: katherine_alice@yahoo.com

Date: Friday, January 24, 2020, 07:43 AM EST

Good morning Mr. Cowan,

I wanted to take a moment and write you in regards to the Pearce Family plan on Bates Street. We also live on Bates Street and I think that this will be a wonderful addition to the neighborhood! There is no opposition to their plan, in fact, we have nothing but enthusiasm and excitement for this project.

All the best,

Carey and Niles Larson
1990 S Bates St, Birmingham, MI 48009

January _____, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

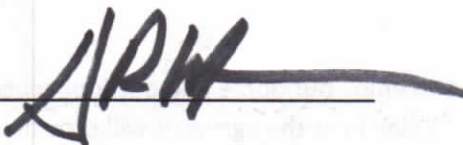
I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Sgt Morrison

Address: 1619 S. BATES

Birmingham, MI
48009

Signature: 

Date: 1-19- _____, 2020

January _____, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Deborah Lail

Address: 1622 Bates

Birmingham, MI
48009

Signature: Deborah D. Lail

Date: 1-20-, 2020

✓ I think it would be a great addition to the neighbors

January _____, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: MARTINA FATTORINI

Address: 1675 SOUTH BATES ST

Birmingham, MI
48009

Signature: 

Date: 01/08, 2020

January 7, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Tiffany Glimi

Address: 1737 S. Bates St.

Birmingham, MI
48009

Signature: Tiffany Glimi

248-930-5656 cell

Date: Jan. 7th, 2020

January 6, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Elisabeth Banks

Address: 1590 Bates

Birmingham, MI
48009

Signature: 

Date: Jan 6, 2020

January _____, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

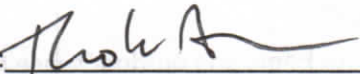
I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: THAO ANDERSON

Address: 1786 S. BATES

Birmingham, MI
48009

Signature: 

Date: 1/6/2020, 2020

January _____, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Jiani Wallace

Address: 1735 Henrietta St. ~~Bates~~ Birmingham formerly lived in
Birmingham, MI 1675 S Bates streets
48009

Signature: Jiani Wallace

Date: 1-6, 2020

January _____, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Jennifer Champion

Address: 1208 S. Bates St.

Birmingham, MI
48009

Signature: Jennifer Champion

Date: 1/7/20, 2020

January _____, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Rachel Hoornaian

Address: 1469 Pierce St

Birmingham, MI
48009

Signature: Rachel S. Hoornaian

Date: 1/7, 2020

January 5th, 2020

City of Birmingham
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Kelly Frank

Address: 1044 Clark St.

Birmingham, MI
48009

Signature: Kelly Frank

Date: January 5th, 2020

1680/1698 S. Bates Lot combination

From: Courtney Monigold (courtneymonigold@gmail.com)

To: bcowan@bhamgov.org

Cc: katherine_alice@yahoo.com

Date: Tuesday, January 14, 2020, 09:07 AM EST

Dear Brooks Cowan,

I am writing you on behalf of Katherine Pearce at 1698 S. Bates in Birmingham. She has made me aware of her desire to obtain the property next door to her (1680 S. Bates) to create green space for her children to play.

As a fellow neighbor (I am at 1515 Pierce St), I too, desired to create the same space for my children. We live on a very busy street, and a very busy corner. My children are unable to play in my front yard due to heavy traffic, speeding, and the risk of drivers on cell phones. When we obtained the lot next door (1525 Pierce) to expand our home, it created an oasis for our children for more outdoor play. In addition to that, it allowed us to build more equity in our home, as well as provide improvement to the neighborhood with our full home renovation. The home we took down was a revolving rental home. The home was not only an eye sore, but it often times, attracting sketchy neighbors. When we took the home down, it was full of mold and run down. Any person shopping for new home in the neighborhood would comment on such an eye sore. I can't tell you how many people stop me in my front yard to compliment us on what we've done to the neighborhood.

As a realtor in Birmingham of 10 years (I work at KW Domain), I can tell you that a run down rental home is not exactly an asset to our neighborhood. It creates unease in young families looking to buy in the neighborhood and apprehension for those that would like to park their biggest asset (which is owning a home). I work predominantly in high end new construction and I tell you first hand the first thing clients do is look out the window. And being so close to our neighbors in Birmingham, seeing a run down home next to you creates some pitfalls in resale.

In addition to that, in Birmingham, we are challenged by our smaller lot sizes. Anyone with with small children first look at the yards pace. They check for size, but their main concern goes to safety. The Pearce Family's desire to create green space will not only provide them with equity in their property but also would be a great asset to our community and provide a safe oasis for their children to play.

If you have any further questions regarding this matter, please do not hesitate to reach out to me.

Thank you!

Courtney Monigold

--

Best regards,

Courtney Monigold



COURTNEY MONIGOLD

Realtor® | New Construction Consult

248.891.4334 mobile

248.590.0800 office

courtneymonigold@gmail.com

cmonigold.kw.com

kw | **DOMAIN**

LUXURY HOMES INTERNATIONAL

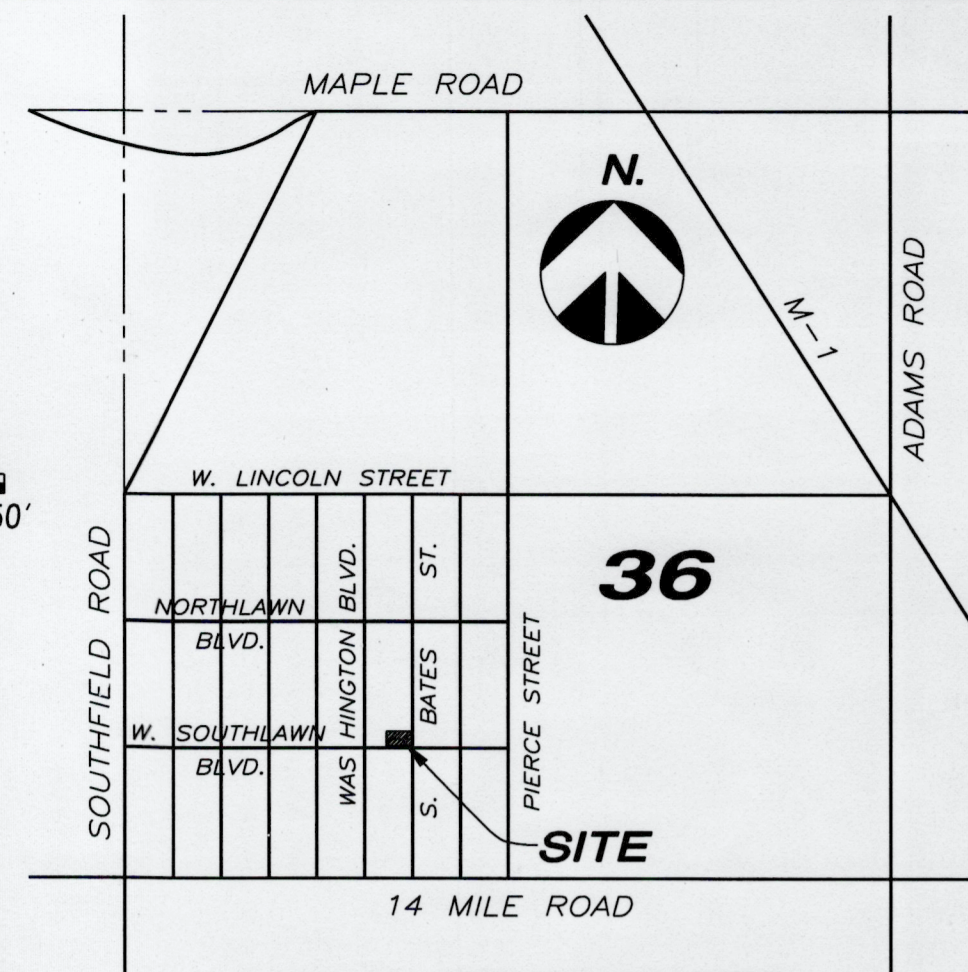
210 S. OLD WOODWARD | SUITE 200 | BIRMINGHAM, MI | 48009

OVERALL NEIGHBORHOOD
PART OF THE S.W. 1/4 OF SECTION 36
T.2N., R.10E., CITY OF BIRMINGHAM
OAKLAND COUNTY, MICHIGAN

191209-10185
JOB NO.
Date 1-22-2020
Scale 1"=50'
Drawn DKZ
Check W.C.A.
Sheet 1 of 2
Fid. Bl.

PROPOSED LOT COMBINATION
FOR:
KATHERINE PEARCE
1698 S. BATES STREET
BIRMINGHAM, MI 48009
(248) 444-9146

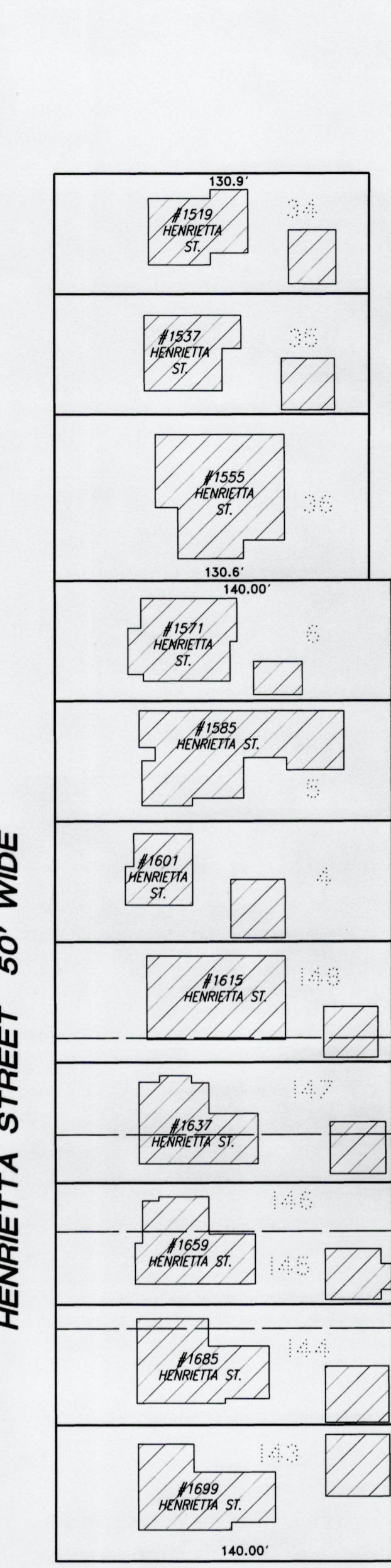
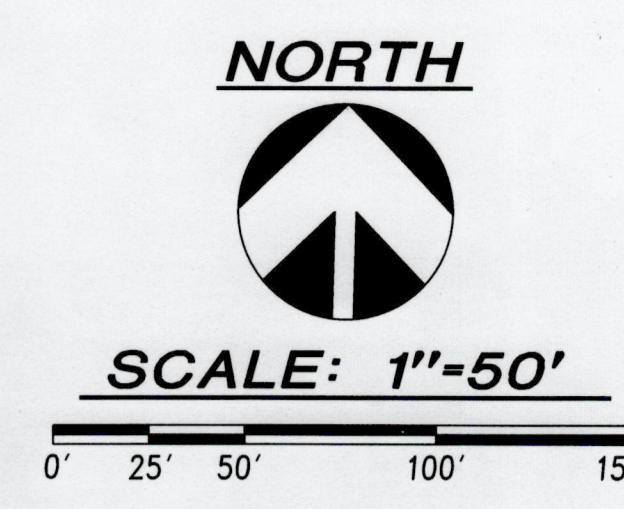
PHONE 586 731-8030
FAX 586 731-2605
URBAN LAND CONSULTANTS
PLANNERS LAND SURVEYORS
CIVIL ENGINEERS
8800 23 MILE ROAD
SHELBY TWP., MI 48316-4516



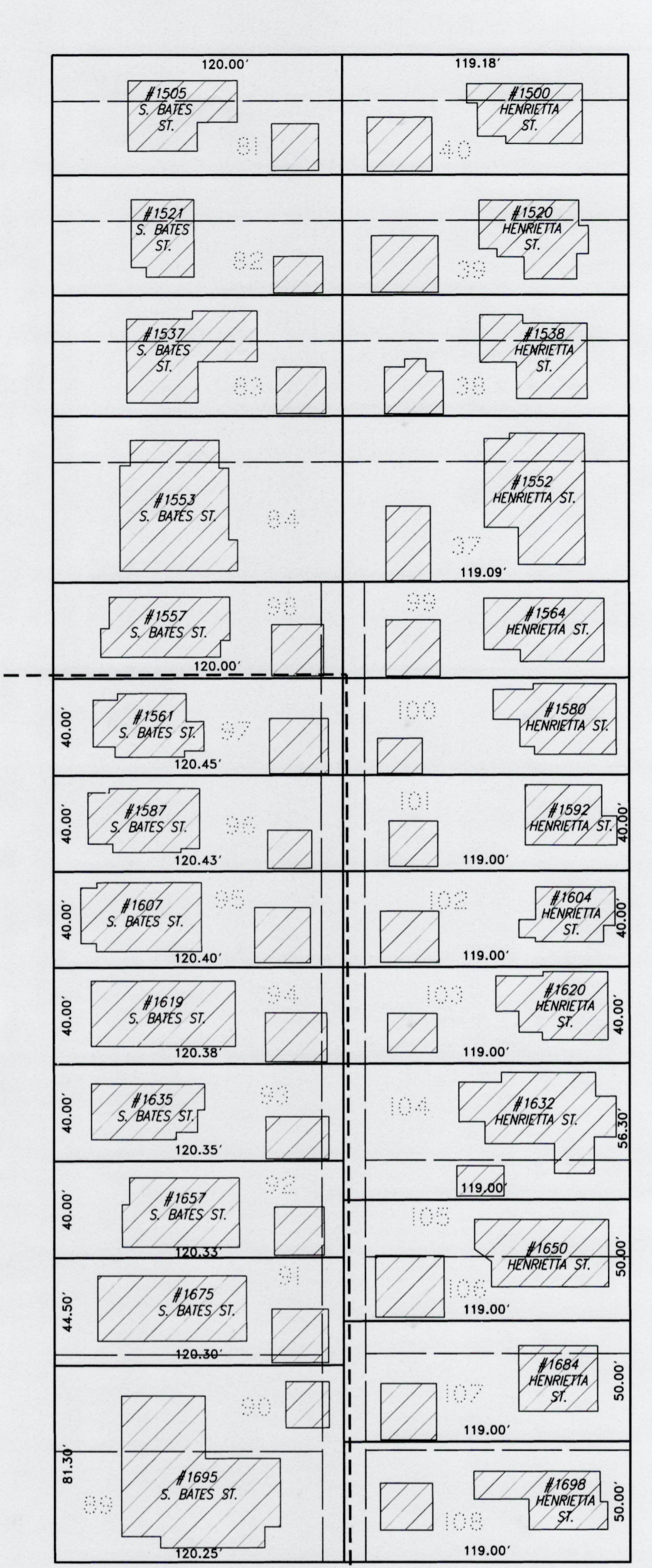
LOCATION MAP
SCALE: 4" = 1 MILE

PROPERTY DESCRIPTION
Parcel 19-36-331-038
Lot 194 and the South five feet of Lot 195 except the East two feet of both lots according to the plat "Re-Subdivision of Lots 1 to 84 inclusive and 104 to 149 inclusive of Birmingham-Lincoln Lots Subdivision" of part of the East 1/2 of the Southwest 1/4 of Section 36, T.2N., R.10E., Bloomfield Township, Oakland County, Michigan as recorded in the Liber 37, Page 5 of the Oakland County Records.
Parcel 19-36-331-039
Lot 193 except the East two feet according to the plat "Re-Subdivision of Lots 1 to 84 inclusive and 104 to 149 inclusive of Birmingham-Lincoln Lots Subdivision" of part of the East 1/2 of the Southwest 1/4 of Section 36, T.2N., R.10E., Bloomfield Township, Oakland County, Michigan as recorded in the Liber 37, Page 5 of the Oakland County Records.
Proposed Combination
Lots 193, 194 and the South five feet of Lot 195 except the East two feet of each lot according to the plat "Re-Subdivision of Lots 1 to 84 inclusive and 104 to 149 inclusive of Birmingham-Lincoln Lots Subdivision" of part of the East 1/2 of the Southwest 1/4 of Section 36, T.2N., R.10E., Bloomfield Township, Oakland County, Michigan as recorded in the Liber 37, Page 5 of the Oakland County Records.

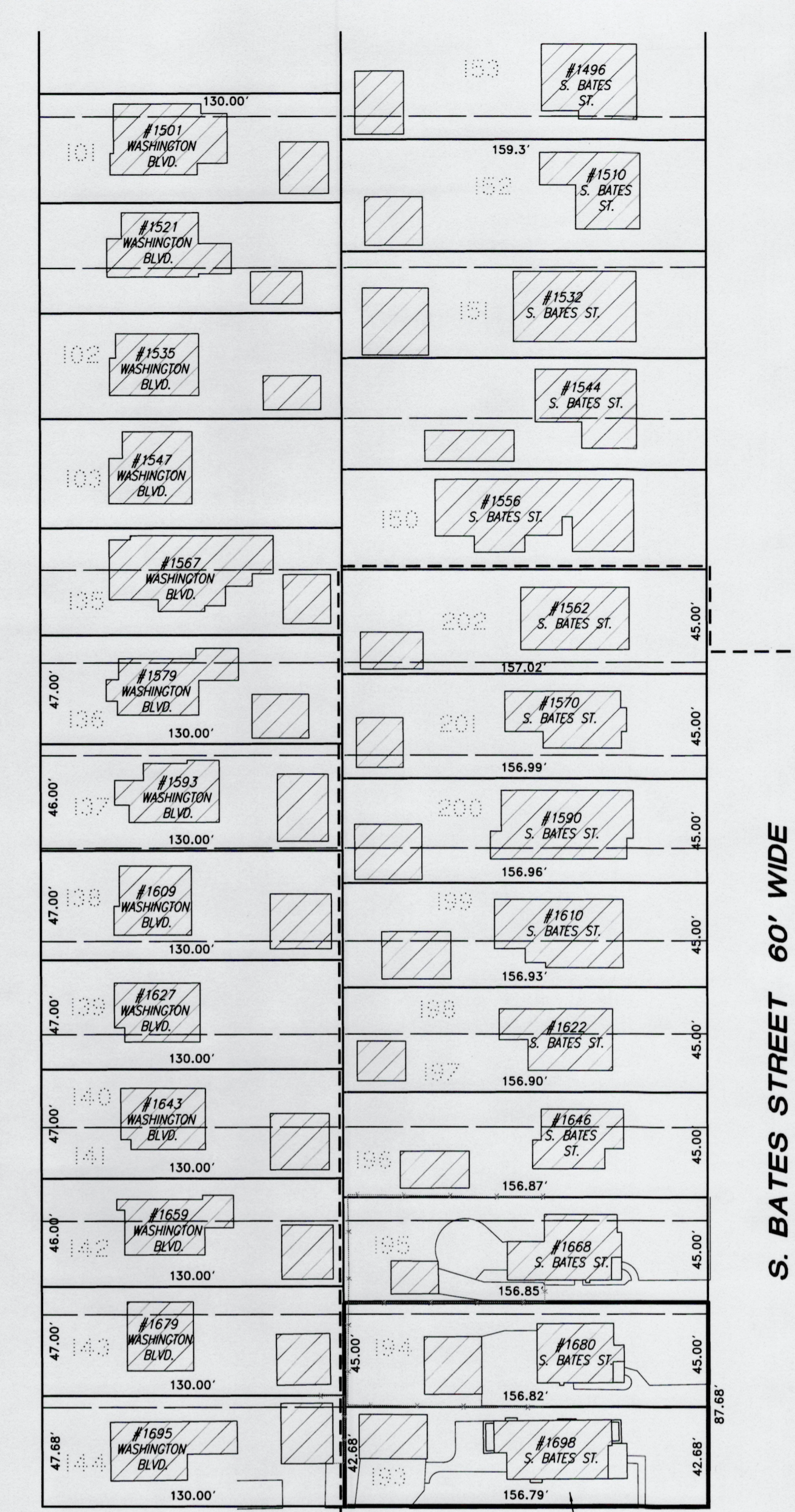
ADDRESS	WIDTH (FEET)	AREA (S.F.)
1786 BATES	43.0	6,815
1763 BATES	50.0	6,004
1776 BATES	43.0	6,817
1754 BATES	43.0	6,819
1751 BATES	50.0	6,006
1740 BATES	43.0	6,820
1737 BATES	50.0	6,007
1726 BATES	43.0	6,822
1721 BATES	40.0	4,807
1717 BATES	44.0	5,248
1708 BATES	44.5	7,062
1695 BATES	81.3	9,778
1675 BATES	44.5	5,354
1668 BATES	45.0	7,059
1657 BATES	40.0	4,814
1646 BATES	45.0	7,060
1635 BATES	40.0	4,815
1622 BATES	45.0	7,061
1619 BATES	40.0	4,816
1610 BATES	45.0	7,063
1607 BATES	40.0	4,817
1590 BATES	45.0	7,064
1587 BATES	40.0	4,818
1570 BATES	45.0	7,065
1562 BATES	45.0	7,066
1561 BATES	40.0	4,818
AVG.	45.17	6,257.5
2 X AVG.	90.33	12,515
PROPOSED LOT	87.68	13,750



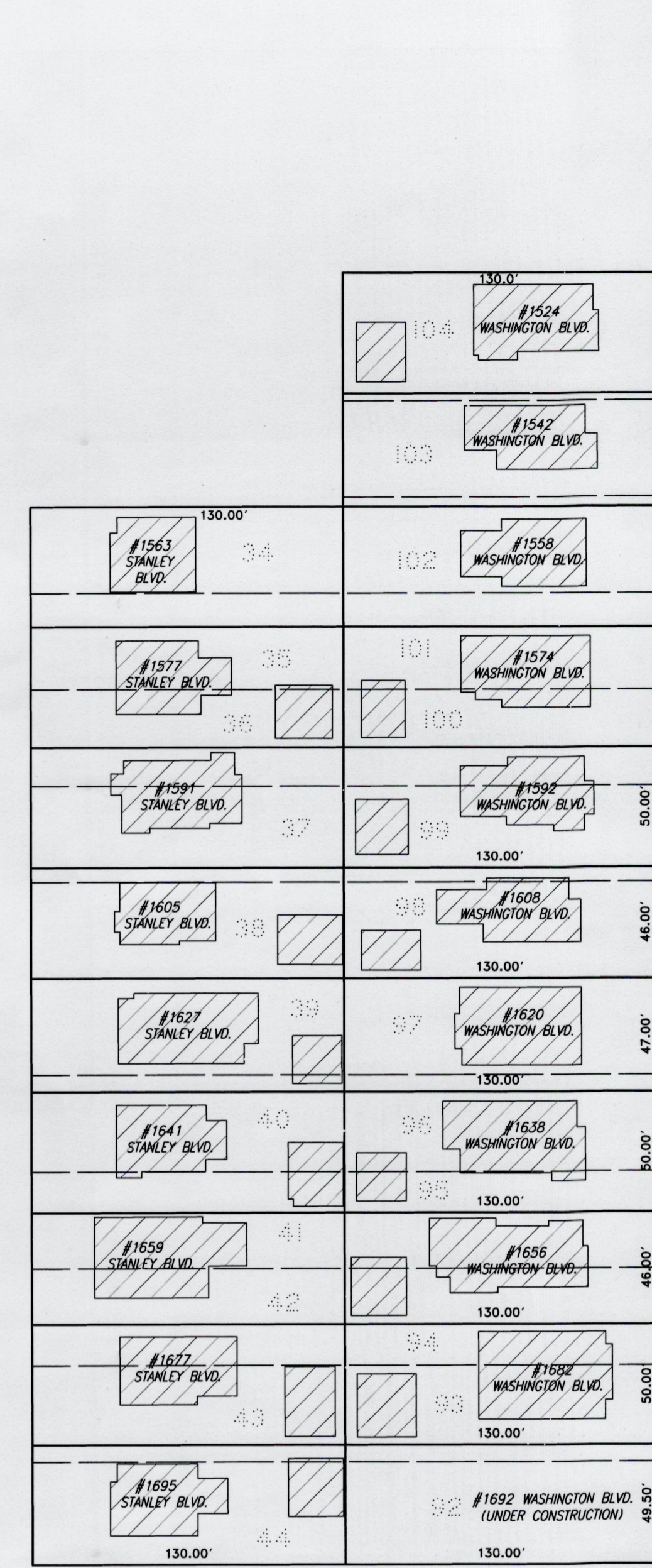
HENRIETTA STREET 50' WIDE



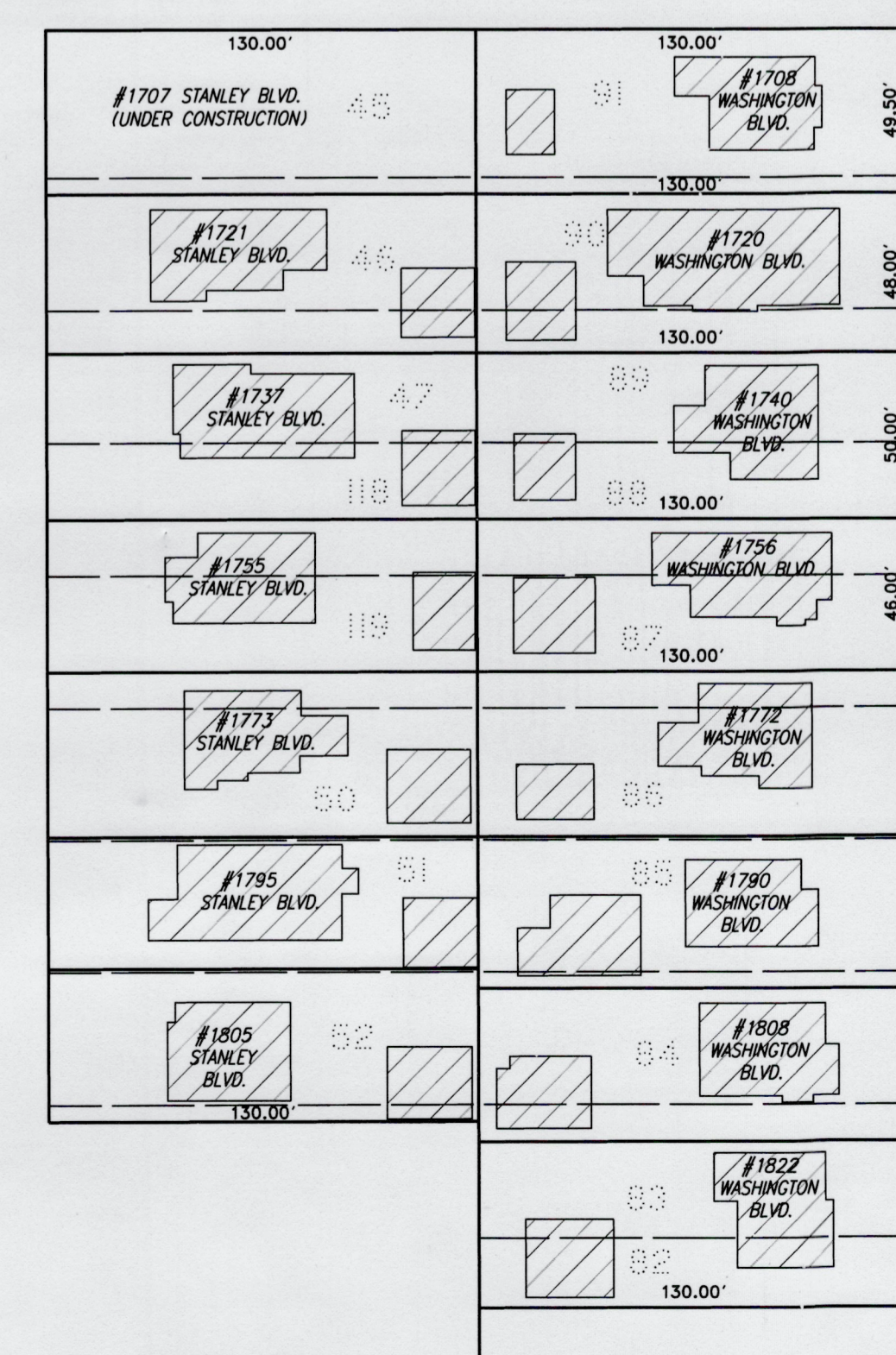
S. BATES STREET 60' WIDE



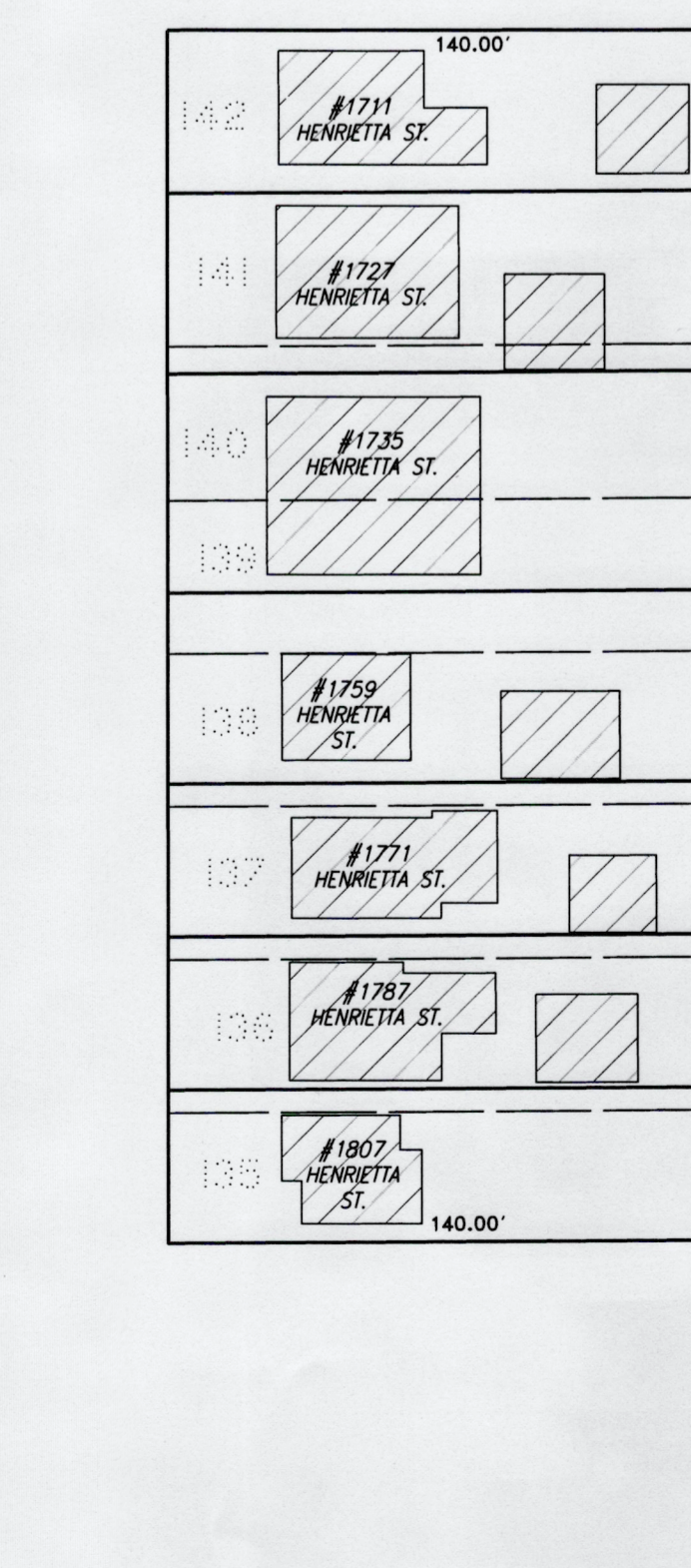
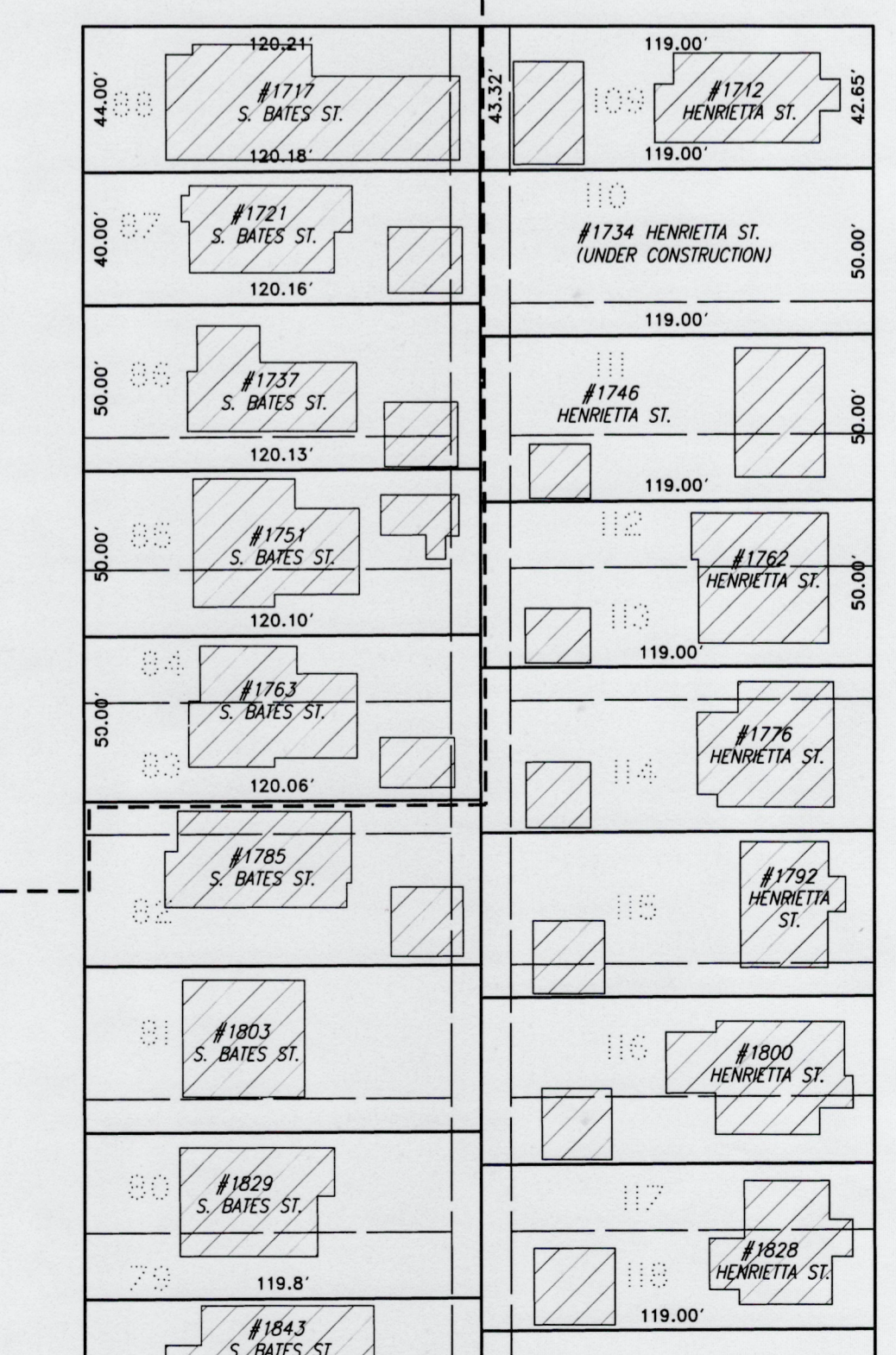
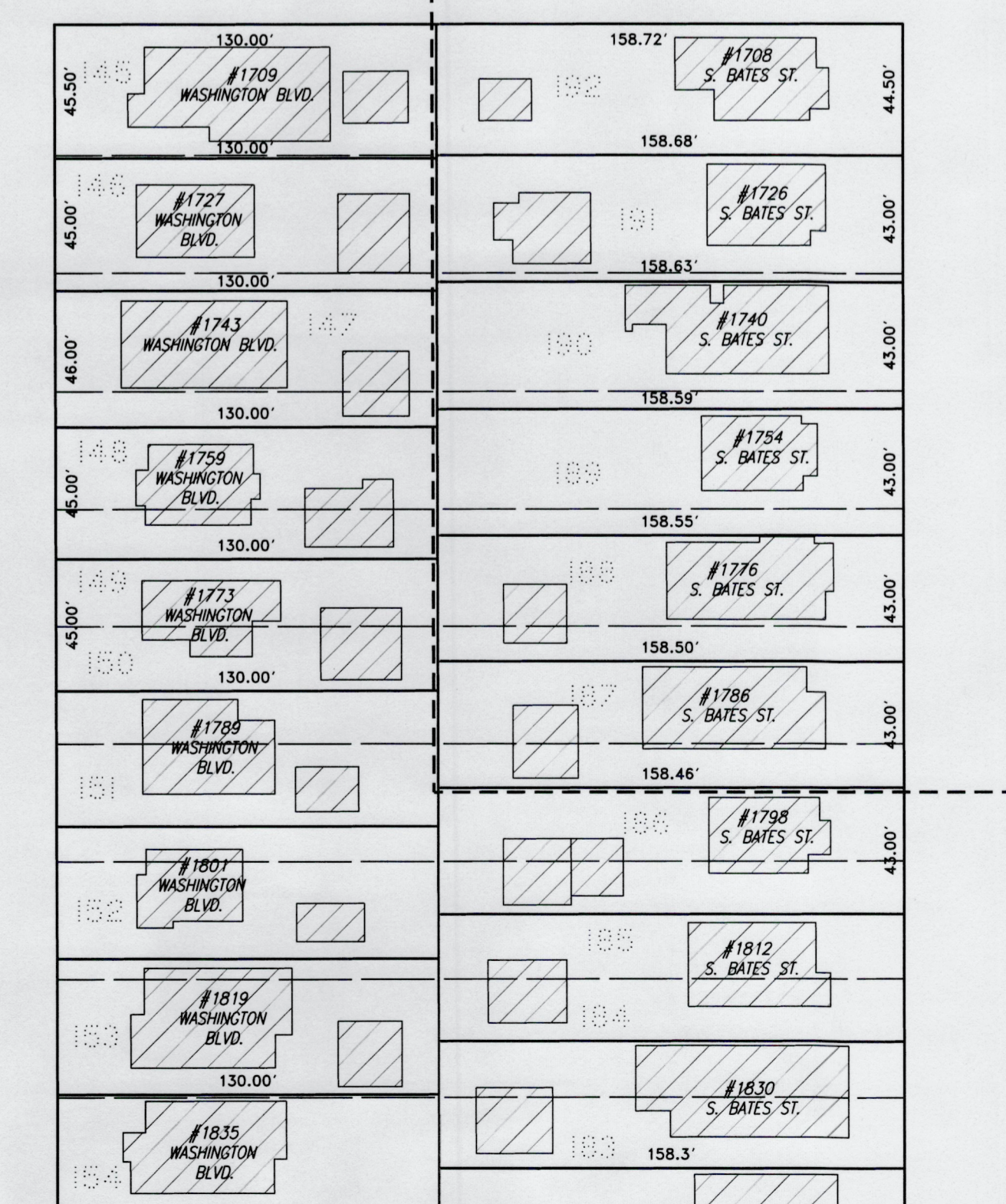
WASHINGTON BOULEVARD 70' WIDE



STANLEY BOULEVARD



W. SOUTHLAWN BOULEVARD 70' WIDE



HOUSES WITHIN 300' OF STREET. SET TABLE FOR CALCULATIONS.

PROPOSED LOT COMBINATION. SEE PAGE 2 FOR DETAIL.

NORTH



SCALE: 1"=30'

PROPERTY DESCRIPTION

Parcel 19-36-331-038
Lot 194 and the South five feet of Lot 195 except the East two feet of both lots according to the plat "Re-Subdivision of Lots 1 to 84 inclusive and 104 to 149 inclusive of Birmingham-Lincoln Lots Subdivision" of part of the East 1/2 of the Southwest 1/4 of Section 36, T.2N., R.10E., Bloomfield Township, Oakland County, Michigan as recorded in the Liber 37, Page 5 of the Oakland County Records.

Parcel 19-36-331-039
Lot 193 except the East two feet according to the plat "Re-Subdivision of Lots 1 to 84 inclusive and 104 to 149 inclusive of Birmingham-Lincoln Lots Subdivision" of part of the East 1/2 of the Southwest 1/4 of Section 36, T.2N., R.10E., Bloomfield Township, Oakland County, Michigan as recorded in the Liber 37, Page 5 of the Oakland County Records.

Proposed Combination
Lots 193, 194 and the South five feet of Lot 195 except the East two feet of each lot according to the plat "Re-Subdivision of Lots 1 to 84 inclusive and 104 to 149 inclusive of Birmingham-Lincoln Lots Subdivision" of part of the East 1/2 of the Southwest 1/4 of Section 36, T.2N., R.10E., Bloomfield Township, Oakland County, Michigan as recorded in the Liber 37, Page 5 of the Oakland County Records.

R-2 ZONING REQUIREMENTS

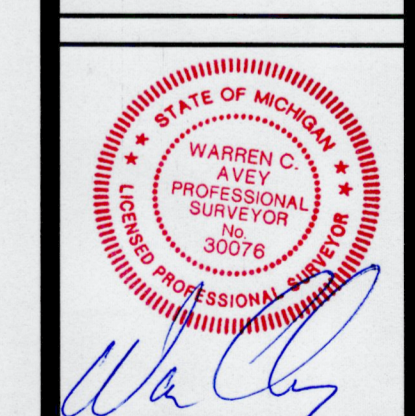
- MINIMUM LOT AREA: 6,000 S.F.
MINIMUM OPEN SPACE: 40%
MINIMUM LOT COVERAGE: 30%
MINIMUM FRONT SETBACK: AVERAGE OF 200' OR 25'
MINIMUM REAR SETBACK: 30'
MINIMUM COMBINED FRONT & REAR: 55'
MINIMUM SIDE YARD: LARGER OF 9' OR 10% OF TOT. LOT WIDTH (ONE SIDE) LARGER OF 14' OR 25% OF TOT. LOT WIDTH (BOTH SIDES)

LOCAL NEIGHBORHOOD
PART OF THE S.W. 1/4 OF SECTION 36
T.2N., R.10E., CITY OF BIRMINGHAM
OAKLAND COUNTY, MICHIGAN

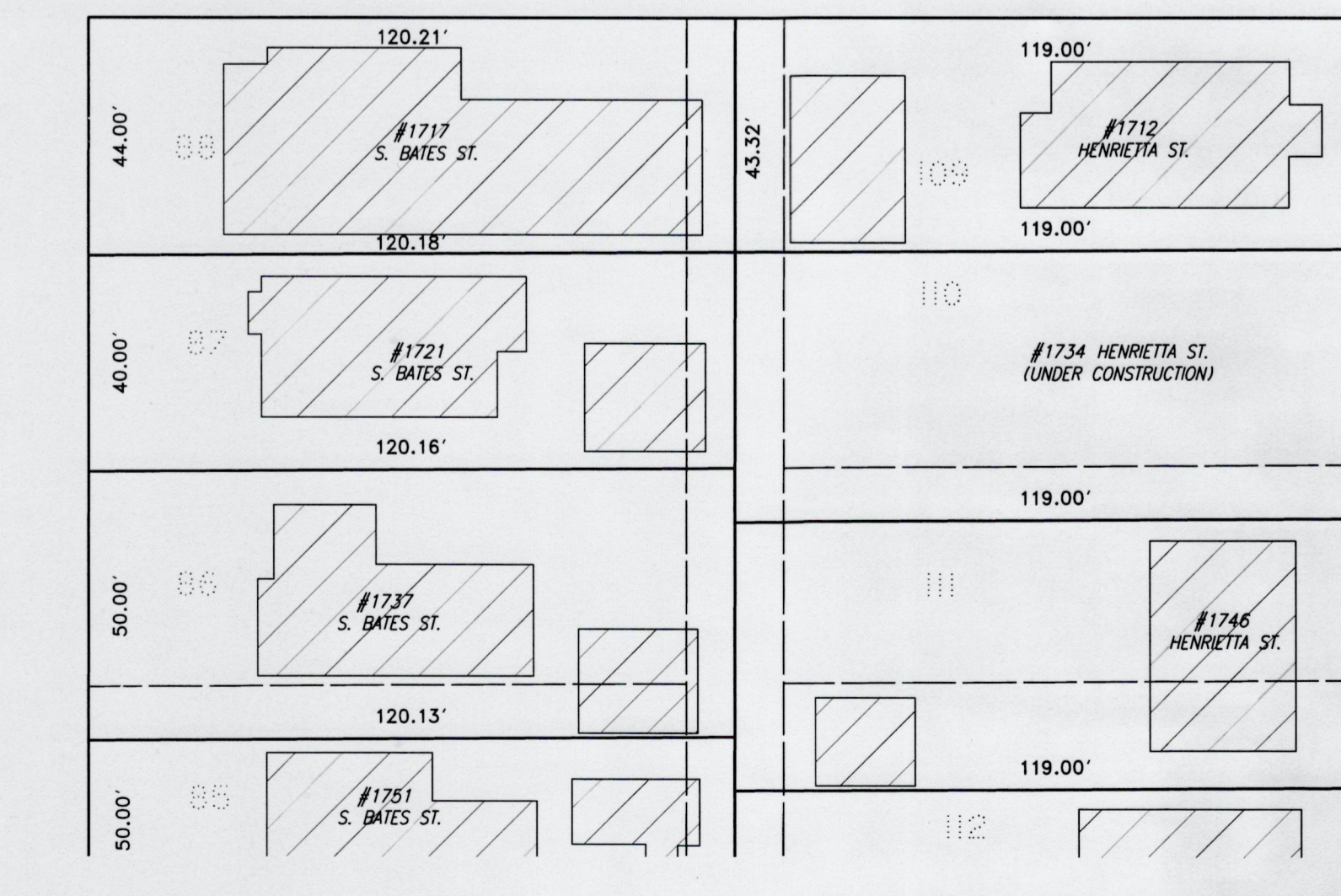
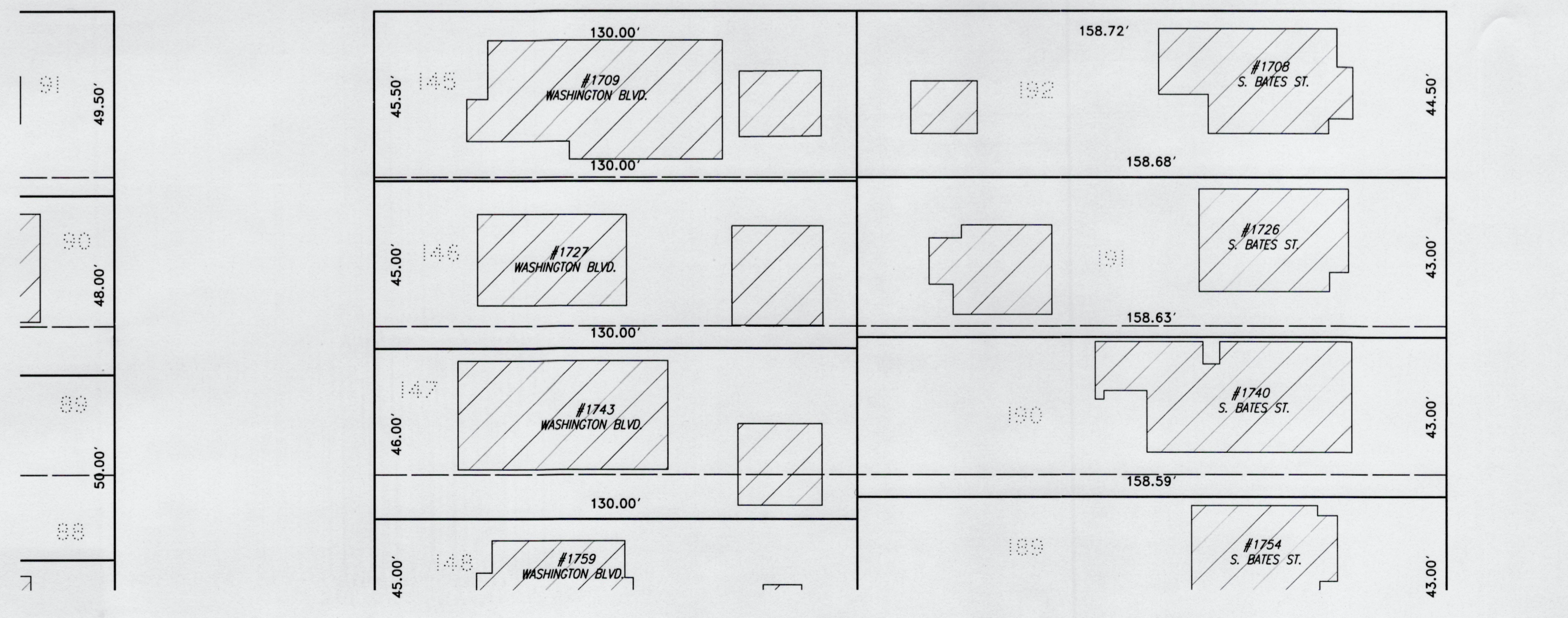
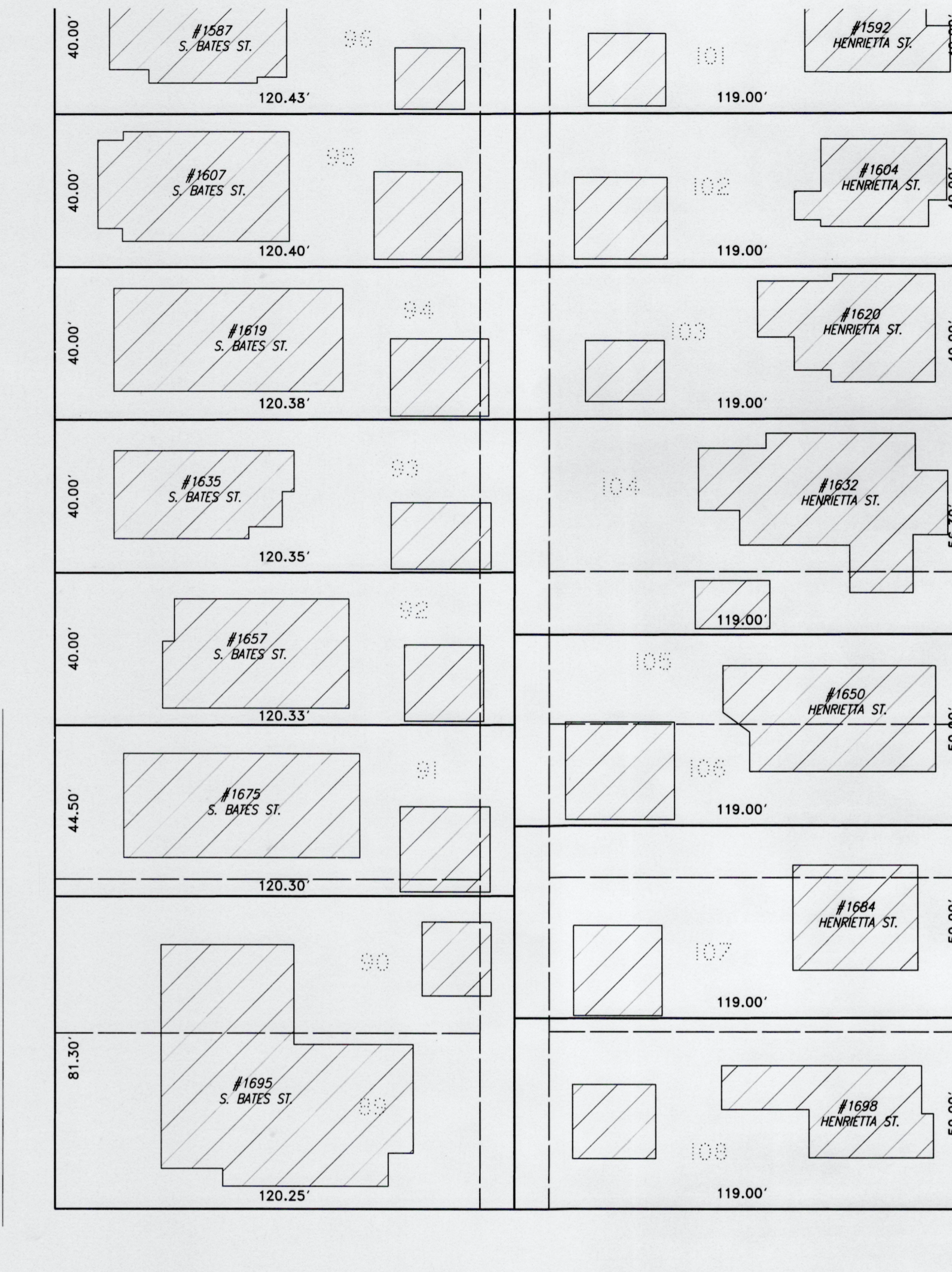
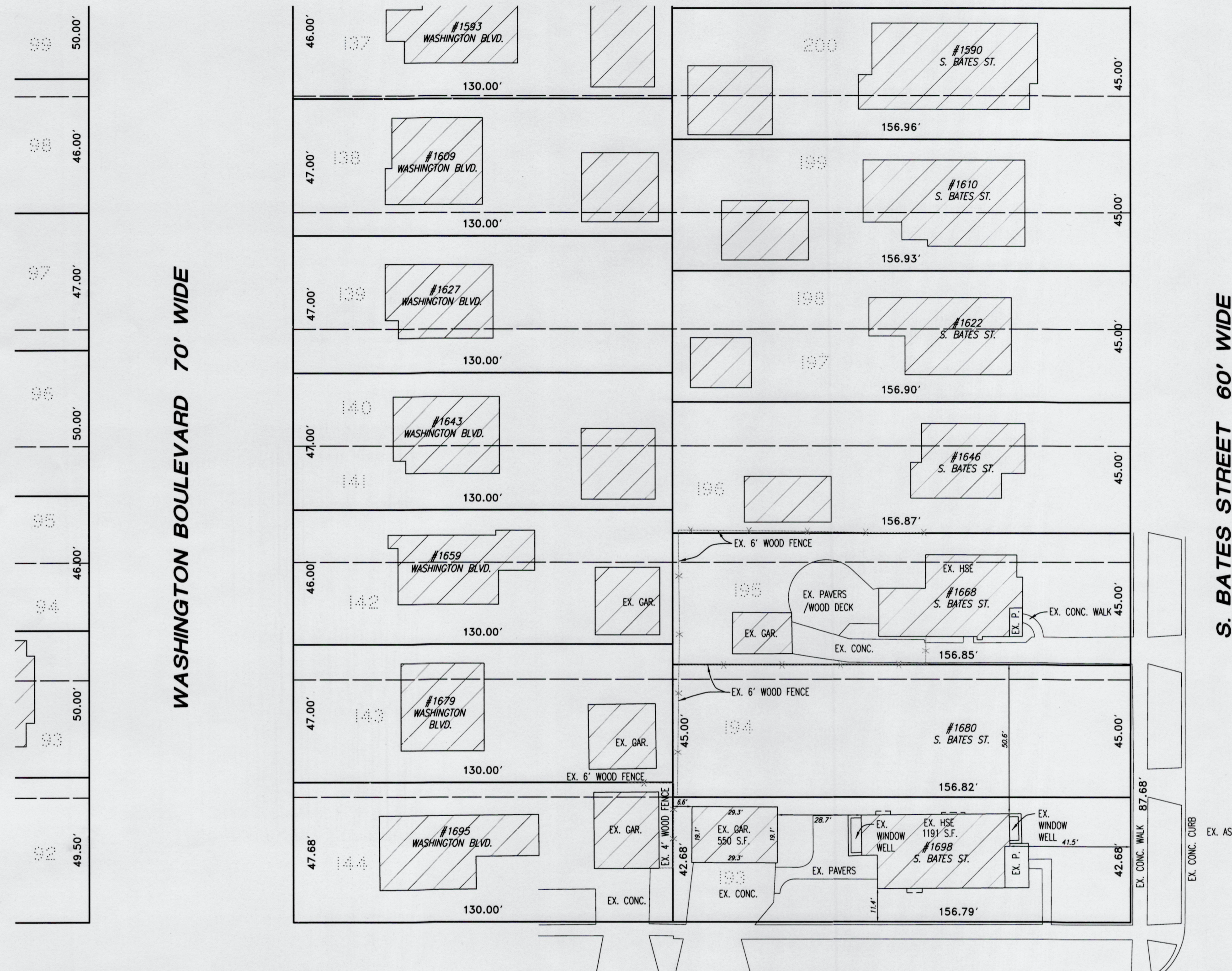
ADDITIONS AND/OR REVISIONS
DATE

191209-10185
Job No.
Date 1-31-2020
Scale 1"=20'
Drawn DKZ
Check W.C.A.
Sheet 2 of 2
Fld. Bk.

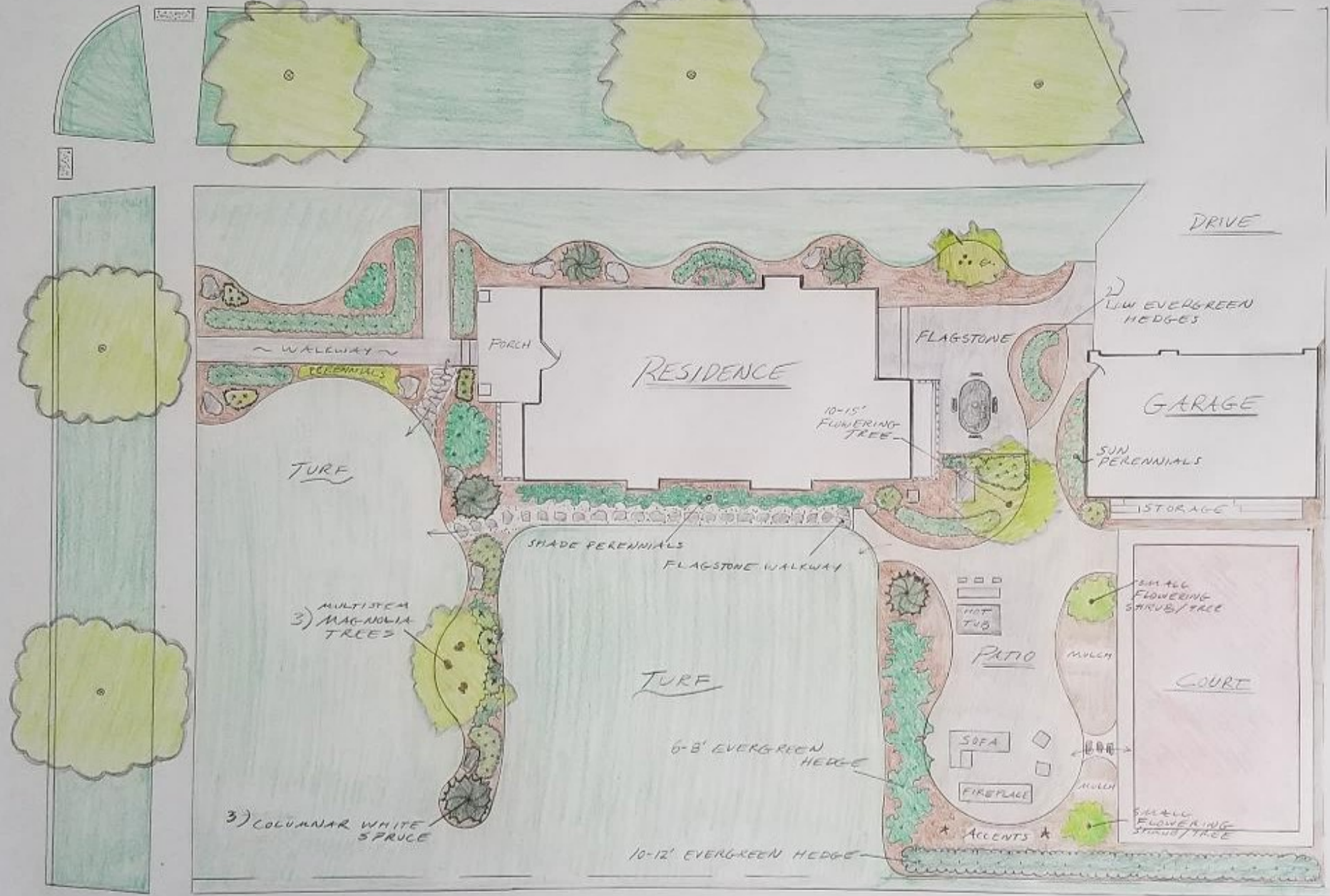
PROPOSED LOT COMBINATION
FOR: KATHERINE PEARCE
1698 S. BATES STREET
BIRMINGHAM, MI 48009
(248) 444-9146







URBAN LAND CONSULTANTS
PLANNERS LAND SURVEYORS
8800 23 MILE ROAD SHELBY TWP., MI 48316-4516
PHONE 586 731-8030
FAX 586 731-2605

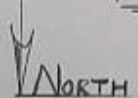


K:\2019\12101209\SURVEY\LOCAL\AREAS\LOCAL.dwg, 1/31/2020 8:59 AM, DWG To PDF.pc3



KEY:

-  = MATCH EXISTING OUTCROPPING
-  = VARIETIES OF ORNAMENTAL GRASS
-  = SMALL FLOWERING SHRUBS
-  = LOW SPREADING EVERGREENS



PEARCE RESIDENCE

1698 S. BATES BIRMINGHAM, AL 35209

SCALE: 1/8" = 10'

JANUARY 2020



S. BATES ST.

EAST ELEVATION PERSPECTIVE



Item #M49900098

Superior VRE4600 Linear Outdoor Gas Fireplace

By: [Superior Products](#)

[FAQs](#) | [Reviews\(0\)](#)

- ✓ 1. Gas Type * Natural Gas ▼
- ✓ 2. Size * 36" ▼
- ✓ 3. Fireglass * Diamond Crystal Fire Glass ▼
- ✓ 4. Weather Cover * No Thank You ▼
- 5. Remote * ▼

*Required

Qty	1
-----	---

In Stock

Add to cart for shipping information

Free Freight Shipping

\$3,079.80

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View Product



MEMORANDUM

Police Department

DATE: January 30, 2020
TO: Joseph A. Valentine, City Manager
FROM: Scott Grewe, Operations Commander
APPROVED: Mark H. Clemence, Police Chief
SUBJECT: Sec. 74-6 Skateboarding

INTRODUCTION:

At the January 27th City Commission meeting, the Skateboarding ordinance was discussed and required further review. The current ordinance is in need of updating due to the use of electronically propelled devices. These devices include skateboards, bikes and scooters that are not covered under our current City ordinance.

BACKGROUND:

Over the course of the last year, the police department received increased calls regarding people riding electric devices in the downtown. State law, through the Michigan Vehicle Code (MVC), regulates the use of these devices and the City of Birmingham has adopted the Michigan Vehicle Code by ordinance (Sec. 110-56) which allows officers to enforce these regulations by City Ordinance.

However, the current Skateboarding ordinance, which restricts their use on sidewalks in the Central Business District (CBD), covers a skateboard powered only by human propulsion. All other forms of electronically propelled devices are not covered under our current ordinance. As a result, they are allowed on sidewalks in the CBD.

During the January 27th meeting, the Commission discussed expanding the restricted area beyond the CBD. Staff reviewed the boundaries of the Birmingham Shopping District and the Rail District for expansion of the restrictions set forth in this ordinance. The Birmingham Shopping District (BSD) surrounds the CBD and extends onto north and south Old Woodward and into the Triangle District where business and pedestrian volumes remain higher. The Rail District, while mostly commercial, has a lower volume of pedestrian traffic than the CBD or the BSD. Also, many of the businesses along the Rail District are set back from the sidewalk which reduces the potential conflict from exiting patrons and sidewalk traffic. Some businesses that are close to the sidewalk have parking lots to the rear while other business are set back with parking lots between the sidewalk and the building. Both of these circumstances reduce pedestrian traffic on City sidewalks.

After this review, staff has including the BSD boundaries as an option for expanding the restricted area under this ordinance.

LEGAL REVIEW:

The attached updated ordinance, Sec 74-6. - Skateboarding, Bicycling and Electronic Personal Assistive Mobility Devices, provides regulations above what is already in place under State Law to prohibit their use in the CBD or BSD.

The City Attorney has reviewed and approved the proposed updated ordinance.

FISCAL IMPACT:

There is no cost to the city for the proposed update.

SUMMARY:

Recently the City has seen an increase in the use of Electric Personal Assistive Mobility Devices. The Cities current ordinance does not cover the use of these devices. Due to the increase in all types of Electric Personal Assistive Mobility Devices, it is recommended the suggested update to the City ordinance be approved. Staff has provided an option to include bicycles as a part of this ordinance. The proposed changes are consistent with State Law.

The current ordinance restrictions apply to the Central Business District. Staff has included an option to expand this area to include the Birmingham Shopping District.

ATTACHMENTS:

1. Current copy of 74-6 with proposed changes (including bicycles)
2. Updated version of Sec. 74-6 (including bicycles)
3. Current copy of 74-6 with proposed changes (including bicycles and BSD)
4. Updated version of Sec. 74-6 (including bicycles and BSD)
5. Current copy of 74-6 with proposed changes
6. Updated version of Sec. 74-6
7. Current copy of 74-6 with proposed changes (including BSD)
8. Updated version of Sec. 74-6 (including BSD)

SUGGESTED ACTION:

To amend Part II of the City Code, Chapter 74 Offenses, Article I. – General, Sec 74-6, to replace the current ordinance to include Bicycling and Electric Personal Assistive Mobility Devices in the (Central Business District / Birmingham Shopping District). Furthermore, to authorize the Mayor and City Clerk to sign the ordinance on behalf of the city.

OR

To amend Part II of the City Code, Chapter 74 Offenses, Article I. – General, Sec 74-6, to replace the current ordinance to include Electric Personal Assistive Mobility Devices in the (Central Business District / Birmingham Shopping District). Furthermore, to authorize the Mayor and City Clerk to sign the ordinance on behalf of the city.

Sec. 74-6. – Skateboarding, Bicycling and Electric Personal Assistive Mobility

Devices.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Central business district means that area bounded by and including the east sidewalk of Woodward north to the north sidewalk of Oakland Avenue west to the north sidewalk of Willits Avenue west to the west sidewalk of Chester to the north sidewalk of Maple to the west sidewalk of Southfield Road, south to the south sidewalk of Merrill Street east to the west sidewalk of Bates Street south to the south sidewalk of Townsend Street east to the west sidewalk of Henrietta south to the south sidewalk of Brown Street east to the east sidewalk of Woodward. (See Exhibit A)

Electric personal assistive mobility device means a self-balancing nontandem 2-wheeled device, designed to transport only 1 person at a time, having an electrical propulsion system with average power of 750 watts or 1 horsepower and a maximum speed on a paved level surface of not more than 15 miles per hour.

Electric Skateboard means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion.

Parking structure means any public structure designed for the parking of motor vehicles.

Pedestrian means a person on foot or on skateboard, excluding a person on foot walking a bicycle or moped.

Plaza means that open space area between the main entrance to a building and the street.

Sidewalk means that portion of a highway designed or ordinarily used for pedestrian travel.

Skateboard means a single platform mounted on wheels, which is propelled solely by human power and which has no mechanism or other device with which to steer or to control the movement or direction of the platform.

Bicycle means a device propelled by human power upon which a person may ride, having either 2 or 3 wheels in a tandem or tricycle arrangement, all of which are over 14 inches in diameter.

Electric bicycle means a device upon which an individual may ride that satisfies all of the following:

1) The device is equipped with all of the following:

(i) A seat or saddle for use by the rider.

(ii) Fully operable pedals for human propulsion.

(iii) An electric motor of not greater than 750 watts.

2) The device falls within 1 of the following categories:

(i) Class 1 electric bicycle. As used in this subparagraph, "class 1 electric bicycle" means an electric bicycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 20 miles per hour.

(ii) Class 2 electric bicycle. As used in this subparagraph, "class 2 electric bicycle" means an electric bicycle that is equipped with a motor that propels the electric bicycle to a speed of no more than 20 miles per hour, whether the rider is pedaling or not, and that disengages or ceases to function when the brakes are applied.

(iii) Class 3 electric bicycle. As used in this subparagraph, "class 3 electric bicycle" means an electric bicycle that is equipped with a motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 28 miles per hour.

(B) Prohibitive

This section of the code does not apply to wheelchairs or other devices used to aid persons with disabilities or medical assistance.

(1) Skateboarding, Bicycling and use of any Electric Personal Assistive Mobility Device
~~Skateboarding shall be prohibited upon any sidewalk in the central business district, on City Hall plaza, Library plaza or in any parking structure.- Skateboarding shall be permitted on all other sidewalks within the city.~~

(2) Notwithstanding their status as pedestrians, ~~skateboard~~ operators on sidewalks shall yield the right-of-way to all vehicular and to all other pedestrian ~~(nonskateboard)~~ traffic upon the sidewalk.

~~(3) No more than one person shall operate or ride on a skateboard at one time.~~

~~(4) No skateboard shall be operated on the city hall plaza or the library plaza or in any parking structure.~~

(5) No person upon roller skates, ~~skateboards, or~~ riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. No person shall use, or ride on or in, any device described in this section on or in any city-owned public parking facility.

(6) A person who violates this section is responsible for a civil infraction with a \$100 fine.

- (7) ~~A person who violates this section is subject to the penalties prescribed in [section 1-9 of this Code](#).~~ In addition to any penalty prescribed in [\(6\)](#) of this Code, a police officer or other law enforcement agent may confiscate the skateboard and obtain the person's name, address, telephone number and age. A skateboard confiscated under this subsection shall be returned to persons 17 years of age or older, not earlier than 24 hours after the violation, upon their appearance at the city police department and the execution of a declaration of ownership. Skateboards confiscated from those persons under the age of 17 shall be returned, not earlier than 24 hours after the violation, to the persons' parent or guardian upon their appearance at the city police department and the execution of a declaration of ownership. If a skateboard is confiscated under this subsection from a person other than the owner of the skateboard, the skateboard shall be returned, not earlier than 24 hours after the violation, to the owner or the parent or guardian of the owner, if the owner is under 17 years of age, upon the appearance of the owner or the parent or guardian of the owner at the city police department and the execution of a declaration of ownership.

Sec. 74-6. – Skateboarding, Bicycling and Electric Personal Assistive Mobility Devices.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Central business district means that area bounded by and including the east sidewalk of Woodward north to the north sidewalk of Oakland Avenue west to the north sidewalk of Willits Avenue west to the west sidewalk of Chester to the north sidewalk of Maple to the west sidewalk of Southfield Road, south to the south sidewalk of Merrill Street east to the west sidewalk of Bates Street south to the south sidewalk of Townsend Street east to the west sidewalk of Henrietta south to the south sidewalk of Brown Street east to the east sidewalk of Woodward. (See Exhibit A)

Electric personal assistive mobility device means a self-balancing nontandem 2-wheeled device, designed to transport only 1 person at a time, having an electrical propulsion system with average power of 750 watts or 1 horsepower and a maximum speed on a paved level surface of not more than 15 miles per hour.

Electric Skateboard means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion.

Parking structure means any public structure designed for the parking of motor vehicles.

Pedestrian means a person on foot or on skateboard, excluding a person on foot walking a bicycle or moped.

Plaza means that open space area between the main entrance to a building and the street.

Sidewalk means that portion of a highway designed or ordinarily used for pedestrian travel.

Skateboard means a single platform mounted on wheels, which is propelled solely by human power and which has no mechanism or other device with which to steer or to control the movement or direction of the platform.

Bicycle means a device propelled by human power upon which a person may ride, having either 2 or 3 wheels in a tandem or tricycle arrangement, all of which are over 14 inches in diameter.

Electric bicycle means a device upon which an individual may ride that satisfies all of the following:

- 1) The device is equipped with all of the following:
 - (i) A seat or saddle for use by the rider.

(ii) Fully operable pedals for human propulsion.

(iii) An electric motor of not greater than 750 watts.

2) The device falls within 1 of the following categories:

- (i) Class 1 electric bicycle. As used in this subparagraph, "class 1 electric bicycle" means an electric bicycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 20 miles per hour.
- (ii) Class 2 electric bicycle. As used in this subparagraph, "class 2 electric bicycle" means an electric bicycle that is equipped with a motor that propels the electric bicycle to a speed of no more than 20 miles per hour, whether the rider is pedaling or not, and that disengages or ceases to function when the brakes are applied.
- (iii) Class 3 electric bicycle. As used in this subparagraph, "class 3 electric bicycle" means an electric bicycle that is equipped with a motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 28 miles per hour.

(B) Prohibitive

This section of the code does not apply to wheelchairs or other devices used to aid persons with disabilities or medical assistance.

- (1) Skateboarding, Bicycling and use of any Electric Personal Assistive Mobility Device shall be prohibited upon any sidewalk in the central business district, on City Hall plaza, Library plaza or in any parking structure.:-
- (2) Notwithstanding their status as pedestrians, operators on sidewalks shall yield the right-of-way to all vehicular and to all other pedestrian traffic upon the sidewalk.
- (3) No person upon roller skates, riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. No person shall use, or ride on or in, any device described in this section on or in any city-owned public parking facility.
- (6) A person who violates this section is responsible for a civil infraction with a \$100 fine.
- (7) In addition to any penalty prescribed in (6) of this Code, a police officer or other law enforcement agent may confiscate the skateboard and obtain the person's name, address, telephone number and age. A skateboard confiscated under this subsection shall be returned to persons 17 years of age or older, not earlier than 24 hours after the violation, upon their appearance at the city police department and the execution of a declaration of ownership. Skateboards confiscated from those persons under the

age of 17 shall be returned, not earlier than 24 hours after the violation, to the persons' parent or guardian upon their appearance at the city police department and the execution of a declaration of ownership. If a skateboard is confiscated under this subsection from a person other than the owner of the skateboard, the skateboard shall be returned, not earlier than 24 hours after the violation, to the owner or the parent or guardian of the owner, if the owner is under 17 years of age, upon the appearance of the owner or the parent or guardian of the owner at the city police department and the execution of a declaration of ownership.

All other Sections of Chapter 74 – Offenses, shall remain unaffected.

Ordained this _____ day of _____, 2020. Effective upon publication.

Pierre Boutros, Mayor

Cheryl Arft, Acting City Clerk

I, Cheryl Arft, Acting City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2020 and that a summary was published _____, 2020.

Cheryl Arft, Acting City Clerk

Exhibit A

Central Business District



Sec. 74-6. – Skateboarding, Bicycling and Electric Personal Assistive Mobility

Devices.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Central business district* means that area bounded by and including the east sidewalk of Woodward north to the north sidewalk of Oakland Avenue west to the north sidewalk of Willits Avenue west to the west sidewalk of Chester to the north sidewalk of Maple to the west sidewalk of Southfield Road, south to the south sidewalk of Merrill Street east to the west sidewalk of Bates Street south to the south sidewalk of Townsend Street east to the west sidewalk of Henrietta south to the south sidewalk of Brown Street east to the east sidewalk of Woodward.~~

~~*Birmingham Shopping District* means that area bounded by and including the east sidewalk of Woodward north and the north sidewalk of Oakland Avenue, west to the east sidewalk of N. Old Woodward, north to the north sidewalk of Oak, west to the west sidewalk of N. Old Woodward, south to the north sidewalk of Willits, west to the west sidewalk of Chester, south to the north sidewalk of Maple, west to the east sidewalk of Southfield Road, south to the south sidewalk of Merrill Street, east to the west sidewalk of Bates Street, south to the south sidewalk of Townsend Street, east to the east sidewalk of Henrietta, south to the south sidewalk of Brown Street, east to the west sidewalk of Purdy, south to the south sidewalk of Daines, east to the west side walk of S. Old Woodward, south to the north sidewalk of Lincoln, east to the west sidewalk of Adams, north to the north sidewalk of Bowers, west to the east sidewalk of Elm, north to the south sidewalk of Maple, east to the east sidewalk of Adams, north to the north sidewalk of Maple, west to the east sidewalk of Woodward, north to the north side walk of Oakland. (See Exhibit A)~~

~~*Electric personal assistive mobility device* means a self-balancing nontandem 2-wheeled device, designed to transport only 1 person at a time, having an electrical propulsion system with average power of 750 watts or 1 horsepower and a maximum speed on a paved level surface of not more than 15 miles per hour.~~

~~*Electric Skateboard* means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion.~~

Parking structure means any public structure designed for the parking of motor vehicles.

Pedestrian means a person on foot or on skateboard, excluding a person on foot walking a bicycle or moped.

Plaza means that open space area between the main entrance to a building and the street.

Sidewalk means that portion of a highway designed or ordinarily used for pedestrian travel.

Skateboard means a single platform mounted on wheels, which is propelled solely by human power and which has no mechanism or other device with which to steer or to control the movement or direction of the platform.

Bicycle means a device propelled by human power upon which a person may ride, having either 2 or 3 wheels in a tandem or tricycle arrangement, all of which are over 14 inches in diameter.

Electric bicycle means a device upon which an individual may ride that satisfies all of the following:

1) The device is equipped with all of the following:

(i) A seat or saddle for use by the rider.

(ii) Fully operable pedals for human propulsion.

(iii) An electric motor of not greater than 750 watts.

2) The device falls within 1 of the following categories:

(i) Class 1 electric bicycle. As used in this subparagraph, "class 1 electric bicycle" means an electric bicycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 20 miles per hour.

(ii) Class 2 electric bicycle. As used in this subparagraph, "class 2 electric bicycle" means an electric bicycle that is equipped with a motor that propels the electric bicycle to a speed of no more than 20 miles per hour, whether the rider is pedaling or not, and that disengages or ceases to function when the brakes are applied.

(iii) Class 3 electric bicycle. As used in this subparagraph, "class 3 electric bicycle" means an electric bicycle that is equipped with a motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 28 miles per hour.

(B) Prohibitive

This section of the code does not apply to wheelchairs or other devices used to aid persons with disabilities or medical assistance.

(1) Skateboarding, Bicycling and use of any Electric Personal Assistive Mobility Device
Skateboarding shall be prohibited upon any sidewalk in the Birmingham Shopping District central business district, on City Hall plaza, Library plaza or in any parking structure.- Skateboarding shall be permitted on all other sidewalks within the city.

(2) Notwithstanding their status as pedestrians, ~~skateboard~~ operators on sidewalks shall yield the right-of-way to all vehicular and to all other pedestrian ~~(nonskateboard)~~ traffic upon the sidewalk.

~~(3) No more than one person shall operate or ride on a skateboard at one time.~~

~~(4) No skateboard shall be operated on the city hall plaza or the library plaza or in any parking structure.~~

(5) No person upon roller skates, ~~skateboards, or~~ riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. No person shall use, or ride on or in, any device described in this section on or in any city-owned public parking facility.

(6) A person who violates this section is responsible for a civil infraction with a \$100 fine.

(7) ~~A person who violates this section is subject to the penalties prescribed in section 1-9 of this Code.~~ In addition to any penalty prescribed in (6) of this Code, a police officer or other law enforcement agent may confiscate the skateboard and obtain the person's name, address, telephone number and age. A skateboard confiscated under this subsection shall be returned to persons 17 years of age or older, not earlier than 24 hours after the violation, upon their appearance at the city police department and the execution of a declaration of ownership. Skateboards confiscated from those persons under the age of 17 shall be returned, not earlier than 24 hours after the violation, to the persons' parent or guardian upon their appearance at the city police department and the execution of a declaration of ownership. If a skateboard is confiscated under this subsection from a person other than the owner of the skateboard, the skateboard shall be returned, not earlier than 24 hours after the violation, to the owner or the parent or guardian of the owner, if the owner is under 17 years of age, upon the appearance of the owner or the parent or guardian of the owner at the city police department and the execution of a declaration of ownership.

Sec. 74-6. – Skateboarding, Bicycling and Electric Personal Assistive Mobility Devices.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Birmingham Shopping District means that area bounded by and including the east sidewalk of Woodward north and the north sidewalk of Oakland Avenue, west to the east sidewalk of N. Old Woodward, north to the north sidewalk of Oak, west to the west sidewalk of N. Old Woodward, south to the north sidewalk of Willits, west to the west sidewalk of Chester, south to the north sidewalk of Maple, west to the east sidewalk of Southfield Road, south to the south sidewalk of Merrill Street, east to the west sidewalk of Bates Street, south to the south sidewalk of Townsend Street, east to the east sidewalk of Henrietta, south to the south sidewalk of Brown Street, east to the west sidewalk of Purdy, south to the south sidewalk of Daines, east to the west side walk of S. Old Woodward, south to the north sidewalk of Lincoln, east to the west sidewalk of Adams, north to the north sidewalk of Bowers, west to the east sidewalk of Elm, north to the south sidewalk of Maple, east to the east sidewalk of Adams, north to the north sidewalk of Maple, west to the east sidewalk of Woodward, north to the north side walk of Oakland. (See Exhibit A)

Electric personal assistive mobility device means a self-balancing nontandem 2-wheeled device, designed to transport only 1 person at a time, having an electrical propulsion system with average power of 750 watts or 1 horsepower and a maximum speed on a paved level surface of not more than 15 miles per hour.

Electric Skateboard means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion.

Parking structure means any public structure designed for the parking of motor vehicles.

Pedestrian means a person on foot or on skateboard, excluding a person on foot walking a bicycle or moped.

Plaza means that open space area between the main entrance to a building and the street.

Sidewalk means that portion of a highway designed or ordinarily used for pedestrian travel.

Skateboard means a single platform mounted on wheels, which is propelled solely by human power and which has no mechanism or other device with which to steer or to control the movement or direction of the platform.

Bicycle means a device propelled by human power upon which a person may ride, having either 2 or 3 wheels in a tandem or tricycle arrangement, all of which are over 14 inches in diameter.

Electric bicycle means a device upon which an individual may ride that satisfies all of the following:

- 1) The device is equipped with all of the following:
 - (i) A seat or saddle for use by the rider.
 - (ii) Fully operable pedals for human propulsion.
 - (iii) An electric motor of not greater than 750 watts.
- 2) The device falls within 1 of the following categories:
 - (i) Class 1 electric bicycle. As used in this subparagraph, "class 1 electric bicycle" means an electric bicycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 20 miles per hour.
 - (ii) Class 2 electric bicycle. As used in this subparagraph, "class 2 electric bicycle" means an electric bicycle that is equipped with a motor that propels the electric bicycle to a speed of no more than 20 miles per hour, whether the rider is pedaling or not, and that disengages or ceases to function when the brakes are applied.
 - (iii) Class 3 electric bicycle. As used in this subparagraph, "class 3 electric bicycle" means an electric bicycle that is equipped with a motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 28 miles per hour.

(B) Prohibitive

This section of the code does not apply to wheelchairs or other devices used to aid persons with disabilities or medical assistance.

- (1) Skateboarding, Bicycling and use of any Electric Personal Assistive Mobility Device shall be prohibited upon any sidewalk in the Birmingham Shopping District, on City Hall plaza, Library plaza or in any parking structure.
- (2) Notwithstanding their status as pedestrians, operators on sidewalks shall yield the right-of-way to all vehicular and to all other pedestrian traffic upon the sidewalk.
- (3) No person upon roller skates, riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. No person shall use, or ride on or in, any device described in this section on or in any city-owned public parking facility.
- (6) A person who violates this section is responsible for a civil infraction with a \$100 fine.

(7) In addition to any penalty prescribed in (6) of this Code, a police officer or other law enforcement agent may confiscate the skateboard and obtain the person's name, address, telephone number and age. A skateboard confiscated under this subsection shall be returned to persons 17 years of age or older, not earlier than 24 hours after the violation, upon their appearance at the city police department and the execution of a declaration of ownership. Skateboards confiscated from those persons under the age of 17 shall be returned, not earlier than 24 hours after the violation, to the persons' parent or guardian upon their appearance at the city police department and the execution of a declaration of ownership. If a skateboard is confiscated under this subsection from a person other than the owner of the skateboard, the skateboard shall be returned, not earlier than 24 hours after the violation, to the owner or the parent or guardian of the owner, if the owner is under 17 years of age, upon the appearance of the owner or the parent or guardian of the owner at the city police department and the execution of a declaration of ownership.

All other Sections of Chapter 74 – Offenses, shall remain unaffected.

Ordained this _____ day of _____, 2020. Effective upon publication.

Pierre Boutros, Mayor

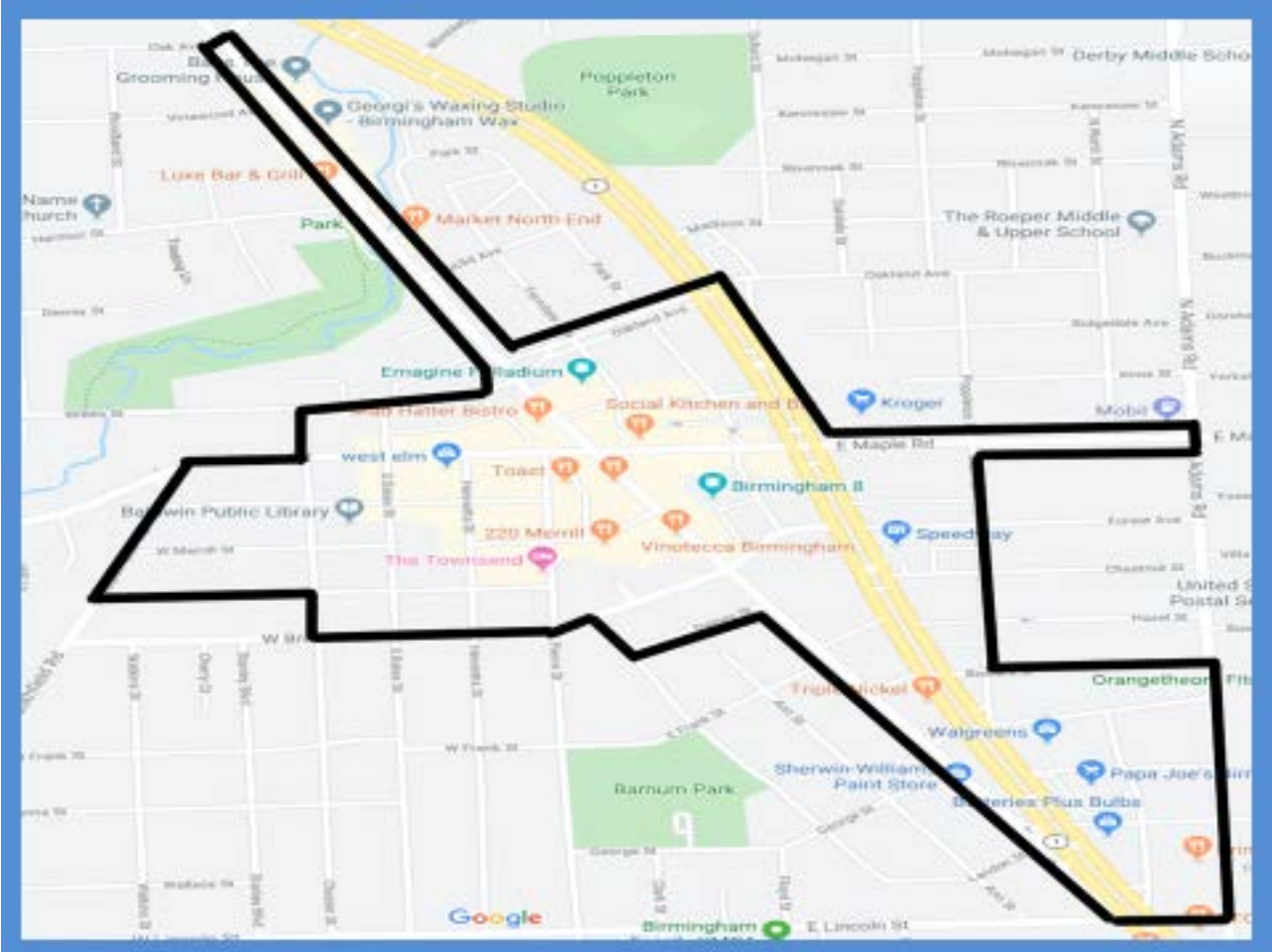
Cheryl Arft, Acting City Clerk

I, Cheryl Arft, Acting City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2020 and that a summary was published _____, 2020.

Cheryl Arft, Acting City Clerk

Exhibit A

Birmingham Shopping District



Sec. 74-6. – Skateboarding and Electric Personal Assistive Mobility Devices.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Central business district means that area bounded by and including the east sidewalk of Woodward north to the north sidewalk of Oakland Avenue west to the north sidewalk of Willits Avenue west to the west sidewalk of Chester to the north sidewalk of Maple to the west sidewalk of Southfield Road, south to the south sidewalk of Merrill Street east to the west sidewalk of Bates Street south to the south sidewalk of Townsend Street east to the west sidewalk of Henrietta south to the south sidewalk of Brown Street east to the east sidewalk of Woodward. (See Exhibit A)

Electric personal assistive mobility device means a self-balancing nontandem 2-wheeled device, designed to transport only 1 person at a time, having an electrical propulsion system with average power of 750 watts or 1 horsepower and a maximum speed on a paved level surface of not more than 15 miles per hour.

Electric Skateboard means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion.

Parking structure means any public structure designed for the parking of motor vehicles.

Pedestrian means a person on foot or on skateboard, excluding a person on foot walking a bicycle or moped.

Plaza means that open space area between the main entrance to a building and the street.

Sidewalk means that portion of a highway designed or ordinarily used for pedestrian travel.

Skateboard means a single platform mounted on wheels, which is propelled solely by human power and which has no mechanism or other device with which to steer or to control the movement or direction of the platform.

(B) Prohibitive

This section of the code does not apply to wheelchairs or other devices used to aid persons with disabilities or medical assistance.

- (1) *Skateboarding and the use of any Electric Personal Assistive Mobility Device shall be Skateboarding prohibited upon any sidewalk in the central business district, on City Hall plaza, Library plaza or in any parking structure. Skateboarding shall be permitted on all other sidewalks within the city.*

(2) Notwithstanding their status as pedestrians, ~~skateboard~~ operators on sidewalks shall yield the right-of-way to all vehicular and to all other pedestrian ~~(nonskateboard)~~ traffic upon the sidewalk.

~~(3) No more than one person shall operate or ride on a skateboard at one time.~~

~~(4) No skateboard shall be operated on the city hall plaza or the library plaza or in any parking structure.~~

(5) No person upon roller skates, ~~skateboards, or~~ riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. No person shall use, or ride on or in, any device described in this section on or in any city-owned public parking facility.

(6) A person who violates this section is responsible for a civil infraction with a \$100 fine.

(7) ~~A person who violates this section is subject to the penalties prescribed in of this Code.~~ In addition to any penalty prescribed in (6) of this Code, a police officer or other law enforcement agent may confiscate the skateboard and obtain the person's name, address, telephone number and age. A skateboard confiscated under this subsection shall be returned to persons 17 years of age or older, not earlier than 24 hours after the violation, upon their appearance at the city police department and the execution of a declaration of ownership. Skateboards confiscated from those persons under the age of 17 shall be returned, not earlier than 24 hours after the violation, to the persons' parent or guardian upon their appearance at the city police department and the execution of a declaration of ownership. If a skateboard is confiscated under this subsection from a person other than the owner of the skateboard, the skateboard shall be returned, not earlier than 24 hours after the violation, to the owner or the parent or guardian of the owner, if the owner is under 17 years of age, upon the appearance of the owner or the parent or guardian of the owner at the city police department and the execution of a declaration of ownership.

Sec. 74-6. – Skateboarding and Electric Personal Assistive Mobility Devices.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Central business district means that area bounded by and including the east sidewalk of Woodward north to the north sidewalk of Oakland Avenue west to the north sidewalk of Willits Avenue west to the west sidewalk of Chester to the north sidewalk of Maple to the west sidewalk of Southfield Road, south to the south sidewalk of Merrill Street east to the west sidewalk of Bates Street south to the south sidewalk of Townsend Street east to the west sidewalk of Henrietta south to the south sidewalk of Brown Street east to the east sidewalk of Woodward. (See Exhibit A)

Electric personal assistive mobility device means a self-balancing nontandem 2-wheeled device, designed to transport only 1 person at a time, having an electrical propulsion system with average power of 750 watts or 1 horsepower and a maximum speed on a paved level surface of not more than 15 miles per hour.

Electric Skateboard means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion.

Parking structure means any public structure designed for the parking of motor vehicles.

Pedestrian means a person on foot or on skateboard, excluding a person on foot walking a bicycle or moped.

Plaza means that open space area between the main entrance to a building and the street.

Sidewalk means that portion of a highway designed or ordinarily used for pedestrian travel.

Skateboard means a single platform mounted on wheels, which is propelled solely by human power and which has no mechanism or other device with which to steer or to control the movement or direction of the platform.

(B) Prohibitive

This section of the code does not apply to wheelchairs or other devices used to aid persons with disabilities or medical assistance.

- (1) Skateboarding and the use of any Electric Personal Assistive Mobility Device shall be prohibited upon any sidewalk in the central business district, on City Hall plaza, Library plaza or in any parking structure.

- (2) Notwithstanding their status as pedestrians, operators on sidewalks shall yield the right-of-way to all vehicular and to all other pedestrian traffic upon the sidewalk.
- (3) No person upon roller skates, riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. No person shall use, or ride on or in, any device described in this section on or in any city-owned public parking facility.
- (4) A person who violates this section is responsible for a civil infraction with a \$100 fine.
- (5) In addition to any penalty prescribed in (6) of this Code, a police officer or other law enforcement agent may confiscate the skateboard and obtain the person's name, address, telephone number and age. A skateboard confiscated under this subsection shall be returned to persons 17 years of age or older, not earlier than 24 hours after the violation, upon their appearance at the city police department and the execution of a declaration of ownership. Skateboards confiscated from those persons under the age of 17 shall be returned, not earlier than 24 hours after the violation, to the persons' parent or guardian upon their appearance at the city police department and the execution of a declaration of ownership. If a skateboard is confiscated under this subsection from a person other than the owner of the skateboard, the skateboard shall be returned, not earlier than 24 hours after the violation, to the owner or the parent or guardian of the owner, if the owner is under 17 years of age, upon the appearance of the owner or the parent or guardian of the owner at the city police department and the execution of a declaration of ownership.

All other Sections of Chapter 74 – Offenses, shall remain unaffected.

Ordained this _____ day of _____, 2020. Effective upon publication.

Pierre Boutros, Mayor

Cheryl Arft, Acting City Clerk

I, Cheryl Arft, Acting City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2020 and that a summary was published _____, 2020.

Cheryl Arft, Acting City Clerk

Exhibit A

Central Business District



Sec. 74-6. – Skateboarding and Electric Personal Assistive Mobility Devices.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Central business district* means that area bounded by and including the east sidewalk of Woodward north to the north sidewalk of Oakland Avenue west to the north sidewalk of Willits Avenue west to the west sidewalk of Chester to the north sidewalk of Maple to the west sidewalk of Southfield Road, south to the south sidewalk of Merrill Street east to the west sidewalk of Bates Street south to the south sidewalk of Townsend Street east to the west sidewalk of Henrietta south to the south sidewalk of Brown Street east to the east sidewalk of Woodward.~~

~~*Birmingham Shopping district* means that area bounded by and including the east sidewalk of Woodward north and the north sidewalk of Oakland Avenue, west to the east sidewalk of N. Old Woodward, north to the north sidewalk of Oak, west to the west sidewalk of N. Old Woodward, south to the north sidewalk of Willits, west to the west sidewalk of Chester, south to the north sidewalk of Maple, west to the east sidewalk of Southfield Road, south to the south sidewalk of Merrill Street, east to the west sidewalk of Bates Street, south to the south sidewalk of Townsend Street, east to the east sidewalk of Henrietta, south to the south sidewalk of Brown Street, east to the west sidewalk of Purdy, south to the south sidewalk of Daines, east to the west side walk of S. Old Woodward, south to the north sidewalk of Lincoln, east to the west sidewalk of Adams, north to the north sidewalk of Bowers, west to the east sidewalk of Elm, north to the south sidewalk of Maple, east to the east sidewalk of Adams, north to the north sidewalk of Maple, west to the east sidewalk of Woodward, north to the north side walk of Oakland.~~

~~*Electric personal assistive mobility device* means a self-balancing nontandem 2-wheeled device, designed to transport only 1 person at a time, having an electrical propulsion system with average power of 750 watts or 1 horsepower and a maximum speed on a paved level surface of not more than 15 miles per hour.~~

~~*Electric Skateboard* means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion.~~

Parking structure means any public structure designed for the parking of motor vehicles.

Pedestrian means a person on foot or on skateboard, excluding a person on foot walking a bicycle or moped.

Plaza means that open space area between the main entrance to a building and the street.

Sidewalk means that portion of a highway designed or ordinarily used for pedestrian travel.

Skateboard means a single platform mounted on wheels, which is propelled solely by human power and which has no mechanism or other device with which to steer or to control the movement or direction of the platform.

(B) Prohibitive

This section of the code does not apply to wheelchairs or other devices used to aid persons with disabilities or medical assistance.

- (1) ~~Skateboarding and the use of any Electric Personal Assistive Mobility Device shall be Skateboarding~~ prohibited upon any sidewalk in the Birmingham Shopping central business district, on City Hall plaza, Library plaza or in any parking structure.- ~~Skateboarding shall be permitted on all other sidewalks within the city.~~
- (2) Notwithstanding their status as pedestrians, ~~skateboard~~ operators on sidewalks shall yield the right-of-way to all vehicular and to all other pedestrian ~~(nonskateboard)~~ traffic upon the sidewalk.
- ~~(3) No more than one person shall operate or ride on a skateboard at one time.~~
- ~~(4) No skateboard shall be operated on the city hall plaza or the library plaza or in any parking structure.~~
- (5) No person upon roller skates, ~~skateboards, or~~ riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. No person shall use, or ride on or in, any device described in this section on or in any city-owned public parking facility.
- (6) A person who violates this section is responsible for a civil infraction with a \$100 fine.
- (7) ~~A person who violates this section is subject to the penalties prescribed in of this Code.~~ In addition to any penalty prescribed in (6) of this Code, a police officer or other law enforcement agent may confiscate the skateboard and obtain the person's name, address, telephone number and age. A skateboard confiscated under this subsection shall be returned to persons 17 years of age or older, not earlier than 24 hours after the violation, upon their appearance at the city police department and the execution of a declaration of ownership. Skateboards confiscated from those persons under the age of 17 shall be returned, not earlier than 24 hours after the violation, to the persons' parent or guardian upon their appearance at the city police department and the execution of a declaration of ownership. If a skateboard is confiscated under this subsection from a person other than the owner of the skateboard, the skateboard shall be returned, not earlier than 24 hours after the violation, to the owner or the parent or guardian of the owner, if the owner is under 17 years of age, upon the appearance of the owner or the parent or guardian of the owner at the city police department and the execution of a declaration of ownership.

Sec. 74-6. – Skateboarding and Electric Personal Assistive Mobility Devices.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Birmingham Shopping District means that area bounded by and including the east sidewalk of Woodward north and the north sidewalk of Oakland Avenue, west to the east sidewalk of N. Old Woodward, north to the north sidewalk of Oak, west to the west sidewalk of N. Old Woodward, south to the north sidewalk of Willits, west to the west sidewalk of Chester, south to the north sidewalk of Maple, west to the east sidewalk of Southfield Road, south to the south sidewalk of Merrill Street, east to the west sidewalk of Bates Street, south to the south sidewalk of Townsend Street, east to the east sidewalk of Henrietta, south to the south sidewalk of Brown Street, east to the west sidewalk of Purdy, south to the south sidewalk of Daines, east to the west side walk of S. Old Woodward, south to the north sidewalk of Lincoln, east to the west sidewalk of Adams, north to the north sidewalk of Bowers, west to the east sidewalk of Elm, north to the south sidewalk of Maple, east to the east sidewalk of Adams, north to the north sidewalk of Maple, west to the east sidewalk of Woodward, north to the north side walk of Oakland. (See Exhibit A)

Electric personal assistive mobility device means a self-balancing nontandem 2-wheeled device, designed to transport only 1 person at a time, having an electrical propulsion system with average power of 750 watts or 1 horsepower and a maximum speed on a paved level surface of not more than 15 miles per hour.

Electric Skateboard means a wheeled device that has a floorboard designed to be stood upon when riding that is no more than 60 inches long and 18 inches wide, is designed to transport only 1 person at a time, has an electrical propulsion system with power of no more than 2,500 watts, and has a maximum speed on a paved level surface of not more than 25 miles per hour. An electric skateboard may have handlebars and, in addition to having an electrical propulsion system with power of no more than 2,500 watts, may be designed to also be powered by human propulsion.

Parking structure means any public structure designed for the parking of motor vehicles.

Pedestrian means a person on foot or on skateboard, excluding a person on foot walking a bicycle or moped.

Plaza means that open space area between the main entrance to a building and the street.

Sidewalk means that portion of a highway designed or ordinarily used for pedestrian travel.

Skateboard means a single platform mounted on wheels, which is propelled solely by human power and which has no mechanism or other device with which to steer or to control the movement or direction of the platform.

(B) Prohibitive

This section of the code does not apply to wheelchairs or other devices used to aid persons with disabilities or medical assistance.

- (1) Skateboarding and the use of any Electric Personal Assistive Mobility Device shall be prohibited upon any sidewalk in the Birmingham Shopping District, on City Hall plaza, Library plaza or in any parking structure.
- (2) Notwithstanding their status as pedestrians, operators on sidewalks shall yield the right-of-way to all vehicular and to all other pedestrian traffic upon the sidewalk.
- (3) No person upon roller skates, riding in or by means of any coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. No person shall use, or ride on or in, any device described in this section on or in any city-owned public parking facility.
- (4) A person who violates this section is responsible for a civil infraction with a \$100 fine.
- (5) In addition to any penalty prescribed in (6) of this Code, a police officer or other law enforcement agent may confiscate the skateboard and obtain the person's name, address, telephone number and age. A skateboard confiscated under this subsection shall be returned to persons 17 years of age or older, not earlier than 24 hours after the violation, upon their appearance at the city police department and the execution of a declaration of ownership. Skateboards confiscated from those persons under the age of 17 shall be returned, not earlier than 24 hours after the violation, to the persons' parent or guardian upon their appearance at the city police department and the execution of a declaration of ownership. If a skateboard is confiscated under this subsection from a person other than the owner of the skateboard, the skateboard shall be returned, not earlier than 24 hours after the violation, to the owner or the parent or guardian of the owner, if the owner is under 17 years of age, upon the appearance of the owner or the parent or guardian of the owner at the city police department and the execution of a declaration of ownership.

All other Sections of Chapter 74 – Offenses, shall remain unaffected.

Ordained this _____ day of _____, 2020. Effective upon publication.

Pierre Boutros, Mayor

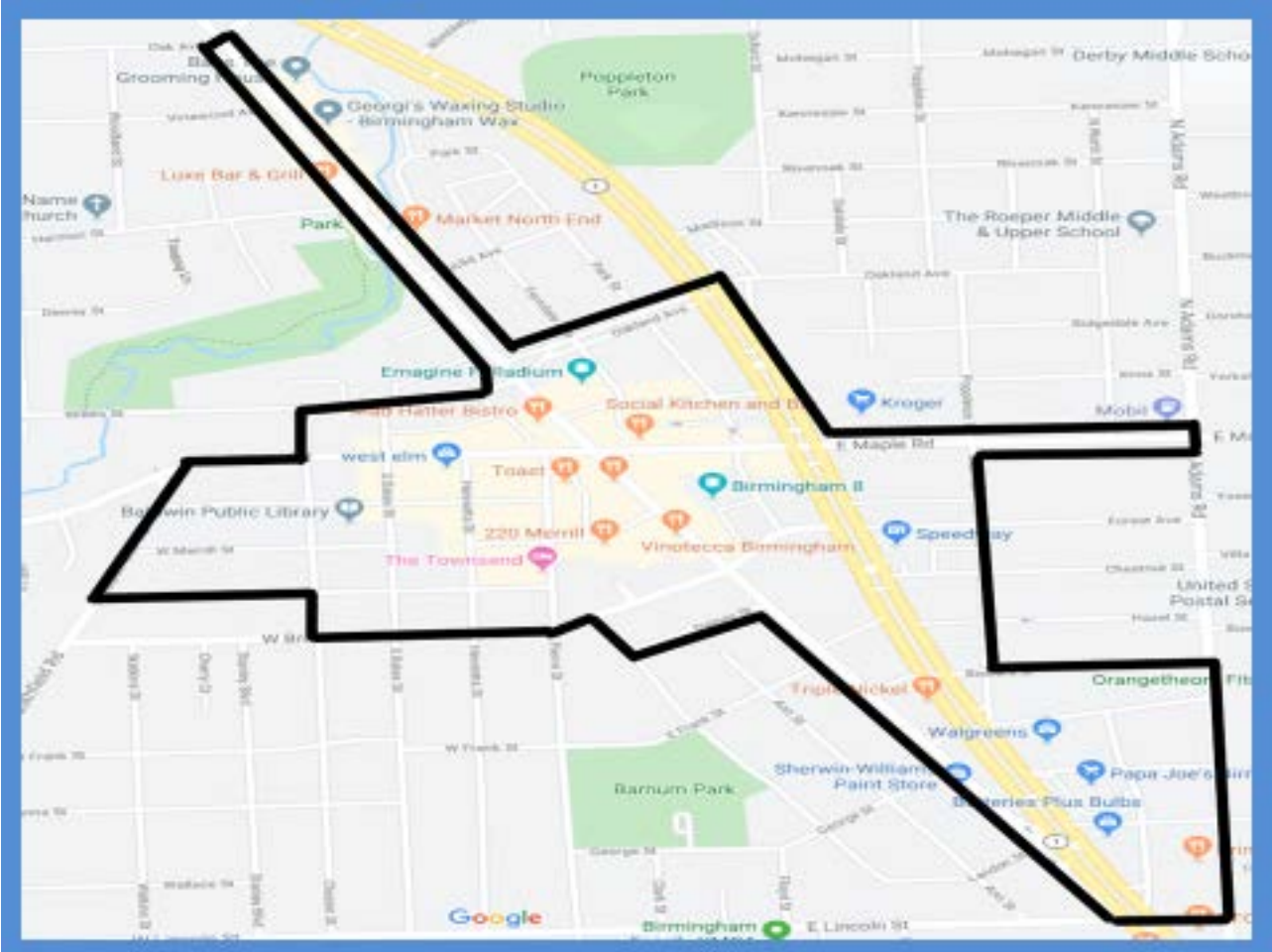
Cheryl Arft, Acting City Clerk

I, Cheryl Arft, Acting City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2020 and that a summary was published _____, 2020.

Cheryl Arft, Acting City Clerk

Exhibit A

Birmingham Shopping District



MEMORANDUM

To: Joseph A. Valentine, City Manager
From: Jane Awdish, City Attorney's Office
Subject: Legal Authority for the Installation of 5G Technology
Date: February 7, 2020

There has been resident concern about the installation of 5G technologies in the public right-of-way and questions regarding the authority regulating the communication industry.

To support next-generation 5G wireless broadband systems, the telecom industry is seeking to deploy tens of thousands of Distributed Antenna Systems (DAS) and Small Cell wireless facilities. Municipalities are increasingly receiving applications for these wireless facilities and are faced with the challenge of regulating large scale antenna deployment in their public right-of-way (ROW) under Federal and State laws.

The Federal Communications Commission (FCC) has restricted municipal regulation of this 5G infrastructure. Specifically, the "Moratoria Order" (Third Report and Order and Declaratory Ruling, FCC 18-111, adopted 8/2/18) and the "Small Cell Order" (Declaratory Ruling and Third Report and Order, FCC 18-133, adopted 9/26/2018) preempt local control of the public right-of-way. The "Moratoria Order" bans any moratoria related to 5G infrastructure deployment and the "Small Cell Order" provides application processing standards and aesthetic requirements, and sets caps on permit fees for ROW access and attachments to jurisdiction-owned structures in the ROW.

On March 12, 2019 the Michigan Small Wireless Communications Facilities Deployment Act, Act No. 365 of the Public Acts of 2018 (the "Act") took effect. The Act similarly encourages the deployment of small wireless infrastructure in the ROW and sets a regulatory framework for municipalities to process applications from wireless providers. This Act looks

very similar to the FCC Small Cell Order. A companion act, Act No. 366 of the Public Acts of 2018, was also enacted to amend the Michigan Zoning Enabling Act to incorporate PA 365.

Congress has conferred jurisdiction to the FCC to regulate telecommunications. Thus, despite any state law relating to the deployment of this wireless infrastructure, local municipalities wishing to prohibit the deployment of 5G infrastructure are preempted by the FCC and its recent Orders. There is pending federal litigation challenging both the Small Cell and Moratoria Orders (the Ninth Circuit Court of Appeals will hear oral arguments on February 10, 2020) however any pending litigation regarding these FCC rulings is not going to be decided any time soon.

As a result, the City is preempted by federal law and cannot prohibit these facilities but we can urge our state and federal legislatures to initiate reliable studies of the health effects of small cell wireless and 5G technology and ask for changes that maintain a reasonable level of local control.

Should the City Commission wish to proceed in making this request of their state and federal legislators a resolution has been prepared for their consideration.

Suggested Action:

To adopt a resolution urging the state legislature and federal government to initiate a study of the health effects of small cell towers built to accommodate 5G technology and to develop installation guidelines protecting the health and welfare of residents.

If you have any questions, please do not hesitate to contact me.

Jane Awdish
Beier Howlett, P.C.
3001 W. Big Beaver Road, Suite 200
Troy, MI 48084
(248) 645-9400
jawdish@bhlaw.us.com

**RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF
BIRMINGHAM URGING THE STATE LEGISLATURE AND FEDERAL GOVERNMENT TO
INITIATE A STUDY OF THE HEALTH EFFECTS OF SMALL CELL TOWERS BUILT TO
ACCOMMODATE 5G TECHNOLOGY AND TO DEVELOP INSTALLATION
GUIDELINES PROTECTING THE HEALTH AND WELFARE
OF RESIDENTS; PROVIDING FOR
AN EFFECTIVE DATE**

Moved by: _____

Seconded by: _____

WHEREAS, small cell wireless equipment is designed to boost cellular service from the existing wireless carriers and will enable those carriers to implement 5G technology by placing these installations on existing streetlights and utility poles; and,

WHEREAS, concerns have been raised about the health risks of 5G technology including small cell installations. Many studies have linked low-level wireless radio frequency radiation exposures to adverse effects on human health; and,

WHEREAS, the health hazards of 5G technology have been intensely debated at the federal level before Congress and the Federal Communications Commission (FCC). There does appear that more scientific study is needed to determine whether small cell 5G installations have an adverse health impact; and,

WHEREAS, the Federal Communications Commission has preempted local governments from prohibiting the installation of small cells and 5G as it relates to their potential health effects or proximity to residential areas; and,

WHEREAS, the FCC adopted regulations in 2018 that are intended to facilitate the installation of 5G technology “underscore[ing] the FCC’s commitment to ensuring that the United States wins the global race to 5G,” as stated in the FCC Press Release dated September 26, 2018; and,

WHEREAS, the FCC’s action allows private cell providers the right to put antennas and transmission control boxes on city-owned streetlight poles and privately-owned utility wood poles subject to only minimal limitations. Given the health concerns described above, the City believes this should cause great concern for all City residents; and,

WHEREAS, the Mayor and City Commission hereby find it is in the best interest of the residents to urge the state and federal governments to initiate independent scientifically reliable studies of the health effects of small cell wireless and 5G technology on residential populations and develop guidelines for the installation of this technology that will protect the health and welfare of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF BIRMINGHAM:

SECTION 1. Each of the above recitals are hereby incorporated herein.

SECTION 2. The Mayor and City Commission hereby urge the state and federal governments to initiate independent scientifically reliable studies of health effects of small cell wireless and 5G technology on residential populations and develop guidelines for the installation of this technology that will protect the health and welfare of the public.

SECTION 3. The City Commission hereby directs the City Clerk to transmit a copy of this Resolution to all appropriate entities.

SECTION 4. This Resolution shall become effective immediately upon its adoption.

Passed, adopted and approved this _____ day of _____, 2020.

AYES: _____

NAYS: _____

PRESENT: _____

ABSENT: _____

CERTIFICATION

I, Cheryl Arft, being the duly appointed and qualified Acting Clerk of the City of Birmingham, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of Resolution, the original of which is on file in my office, adopted by the City of Birmingham Commission at a regular meeting held on _____, 2020.

Cheryl Arft, Acting City Clerk

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Accelerating Wireline Broadband Deployment by) WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)
Accelerating Wireless Broadband Deployment by) WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)

THIRD REPORT AND ORDER AND DECLARATORY RULING

Adopted: August 2, 2018

Released: August 3, 2018

By the Commission: Chairman Pai and Commissioners O’Rielly and Carr issuing separate statements;
Commissioner Rosenworcel approving in part, dissenting in part and issuing a statement.

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APPENDIX A – Final Rules
APPENDIX B – Final Regulatory Flexibility Analysis

I. INTRODUCTION

1. Today, we continue our efforts to promote broadband deployment by speeding the process and reducing the costs of attaching new facilities to utility poles.¹ Now, more than ever, access to this vital infrastructure must be swift, predictable, safe, and affordable, so that broadband providers can continue to enter new markets and deploy facilities that support high-speed broadband. Pole access also is essential to the race for 5G because mobile and fixed wireless providers are increasingly deploying innovative small cells on poles and because these wireless services depend on wireline backhaul.² Indeed, an estimated 100,000 to 150,000 small cells will be constructed by the end of 2018, and these numbers are projected to reach 455,000 by 2020 and 800,000 by 2026.³

2. In today's order, we take one large step and several smaller steps to improve and speed the process of preparing poles for new attachments, or "make ready."⁴ Make-ready generally refers to the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the pole. Consistent with the recommendations of the Broadband Deployment Advisory Committee (BDAC),⁵ we fundamentally shift the framework for the vast majority of attachments governed by federal law by adopting a new pole attachment process that includes "one-touch make-ready" (OTMR), in which the new attacher performs all make-ready work. OTMR speeds and reduces the cost of broadband deployment by allowing the party with the strongest incentive—the new attacher—to prepare the pole quickly by performing all of the work itself, rather than spreading the work across multiple parties. By some estimates, OTMR alone could result in approximately 8.3 million incremental premises passed with fiber and about \$12.6 billion in incremental fiber capital expenditures.⁶ We exclude from OTMR new attachments that are more complicated or above the "communications space" of a pole, where safety and reliability risks can be greater, but we make significant incremental improvements to our rules governing such attachments to speed the existing process, promote accurate billing, and reduce the likelihood of coordination failures that cause unwarranted delay.

3. We also adopt other improvements to our pole attachment rules. To provide certainty to all parties and reduce the costs of deciphering our old decisions, we codify and refine our existing precedent that requires utilities to allow "overlapping," which helps maximize the usable space on the

¹ Consistent with section 224 of the Communications Act of 1934, as amended (the Act), we use the term "pole attachment" to encompass "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility," unless otherwise dictated by context. *See* 47 U.S.C. § 224(a)(4). In the specific context of pole attachment timelines, we use the term "pole attachment" to refer only to utility poles (and not to attachments to ducts, conduits, or rights of way). *See* 47 CFR § 1.1411(a).

² *See* Crown Castle Wireline NPRM Comments at 1-2; Mobilitie Wireline NPRM Comments at 7-8; Sprint Wireline NPRM Comments at 10, 39-40.

³ *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421, Public Notice, 31 FCC Rcd 13360, 13363-64 (WTB 2016).

⁴ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, Order on Reconsideration, 14 FCC Rcd 18049, 18056 n.50 (1999).

⁵ *See* Letter from Paul D'Ari, Designated Federal Officer, Broadband Deployment Advisory Committee, FCC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed July 3, 2018), at Attach. Broadband Deployment Advisory Committee, FCC, *Report of the Competitive Access to Broadband Infrastructure Working Group* at 18-31 (2018), <https://ecfsapi.fcc.gov/file/107030255502405/Competitive%20Access%20to%20Broadband%20Infrastructure%20Report.pdf> (BDAC January 2018 Recommendations).

⁶ *See* Letter from Thomas J. Navin, Counsel to Corning, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-84, at Attach. A; Ed Naef and Alex King, CMA Strategy Consulting, *Assessing the Impact of Removing Regulatory Barriers on Next Generation Wireless and Wireline Broadband Infrastructure Investment: Annex 1, Model Sensitivities* at 5-6 (filed Feb. 26, 2018) (Corning Economic Study).

pole. We clarify that new attachers are not responsible for the costs of repairing preexisting violations of safety or other codes or utility construction standards discovered during the pole attachment process. And we eliminate outdated disparities between the pole attachment rates incumbent local exchange carriers (LECs) must pay compared to other similarly-situated telecommunications attachers.

4. Finally, we address two forms of state and local regulatory barriers to the deployment of wireline and wireless facilities. In the Report and Order, we make clear that we will preempt, on a case-by-case basis, state and local laws that inhibit the rebuilding or restoration of broadband infrastructure after a disaster. In today's Declaratory Ruling, we conclude that state and local moratoria on telecommunications services and facilities deployment are barred by section 253(a) of the Act because they "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."⁷ Barring deployment deprives the public of better services and more broadband options, yet a small but growing number of localities have adopted moratoria in various forms. We put an end to such regulatory barriers.

II. BACKGROUND

5. Section 224 of the Act grants us broad authority to regulate attachments to utility-owned and -controlled poles, ducts, conduits, and rights-of-way.⁸ The Act authorizes us to prescribe rules to: ensure that the rates, terms, and conditions of pole attachments are just and reasonable;⁹ require utilities¹⁰ to provide nondiscriminatory access to their poles, ducts, conduits, and rights-of-way to telecommunications carriers and cable television systems (collectively, attachers);¹¹ provide procedures for resolving pole attachment complaints;¹² govern pole attachment rates for attachers;¹³ and allocate make-ready costs among attachers and utilities.¹⁴ The Act exempts from our jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves.¹⁵ Pole attachments in thirty states are currently governed by our rules.

6. Our rules take into account the many purposes of utility poles and how an individual pole is divided into various "spaces" for specific uses.¹⁶ Utility poles often accommodate equipment used to

⁷ 47 U.S.C. § 253(a).

⁸ See 47 U.S.C. § 224(b)(1). The placement and use of utility infrastructure also are governed by local, state, and federal safety rules, as well as by industry standards such as those set forth in the National Electric Safety Code (NESC). The NESC is a set of standards published by the Institute of Electrical and Electronics Engineers (IEEE) for the safe installation, operation, and maintenance of electric power and communications systems. *2017 National Electrical Safety Code (C2-2017)*, IEEE (2017).

⁹ 47 U.S.C. §§ 224(b)(1)-(2).

¹⁰ The Act defines a utility as a "local exchange carrier or an electric, gas, water, steam, or other public utility, . . . who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1). However, for purposes of pole attachments, a utility does not include any railroad, any cooperatively-organized entity, or any entity owned by a federal or state government. *Id.*

¹¹ 47 U.S.C. § 224(f). The Act allows utilities that provide electric service to deny access to their poles, ducts, conduits, or rights-of-way because of "insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." *Id.* at § 224(f)(2).

¹² 47 U.S.C. § 224(b)(1).

¹³ 47 U.S.C. §§ 224(d)-(e).

¹⁴ 47 U.S.C. §§ 224(b), (h)-(i).

¹⁵ See 47 U.S.C. § 224(c). To date, twenty states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 25 FCC Rcd 5541, 5541-42 (WCB 2010).

¹⁶ 47 CFR §§ 1.1411(e), (i); 1.1412(a). The citations to the rules throughout this Order and Appendix A reflect the renumbering of Part 1, subpart J of Title 47 of the Code of Federal Regulations as adopted by the Commission in

provide a variety of services, including electric power, telephone, cable, wireline broadband, and wireless.¹⁷ Accommodating a variety of services on the same pole benefits the public by minimizing “unnecessary and costly duplication of plant for all pole users.”¹⁸ Different vertical portions of the pole serve different functions.¹⁹ The bottom of the pole generally is unusable for most types of attachments, although providers of wireless services and facilities sometimes attach equipment associated with distributed antenna systems (DAS) and other small wireless facilities to the portion of the pole near the ground.²⁰ Above that, the lower usable space on a pole—the “communications space”—houses low-voltage communications equipment, including fiber, coaxial cable, and copper wiring.²¹ The topmost portion of the pole, the “electric space,” houses high-voltage electrical equipment.²² Work in the electric space generally is considered more dangerous than work in the communications space.²³ Historically, communications equipment attachers used only the communications space; however, mobile wireless providers increasingly are seeking access to areas above the communications space, including the electric space, to attach pole-top small wireless facilities.²⁴

7. When a new attacher seeks access to a pole, it is necessary to evaluate whether adding the attachment will be safe and whether there is room for it.²⁵ In many cases, existing attachments must be moved to make room for the new attachment. In some cases, it is necessary to install a larger pole to accommodate a new attachment.²⁶ Our current rules, adopted in 2011, prescribe a multi-stage process for placing new attachments on utility poles:

- Application Review and Survey. The new attacher applies to the utility for pole access. Once the application is complete, the utility has 45 days in which to make a decision on the application and complete any surveys to determine whether and where attachment is feasible

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July 2018. See *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, EB Docket No. 17-245, Report and Order, FCC 18-96, Appx. A (July 18, 2018).

¹⁷ See Letter from H. Russell Frisby, Jr., Counsel to Edison Electric Institute (EEI), to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at Attach. Duke Energy, *What’s on an electric utility pole?* (filed Oct. 3, 2017) (EEI Oct. 3, 2017 Wireline *Ex Parte* Letter).

¹⁸ S. REP. NO. 95-580, at 13 (1977), as reprinted in 1978 U.S.C.C.A.N. 109, 121.

¹⁹ See Florida Public Service Commission, *What’s on a Utility Pole?* (2018), <http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole> (last visited June 27, 2018); see also EEI Oct. 3, 2017 Wireline *Ex Parte* Letter at Attach. *Pole Attachments: Safety and Reliability*, at 4.

²⁰ See EEI Oct. 3, 2017 Wireline *Ex Parte* Letter at Attach. *Pole Attachments: Safety and Reliability*; Crown Castle Wireline NPRM Comments at 5.

²¹ See Florida Public Service Commission, *What’s on a Utility Pole?* (2018), <http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole> (last visited June 27, 2018); see also EEI Oct. 3, 2017 Wireline *Ex Parte* Letter at Attach. Duke Energy, *What’s on an electric utility pole?*

²² See Florida Public Service Commission, *What’s on a Utility Pole?* (2018), <http://www.psc.state.fl.us/ConsumerAssistance/UtilityPole> (last visited June 27, 2018); see also EEI Oct. 3, 2017 Wireline *Ex Parte* Letter at Attach. Duke Energy, *What’s on an electric utility pole?*

²³ See Coalition of Concerned Utilities (CCU) Wireline NPRM Comments at 28-29; Texas Office of Public Utility Counsel Wireline NPRM Comments at 4; EEI Wireline NPRM Reply at 23; Alliant Energy Corp. et al. (Midwest Electric Utilities) Wireline NPRM Reply at 25-28.

²⁴ See Crown Castle Wireline NPRM Comments at 18.

²⁵ See American Cable Association (ACA) Wireline NPRM Reply at 18; Ameren et al. (Electric Utilities) Wireline NPRM Reply at 17.

²⁶ See Google Fiber Wireline NPRM Comments at 7.

and what make-ready is required.²⁷ The utility may take an additional 15 days for large orders.²⁸ Our current rules allow new attachers in the communications space to perform surveys when the utility does not meet its deadline.²⁹

- Estimate. The utility must provide an estimate of all make-ready charges within 14 days of receiving the results of the survey.³⁰
- Attacher Acceptance. The new attacher has 14 days or until withdrawal of the estimate by the utility, whichever is later, to approve the estimate and provide payment.³¹
- Make-Ready. The existing attachers are required to prepare the pole within 60 days of receiving notice from the utility for attachments in the communications space (105 days in the case of larger orders) or 90 days for attachments above the communications space (135 days in the case of larger orders).³² A utility may take 15 additional days after the make-ready period ends to complete make-ready itself.³³ Our current rules allow new attachers in the communications space to perform make-ready work themselves using a utility-approved contractor when the utility or existing attachers do not meet their deadlines.³⁴

8. A number of commenters allege that pole attachment delays and the high costs of attaching to poles have deterred them from deploying broadband.³⁵ For example, Nittany Media's CTO explains that "[o]ver the past 4 years I have seen a tremendous increase in the costs of fiber construction. Although material and labor costs have remained stable and even in some cases become more efficient, pole attachment costs have increased exponentially."³⁶ Commenters in particular point to the make-ready stage of our current timeline as the largest source of high costs and delays in the pole attachment process.³⁷ In response to these types of concerns and to promote broadband deployment, two localities and one

²⁷ 47 CFR § 1.1411(c).

²⁸ 47 CFR §§ 1.1411(c), (g).

²⁹ 47 CFR § 1.1411(i).

³⁰ 47 CFR § 1.1411(d).

³¹ 47 CFR §§ 1.1411(d)(1)-(2).

³² 47 CFR §§ 1.1411(e)(1)(ii), (e)(2)(ii). A "larger order" is "the lesser of 3000 poles or 5 percent of the utility's poles in a state." 47 CFR § 1.1411(g)(3).

³³ 47 CFR §§ 1.1411(e)(1)(iv), (e)(2)(iv).

³⁴ 47 CFR § 1.1411(e)(1)(v).

³⁵ See, e.g., Crown Castle Wireline NPRM Comments at 4-10; Google Fiber Wireline NPRM Comments at 2; Lightower Wireline NPRM Comments at I, 2; Mobilitie Wireline NPRM Comments at 8-11; see also INCOMPAS Wireline NPRM Comments at 6 ("The existing rules, while adopted with the right objectives, are insufficient for modern infrastructure."); Fiber Broadband Association (FBA) Wireline NPRM Comments at 4 ("Yet, six years after the 2011 Pole Attachment Order, the FBA's service provider members still find that substantial problems persist in seeking access to poles. In too many instances, pole owners simply ignore the Commission's mandated timelines.").

³⁶ Letter from Michael H. Hain, CTO, Nittany Media, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed June 15, 2017). See also FBA Wireline NPRM Comments at 3 (stating that FBA "encourages the Commission to adopt reforms that will improve efficiency by addressing practices of many pole owners and existing attachers that delay and increase the cost of pole access"); Google Fiber Wireline NPRM Comments at 2 ("[S]taging make-ready in sequential 60-day notice periods . . . results in delay and increased costs . . . These problems, in turn, hinder—and may even foreclose entirely—the deployment of new networks and expansion of broadband service."); Lightower Wireline NPRM Comments at i ("Lightower has experienced barriers [to deploying wired broadband infrastructure] due to a lack of cost transparency.").

³⁷ See Letter from Katharine R. Saunders, Managing Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed Nov. 13, 2017) (Verizon Nov. 13, 2017 Wireline *Ex Parte* Letter), at

state—Louisville, Kentucky;³⁸ Nashville, Tennessee;³⁹ and the State of West Virginia⁴⁰—adopted their own versions of OTMR where the new attacher performs all the required make-ready work.

9. As part of its commitment to speeding broadband deployment, the Commission established the BDAC in January 2017 to advise on how best to remove barriers to broadband deployment, such as delays in new pole attachments.⁴¹ Earlier this year, the BDAC recommended that the Commission take a series of actions to promote competitive access to broadband infrastructure, including adopting OTMR for simple attachments in the communications space and making incremental improvements to the Commission’s pole attachment process for complex and non-communications space attachments.⁴²

10. We are also committed to using all the tools at our disposal to speed the restoration of infrastructure after disasters. Disasters such as the 2017 hurricanes can have debilitating effects on communications networks,⁴³ and one of our top priorities is assisting in the rebuilding of network infrastructure in the wake of such events.⁴⁴ We have also made clear our commitment to ensuring that our own federal regulations do not impede restoration efforts.⁴⁵

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Attach. Nicholas Vantzelfde, Managing Partner, Communications Media Advisors, LLC, *Perspectives on the Current State of Make Ready and the Potential Impact of a One-Touch Make-Ready Policy*, at 4 (2017) (CMA Report) (“Expediting the make-ready process can reduce payback periods and thus spur increased investment for next-generation networks. The current process is inefficient; impeding broadband deployment and creating additional burdens for pole owners.”); Letter from Karen Reidy, Vice President, Regulatory Affairs, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Dec. 20, 2017) (“[T]he current [make-ready] approach—with its sequential make-ready performed by different parties—results in substantial delays, lack of predictability, higher costs, and reduced fiber network expansion.”); CCU Wireline NPRM Comments at 11; Google Fiber Wireline NPRM Comments at 9; BDAC January 2018 Recommendations at 19-20.

³⁸ See Louisville Ordinance No. O-427-15, § 116.72(D)(2). In March 2017, the United States District Court for the Western District of Kentucky allowed several challenges to the Louisville OTMR ordinance to proceed. See *Insight Kentucky Partners II, L.P. v. Louisville/Jefferson Cty. Metro Gov’t*, 2017 WL 1193065 (W.D. Ky. Aug. 16, 2017).

³⁹ See Nashville Ordinance No. BL2016-343, § 13.18.020 (A). In November 2017, the United States District Court for the Middle District of Tennessee found that the Nashville OTMR ordinance was preempted by federal law and permanently enjoined the City of Nashville and Davidson County, TN from applying the ordinance to private parties. See *BellSouth Telecomm., LLC v. Metro. Gov’t of Nashville and Davidson Cty., Tenn.*, 2017 WL 5641145 (M.D. Tenn. Nov. 21, 2017).

⁴⁰ See W. VA. Code § 31G (2017). In June 2018, after both West Virginia and Frontier, which challenged the West Virginia OTMR statute, agreed that the Commission’s pole attachment rules preempt West Virginia OTMR statute, the United States District Court for the Southern District of West Virginia granted Frontier’s motion for summary judgment and permanently enjoined the West Virginia OTMR statute. See *Frontier West Virginia Inc., et al. v. Gov. Jim Justice II, et al., West Virginia Cable Telecomm. Ass’n, Inc. v. James C. Justice, Jr., et al.*, Civil Action Nos. 2:17-cw-03560, 2:17-cv-03609, Memorandum Opinion and Order (S.D.W. Va. June 14, 2018).

⁴¹ See FCC, Broadband Deployment Advisory Committee, Organization, Charter, <https://www.fcc.gov/sites/default/files/bdac-charter.pdf> (last visited June 28, 2018).

⁴² See BDAC January 2018 Recommendations at 19, 21.

⁴³ See Letter from Sandra E. Torres López, Chairwoman, Puerto Rico Telecommunications Regulatory Board, to Ajit Pai, Chairman, FCC, WC Docket No. 10-90, at 1 (filed Dec. 13, 2017) (estimating that Hurricanes Irma and Maria caused approximately \$1.5 billion of damage to Puerto Rico’s communications network).

⁴⁴ See, e.g., *Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket No. 18-143, et al., Order and Notice of Proposed Rulemaking, FCC 18-57 (May 29, 2018) (establishing the Uniendo a Puerto Rico Fund and the Connect USVI Fund to rebuild, improve and expand voice and broadband networks in Puerto Rico and the U.S. Virgin Islands).

⁴⁵ See, e.g., *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11157-59, paras. 71-78 (2017) (*Wireline Infrastructure Order*); *Accelerating Wireline Broadband*

11. The Commission initiated this proceeding on April 20, 2017 by adopting a *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment* seeking comment on a number of potential regulatory reforms to our rules and procedures to accelerate deployment of next-generation networks and services.⁴⁶ The Commission sought comment on, among other things, speeding the pole attachment timeline;⁴⁷ alternative pole attachment processes, including OTMR;⁴⁸ and creating a presumption that the incumbent LEC attachers pay the same pole attachment rate as other telecommunications attachers.⁴⁹ The Commission also sought comment on whether moratoria on the deployment of telecommunications facilities are inconsistent with section 253(a) of the Act.⁵⁰

12. On November 16, 2017, the Commission adopted a *Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking* enacting reforms to better enable providers to invest in next generation networks.⁵¹ Among other proposals, the *Further Notice of Proposed Rulemaking* sought comment on the treatment of overlashing by utilities⁵² and what actions the Commission can take to facilitate the rebuilding and repairing of broadband infrastructure after natural disasters.⁵³

III. REPORT AND ORDER

13. Based on the record in this proceeding, we amend our pole attachment rules to facilitate faster, more efficient broadband deployment. Further, we address state and local legal barriers to rebuilding networks after disasters. But, at the outset, we emphasize that parties are welcome to reach bargained solutions that differ from our rules.⁵⁴ Our rules provide processes that apply in the absence of a negotiated agreement, but we recognize that they cannot account for every distinct situation and encourage parties to seek superior solutions for themselves through voluntary privately-negotiated solutions.⁵⁵ In addition, we recognize that some states will seek to build on the rules that we adopt herein in order to serve the particular needs of their communities. As such, nothing here should be construed as

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Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, Second Report and Order, FCC 18-74, paras. 58-59 (June 8, 2018) (*Second Wireline Infrastructure Order*) (streamlining network change procedures where *force majeure* event necessitates a network change).

⁴⁶ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (*Wireline Infrastructure Notice*).

⁴⁷ *Id.* at 3268-70, paras. 7-12.

⁴⁸ *Id.* at 3270-76, paras. 13-31.

⁴⁹ *Id.* at 3279-80, paras. 44-46.

⁵⁰ *Id.* at 3297, para. 102.

⁵¹ See generally *Wireline Infrastructure Order*.

⁵² See *id.* at 11188-89, paras. 160-62.

⁵³ See *id.* at 11194, paras. 178-79.

⁵⁴ See CCU Wireline NPRM Comments at 18 (encouraging that “utilities and attachers be free to agree on their own one-touch make-ready process”).

⁵⁵ We therefore reject a clarification requested by Crown Castle that would limit the scope of mutually bargained-for attachment solutions. See Letter from Kenneth J. Simon, Senior Vice President and General Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket No. 17-79, at 4 (filed July 25, 2018) (Crown Castle July 25, 2018 Wireline *Ex Parte* Letter) (requesting that the “Commission should clarify that its rules serve as a floor, and that just as state requirements must not conflict with the new rules, negotiated agreements must incorporate the new rules as a baseline and build upon, rather than replace, them”); cf. Letter from Mindy E. Hartstein, Director, Hawaiian Electric Co., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 25, 2018) (Hawaiian Electric July 25, 2018 Wireline *Ex Parte* Letter) (“[W]here parties have reached bargained solutions that differ from the Draft Order . . . the terms of a collaborative, negotiated agreement control.”).

altering the ability of a state to exercise reverse preemption of our pole attachment rules.⁵⁶

A. Speeding Access to Poles

14. Most fundamentally, we amend our rules to allow new attachers⁵⁷ with simple wireline attachments in the communications space to elect an OTMR-based pole attachment process that places them in control of the work necessary to attach their equipment, and we improve our existing attachment process for other, more complex attachments. We summarize these changes, as well as our prior rules, in the table below:⁵⁸

⁵⁶ See 47 U.S.C. § 224(c).

⁵⁷ We define a new attacher as a cable television system or telecommunications carrier requesting to attach new or upgraded facilities (e.g., equipment or lines) to a pole owned or controlled by a utility. See *infra* Appx. A, 47 CFR § 1.1411(a)(2). Therefore, new attachers include existing attachers that need to upgrade their facilities with new attachments.

⁵⁸ This table is a summary for informational purposes only, and it sacrifices nuance for brevity. The text of this *Report and Order* (excluding the table) and the rules in Appendix A set forth our binding determinations.

Phase	Prior Rules	OTMR-Based Regime	Enhanced Non-OTMR Regime
<i>Review of Application for Completeness</i>	Vague definition of complete application can lead to delays. No timeline for utility to determine whether application is complete. <i>47 CFR § 1.1411(c)</i>	Revised definition of complete application makes it clear what must be included in application. A utility has 10 business days to determine whether an application is complete; the utility must specify any deficiencies and has limited time to review resubmitted applications. <i>Appx. A §§ 1.1411(c)(1), (j)(1)(ii)</i>	
<i>Review of Whether to Grant Complete Application; Survey</i>	The utility has 45 days to decide whether to grant a complete application and to complete any surveys. The utility has an additional 15 days for large orders. <i>47 CFR § 1.1411(c)</i>	The utility has 15 days to decide whether to grant a complete application. The new attacher conducts the survey and determines its timing. <i>Appx. A § 1.1411(j)(2), (j)(3)</i>	Largely same as prior rules, except that the utility must take certain steps to facilitate survey participation by new and existing attachers. <i>Appx. A § 1.1411(c)(3)</i>
<i>Estimate</i>	The utility must provide an estimate of the make-ready charges within 14 days of receiving the survey results. <i>47 CFR § 1.1411(d)</i>	N/A – no estimate stage	Same as prior rules, except the estimate must detail basis for charges. <i>Appx. A § 1.1411(d)</i>
<i>Attacher Acceptance</i>	The attacher has 14 days or until withdrawal of the estimate by the utility, whichever is later, to approve the estimate and provide payment. <i>47 CFR § 1.1411(d)(i)-(ii)</i>	N/A – no acceptance stage	Same as prior rules. <i>Appx. A § 1.1411(d)(2)</i>
<i>Make-Ready</i>	The existing attachers must prepare the pole within 60 days of receiving notice from the utility in the communications space (105 days for larger orders) or 90 days in the above the communications space (135 days for larger orders). A utility may take 15 additional days after the make-ready period to complete make-ready itself. <i>47 CFR § 1.1411(e)(1)(ii), (e)(1)(iv), (e)(2)(ii), (e)(2)(iv)</i>	The new attacher performs all work in as little as one trip. The new attacher must provide 15 days' notice to existing attachers before commencing work, and this notice period may run concurrently with the utility's review of whether to grant the application. The new attacher must notify existing attachers within 15 days after completion of work on a pole so that existing attachers can inspect the work. <i>Appx. A § 1.1411(j)(4)</i>	The existing attachers prepare the pole within 30 days in the communications space (75 days for larger orders) or 90 days above the communications space (135 days for larger orders). A utility may take 15 additional days after the make-ready period to complete make-ready itself for work outside the communications space. <i>Appx. A § 1.1411(e)(1)(ii), (e)(2)(ii), (e)(2)(iv)</i>
<i>Self-Help Remedy</i>	New attachers in the communications space may perform work themselves when the deadlines are not met. <i>47 CFR § 1.1411(i)</i>	N/A	New attachers in any part of the pole may perform work themselves when the deadlines are not met. We take steps to strengthen the self-help remedy. <i>Appx. A § 1.1411(i)(2)</i>

15. No matter the attachment process, we encourage all parties to work cooperatively to meet deadlines, perform work safely, and address any problems expeditiously. Utilities, new attachers, and

existing attachers agree that cooperation among the parties works best to make the pole attachment process proceed smoothly and safely.⁵⁹

1. New OTMR-Based Pole Attachment Process

16. We adopt a new pole attachment process that new attachers can elect that places them in control of the surveys, notices, and make-ready work necessary to attach their equipment to utility poles. With OTMR as the centerpiece of this new pole attachment regime, new attachers will save considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments. A better aligning of incentives for quicker and less expensive attachments will serve the public interest through greater broadband deployment and competitive entry.

a. Applicability and Merits of OTMR Regime

17. We adopt the BDAC's recommendation and amend our rules to allow new attachers to elect OTMR for simple make-ready for wireline attachments in the communications space on a pole.⁶⁰ We define simple make-ready as the BDAC does, i.e., make-ready where "existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment."⁶¹ Commenters state that simple make-ready work does not raise the same level of safety concerns as complex make-ready or work above the communications space on a pole.⁶² There is substantial support in the record, both from utilities and attachers, for allowing OTMR for simple make-ready;⁶³ and because this option will apply to the substantial majority of pole

⁵⁹ See, e.g., CCU Wireline NPRM Comments at 3-4; Midwest Electric Utilities Wireline NPRM Comments at 18; CenterPoint Energy Houston Electric, LLC et al. (POWER Coalition) Wireline NPRM Comments at 9-10; AT&T Wireline NPRM Reply at 4 n.4.

⁶⁰ See BDAC January 2018 Recommendations at 21.

⁶¹ *Id.* at 20.

⁶² See, e.g., ExteNet Systems, Inc. (ExteNet) Wireline & Wireless NPRM Comments at 54-55; FBA Wireline NPRM Comments at 5 n.12, 8; AT&T Wireline NPRM Reply at 8-9; Letter from Kristine Laudadio Devine, Counsel to Google Fiber, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed June 4, 2018) (Google Fiber June 4, 2018 Wireline *Ex Parte* Letter); Letter from Charles A. Zdebski and Brett H. Freedson, Counsel to CenterPoint Energy Houston Electric, LLC and Florida Power & Light Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Feb. 13, 2018) (CenterPoint Energy/FPL Feb. 13, 2018 Wireline *Ex Parte* Letter); Letter from Eben M. Wyman, Principal, Power & Communication Contractors Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at [2] (filed Nov. 30, 2017) (PCCA Nov. 30, 2017 Wireline *Ex Parte* Letter).

⁶³ See CCU Wireline NPRM Comments at 17-18; Computing Technology Industry Association (COMPTIA) Wireline NPRM Comments at 2-3; EEI Wireline NPRM Comments at 32; Electric Utilities Wireline NPRM Comments at 7; FBA Wireline NPRM Comments at 5; Level 3 Wireline NPRM Comments at 2-3; POWER Coalition Wireline NPRM Comments at 10; Utilities Technology Council (UTC) Wireline NPRM Reply at 17-21; AT&T Wireline NPRM Reply at 7-8; CPS Energy Wireline NPRM Reply at 8-9; Google Fiber Wireline NPRM Reply at 1-2; Verizon Wireline NPRM Reply at 4-9; Letter from Angie Kronenberg, Chief Advocate & General Counsel, INCOMPAS, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84 et al., at Attach. 3 (filed Feb. 13, 2018) (INCOMPAS Feb. 13, 2018 Wireline *Ex Parte* Letter); Letter from Brett Heather Freedson, Counsel to CenterPoint Energy Houston Electric, LLC et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, Attach. 1 (filed May 25, 2018) (CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter); Letter from Debbie Goldman, Telecommunications Policy Director, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Feb. 6, 2018) (CWA Feb. 6, 2018 Wireline *Ex Parte* Letter); Letter from Lonnie R. Stephenson, International President, IBEW, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Jan. 30, 2018) (IBEW Jan. 30, 2018 Wireline *Ex Parte* Letter); Letter from Lisa R.

attachment projects,⁶⁴ it will speed broadband deployment. We also follow the BDAC's recommendation and do not provide an OTMR option for more complex projects in the communications space or for any projects above the communications space at this time.⁶⁵

18. Our new rules define “complex” make-ready, as the BDAC does, as “[t]ransfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments.”⁶⁶ We consider “[a]ny and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers[] . . . to be . . . complex.”⁶⁷ We agree with Verizon that the term “wireless activities” does not include a wireless attacker’s work on its wireline backhaul facilities, which is no different than wireline work done by other attackers.⁶⁸ While the BDAC recommendation did not explicitly address the treatment of pole replacements, we interpret the definition of complex make-ready to include all pole replacements as well. We agree with commenters that pole replacements are usually not simple or routine and are more likely to cause service outages or facilities damage,⁶⁹ and thus we conclude that they should fall into the complex category of work.

19. There is substantial support from commenters in the record for not using OTMR for complex make-ready work at this time.⁷⁰ We agree that we should exclude these more challenging

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Youngers, Executive Director, Fiber Broadband Association (FBA), to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed July 20, 2018) (FBA July 20, 2018 Wireline *Ex Parte* Letter).

⁶⁴ According to AT&T, approximately 80 percent of current make-ready work is “simple.” See Letter from Ola Oyefusi, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at Attach. *Accelerating Wireline Broadband Deployment: Presentation – Pole Attachment Process with OTMR* at 2 (filed Jan. 22, 2018). See also Letter from Eric B. Langley, Counsel to Electric Utilities, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Mar. 19, 2018) (Electric Utilities Mar. 19, 2018 Wireline *Ex Parte* Letter) (stating that “more than 80[] [percent] of make-ready poles require communications space make-ready only”). We recognize that in the future, it is likely that less than 80 percent of make-ready work will be eligible for OTMR as wireless carriers ramp up non-simple 5G deployments. See, e.g., AT&T Wireline NPRM Comments at 8 (stating that “[i]ndustry-wide 5G network deployment is expected to involve 10 to 100 times more antenna locations than 4G or 3G.”); EEI Wireline NPRM Comments at 29 (asserting that “[i]t can be expected that an increase in the volume of wireless attachment requests due to 5G deployments will exacerbate pole attachment delays due to the complex nature of the installations and the number of poles involved.”).

⁶⁵ See BDAC January 2018 Recommendations at 21-22, 27.

⁶⁶ *Id.* at 20.

⁶⁷ *Id.* We deny Crown Castle’s request to exclude wireless activity in the communications space from the definition of complex make-ready. See Crown Castle July 25, 2018 Wireline *Ex Parte* Letter at 4-5. We find that the BDAC carefully analyzed the impact of wireless pole attachment work and correctly concluded that such work is complex. See BDAC January 2018 Recommendations at 19-23, 27, 29-31.

⁶⁸ Letter from Katharine R. Saunders, Managing Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 6-7 (filed July 26, 2018) (Verizon July 26, 2018 Wireline OTMR *Ex Parte* Letter). Consistent with the definition of “complex,” a wireless attacker’s work on its wireline facilities is complex if it is the work reasonably likely to cause a service outage or facility damage.

⁶⁹ See Letter from Kristine Laudadio Devine, Counsel to Google Fiber, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Apr. 12, 2018) (Google Fiber Apr. 12, 2018 Wireline *Ex Parte* Letter); Midwest Electric Utilities Wireline NPRM Reply at 25-26; Puget Sound Energy Wireline NPRM Comments at 7-8.

⁷⁰ See, e.g., Charter Communications, Inc. (Charter) Wireline & Wireless NPRM Comments at 55; FBA Wireline NPRM Comments at 5 n.12; Google Fiber Wireline NPRM Comments at 5-6; Level 3 Wireline NPRM Comments at 3; POWER Coalition Wireline NPRM Comments at 11; Texas Office of Public Utility Counsel Wireline NPRM Comments at 4; Letter from Frank S. Simone, Vice President-Federal Regulatory, AT&T, and Debbie Goldman, Telecommunications Policy Director, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC,

attachments from OTMR at this time to minimize the likelihood and impact of service disruption. In particular, cutting or splicing of existing wires on a pole has the heightened potential to result in a network outage.⁷¹ We also recognize that wireless attachments involve unique physical and safety complications that existing attachers must consider (e.g., wireless configurations cover multiple areas on a pole, considerably more equipment is involved, RF impacts must be analyzed), thus increasing the challenges of using an accelerated, single-party process at this time.⁷²

20. The new OTMR process also will not be available for work above the communications space, including the electric space.⁷³ Many utility commenters argue that work above the communications space, which mainly involves wireless attachments, frequently impacts electrical facilities and that such work should fall to the utilities to manage and complete.⁷⁴ We recognize that work above the communications space may be more dangerous for workers and the public and that impacts of electric outages are especially severe.⁷⁵ Therefore, we find at this time that the value of control by existing attachers and utilities over infrastructure above the communications space outweighs the benefits of allowing OTMR for these attachments. Based on the foregoing analysis, we decline Verizon's request to allow OTMR for complex make-ready and work above the communications space.⁷⁶ We recognize that by not providing an OTMR option above the communications space for the time being, we are not permitting OTMR as an option for small cell pole-top attachments necessary for 5G deployment. We take this approach because there is broad agreement that more complex projects and all projects above the communications space may raise substantial safety and continuity of service concerns.⁷⁷ At the same time, we adopt rules aimed at mitigating the safety and reliability concerns about the OTMR process we adopt today, and we are optimistic that once parties have more experience with OTMR, either they will by contract or we will by rule expand the reach of OTMR.⁷⁸ In the meantime, we find that the benefits of moving incrementally by providing a right to elect OTMR only in the communications space and only for simple wireline projects outweigh the costs.

21. We agree with commenters that argue that OTMR is substantially more efficient for new attachers, current attachers, utilities, and the public than the current sequential make-ready approach set

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WC Docket No. 17-84, GN Docket No. 17-83, at 1 (filed Jan. 16, 2018) (AT&T-CWA Jan. 16, 2018 Wireline *Ex Parte* Letter); CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 1.

⁷¹ See Google Fiber Apr. 12, 2018 Wireline *Ex Parte* Letter at 2.

⁷² See CCU Wireline NPRM Comments at 27-28; EEI Wireline NPRM Comments at 28-29; Midwest Electric Utilities Wireline NPRM Comments at 28-29; American Public Power Association (APPA) Wireline NPRM Reply at 28.

⁷³ This accords with the BDAC's recommendations. See BDAC January 2018 Recommendations at 21-22.

⁷⁴ See CCU Wireline NPRM Comments at 28; EEI Wireline NPRM Comments at 28-29; Electric Utilities Wireline NPRM Comments at 6; Midwest Electric Utilities Wireline NPRM Comments at 30; POWER Coalition Wireline NPRM Comments at 11; Puget Sound Energy Wireline NPRM Comments at 5; Texas Office of Public Utility Counsel Wireline NPRM Comments at 4; UTC Wireline NPRM Comments at 13.

⁷⁵ See, e.g., CCU Wireline NPRM Comments at 28-29; Electric Utilities Wireline NPRM Comments at 8-9; Puget Sound Energy Wireline NPRM Comments at 4; Texas Office of Public Utility Counsel Wireline NPRM Comments at 4; EEI Wireline NPRM Reply at 20; Midwest Electric Utilities Wireline NPRM Reply at 24-26.

⁷⁶ See Letter from Katharine R. Saunders, Managing Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84, at 4 (filed Mar. 8, 2018) (Verizon Mar. 8, 2018 Wireline *Ex Parte* Letter).

⁷⁷ See, e.g., CCU Wireline NPRM Comments at 28-29; EEI Wireline NPRM Comments at 28; Texas Office of Public Utility Counsel Wireline NPRM Comments at 4; Midwest Electric Utilities Wireline NPRM Reply at 25-26; APPA Wireline NPRM Reply at 28; AT&T-CWA Jan. 16, 2018 Wireline *Ex Parte* Letter at 2; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 2.

⁷⁸ See FBA July 20, 2018 Wireline *Ex Parte* Letter at 3.

forth in our rules.⁷⁹ We agree with Next Centuries Cities that “OTMR facilitates deployment and reduces barriers to access, which leads to increased broadband deployment, decreased costs for consumers, and increased service speeds.”⁸⁰ Indeed, Corning estimates that OTMR for wireline deployments could result in over eight million additional premises passed with fiber and about \$12.6 billion in incremental fiber capital expenditures.⁸¹ Although we do not at this time provide for an OTMR option for pole-top small cell deployment, OTMR will facilitate the rollout of 5G services because mobile services depend on wireline backhaul, and OTMR will expedite the buildout of wireline backhaul capacity.⁸² Utilities such as Ameren and Oncor Electric agree that “[OTMR] in the communications space is the most effective vehicle for the Commission to make large strides in speeding the deployment of broadband.”⁸³

22. OTMR speeds broadband deployment by better aligning incentives than the current multi-party process.⁸⁴ It puts the parties most interested in efficient broadband deployment—new attachers—in a position to control the survey and make-ready processes.⁸⁵ The misaligned incentives in

⁷⁹ See Computer & Communications Industry Association (CCIA) Wireline & Wireless NPRM Comments at 17; Letter from Christopher Shipley, Attorney and Policy Advisor, INCOMPAS, to Marlene Dortch, Secretary, FCC, Docket Nos. 17-84 et al., at 2 (filed Apr. 20, 2018) (INCOMPAS April 20, 2018 Wireline *Ex Parte* Letter); Letter from Karen Reidy, Vice President, Regulatory, INCOMPAS, to Marlene Dortch, Secretary, FCC, Docket Nos. 17-84, at 1 (filed July 22, 2018) (INCOMPAS July 22, 2018 Wireline *Ex Parte* Letter); Letter from Kristine Laudadio Devine, Counsel to Google Fiber Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1-2 (filed Feb. 1, 2018) (Google Fiber Feb. 1, 2018 Wireline *Ex Parte* Letter); Electric Utilities Mar. 19, 2018 Wireline *Ex Parte* Letter at 2.

⁸⁰ Next Century Cities Wireline NPRM Comments at 7; see also Google Fiber Feb. 1, 2018 Wireline *Ex Parte* Letter at 1 (“OTMR will allow new attachers to pay for one trip to the pole instead of several, facilitate streamlined engagement of contractors, reduce duplication of effort, and eliminate the need to pay pass-through administrative costs of existing attachers—all factors that make deployment of new networks expensive and slow.”); BDAC January 2018 Recommendations at 19, 31 (“The rules should provide pole attachers with a single-contractor, single-trip solution for simple make-ready work [in the communications space] which expedites make-ready work”); Corning Economic Study at 28-29 (asserting that under sequential make-ready, a pole with four attachers means four different parties are completing make-ready at four different times, “a wasteful process as each touch can add up to \$450 in costs[]” for the new attacher); CCIA Wireline & Wireless NPRM Comments at 17 (“OTMR reduces the cost and [increases the] speed of deployment of new networks by maximizing efficiency”); CPS Energy Wireline NPRM Reply at 14 (“CPS Energy has worked with industry stakeholders to develop an innovative OTMR process that effectively and efficiently facilitates access to poles in a manner that protects the legitimate interests of CPS Energy, new entrants, and existing attaching entities.”); INCOMPAS April 20, 2018 Wireline *Ex Parte* Letter at 2; Electric Utilities Mar. 19, 2018 Wireline *Ex Parte* Letter at 1 (OTMR “in the communications space is the most effective vehicle for the Commission to make large strides in speeding the deployment of broadband.”).

⁸¹ See Corning Economic Study at 5.

⁸² See Google Fiber Wireline NPRM Comments at 4; Verizon Wireline NPRM Comments at 2.

⁸³ Electric Utilities Mar. 19, 2018 Wireline *Ex Parte* Letter at 1.

⁸⁴ See CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 2 (“From the perspective of the IOUs, this common sense approach also appropriately places the burden of coordinating make-ready work on the communications entity that ultimately will benefit from use of the pole.”); Letter from Katharine R. Saunders, Managing Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84, at 2-3 (filed June 21, 2018) (Verizon June 21, 2018 Wireline *Ex Parte* Letter) (describing the buildout in West Virginia of wireline backhaul for Verizon’s wireless network where it “faced multiple and extensive delays at every step of the make-ready process as existing attachers repeatedly missed deadlines. This meant that there were often teams of workers ready to complete the build who were sidelined as they waited for existing attachers to finish their respective moves. This not only delayed deployment significantly but also drove up our costs as we waited for the ability to build.”).

⁸⁵ See CMA Report at 10, 12; COMPTIA Wireline NPRM Comments at 3; Electric Utilities Wireline NPRM Comments at 5; ExteNet Wireline & Wireless NPRM Comments at 54-55; Google Fiber Wireline NPRM

the current process often result in delay by current incumbents and utilities and high costs for new attachers as a result of the coordination of sequential make-ready work performed by different parties.⁸⁶ As Google Fiber points out, under the current process, if the lowest attacher on the pole (usually the incumbent LEC) moves its wires and equipment to accommodate a new attachment at the end of the existing 60-day make-ready period, then the entire pole attachment process is derailed because multiple existing attachers still have to perform make-ready on their equipment, despite the fact that the make-ready deadline contemplated in our rules has lapsed.⁸⁷ Because existing attachers lack an incentive to accommodate new attachers quickly, these delays in sequential attachment are all too common.⁸⁸ OTMR eliminates this problem.

23. We also agree with commenters that OTMR will benefit municipalities and their residents by reducing closures and disruptions of streets and sidewalks.⁸⁹ Unlike sequential make-ready work, which results in a series of trips to the affected poles by each of the attachers and repeated disruptions to vehicular traffic, OTMR's single trip to each affected pole will reduce the number of such disruptions.⁹⁰

24. We also agree with those commenters that argue that an OTMR-based regime will benefit utilities.⁹¹ The record indicates that many utilities that own poles are not comfortable with their current responsibilities for facilitating attachments in the communications space.⁹² By shifting responsibilities from the utility to the new attacher to survey the affected poles, determine the make-ready work to be done, notify affected parties of the required make-ready work, and perform the make-ready work, our new

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Comments at 11; INCOMPAS Wireline NPRM Comments at 9-10; Next Century Cities Wireline NPRM Comments at 6; FBA July 20, 2018 Wireline *Ex Parte* Letter at 2; INCOMPAS July 22, 2018 Wireline *Ex Parte* Letter at 1.

⁸⁶ See CMA Report at 1-2, 6-8, 12; INCOMPAS Feb. 13, 2018 Wireline *Ex Parte* Letter Attach. 2-3; Verizon June 21, 2018 Wireline *Ex Parte* Letter at 2; see also CCU Wireline NPRM Comments at 11-12; Google Fiber Wireline NPRM Comments at 11-12; BDAC January 2018 Recommendations at 19-20.

⁸⁷ See Google Fiber Feb. 1, 2018 Wireline *Ex Parte* Letter at 3; see also Letter from Katharine R. Saunders, Managing Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket No. 17-79, at 3 (filed July 2, 2018) (Verizon July 2, 2018 Wireline *Ex Parte* Letter) (stating that "if make-ready is necessary to accommodate a new attachment that will be placed at the top of the communications space, then existing attachers will move their facilities downward proceeding sequentially from the lowest attacher in the communications space to the highest attacher in the communications space").

⁸⁸ See CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 2 (stating that "a formidable disincentive exists for an incumbent communications attacher to cooperate in a process that ultimately will bring direct competition within its service footprint"); CCU Wireline NPRM Comments at 11; CMA Report at 1-2; INCOMPAS Feb. 13, 2018 Wireline *Ex Parte* Letter at Attach. at 2-3; Verizon June 21, 2018 Wireline *Ex Parte* Letter at 2; BDAC January 2018 Recommendations at 19-20.

⁸⁹ See Electric Utilities Wireline NPRM Comments at 8; ExteNet Wireline & Wireless NPRM Comments at 54-55; FBA Wireline NPRM Comments at 6-8; INCOMPAS Wireline NPRM Comments at 9; Next Century Cities Wireline NPRM Comments at 6; Verizon Nov. 13, 2017 Wireline *Ex Parte* Letter at 2; PCCA Nov. 30, 2017 Wireline *Ex Parte* Letter at 2; Google Fiber Feb. 1, 2018 Wireline *Ex Parte* Letter at 1-2.

⁹⁰ See, e.g., ExteNet Wireline & Wireless NPRM Comments at 54-55; INCOMPAS Wireline NPRM Comments at 9; Verizon July 2, 2018 Wireline *Ex Parte* Letter at 3.

⁹¹ See, e.g., EEI Wireline NPRM Comments at 32; FBA Wireline NPRM Comments at 7; CPS Energy Wireline NPRM Reply at 6-7; Verizon Nov. 13, 2017 Wireline *Ex Parte* Letter at 2; INCOMPAS April 20, 2018 Wireline *Ex Parte* Letter at 2.

⁹² See, e.g., EEI Wireline NPRM Comments at 21-22; Electric Utilities Wireline NPRM Comments at 5-6; POWER Coalition Wireline NPRM Comments at 11-12; UTC Wireline NPRM Reply at 18; Verizon July 2, 2018 Wireline *Ex Parte* Letter at 3.

OTMR regime will alleviate utilities of the burden of overseeing the process for most new attachments and of some of the costs of pole ownership.⁹³

25. While giving the new attacher control drives the substantial benefits of an OTMR regime, it also raises concerns among some utilities and existing attachers. But we are not convinced by the arguments made by some commenters that OTMR will allow make-ready work to be performed by new attachers that lack adequate incentives to perform quality work, and therefore will increase the likelihood of harm to equipment integrity and public safety.⁹⁴ As other commenters explain, the new attacher and its chosen contractor have an incentive to perform quality work in order to limit risk, keep workers safe, and avoid tort liability for damages caused by substandard work.⁹⁵ We also adopt several safeguards herein that incentivize the new attacher and its contractor to perform work correctly.⁹⁶

26. In addition, some commenters raise concerns that OTMR may not protect public safety “given the real prospects for serious injuries to [lineworkers] and the public[;]”⁹⁷ ensure “the reliability and security of the electric grid[;]”⁹⁸ and maintain the safety and reliability of existing attachers’ facilities in order to prevent service outages.⁹⁹ We are not persuaded, however, by the anecdotal evidence offered in support of these commenters’ concerns.¹⁰⁰ For example, Charter cites problems with third-party

⁹³ See FBA Wireline NPRM Comments at 8; CPS Energy Wireline NPRM Reply at 6-7; UTC Wireline NPRM Reply at 18; Verizon Nov. 13, 2017 Wireline *Ex Parte* Letter at 2; INCOMPAS April 20, 2018 Wireline *Ex Parte* Letter at 2.

⁹⁴ See AT&T Wireline NPRM Comments at 16; Charter Wireline & Wireless NPRM Comments at 39; Comcast Wireline & Wireless NPRM Comments at 20; EEI Wireline NPRM Comments at 31; Frontier Wireline NPRM Comments at 18; NCTA Wireline & Wireless NPRM Comments at 16; POWER Coalition Wireline NPRM Comments at 12; CCU Wireline NPRM Reply at 2-6; CenturyLink Wireline NPRM Reply at 15-16; Communications Workers of America (CWA) Wireline NPRM Reply at 1; AT&T-CWA Jan. 16, 2018 Wireline *Ex Parte* Letter at 2; Letter from Elizabeth Andrion, Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, GN Docket No. 17-83, at 1 (filed Feb. 5, 2018) (Charter Feb. 5, 2018 Wireline *Ex Parte* Letter); Letter from Brian Thorn, CWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed July 26, 2018).

⁹⁵ See CMA Report at 10-13; CPS Energy Wireline NPRM Reply at 10-11, 20, 23; Google Fiber Wireline NPRM Reply at 8; PCCA Nov. 30, 2017 Wireline *Ex Parte* Letter at 2.

⁹⁶ See *infra* sections III.A.1.b., III.A.1.c.

⁹⁷ EEI Wireline NPRM Comments at 12; see also, e.g., BDAC January 2018 Recommendations at 19 (“The rules also should balance every community’s interest in safety and continuous service.”); AT&T Wireline NPRM Comments at 15 (stating that OTMR should preserve the safety of the public and workers).

⁹⁸ EEI Wireline NPRM Comments at 12; see also, e.g., POWER Coalition Wireline NPRM Comments at 11 (stating that OTMR “must be limited to ensure that workers on the pole are not exposed to, and do not create unsafe conditions, or act in a manner that threatens the reliability of electric infrastructure”); CCU Wireline NPRM Reply at 2-3 (“Contractors in the electric space working under the direction of communications companies could injure themselves, create hazards to subsequent pole workers or the public at large, cause electrical outages or reliability concerns, or damage electric service facilities on the poles.”).

⁹⁹ See CenturyLink Wireline NPRM Comments at 15; Charter Wireline & Wireless NPRM Comments at 39; Comcast Wireline & Wireless NPRM Comments at 20; Frontier Wireline NPRM Comments at 18; NCTA Wireline & Wireless NPRM Comments at 15-16.

¹⁰⁰ See e.g., AT&T Wireline NPRM Comments at 16 (“[U]napproved contractors have caused outages to AT&T wireline facilities in Tennessee, Kentucky, Florida, Georgia, and North Carolina. In 2016, AT&T suffered four outages in the Nashville area that were caused by an attacher’s unapproved contractors’ underground boring operations, one of which resulted in a major 911 outage.”); Comcast Wireline & Wireless NPRM Comments at 21-22 (“Comcast has experienced this dynamic firsthand in Nashville, where, at last count, roughly 40 percent of the instances of make-ready work performed by Google Fiber contractors on Comcast’s equipment violated requirements set forth in the National Electrical Safety Code[.]”) (emphasis removed). NCTA’s contention that we must rely on the anecdotal evidence in the record is misplaced. See NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2 n.5. While the anecdotes raised in the record are important reminders of the need for new attachers to take great

contractor work on its equipment in San Antonio and in Kansas City.¹⁰¹ CPS Energy contends, however that rather than being an indictment of OTMR, Charter’s anecdotes instead show that an OTMR process can work as intended to speed broadband deployment without sacrificing safety or network integrity.¹⁰² We agree. As CPS Energy points out, its OTMR process ensured that Charter received notice of the completion of make-ready and received adequate opportunity to perform a post-make-ready inspection.¹⁰³ It was during the inspection that Charter discovered problems with the make-ready work performed by the new attacher, at which point it had the opportunity to report any make-ready problems discovered during the inspection to the new attacher for remediation.¹⁰⁴ As CPS Energy notes, its OTMR process “worked as designed: Charter experienced no outages.”¹⁰⁵ The process we adopt today assures these same safeguards.¹⁰⁶

27. We are committed to ensuring that our approach to pole attachments preserves the safety of workers and the public and protects the integrity of existing electric and communications infrastructure. As an initial matter, we follow the BDAC’s recommendation that all complex work and work above the communications space, where reliability and safety risks can be greater, will not be eligible for the new OTMR process.¹⁰⁷ In addition, we take several steps to promote coordination among the parties and ensure that new attachers perform work safely and reliably, thereby significantly mitigating the potential drawbacks of OTMR. First, we require new attachers to use a utility-approved contractor to perform OTMR work, except when the utility does not provide a list of approved contractors, in which case new attachers must use qualified contractors.¹⁰⁸ This requirement addresses existing attachers’ apprehension about unfamiliar contractors working on their facilities¹⁰⁹ and also guards against delays that result when utilities fail to maintain approved contractor lists.¹¹⁰ Second, we require new attachers to provide advance notice and allow representatives of existing attachers and the utility a reasonable opportunity to be present when surveys and OTMR work are performed¹¹¹ in order to

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care in protecting poles and the existing equipment on those poles while carrying out OTMR, these examples fail to demonstrate a pattern of new attacher carelessness with regard to third-party equipment, and contrary to NCTA’s assertion, they do not constitute “ample evidence” of a “substantial number of incidents, including 911 outages.” *Id.*

¹⁰¹ See Charter Wireline & Wireless NPRM Comments at 39-44 (noting NESC violations discovered after OTMR performed on its equipment and after make-ready).

¹⁰² See CPS Energy Wireline NPRM Reply at 23; see also Google Fiber June 4, 2018 Wireline *Ex Parte* Letter at 1 (“The mere fact that, at some point, errors were made by someone in performing make-ready work does not implicate the safety and efficiency of a well-structured OTMR regime.”).

¹⁰³ CPS Energy Wireline NPRM Reply at 23.

¹⁰⁴ See *id.*; see also Google Fiber Wireline NPRM Reply at 12 n.24 (noting that in Nashville, “Comcast inspected the work before it was completed, and upon receiving notice of the violations, Google Fiber made corrections as required.”); PCCA Nov. 30, 2017 Wireline *Ex Parte* Letter at 2 (“[W]e believe OTMR can be, and already is[,] performed in the field safely and efficiently.”).

¹⁰⁵ CPS Energy Wireline NPRM Reply at 23.

¹⁰⁶ See *infra* section III.A.1.c.

¹⁰⁷ See BDAC January 2018 Recommendations at 21-22, 27.

¹⁰⁸ See *infra* section III.A.1.b. (describing the required contractor qualifications).

¹⁰⁹ See, e.g., AT&T Wireline NPRM Comments at 16; Charter Wireline & Wireless NPRM Comments at 39; Comcast Wireline & Wireless NPRM Comments at 21.

¹¹⁰ See ACA Wireline NPRM Reply at 24-25.

¹¹¹ We decline to adopt NCTA and CWA’s request that we find that new attachers should be responsible for any expenses associated with the costs incurred by existing attachers if they decide to double-check the work performed by the new attacher’s contractors, including any post-make-ready inspections. See NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2, 4; CWA July 26, 2018 Wireline *Ex Parte* Letter at 4. One of the core benefits of OTMR—cost savings—would be jeopardized if new attachers were responsible for the costs of doing the work itself and

encourage new attachers to perform quality work and to provide the utility and existing attachers an opportunity for oversight to protect safety and prevent equipment damage.¹¹² Third, we require new attachers to allow existing attachers and the utility the ability to inspect and request any corrective measures soon after the new attacher performs the OTMR work to address existing attachers' and utilities' concerns that the new attacher's contractor may damage equipment or cause an outage without their knowledge and with no opportunity for prompt recourse.¹¹³

28. Finally, as an additional safeguard to prevent substantial service interruptions or danger to the public or workers, we allow existing attachers and utilities to file a petition with the Commission, to be considered on an expedited, adjudicatory case-by-case basis, requesting the suspension of a new attacher's OTMR privileges due to a pattern or practice of substandard, careless, or bad faith conduct when performing attachment work.¹¹⁴ Such petition shall be placed on public notice, and the new attacher will have an opportunity to address the allegations of substandard, careless, or bad faith conduct and to explain how it plans to eliminate any such conduct in the future. In those instances where the Commission finds that suspension is warranted, the Commission will suspend the privileges for a length of time appropriate based on the conduct at issue, up to and including permanent suspension.¹¹⁵

29. We disagree with NCTA's contention that these safeguards do not adequately protect

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reimbursing the monitoring and inspection expenses of potentially multiple existing attachers. As other commenters explain, new attachers should not be responsible for "existing attachers' 'elective' costs – that is, their costs to attend the joint survey or be present when make-ready is performed." Letter from Kristine Laudadio Devine, Counsel to Google Fiber Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 23, 2018) (Google Fiber July 23, 2018 Wireline *Ex Parte* Letter); *see also* Verizon July 26, 2018 Wireline OTMR *Ex Parte* Letter at 7.

¹¹² *See* ACA Wireline NPRM Comments at 16-17; *see also, e.g.*, Charter Wireline & Wireless NPRM Comments at 39-44 ("Charter's experience has been that the work done under [a] one-touch policy is only as effective as the contractor performing the work and the quality and timeliness of the initial notice that Charter receives."); Comcast Wireline & Wireless NPRM Comments at 20-22; NCTA Wireline NPRM Comments at 15-16 ("[T]hese ordinances generally provide little or no advance notice to an existing provider that its facilities will be moved, little or no opportunity to perform the work even when notice is provided, no ability to select the contractor that performs the work on behalf of the new entrant, and limited ability to inspect and remediate (and no indemnification requirement) if the work is done poorly. The effect of these provisions is to jeopardize the safety and quality of service of existing providers."); AT&T Wireline NPRM Reply at 9 ("Under AT&T's OTMR proposal, existing attachers are provided 30 days after notice to make these determinations and to invoke their right to the existing 60-day make-ready period if complex make-ready is required."). We disagree with CenturyLink's assertion that giving an existing attacher the right to be present when make-ready is performed "does not meaningfully protect the interests of a pole owner or existing attacher" because "such uncompensated activities are unlikely to be a prudent use of a pole owner's or existing attacher's resources." Letter from Nicholas G. Alexander, Associate General Counsel, CenturyLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket 17-84, at 4-5 (filed July 23, 2018) (CenturyLink July 23, 2018 Wireline *Ex Parte* Letter). We find that if utilities and existing attachers have significant safety or network reliability concerns with an OTMR project, they will have an adequate incentive to exercise the right to be present.

¹¹³ *See, e.g.*, Charter Wireline & Wireless NPRM Comments at 56-57; Comcast Wireline & Wireless NPRM Comments at 21-23; NCTA Wireline & Wireless NPRM Reply at 16-17.

¹¹⁴ Such a petition right should address the concerns of existing attachers that claim they have no recourse if new attachers abuse the OTMR process. *See, e.g.*, NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2; CWA July 26, 2018 Wireline *Ex Parte* Letter at 4.

¹¹⁵ We decline proposals to codify a complaint right under the pole attachment rules for existing attachers for violations of the OTMR rules. *See* Letter from Steven F. Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2, 4 (filed July 18, 2018) (NCTA July 18, 2018 Wireline *Ex Parte* Letter); Letter from Debbie Goldman, Telecommunications Policy Director, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4 (filed July 26, 2018) (CWA July 26, 2018 *Ex Parte* Letter). In addition to being able to file petitions as described above, existing attachers may file informal complaints regarding alleged OTMR rules violations.

existing attachers from substandard work performed on their equipment by third-party contractors.¹¹⁶ At every step in the OTMR process, the safeguards we adopt give existing attachers an opportunity to monitor third-party work and raise any concerns they might have—either to the new attacher or to the utility. Far from being voiceless in their concerns about third-party work, as NCTA contends,¹¹⁷ existing attachers can take their reservations about new attacher workmanship and contractor qualifications to the utility, which, as the pole owner and an attacher on the pole, has the incentive to act on such concerns.

30. We recognize that we cannot fully align the incentives of new attachers with those of existing attachers and utilities, but we find that the significant benefits of faster, cheaper, more efficient broadband deployment from this new OTMR process outweigh any costs that remain for most pole attachments. We expect the OTMR regime we adopt today to speed broadband deployment without substantial service interruptions or danger to the public or workers. To the extent that it exceeds our expectations, we may consider expanding the availability of our OTMR process where it is safe to do so.¹¹⁸ Conversely, if new attachers fail to prevent physical harm or outages, we will not hesitate to revisit whether to maintain an OTMR option.

31. We note that even where an attachment qualifies for our new OTMR process, there may be instances where a new attacher prefers to use our existing pole attachment timeline because, for instance, the new attacher prefers a process where existing attachers are responsible for moving their own equipment rather than the new attacher.¹¹⁹ Therefore, we permit new attachers to elect our existing pole attachment regime (as modified herein) rather than the new OTMR process.¹²⁰

32. *Rejecting Non-OTMR Solutions.* We reject proposals advanced in the record to reform the pole attachment timeline—specifically, “right-touch, make-ready”¹²¹ and NCTA’s “Accelerated and Safe Access to Poles” (“ASAP”) proposal—which merely modify the current framework rather than using OTMR.¹²² We find that compared to our OTMR approach, these approaches have much more limited benefits because they rely on diffuse responsibility among parties that lack the new attacher’s incentive to ensure that the work is done quickly, cost-effectively, and properly.¹²³ Moreover, they would

¹¹⁶ See NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2-3.

¹¹⁷ *Id.*

¹¹⁸ Corning estimates that applying OTMR to 5G attachments would result in an additional 5.9 million incremental premises passed and about \$8.8 billion in associated capital expenditures. Corning Economic Study at 5-6.

¹¹⁹ See Verizon Nov. 13, 2017 Wireline *Ex Parte* Letter at 2 (“Attachers who do not elect to use OTMR would be able to continue to use the existing pole attachment timeframes and processes.”).

¹²⁰ We reject requests that OTMR should be made a part of our existing pole attachment process. See Letter from Phillip Moeller, Executive Vice President, EEI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed July 26, 2018) (EEI July 26, 2018 Wireline *Ex Parte* Letter) (“By creating a separate OTMR process, the Commission would make the pole attachment process administratively burdensome and overly complicated which may eliminate some of the intended benefits of this policy.”); Letter of David D. Rines, Counsel to Xcel Energy Services Inc. and Alliant Energy Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed July 26, 2018) (Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter). Because OTMR is an elective new process with its own requirements and obligations, we find that it requires distinct procedures and rules from our existing pole attachment procedures.

¹²¹ See Comcast Wireline & Wireless NPRM Reply at 10-11 (proposing right-touch, make-ready, which allows existing attachers to perform make-ready sequentially within a designated time period and relies on fines and other penalties to encourage existing attachers to meet their deadlines).

¹²² See Letter from Steven F. Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed Mar. 5, 2018) (NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter) (setting forth “ASAP” proposal, which shortens existing pole attachment timeline, particularly for utilities).

¹²³ See CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 3; Letter from Kristine Laudadio Devine, Counsel to Google Fiber, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4 (filed Mar. 14, 2018)

“do nothing to solve the numerous separate climbs and construction stoppages in the public-rights-of-way” resulting from sequential make-ready.¹²⁴ We also agree with AT&T that adopting a penalties-based approach is more likely to promote conflict than speedier deployment.¹²⁵

33. We also agree with commenters that the ASAP proposal would put unrealistic time pressure on existing attachers and utilities.¹²⁶ For example, NCTA recommends: (1) an expedited 15-day period for utilities to both complete their review of pole attachment applications and conduct the appropriate pole surveys; and (2) a seven-day period for presenting the new attacher with an estimate of make-ready charges.¹²⁷ As the Electric Utilities explain, “NCTA’s recent ‘ASAP’ proposal seeks to cut critical engineering review and addresses steps in the access process that are not part of the problem.”¹²⁸ While a more compressed pole attachment timeline is appropriate for our OTMR regime because a single party controls the work, such timelines are not appropriate for a utility that has to coordinate work separately for both the new attacher and multiple existing attachers.¹²⁹

34. *Legal Considerations.* We reject the contentions of certain cable commenters that OTMR “deprives an existing attacher of its statutory right to notice and an opportunity to add to or modify its own existing attachment before a pole is modified or altered and thus violates Section 224(h).”¹³⁰ Section 224(h) of the Act provides, in relevant part, that “[w]henver the owner of a pole . . . intends to modify or alter such pole . . . the owner shall provide written notification of such action to any entity that has obtained an attachment . . . so that such entity may have a reasonable opportunity to add to or modify its existing attachment.”¹³¹ We agree with Verizon that there is no statutory right under section 224(h) for an existing attacher to add to or modify its existing attachment when a new attacher is

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(Google Fiber Mar. 14, 2018 Wireline *Ex Parte* Letter) (“By reducing inefficiency and waste in make-ready, adoption of OTMR will shift the core economic assumptions that inform deployment planning.”).

¹²⁴ INCOMPAS Wireline NPRM Comments at 10; *see* CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 2-3 (“[T]he ASAP Proposal would maintain the current sequence of duplicative visits to the pole[.]”); INCOMPAS July 22, 2018 Wireline *Ex Parte* Letter at 1.

¹²⁵ *See* AT&T Wireline NPRM Comments at 28 (“Adopting a penalties-based approach would only foment conflict, in litigation or otherwise, between new and existing attachers about who is to blame for the make-ready delay.”); *see also* Crown Castle Wireline NPRM Comments at 25 (stating that “the administration, tracking, and enforcement of such fines would simply complicate matters”); Frontier Wireline NPRM Comments at 19 (stating that any significant penalties for failing to act in a certain timeframe would unfairly shift significant costs and risks to existing attachers and utilities); Verizon Wireline NPRM Reply at 9.

¹²⁶ *See* Verizon Mar. 8, 2018 Wireline *Ex Parte* Letter at 3-4 (stating that “rather than enabling new attachers to help drive the application review, survey, and make-ready estimate process, the NCTA proposal would place increased burdens on pole owners and existing attachers to process applications and complete make-ready”); Google Fiber Mar. 14, 2018 Wireline *Ex Parte* Letter at 4-5; Electric Utilities Mar. 19, 2018 Wireline *Ex Parte* Letter at 2; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 2.

¹²⁷ NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter Attach. 1-2.

¹²⁸ Electric Utilities Mar. 19, 2018 Wireline *Ex Parte* Letter at 2.

¹²⁹ *See* Verizon Wireline NPRM Comments at 9 (“With the one-touch make-ready alternative available to those who want to move more quickly, the Commission should leave intact the current process and timelines for those attachers who do not wish to take on the responsibility for conducting an engineering survey, estimating the necessary make-ready work, and doing one-touch make-ready through an approved contractor.”)

¹³⁰ NCTA Wireline NPRM Reply at 20; *see also* Charter Wireline NPRM Comments at 45-46; Comcast Wireline NPRM Comments at 19; NCTA Wireline NPRM Comments at 19; Letter from Steve Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed July 12, 2018) (NCTA July 12, 2018 Wireline *Ex Parte* Letter).

¹³¹ 47 U.S.C. § 224(h).

performing the make-ready.¹³² On its face section 224(h) only applies to situations where the pole owner modifies or alters the pole, and thus is not implicated under the OTMR approach we adopt today: under our approach new attachers, not pole owners, perform OTMR work.¹³³

35. We also find that OTMR does not constitute a government taking of existing attachers' property that requires just compensation under the Fifth Amendment, and we reject arguments to the contrary.¹³⁴ As an initial matter, OTMR is not a "permanent physical occupation" of an existing attacher's property;¹³⁵ at most it gives contractors of the new attacher a temporary right to move and rearrange attachments.¹³⁶ In such situations, where a regulation falls short of eliminating all economically beneficial use of the property at issue, courts apply the balancing test of *Penn Central Transportation Co.*¹³⁷ and evaluate the economic impact of the regulation on the property owner, the extent to which the regulation has interfered with "distinct investment-backed expectations," and "the character of the government action."¹³⁸ Applying that test here makes clear that OTMR effects no taking. We are limiting the application of OTMR to simple work (i.e., where outages are not expected to occur) on wireline attachments in the communications space performed by qualified contractors, and we have taken steps to ensure that the OTMR process limits adverse effects on existing attachers' networks,¹³⁹ which means any economic impact on existing attachers and any interference with investment expectations will be limited. Furthermore, OTMR represents at most an incidental movement of existing attachers' property.¹⁴⁰ To the

¹³² Verizon Wireline NPRM Reply at 10.

¹³³ See 47 U.S.C. § 224(h). We reject NCTA's contention that our analysis here of section 224(h) somehow suggests that section 224 of the Act "provides new attachers a greater right to move existing facilities than the company that owns those facilities." NCTA July 18, 2018 Wireline *Ex Parte* Letter at 1-2. Rather, section 224 of the Act gives us broad authority to adopt appropriate pole attachment rules, including the OTMR regime set forth herein. See *infra* section III.E.

¹³⁴ See Charter Wireline & Wireless NPRM Comments at 49-50; Comcast Wireline & Wireless NPRM Comments at 22.

¹³⁵ See *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1073 (1992). With respect to utilities' property interests, we recognize that our new OTMR regime grants access to utilities' poles, as our current regime does, via section 224(f)(1), which requires utilities to provide cable systems and telecommunications carriers with nondiscriminatory access to utilities' poles, ducts, and rights-of-way, and that Congress' grant of such mandatory access likely constitutes a government taking. See *Gulf Power Co. v. United States*, 187 F.3d 1324, 1328-29 (11th Cir. 1999). However, we agree with the Eleventh Circuit that by mandating that utilities receive just and reasonable rates for such access, the Act "is not facially unconstitutional under the Fifth Amendment, because, at least in most cases, it provides a constitutionally adequate process which ensures a utility does not suffer that taking without obtaining just compensation," *Id.* at 1338. Our OTMR regime changes the manner by which new attachers may invoke their mandatory access right under section 224(f)(1), but does not change the process by which new attachers must compensate utilities for such access.

¹³⁶ See Google Fiber Wireline NPRM Comments at 13-14.

¹³⁷ *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978); *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001).

¹³⁸ *Penn Central Transp. Co.*, 438 U.S. at 124.

¹³⁹ See *infra* section III.A.1.c.(i), (v) (specifying that new attachers must provide advance notice and allow representatives of existing attachers and the utility a reasonable opportunity to be present when surveys and OTMR work are performed); section III.A.1.c.(vi) (mandating that new attachers allow existing attachers and the utility the ability to inspect and request any corrective measures soon after the new attacher performs the OTMR work).

¹⁴⁰ *Penn Central Transp. Co.*, 438 U.S. at 124 (noting that a taking "may more readily be found when the interference with property can be characterized as a physical invasion by government . . . than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.") (citation omitted).

extent that movement affects existing attachers' or utilities' property, such impact is incidental and not our purpose, which is to promote broadband deployment and further the public interest.¹⁴¹

b. Contractor Selection Under the OTMR Process

36. We adopt rules requiring attachers using the OTMR process to use a utility-approved contractor if the utility makes available a list of qualified contractors authorized to perform surveys and simple make-ready work in the communications space. If there is no utility-approved list of contractors, we adopt rules that require OTMR attachers to use a contractor that meets key safety and reliability criteria, as recommended by the BDAC.¹⁴² The record suggests that inconsistent updating of approved contractor lists by utilities, as well as a lack of uniform contractor qualification and selection standards, leads to delays when new attachers seek to exercise their self-help remedy and perform make-ready work on a pole.¹⁴³ At the same time, existing attachers are understandably apprehensive about having unfamiliar contractors work on and potentially damage their facilities.¹⁴⁴ The process we adopt addresses both of these problems by preventing delays in the engagement of contractors and by establishing clear minimum qualifications.¹⁴⁵

37. *Utility-Approved Contractors.* We strongly encourage utilities to publicly maintain a list of approved contractors qualified to perform surveys and simple make-ready work as part of the OTMR process.¹⁴⁶ However we do not *require* utilities to do so. Utilities have a strong interest in protecting their equipment and many have indicated their interest in deciding which contractors can perform work on their poles.¹⁴⁷ At the same time, many utilities have indicated that they do not have the expertise to select contractors qualified to work in the communications space and would prefer to defer to the new attachers' choice of contractors.¹⁴⁸ Therefore, we give the utilities the option of maintaining a list of approved contractors for OTMR work but do not impose a mandate.

38. If the utility maintains a list, new and existing attachers may request that contractors meeting the qualifications set forth below be added to the utility's list and utilities may not unreasonably withhold consent to add a new contractor to the list. We adopt this requirement so that a utility that maintains a list does not have the ability to prevent deployment progress, which would be contrary to our goal in adopting OTMR. To be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.¹⁴⁹

¹⁴¹ *See id.*

¹⁴² *See* BDAC January 2018 Recommendations at 26.

¹⁴³ *See* ACA Wireline NPRM Reply at 24-25; *see also* BDAC January 2018 Recommendations at 20.

¹⁴⁴ *See* AT&T Wireline NPRM Comments at 16; Charter Wireline NPRM Comments at 39; Comcast Wireline NPRM Comments at 21; *see also* BDAC January 2018 Recommendations at 27.

¹⁴⁵ *See* BDAC January 2018 Recommendations at 29-30.

¹⁴⁶ *See id.* at 28; CCU Wireline NPRM Comments at 17; CPS Energy Wireline NPRM Reply at 11; Verizon Wireline NPRM Reply at 7; Letter from Heather Burnett Gold, President & CEO, Fiber Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4 (filed Apr. 10, 2018) (FBA Apr. 10, 2018 Wireline *Ex Parte* Letter).

¹⁴⁷ *See, e.g.,* CCU Wireline NPRM Comments at 17; AT&T Wireline NPRM Reply at 10; Google Fiber Wireline NPRM Reply at 9; Verizon Wireline NPRM Reply at 7.

¹⁴⁸ *See* BDAC January 2018 Recommendations at 20, 26, 28; Midwest Electric Utilities Wireline NPRM Comments at 27; POWER Coalition Wireline NPRM Comments at 13; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 2.

¹⁴⁹ *See* BDAC January 2018 Recommendations at 30 ("Either a pole owner or an existing attacher could reject a contractor proposed by an attacher before the twenty-five calendar day notice period expires, but only on established, declared transparent grounds uniformly applied on the basis of safety or reliability qualification failure."); CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 2 ("An IOU pole owner . . . may

39. To help ensure public and worker safety and the integrity of all parties' equipment, we conclude that any contractors that perform OTMR must meet certain minimum safety and reliability standards. We require utilities to ensure that contractors on the approved list meet the following minimum requirements, enumerated by the BDAC, for performing OTMR work: (1) follow published safety and operational guidelines of the utility, if available, but if unavailable, follow the National Electrical Safety Code (NESC) guidelines; (2) read and follow licensed-engineered pole designs for make-ready work, if required by the utility; (3) follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational Safety and Health Administration (OSHA) rules; (4) meet or exceed any uniformly applied and reasonable safety and reliability thresholds set and made available by the utility, e.g., the contractor cannot have a record of significant safety violations or worksite accidents;¹⁵⁰ and (5) be adequately insured or be able to establish an adequate performance bond for the make-ready work it will perform, including work it will perform on facilities owned by existing attachers.¹⁵¹ These requirements collectively will materially reduce safety and reliability risks, as well as delays in the completion of pole attachments, by allowing one qualified contractor to perform all necessary make-ready work instead of having multiple contractors make multiple trips to the pole to perform this work.¹⁵²

40. *New Attacher Selection of Contractors.* Where there is no utility-approved list of qualified contractors or no approved contractors available within a reasonable time period, then, consistent with the BDAC recommendation, new attachers proceeding with OTMR may use qualified contractors of their choosing.¹⁵³ The new attacher must certify to the utility¹⁵⁴ (either in the three-

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object to any proposed Communications Contractor . . . (i) if it is determined that such contractor does not satisfy the minimum qualification requirements proposed by the BDAC; or (ii) if it is determined that such contractor does not meet any minimum qualification requirement of the IOU pole owner related to safety or reliability, that is disclosed to the public, and that is evenhandedly applied; or (iii) if it determined, based on past record, that such contractor is not qualified to perform the work for which it seeks to be pre-approved.”).

¹⁵⁰ We decline to adopt ACA's proposal that we combine prongs (1) and (4) by incorporating the relevant elements of (4) into (1) and deleting (4). See Letter from Thomas Cohen, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4, Attach. at 10 (filed July 23, 2018) (ACA July 23, 2018 Wireline *Ex Parte* Letter). The contractor qualification requirements we adopt conform to the BDAC's recommendations, which we find superior to ACA's proposal. ACA's proposal would limit the utility to imposing “commercially reasonable” published safety and operational guidelines, *see id.*, but we find it best promotes safety and reliability to preserve the utility's discretion to publish binding safety and operational guidelines of its choosing, consistent with the BDAC's recommendation. Additionally, while we recognize that prongs (1) and (4) overlap, we find any such overlap is warranted as extra protection to help ensure contractors do safe, reliable work.

¹⁵¹ See BDAC January 2018 Recommendations at 29; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter Attach. at 2. We adopt NCTA's proposed clarification that the make-ready for which the contractor must be adequately insured or establish an adequate performance bond includes any work it will perform on facilities owned by existing attachers. See Letter from Jennifer McKee, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket No. 17-79, Attach. at 9 (filed July 25, 2018) (NCTA July 25, 2018 Wireline *Ex Parte* Letter). Through this change, we intend to clarify that the bond or insurance must be adequate for the entire scope of the make-ready work; we do not through this change address the new attacher's responsibility for damage, which we discuss below. See *infra* section III.A.1.d.

¹⁵² See BDAC January 2018 Recommendations at 19; Lumos Wireline NPRM Reply at 4-5.

¹⁵³ See BDAC January 2018 Recommendations at 28 (“In addition to those contractors placed on an approved list by the pole owner, attachers may propose contractors to the pole owner for approval for any category of make-ready work.”). To maximize options for new attachers, we allow a new attacher entitled to select a contractor that does not appear on a utility's list to use its own employees to perform pole attachment work, so long as those employees meet all qualifications for contractors set forth herein. Thus, we use the term “contractor” as a term of art that encompasses the new attacher's employees.

business-day advance notice for surveys or in the 15-day make-ready notice)¹⁵⁵ that the named contractor meets the same five minimum requirements for safety and reliability discussed above.¹⁵⁶

41. The utility may mandate additional commercially reasonable requirements for contractors relating to issues of safety and reliability, but such requirements must clearly communicate the safety or reliability issue, be non-discriminatory, in writing, and publicly available (e.g., on the utility's website).¹⁵⁷ This condition will guard against pole damage and resulting outages and safety hazards due to particular local conditions,¹⁵⁸ while ensuring that utilities do not use these additional requirements as a roadblock to deployment.¹⁵⁹ We also grant utilities the flexibility to mandate such additional commercially reasonable requirements for contractors because utilities are best positioned to ensure that any additional state or local legal requirements are complied with and any additional environmental or pole-specific factors are accounted for.¹⁶⁰

42. Where there is no utility-approved list of contractors, we adopt rules, consistent with the BDAC's recommendation, allowing the utility to veto any contractor chosen by the new attachor.¹⁶¹ Utilities must base any veto on reasonable safety or reliability concerns related to the contractor's ability to meet one or more of the minimum qualifications described earlier in this subsection or on the utility's previously posted safety standards.¹⁶² The utility also must make its veto within either the three-business-day notice period for surveys or the 15-day notice period for make-ready.¹⁶³ In reaching this determination, we agree with the Coalition of Concerned Utilities that the safety and reliability of the pole

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¹⁵⁴ The new attachor may choose to require the contractor to certify to the new attachor that the contractor meets the five BDAC-enumerated minimum safety and reliability requirements and provide a copy of this contractor certification to the utility.

¹⁵⁵ See *infra* section III.A.1.c.(i), (v).

¹⁵⁶ See BDAC January 2018 Recommendations at 29; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter Attach. at 2.

¹⁵⁷ See BDAC January 2018 Recommendations at 29; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter Attach. at 2. Ideally, such requirements for contractors would also be found in the pole attachment agreement between the utility and the new attachor.

¹⁵⁸ See Frontier Wireline NPRM Comments at 16; Charter Wireline NPRM Comments at 38.

¹⁵⁹ See Verizon Wireline NPRM Reply at 8 n.29.

¹⁶⁰ Cf. CCU Wireline NPRM Comments at 10, 24 (stating that the Coalition currently "complies with federal, state, and, when applicable, local code and operating requirements for safe work and construction practices[.]" and that "[i]t takes careful effort to maintain and operate critical electric infrastructure[]" to ensure attachments are not installed out of compliance with applicable codes or in a manner that cannot withstand weather emergencies); Midwest Electric Utilities Wireline NPRM Comments at 38 (describing a utility response to an inclement weather emergency or power outage); POWER Coalition Wireline Comments at 6 (describing its members' experience complying with local requirements).

¹⁶¹ See BDAC January 2018 Recommendations at 30; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter Attach. at 2.

¹⁶² See BDAC January 2018 Recommendations at 30 (stating that a utility cannot be unreasonably restrictive if a contractor meets the minimum qualification requirements; a rejection of a contractor must be on "established, declared transparent grounds uniformly applied on the basis of safety or reliability qualification failure"); CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter Attach. at 2. We agree with ACA that we should prevent unwarranted vetoes by requiring the utility to have a "reasonable" basis for vetoing the new attachor's contractor. See ACA July 23, 2018 Wireline *Ex Parte* Letter at 4. We decline to adopt ACA's precise proposed wording, see *id.*, Attach. at 10, which we view as unduly restricting the utility's discretion.

¹⁶³ If a contractor conducts a survey and the utility vetoes that contractor during the 15-day notice period for make-ready, then the survey is not invalidated because the utility already had the opportunity to: (1) be present for the survey; and (2) object to the contractor during the three-business-day notice period for surveys.

is extremely important and, as a result, utilities should be able to disqualify contractors that raise concrete workmanship dangers.¹⁶⁴ To avoid an ongoing dispute between the utility and the new attacher that results in the substantial delay of the pole attachment, any veto by the utility that conforms with the requirements we set forth is determinative and final.¹⁶⁵ When vetoing an attacher's chosen contractor, however, the utility must identify at least one qualified contractor available to do the work.

43. *Existing Attachers.* We decline to grant existing attachers the right to veto or object to the inclusion of a contractor on the utility-approved list or a new attacher's contractor selection.¹⁶⁶ Several commenters explain that existing attachers lack the incentive to act quickly to accommodate a new attacher on a pole given that a new attacher may be a competitor to an existing attacher.¹⁶⁷ By contrast, the utility in most cases is not a competitor to the new attacher.¹⁶⁸ Further, while there will only be one utility with an objection right for any given pole, there could be several existing attachers for that same pole, thereby materially increasing the chances that an objection may be lodged for the purposes of competitive gamesmanship were we to allow existing attachers to challenge a new attacher's contractor selection. Therefore, we are not convinced that an objection process for existing attachers could be designed in a manner sufficient to prevent significant delays in deployment. Imposition of a time limit for objections could force existing attachers to make objections more promptly, but would not prevent gamesmanship, and imposition of a good faith objection requirement would not prevent deployment delays as new attachers would need to resort to the Commission's complaint process to enforce such a requirement.

44. We also decline suggestions that we grant existing attachers the right to disqualify a contractor if the contractor does not meet the minimum qualifications for contractors we establish or if the existing attacher previously terminated the contractor for poor performance or violations of federal, state, or local law.¹⁶⁹ Adopting this proposal is unnecessary because the minimum requirements for contractors we adopt, and the duties we place on utilities and new attachers to ensure compliance with those requirements, will protect against unsafe and unqualified contractors.¹⁷⁰ Additionally, giving existing attachers this form of a veto right could delay and deter broadband deployment.¹⁷¹ For example, adopting

¹⁶⁴ See CCU Wireline NPRM Reply at 2-3; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter Attach. at 2.

¹⁶⁵ See AT&T Wireline NPRM Reply at 10.

¹⁶⁶ The BDAC recommended giving existing attachers the right to object to a new attacher's proposed contractor. See BDAC January 2018 Recommendations at 30. Several commenters support granting existing attachers a right to object to either or both of (1) contractors on the utility list and (2) the new attacher's contractor selection. See, e.g., AT&T Wireline NPRM Comments at 16; CenturyLink Wireline NPRM Comments at 15; Charter Wireline NPRM Comments at 50, 56; NCTA Wireline NPRM Comments at 16.

¹⁶⁷ See, e.g., CMA Report at 6; CCU Wireline NPRM Comments at 11; Verizon June 21, 2018 Wireline *Ex Parte* Letter at 2; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 2; FBA Apr. 10, 2018 Wireline *Ex Parte* Letter at 2; Letter from Karen Reidy, VP of Regulatory Affairs, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Apr. 4, 2018) (INCOMPAS Apr. 4, 2018 Wireline *Ex Parte* Letter); Google Fiber Feb. 1, 2018 Wireline *Ex Parte* Letter at 1-2.

¹⁶⁸ See *infra* section III.C (describing declining incumbent LEC pole ownership rates).

¹⁶⁹ See NCTA July 18, 2018 Wireline *Ex Parte* Letter at 3; NCTA July 25, 2018 Wireline *Ex Parte* Letter at 2, Attach. at 9; CWA July 26, 2018 Wireline *Ex Parte* Letter at 4.

¹⁷⁰ See *supra* paras. 39-40. The utility and the new attacher both have an incentive to ensure quality work and comply with our rules. We therefore find that giving the existing attacher a parallel right to ensure compliance with the minimum qualifications is unnecessary.

¹⁷¹ See Letter from Kristine Laudadio Devine, Counsel to Google Fiber, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 26, 2018) (Google Fiber July 26, 2018 Wireline *Ex Parte* Letter); Verizon July 26, 2018 Wireline OTMR *Ex Parte* Letter at 4.

this proposal could create an incentive for existing attachers to terminate contractors in the interest of making contractor selection more difficult for potential competitors.

45. We also reject NCTA's proposal to permit new attachers to use only contractors pre-approved by existing attachers when moving existing attachers' equipment.¹⁷² Such a proposal undermines the goals we seek to promote in adopting OTMR—speeding and lowering the costs of new deployment. In cases where there are multiple existing attachers, new attachers may need to hire multiple contractors to move existing attachments before the new attachment can be completed thereby necessitating multiple trips to the pole.¹⁷³ Even in situations where there is only one existing attacher, a new attacher could be faced with the unenviable choice of paying higher costs to use the existing attacher's preferred contractor to complete all make-ready or using two different contractors—one to move the existing attacher and one to complete the new attachment—which would slow deployment and be more costly than using one contractor.¹⁷⁴

46. The rules we adopt should alleviate some commenters' concern that depriving existing attachers of a right to input in the contractor selection process could result in serious harm to existing facilities on the pole.¹⁷⁵ First, only simple make-ready work is subject to the OTMR process; existing attachers can perform their own make-ready work in more challenging and dangerous situations. Further, the authority we grant utilities to develop a mandatory list and veto a new attacher's contractor selection for OTMR work should help mitigate the risk to the safety and reliability of the attachments subject to make-ready work by the new attacher's contractor.¹⁷⁶ As several commenters point out, in many markets, contractors approved by the utilities may already be the same as those approved by existing attachers.¹⁷⁷ Additionally, regardless of whether the utility intervenes, contractors must meet the five criteria recommended by the BDAC, which help to ensure safe, reliable, and quality work. Finally, we conclude that we have put in place adequate protections elsewhere in the new OTMR process, in addition to the protections we identify here, to protect the network reliability and safety concerns of existing attachers.¹⁷⁸

47. *Use of Union Workers to Perform Make-Ready Work.* We decline to adopt a requirement that OTMR must be performed by union contractors where an existing attacher has entered into a collective bargaining agreement (CBA) that requires the existing attacher to use union workers for pole

¹⁷² NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter Attach. 4-5; NCTA July 12, 2018 Wireline *Ex Parte* at 2.

¹⁷³ Cf. Google Fiber Apr. 12, 2018 Wireline *Ex Parte* Letter at 3 (stating that if a new attacher is required to use contractors approved by existing attachers “[n]ew attachers would still be forced to pay for multiple trips to the pole by multiple contractors”).

¹⁷⁴ Cf. *id.* at 3 (allowing the existing attacher to “mandate, at the time a new deployment is commencing, that a new entrant use only its approved contractors would not only introduce additional delay in the make-ready timeframe, but would also perpetuate the existing inefficient and costly sequential process”); see also Verizon Wireline NPRM Comments at 5 (allowing a new attacher to hire one approved contractor to move all the facilities on a pole reduces “the disruption, inconvenience, and delay that come from work by multiple crews,” lowering make-ready costs, and ‘improv[ing] safety and pole integrity’”).

¹⁷⁵ See AT&T Wireline NPRM Comments at 16; Charter Wireline NPRM Comments at 52, 56; Comcast Wireline NPRM Comments at 21 n.51; NCTA Wireline NPRM Comments at 16; NCTA July 12, 2018 Wireline *Ex Parte* at 2.

¹⁷⁶ See CCU Wireline NPRM Comments at 26; Google Fiber Wireline NPRM Reply at 9.

¹⁷⁷ See Google Fiber Wireline NPRM Reply at 9 n.17; Verizon Wireline NPRM Reply at 6.

¹⁷⁸ See *infra* section III.A.1.c.(i), (v) (specifying that new attachers must provide advance notice and allow representatives of existing attachers and the utility a reasonable opportunity to be present when surveys and OTMR work are performed); section III.A.1.c.(vi) (mandating that new attachers allow existing attachers and the utility the ability to inspect and request any corrective measures soon after the new attacher performs the OTMR work).

attachment work.¹⁷⁹ The BDAC's OTMR recommendation did not create a different OTMR regime for existing attachers subject to CBAs,¹⁸⁰ and we find no reason to do so here. New attachers that are not parties to a CBA have no obligations under such a CBA. It is the new attacher's contractor that will be performing the make-ready work, so the CBA is not implicated.

48. Further, the record indicates that requiring a new attacher to hire a union contractor only because one of the existing attachers' CBA mandates the use of union workers to perform its pole attachment work would frustrate the efficiency and utility of OTMR. The record suggests that in some areas, it may not be possible for a new attacher to find union contractors covered by an existing attacher's CBA.¹⁸¹ In addition, tailoring our OTMR rules to an existing attacher's CBA "would result in a patchwork of rules that might be subject to change every few years and would be administratively unmanageable for new attachers."¹⁸²

49. The Communications Workers of America (CWA) has expressed concern that an OTMR regime that fails to honor CBAs has the potential to cause facility damage, service interruption, and danger to the public and workers.¹⁸³ Specifically, CWA argues that its CBAs ensure that make-ready work is performed by "well-trained employees who are directly accountable for their work," and as a result, "perform the job properly and safely."¹⁸⁴ We agree that experienced union contractors can evaluate the condition of poles, are familiar with the rules regulating attachments, and have experience preparing surveys and cost estimates and completing inspections of pole attachment work.¹⁸⁵ At the same time, we find that CWA's quality and safety concerns are already addressed in the proposed OTMR regime through the opportunity for existing attachers to be present for surveys and make-ready work¹⁸⁶ and to conduct post-make-ready inspections on the work performed.¹⁸⁷ Both opportunities provide existing attachers with a safeguard against facility damage and harms that could result from contractor mistakes¹⁸⁸—and nothing in our adoption of an OTMR regime should be construed as preventing an existing attacher from using union employees and/or contractors pursuant to an applicable CBA on pole-related work not

¹⁷⁹ Several commenters advocate such a requirement. See Frontier Wireline NPRM Comments at 17-18; AT&T Wireline NPRM Reply at 9-10; CenturyLink Wireline NPRM Reply at 14; CWA Feb. 6, 2018 Wireline *Ex Parte* Letter at 2; IBEW Jan. 30, 2018 Wireline *Ex Parte* Letter at 2.

¹⁸⁰ See BDAC January 2018 Recommendations at 19-25.

¹⁸¹ See Google Fiber Feb. 1, 2018 Wireline *Ex Parte* Letter at 4 (stating that, in many areas, the only union members covered by AT&T's collective bargaining agreements are AT&T employees).

¹⁸² Verizon Wireline NPRM Reply at 8.

¹⁸³ Letter from Debbie Goldman, Telecommunications Policy Director, CWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1-3 (filed May 23, 2018) (CWA May 23, 2018 Wireline *Ex Parte* Letter). Several dozen individual commenters similarly allege that "[t]his proposal puts both the lives of workers and the public at risk." See, e.g., John Bordreau Wireline NPRM Comments; Lee Cochran Wireline NPRM Comments; Maivys Cuevillas Wireline NPRM Comments; Kreissa Reed Wireline NPRM Comments. We reject these generalized allegations as speculative.

¹⁸⁴ CWA May 23, 2018 Wireline *Ex Parte* Letter at 3.

¹⁸⁵ CWA Wireline NPRM Comments at 3-4.

¹⁸⁶ See ACA Wireline NPRM Comments at 16-17.

¹⁸⁷ See AT&T Wireline NPRM Comments at 3, 18; Charter Wireline NPRM Comments at 56; COMPTIA Wireline NPRM Comments at 2; Electric Utilities Wireline NPRM Comments at 6; Google Fiber Wireline NPRM Comments at 6; Portland General Electric Company et al. (Oregon Electric Utilities) Wireline NPRM Comments at 8; CPS Energy Wireline NPRM Reply at 11.

¹⁸⁸ See ACA Wireline NPRM Comments at 16-17; Electric Utilities Wireline NPRM Comments at 6; CPS Energy Wireline NPRM Reply at 11.

subject to OTMR that the existing attacher is entitled to perform.¹⁸⁹

50. Finally, allowing private contracts to dictate our policy choice would “subvert[] the supremacy of federal law over contracts.”¹⁹⁰ As the Supreme Court has made clear, “[i]f the regulatory statute is otherwise within the powers of Congress . . . its application may not be defeated by private contractual provisions.”¹⁹¹

51. *Section 1.1412(d)*. We disagree with ACA’s contention that section 1.1412(d)—an existing rule provision that gives an electric utility’s “consulting representative” authority to “make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes”¹⁹²—is moot as a result of our changes to the contractor process.¹⁹³ We provide opportunities for electric utilities to send a representative on surveys and make-ready work performed by a new attacher,¹⁹⁴ and this rule provision empowers that representative to make final decisions in specified cases. While we recognize that this may entail delay in certain limited circumstances in which the electric utility chooses to send a representative and a problem arises, ACA overstates its case in suggesting that this limited right “render[s] the improvements to the self-help process meaningless.”¹⁹⁵ We find the costs of retaining this narrow rule justified given its important role in promoting safe and reliable work and in establishing clear lines of authority for fieldwork at which multiple parties are present.

c. OTMR Pole Attachment Timeline

52. One substantial benefit of the OTMR process is that it allows for a substantially shortened timeline for application review and make-ready work.¹⁹⁶ We estimate that new attachers using the new OTMR process will save more than three months from application to completion as compared to the process provided for under our existing rules.¹⁹⁷

(i) Conducting a Survey

53. Our OTMR regime saves significant time by placing the responsibility on the new attacher (rather than the utility) to conduct a survey of the affected poles to determine the make-ready

¹⁸⁹ We decline to adopt CWA’s suggested language, which would provide for an existing attacher to use union employees pursuant to an applicable CBA on work subject to OTMR. See CWA July 26, 2018 Wireline *Ex Parte* Letter at 4. We recognize the value of union contractors, and attachers may choose to use union contractors; CWA’s proposal, however, could inhibit deployment by granting existing attachers control over the performance of OTMR work.

¹⁹⁰ Google Fiber Wireline NPRM Reply at 7.

¹⁹¹ *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 224 (1986).

¹⁹² *Infra* Appx. A, 47 CFR § 1.1412(d).

¹⁹³ ACA July 23, 2018 Wireline *Ex Parte* Letter at 5, Attach. at 10.

¹⁹⁴ See *infra* Appx. A, 47 CFR §§ 1.1411(i)(1)(i), (i)(2)(i), (j)(3)(i), (j)(4)(i); *infra* sections III.A.1.c.i, III.A.1.c.v.

¹⁹⁵ ACA July 23, 2018 Wireline *Ex Parte* Letter at 5.

¹⁹⁶ We reject Hawaiian Electric’s request to make special accommodations for OTMR implementation in the Hawaiian Islands because of what it describes as the unique circumstances for pole attachments in Hawaii (e.g., longer pole ordering lead times, Public Utility Commission constraints, database updates). Hawaiian Electric July 25, 2018 Wireline *Ex Parte* Letter at 2-4. Hawaiian Electric has reasonable alternatives to address these challenges, including negotiating for timeline adjustments with new attachers, that themselves may be facing similar challenges, or seeking a waiver from the Commission.

¹⁹⁷ This calculation includes a 30-day reduction in the application review/survey stage, the elimination of the 28-day estimate and acceptance stages, and up to 45 days saved to complete make-ready.

work to be performed.¹⁹⁸ Under an OTMR regime, the survey will come near the beginning of the process (after the new attacher negotiates with the utility for pole access and chooses a contractor to perform the work required for attachment) to enable the new attacher to determine whether any make-ready is required and, if so, what type of make-ready (simple or complex) is involved. The results of the survey typically will be included in the new attacher's pole attachment application.¹⁹⁹

54. To help ensure that the new attacher handles third-party equipment with sufficient care and makes an accurate determination of the work to be done to prepare the poles for its new attachments, our new rules require new attachers to permit representatives of the utility and any existing attachers potentially affected by the proposed work to be present for the survey. We also require new attachers to use commercially reasonable efforts to provide the utility and existing attachers at least three business days of advance notice of the date, time, and location of the survey and the name of the contractor performing the survey.²⁰⁰ Despite claims to the contrary,²⁰¹ we agree with the BDAC that advance notice of three business days from the new attacher strikes the right balance between providing sufficient time to accommodate coordination with the utility and existing attachers and the need to keep the pole attachment process moving forward in a timely manner.²⁰² Also, as the BDAC found in the context of utility surveys, joint surveys help address the potential safety and equipment damage risks raised by existing attachers.²⁰³ To prevent coordination problems that may invite delay, we do not require a new attacher to set a date for the survey that is convenient for the utility and existing attachers.²⁰⁴ In the case of reasonable scheduling conflicts, however, we encourage the parties to work together to find a mutually-agreeable time for the

¹⁹⁸ See Verizon Wireline NPRM Reply at 5; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 4.

¹⁹⁹ CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 4.

²⁰⁰ See, e.g., BDAC January 2018 Recommendations at 37; ACA Wireline NPRM Reply Comments at 16-17; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 4. Contrary to EEI's claim, our OTMR regime does not require the utility to serve in a clearinghouse role for surveys; the new attacher performs this function. See EEI July 26, 2018 Wireline *Ex Parte* Letter at 3-4. We also reject AT&T's request to eliminate the advance notice requirement for surveys, which AT&T claims is "impractical to fulfill because neither pole owners nor new attachers know the identity of existing attachers on a particular pole." Letter from Frank S. Simone, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 5 (filed July 23, 2018) (AT&T July 23, 2018 Wireline *Ex Parte* Letter). We recognize that new attachers may need to rely upon utilities for existing attacher contact information to make the notifications, and utilities presumably have access to such information through pole attachment agreements and/or previous make-ready notifications. Therefore, if a new attacher requests contact information for existing attachers from the utility for use in this notification process, the utility must provide any such contact information it possesses. We adopt this requirement so that a new attacher can fulfill its notification obligation when it does not have a direct relationship with existing attachers. We find a utility's failure to keep adequate documentation on existing attachments is insufficient justification for eliminating the advance notice requirement for surveys.

²⁰¹ See EEI July 26, 2018 Wireline *Ex Parte* Letter at 3 ("In practice, three business days of notice will rarely allow utilities or existing attachers the ability to schedule survey ride-outs."); Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 3 n.5.

²⁰² See, e.g., BDAC January 2018 Recommendations at 37, 39 ("Members of the Committee agreed that a joint survey would be a useful option for the attacher and could benefit the utility as well. They also agreed that the pole owner should be able to establish the timing of the joint survey and then give the attacher reasonable notice (of not less than three days) to participate."); ACA Wireline NPRM Comments at 16-17; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 4; FBA July 20, 2018 Wireline *Ex Parte* Letter at 4.

²⁰³ See BDAC January 2018 Recommendations at 37. NCTA's contention that the existing attacher has no recourse if it disagrees with the results of the new attacher's survey is incorrect. See NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2-3. Existing attachers can raise any objections about the survey findings either with the new attacher or with the utility, which can make final determinations on survey results for reasons of capacity, safety, reliability, and generally applicable engineering purposes. See 47 CFR § 1.1412(d).

²⁰⁴ See BDAC January 2018 Recommendations at 40.

survey. We also encourage all attachers to provide a point of contact publicly (e.g., on their websites) so that new attachers know whom to contact when providing notices required under the OTMR regime.

(ii) Notifying the Utility of the Intent to Use OTMR

55. Consistent with the BDAC's recommendation, we require the new attacher to ensure that its contractor determines whether make-ready work identified in the survey is simple or complex, subject to a utility's right to reasonably object to the determination.²⁰⁵ For purposes of clarity and certainty, we require a new attacher—if it wants to use the OTMR process and is eligible to do so based on the survey—to elect OTMR in its pole attachment application and to identify in its application the simple make-ready work to be performed.²⁰⁶ Some commenters oppose letting the new attacher's contractor make the simple versus complex determination.²⁰⁷ AT&T, for example, advocates for allowing the existing attacher to make the determination.²⁰⁸ However, we agree with those commenters that argue that the new attacher's contractor has the incentive to make the correct determination in order to (1) avoid liability for damages caused by an incorrect choice; (2) limit risk; and (3) in the case of third-party contractors, preserve relationships with all attachers, as well as with the utility, to obtain future work.²⁰⁹ As a result, we find it is "more likely that approved contractors will be conservative in their determination of whether work is simple or complex."²¹⁰ In addition, we agree with Google Fiber that having a contractor chosen from a neutral utility-approved list, where such a list is available, "determine whether make-ready is simple or complex means neither the incumbent nor the new attacher has an opportunity to inject anti-competitive bias into the process."²¹¹

56. We require a utility that wishes to object to a simple make-ready determination to raise such an objection during the 15-day application review period (or within 30 days in the case of larger orders).²¹² We decline suggestions that we extend the objection right to existing attachers²¹³ because we

²⁰⁵ See *id.* at 24; see also CPS Energy Wireline NPRM Reply at 7; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at Attach. at 1; Verizon Mar. 8, 2018 Wireline *Ex Parte* Letter at 5; INCOMPAS Apr. 4, 2018 Wireline *Ex Parte* Letter at 2. Because all utilities have strong incentives to promote safety and the structural integrity of their poles, we agree with AT&T and Windstream that all utilities, including incumbent LEC pole owners, should have the ability to object to the simple/complex determination on poles that the utility owns. See AT&T July 23, 2018 Wireline *Ex Parte* Letter at 2-3; Windstream July 25, 2018 Wireline *Ex Parte* Letter at 2-3. At this time, we find it unnecessary to establish specific procedures around determining whether work will be in the communications space (and thus eligible for OTMR) because we expect that determination to be self-evident.

²⁰⁶ CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter Attach. at 2.

²⁰⁷ See AT&T Wireline NPRM Reply at 9; NCTA Wireline NPRM Reply at 17; CWA Feb. 6, 2018 Wireline *Ex Parte* Letter at 3.

²⁰⁸ See AT&T Wireline NPRM Reply at 9; Charter Wireline & Wireless NPRM Comments at 55.

²⁰⁹ See Google Fiber Wireline NPRM Reply at 6; Verizon Mar. 8, 2018 Wireline *Ex Parte* Letter at 5; see also INCOMPAS Apr. 4, 2018 Wireline *Ex Parte* Letter at 2 (explaining that letting existing attachers, which are often competitors of new attachers, select the contractor for OTMR could lead to anti-competitive behavior). In cases where the new attacher uses its own employees, we find that it will be sufficiently incentivized to make the correct choice in order to limit liability for damages and risk.

²¹⁰ Google Fiber Feb. 1, 2018 Wireline *Ex Parte* Letter at 3.

²¹¹ *Id.*; see also Verizon Mar. 8, 2018 Wireline *Ex Parte* Letter at 5.

²¹² We are not, contrary to some assertions, making the utility the arbiter of what constitutes complex make-ready within the communications space. See Letter from Robin F. Bromberg, Counsel to American Electric Power Service Corp. and Georgia Power, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed July 23, 2018) (AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter); Letter from Robin F. Bromberg, Counsel to Georgia Power et al., to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 6 (filed July 26, 2018) (Southern Company July 26, 2018 Wireline *Ex Parte* Letter). We are merely giving the utility the ability, *if it elects*, to evaluate and object to the simple/complex determination made by the new attacher's contractor. We do so because we find that the utility is in a good position to make an unbiased and informed decision on this issue. Utilities are

agree that doing so could provide existing attachers the opportunity “to slow a new attacher’s deployment by over-designating make-ready work as complex.”²¹⁴ Also, while the BDAC did not address the timing of an objection to the simple/complex determination in its OTMR recommendation, we find that setting a time limit for the objection will reduce confusion and foster quicker deployment. We find 15 days to be sufficient because the utility will have the right to accompany the new attacher’s contractor on the survey when the contractor makes the simple/complex determination,²¹⁵ so the utility will have ample opportunity to have the information it needs to determine whether to object before the deadline.

57. If the utility objects to the new contractor’s determination that work is simple, then the work is deemed complex—the utility’s objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, and provides a good faith explanation of how such evidence and information relate to a determination that the make-ready is not simple. This approach is consistent with other decisions left to a utility during our pole attachment process.²¹⁶ We find that making the utility’s determination final is appropriate because it avoids protracted disputes that could slow deployment. However, we caution utilities that if they make such a decision in a manner inconsistent with the requirements we set forth, for instance without adequate support or in bad faith, then new attachers can avail themselves of our complaint process to address such behavior.

58. If the new attacher determines that the make-ready involves a mix of simple and complex work (or involves work above the communications space), then we allow the new attacher discretion to determine whether to bifurcate the work. If the new attacher prefers to complete the simple make-ready work under the OTMR process while it waits for complex work/work above the communications space to run its course through the longer existing process, then it may do so. A new attacher electing to bifurcate the work must submit separate applications for the simple and complex work and work above the communications space.²¹⁷ If the new attacher prefers that its entire project (both simple and complex work and work above the communications space) follow the existing process, or if the new attacher does not view bifurcation as feasible, then it may employ the existing process for the entire project.

59. In response to a request from Xcel/Alliant, we clarify “what procedures should be followed when it is discovered in the field while make-ready is being performed that the work on a particular pole is in fact complex, or if it is found that conditions in the field will prevent the OTMR

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free to consult with existing attachers in making such an evaluation to the extent such consultation would be useful. See Letter from Brett Kilbourne, Vice President, Policy and General Counsel, UTC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed July 26, 2018) (UTC July 26, 2018 Wireline *Ex Parte* Letter at 2).

²¹³ See NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2-3; CWA July 26, 2018 Wireline *Ex Parte* Letter at 4.

²¹⁴ Verizon July 26, 2018 Wireline OTMR *Ex Parte* Letter at 4; see also Google Fiber July 26, 2018 Wireline *Ex Parte* Letter at 2. We also disagree with NCTA’s contention that the existing attacher has no recourse if it does not agree with the determination of the new attacher’s contractor that certain make-ready work is simple. See NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2-3. The existing attacher always may voice its concerns to the new attacher and to the utility, which can veto the determination of a new attacher’s contractor and which has an incentive as the pole owner and as an attacher to ensure that work is classified correctly.

²¹⁵ See *infra* section III.A.1.c.(i).

²¹⁶ See 47 U.S.C. § 224(f)(2); see *infra* Appx. A, 47 CFR § 1.1412(d).

²¹⁷ See, e.g., AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter at 1-2 (“It is unclear how the Commission intends the OTMR process to unfold where a single application involves various categories of make-ready, including simple communications space make-ready, complex communications space make-ready, and power supply space make-ready.”); see UTC July 26, 2018 Wireline *Ex Parte* Letter at 2 (requesting clarification as to what extent a utility may deny an application that includes multiple types of make-ready). In response to these requests for clarification, we have clarified herein that new attachers that wish to perform both OTMR and complex work must submit separate applications.

contractor from performing the make-ready work in a ‘simple’ manner, if at all.”²¹⁸ In such situations, we find that if the new attacher or the utility discovers that work initially classified by the new attacher and approved by the utility as simple actually turns out to be complex, then that specific work must be stopped.²¹⁹ The determining party must notify the other party of its determination and the affected poles; the attachments at issue will then be governed by the non-OTMR timeline, and the utility should provide notice to existing attachers of make-ready work as soon as reasonably practicable.²²⁰

(iii) Review of Application for Completeness

60. In the interest of speeding application review, we adopt a rule to specify that under the OTMR regime, a pole attachment application is complete if it provides the utility with the information necessary under the utility’s procedures, as specified in a master service agreement or in publicly-available requirements at the time of submission of the application, to make an informed decision on the application.²²¹ We also establish a timeline for the utility’s review of the application for completeness. We adopt these requirements to address attachers’ complaints—made in response to the Commission’s request in the *Wireline Infrastructure Notice* for comments on ways to streamline and accelerate the pole attachment timeline²²²—that “pole owners are not transparent about telling applicants all information that is required to be included on applications at the time of their submission,” often resulting in delays to the pole attachment process while the pole owner requests additional information over a series of weeks or months.²²³

61. While the current definition of a complete application only requires “information necessary under [the utility’s] procedures,”²²⁴ our revised definition provides more transparency about what an attacher must include in its application, because the master service agreement or publicly-available requirements must be available to new attachers as they prepare their application.²²⁵ We reject NCTA’s proposal that we define an application as complete if it provides “only the information reasonably necessary to commence the application process and does not impose unreasonable or unnecessary additional requirements”²²⁶ because that definition fails to provide new attachers sufficient prior notice of the application requirements and invites disputes between the new attacher and utility over what information is “reasonably necessary to commence the application process” or what constitutes “unreasonable or unnecessary additional requirements.”²²⁷

62. To prevent unnecessary delays in starting the pole attachment process, we adopt rules consistent with the BDAC-recommended timeline for a utility to determine whether a pole attachment

²¹⁸ Xcel/Alliant July 26, 2018 *Wireline Ex Parte* Letter at 4.

²¹⁹ See *infra* Appx. A, 47 CFR § 1.1411(j)(4)(iii). The new attacher may choose to continue OTMR work on other poles to the extent that such work is simple.

²²⁰ See *infra* section III.A.2.a.(iii); Appx. A, 47 CFR § 1.1411(e).

²²¹ See Letter from Thomas Cohen, Counsel to ACA, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 5 (filed Sep. 14, 2017) (ACA Sep. 14, 2017 *Wireline Ex Parte* Letter). The BDAC recommended a definition of a complete pole attachment application that we adopt for our existing pole attachment timeline. See BDAC January 2018 Recommendations at 32; see also *infra* section III.A.1.c.(iii). We slightly revise that definition for purposes of our OTMR timeline to account for the new attacher, rather than the utility, conducting the pole surveys.

²²² See *Wireline Infrastructure Notice*, 32 FCC Rcd at 3268-69, 3273, paras. 7-8, 21.

²²³ See Lighttower *Wireline NPRM* Comments at 4-5; ACA Sep. 14, 2017 *Wireline Ex Parte* Letter at 4; FBA Apr. 10, 2018 *Wireline Ex Parte* Letter at 3; FBA July 20, 2018 *Wireline Ex Parte* Letter at 3-4.

²²⁴ 47 CFR § 1.1411(c).

²²⁵ See *infra* Appx. A, 47 CFR § 1.1411(c)(1).

²²⁶ NCTA Mar. 5, 2018 *Wireline Ex Parte* Letter at Attach. at 1.

²²⁷ *Id.*

application is complete:²²⁸

- A utility has 10 business days after receipt of a pole attachment application in which to determine whether the application is complete and notify the attacher of that decision.
- If the utility notifies the attacher that the attacher's application is not complete within the 10 business-day review period, then the utility must specify where and how the application is deficient.
- If there is no response by the utility within 10 business days, or if the utility rejects the application as incomplete but fails to specify any deficiencies in the application, then the application is deemed complete.
- If the utility timely notifies the new attacher that the application is incomplete and specifies deficiencies, a resubmitted application need only supplement the previous application by addressing the issues identified by the utility, and the application shall be deemed complete within five business days after its resubmission, unless the utility specifies which deficiencies were not addressed and how the resubmitted application did not sufficiently address the utility's reasons.²²⁹
- The new attacher may follow this resubmission procedure as many times as it chooses, so long as in each case it makes a bona fide attempt to correct the issues identified by the utility, and in each case the deadlines set forth herein apply to the utility's review.

63. We find that incorporating a specific timeline into our rules provides all parties with some predictability about the start of the OTMR process and avoids unnecessary delays that arise when utilities do not formally accept an application in a timely manner.²³⁰ We find that the timeline we adopt balances the interests of new attachers in the speedy processing of applications and of utilities in needing sufficient time to review the applications. We require utilities to specify the deficiencies in pole attachment applications within 10 business days of receipt so that the new attachers have the information necessary to address those deficiencies in a timely fashion. We also believe this gives incentives for utilities generally to communicate to prospective applicants concerning what is needed for an application because doing so will aid in the utility's formal review process. We adopt a "deemed grant" remedy to prevent delays, and we adopt a shorter timeline for second and further reviews because we expect utilities' review to be cabined to a more limited number of issues that it previously identified. We also encourage utilities that receive complete applications to respond promptly and affirmatively confirm that applications are complete, rather than wait for the 10 business-day review period to lapse. In response to a concern raised by Crown Castle, we clarify that the utility cannot delay its determination of whether an application is complete by seeking to negotiate rates, terms, and conditions in the pole attachment agreement that "unreasonably deviate from those assured by the rules."²³¹ Such bad faith practices intended to delay the start of the pole attachment timeline are prohibited as contrary to our goal of speedy broadband deployment.

(iv) Application Review

64. For OTMR attachments, we shorten the time period within which a utility must decide

²²⁸ BDAC January 2018 Recommendations at 32; *see also* ACA Sep. 14, 2017 Wireline *Ex Parte* Letter at 5. *See infra* Appx. A, 47 CFR § 1.1411(j)(1)(ii).

²²⁹ Because the utility already must specify the reasons for deeming an application incomplete, and thus condense the outstanding issues with regard to the application, we disagree with EEI that utilities should have 10 days to review a resubmitted application to determine whether the new attacher adequately has addressed the reasons for the application's return. *See* EEI July 26, 2018 Wireline *Ex Parte* Letter at 4.

²³⁰ *See* ACA Sep. 14, 2017 Wireline *Ex Parte* Letter at 4-5 (explaining the delays and lack of transparency in the application process).

²³¹ Crown Castle July 25, 2018 Wireline *Ex Parte* Letter at 4.

whether to grant a complete application from 45 days to 15 days for standard requests and from 60 days to 30 days for larger requests.²³² While the BDAC did not address this issue, we find that because the new attacher (rather than the utility) will be doing most of the pre-make-ready work under OTMR (e.g., surveys, notices), it is appropriate to adopt a shorter timeline for the utility to review the application.²³³ Furthermore, because the utility has the right to specify the information it requires the new attacher to put in the application and has the ability to reject the application (multiple times if necessary) before accepting it for review, we find 15 days should be sufficient for the utility to conduct its review.²³⁴ We reject Xcel/Alliant's contention that providing a shorter timeframe for OTMR application review will cause utilities to unfairly prioritize OTMR applications over previously-filed non-OTMR applications or cause new attachers to game the process by submitting OTMR applications to get them processed and approved ahead of other attachers.²³⁵ There is no incentive for new attachers to submit bad faith OTMR applications because it does not bring the applicant any advantage—as discussed above, once the new attacher or utility discovers that simple work actually is complex, then the work must follow our non-OTMR timeline, resulting in no time savings and wasted money and effort that the applicant could have saved had it originally classified the work correctly in its application.²³⁶

(v) **Make-Ready**

65. The new attacher may proceed with OTMR by giving 15 days' prior written notice to the utility and all affected existing attachers.²³⁷ To avoid unnecessary delays, we conclude that the new attacher may provide the required 15-day notice any time after the utility deems its pole attachment application complete. Thus, the 15-day notice period may run concurrently with the utility's evaluation of whether to grant the application.²³⁸ If, however, the new attacher cannot start make-ready work on the date specified in its 15-day notice (e.g., because its application has been denied or it is otherwise not ready to commence make-ready), then the new attacher must provide 15 days' advance notice of its revised make-ready date.

²³² See *infra* Appx. A, 47 CFR § 1.1411(j)(2) (providing that the deadline is extended to 60 days for larger pole attachment requests as described in 47 CFR § 1.1411(g)). Larger requests are when an order is greater than 3000 poles or 5 percent of the utility's poles in a state. See *infra* Appx. A, 47 CFR § 1.1411(g).

²³³ See CPS Energy Wireline NPRM Reply at 7 (explaining that transferring the make-ready design and planning to the new attachers allows CPS Energy to slash its pole attachment application review time by over fifty percent); see also EEI July 26, 2018 Wireline *Ex Parte* Letter at 5; Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 2-4; UTC July 26, 2018 Wireline *Ex Parte* Letter at 2.

²³⁴ We reject the contentions that 15 days “does not provide a mechanism by which a new attacher may be made aware if the poles it selected are already subject to a pre-existing pole attachment application” and that it does not “account for how to address multiple or overlapping pole orders.” EEI July 26, 2018 Wireline *Ex Parte* Letter at 5; see also Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 2; UTC July 26, 2018 Wireline *Ex Parte* Letter at 2. In the time we give to a utility to review a pole attachment application and also to determine its completeness, we expect that the utility should be able to resolve these processing issues. But, if the utility needs additional time, then it may work with the new attacher to negotiate a new schedule that timely resolves these issues. We retain in the OTMR context our preexisting requirement that if a utility denies an application, the utility's denial must be specific and include all relevant evidence and information supporting its denial and must explain how such evidence and information relate to a denial of access for reasons of safety, reliability, lack of capacity, or engineering standards. See 47 CFR § 1.1403(b).

²³⁵ Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 3.

²³⁶ See *supra* section III.A.1.a.

²³⁷ See COMPTIA Wireline NPRM Comments at 2; Google Fiber Wireline NPRM Reply at 9; cf. BDAC January 2018 Recommendations at 23.

²³⁸ We disagree with CWA's contention that the utility's application review period and the new attacher's pre-make-ready notice period should not run concurrently. CWA July 26, 2018 Wireline *Ex Parte* Letter at 3. As part of our goal of speeding the OTMR pole attachment process, we find that allowing the two time periods to run concurrently will eliminate unnecessary delays in the process.

66. Although the BDAC recommendation provides for 25 days prior written notice for OTMR,²³⁹ we find that 15 days strikes a reasonable balance between promoting fast access to utility poles (one of the core goals of OTMR) and providing sufficient time for existing attachers and the utility to work with the new attacher to arrange to be present when OTMR is being performed on their equipment.²⁴⁰ Furthermore, the 25-day notice period recommended by the BDAC for OTMR is only five days shorter than the 30-day period recommended by the BDAC for existing attachers to complete complex make-ready work,²⁴¹ which is not much time savings for an OTMR process that we adopt for simple work that is unlikely to cause safety issues.²⁴² We also disagree with NCTA's request for a longer notice period for larger projects;²⁴³ because this is merely a notice requirement and does not require action on the part of the existing attacher or utility, there is no need for a longer notice period for larger projects.

67. To keep all affected parties informed about the new attacher's progress, and consistent with the BDAC's recommendation, we require the new attacher to provide representatives of the utility and existing attachers with the following information in the 15-day advance notice: (1) the date and time of the make-ready work; (2) a description of the make-ready work involved; (3) a reasonable opportunity to be present when the make-ready work is being performed; and (4) the name of the contractor chosen by the new attacher to perform the make-ready work.²⁴⁴ Allowing existing attachers and the utility a reasonable opportunity to be present when OTMR work is being done addresses the concerns of existing attachers that third-party contractors may not take proper care when performing simple make-ready work on their equipment.²⁴⁵ We also adopt the advance notice requirements to allow the utility and existing attachers, if they so choose, to alert their customers that work on their equipment is forthcoming; as Liberty Cablevision of Puerto Rico explains, "[t]his is a reasonable way to address concerns that service-affecting problems arising from the make-ready work would be improperly attributed to an existing attacher."²⁴⁶ In addition, providing the name of the new attacher's OTMR contractor allows existing

²³⁹ See BDAC January 2018 Recommendations at 23; see also AT&T Wireline NPRM Comments at 17 (requesting that new attachers notify existing attachers at least 30 days prior to the OTMR make-ready); CPS Energy Wireline NPRM Reply at 9, 16-17 (requesting 21 days' advance notice to existing attachers of impending OTMR work); Charter Feb. 5, 2018 Wireline *Ex Parte* Letter at 1 (requesting 30 days' advance notice to give existing attachers a chance to move their equipment); CenturyLink July 23, 2018 Wireline *Ex Parte* Letter at 4-5 (requesting 25 days advance notice); NCTA July 25, 2018 Wireline *Ex Parte* Letter at 2 (requesting 25 days advance notice); CWA July 26, 2018 Wireline *Ex Parte* Letter at 3 (requesting 25 days advance notice).

²⁴⁰ See Level 3 Wireline NPRM Comments at 3; Verizon Wireline NPRM Comments at 7 (recommending only five days' notice before OTMR work begins); Google Fiber Wireline NPRM Reply at 9.

²⁴¹ See BDAC January 2018 Recommendations at 21, 23.

²⁴² See Google Fiber Wireline NPRM Reply at 9 (stating that "a 15-day notice period should be sufficient for utility-approved contractors to ensure that these services will be adequately protected during make-ready").

²⁴³ See NCTA July 25, 2018 Wireline *Ex Parte* Letter at 2.

²⁴⁴ See BDAC January 2018 Recommendations at 23; *infra* Appx. A, 47 CFR § 1.1411(j)(4)(i); Charter Wireline & Wireless NPRM Comments at 56; NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter at Attach. at 5. As is the case for survey notifications, if a new attacher requests contact information for existing attachers from the utility for use in this notification process, the utility must provide any such contact information it possesses. See *supra* section III.A.1.c.(i). We adopt this requirement so that a new attacher can fulfill its notification obligation when it does not have a direct relationship with existing attachers.

²⁴⁵ See BDAC January 2018 Recommendations at 27 ("Existing attachers worry that one-touch make-ready endangers their attachments and provision of service because they are in control of neither the contractor nor the quality of work performed."); Comcast Wireline & Wireless NPRM Comments at 21; NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter at 2 (stating that cable operators have experienced problems with OTMR "where there is a complete lack of privity between the existing attacher and the contractor.").

²⁴⁶ Liberty Cablevision of Puerto Rico Wireline NPRM Comments at 8 n.7.

attachers to notify the utility and the utility to object if the contractor is not properly qualified.²⁴⁷

68. We emphasize that the 15 days is only a notice period before the new attacher begins make-ready work; it is not an opportunity for existing attachers or the utility to complete make-ready work on their equipment and then bill the new attacher for that work.²⁴⁸ However, we clarify that we are not precluding existing attachers and the utility from doing non-reimbursable work on their equipment during the 15-day notice period. We find that, contrary to the requests of certain attachers,²⁴⁹ providing an existing attacher an affirmative right to perform make-ready and bill the new attacher for such work during the notice period would undermine one of the main benefits of OTMR: decreasing make-ready costs for new attachers.²⁵⁰

69. We also adopt the BDAC recommendation that we require the new attacher to notify an affected entity immediately if the new attacher's contractor damages another company's equipment or causes an outage that is reasonably likely to interrupt the provision of service.²⁵¹ We extend this requirement to damage to the utility's equipment as well. Upon receiving notice of damaged equipment or a service outage, the utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or outage or require the new attacher to fix the damage or outage at its expense immediately following notice from the utility or existing attacher.²⁵² Upon notice from the existing attacher or the utility to fix damages or an outage caused by the new attacher, the new attacher must complete the repair work before it can resume its make-ready work.²⁵³ Where the utility or the existing attacher elects to fix the damage or outage, the new attacher can only continue with make-ready work if it does not interfere with the repair work being

²⁴⁷ See BDAC January 2018 Recommendations at 27 (“Opponents of one-touch make-ready often cite unknown contractor qualifications as a principal reason why one-touch make-ready should not be adopted.”); see also Charter Wireline & Wireless NPRM Comments at 42 (stating that OTMR is only as effective as the contractor performing the work).

²⁴⁸ See Verizon July 2, 2018 Wireline Ex Parte Letter at 3 (“If a new attacher elects OTMR, existing attachers would not have the right to perform their own make-ready.”); Google Fiber July 26, 2018 Wireline Ex Parte Letter at 2.

²⁴⁹ See NCTA July 18, 2018 Wireline Ex Parte Letter at 3-4; CenturyLink July 23, 2018 Wireline Ex Parte Letter at 4; Letter from Christianna Barnhart, Vice President, Regulatory Affairs, Charter, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed July 25, 2018) (Charter July 25, 2018 Wireline Ex Parte Letter); Letter from David Don, Vice President, Regulatory Policy, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed July 26, 2018) (Comcast July 26, 2018 Wireline Ex Parte Letter); CWA July 26, 2018 Wireline Ex Parte Letter at 3.

²⁵⁰ See Google Fiber Mar. 14, 2018 Wireline Ex Parte Letter at 1; Verizon Mar. 8, 2018 Wireline Ex Parte Letter at 3-4. We decline CenturyLink's request that we clarify that when performing OTMR, a new attacher should preserve the relative position of existing attachers on a pole. See CenturyLink July 23, 2018 Wireline Ex Parte Letter at 5. While we agree that new attachers should strive to complete their attachments in the least disruptive manner possible, the Commission has not historically regulated the positioning of attachments on the pole, and attachers remain free to bargain for such positioning rights in their respective pole attachment agreements with the utility.

²⁵¹ BDAC January 2018 Recommendations at 22; Charter Wireline & Wireless NPRM Comments at 57; NCTA Mar. 5, 2018 Wireline Ex Parte Letter at Attach. at 5; Comcast July 26, 2018 Wireline Ex Parte Letter at 1; Google Fiber July 26, 2018 Wireline Ex Parte Letter at 1-2. This obligation also applies when the new attacher or its contractors are performing self-help make-ready work. See *infra* section III.A.2.b.

²⁵² See, e.g., CenturyLink Wireline NPRM Comments at 12-13; Charter Wireline & Wireless NPRM Comments at 56-57; CPS Energy Wireline NPRM Reply at 11-12; Electric Utilities Wireline NPRM Comments at 6; Frontier Wireline NPRM Comments at 19; Level 3 Wireline NPRM Comments at 3; Midwest Electric Utilities Wireline NPRM Comments at 8; POWER Coalition Wireline NPRM Comments at 12; UTC Wireline NPRM Comments at 14; AT&T-CWA Jan. 16, 2018 Wireline Ex Parte Letter at 1; NCTA July 18, 2018 Wireline Ex Parte Letter at 3; Comcast July 26, 2018 Wireline Ex Parte Letter at 1-2; Google Fiber July 26, 2018 Wireline Ex Parte Letter at 1-2.

²⁵³ See NCTA July 18, 2018 Wireline Ex Parte Letter at 3; Comcast July 26, 2018 Wireline Ex Parte Letter at 1; Google Fiber July 26, 2018 Wireline Ex Parte Letter at 2.

conducted by the utility or existing attacher. This requirement for immediate notification and repair of damages or outages caused by a new attacher's contractor addresses the concern of existing attachers and utilities that the new attacher's contractor may damage equipment or cause an outage that would harm consumers or threaten safety without the existing attacher's or utility's knowledge or an opportunity for prompt recourse.²⁵⁴

(vi) Post Make-Ready

70. We agree with commenters that suggest that the OTMR process should include time for post-make-ready inspections and the quick repair of any defective make-ready work.²⁵⁵ To give existing attachers and the utility an opportunity to correct any errors and to further encourage quality work by the new attacher, we adopt the BDAC's recommendation that the new attacher must provide notice to the utility and affected existing attachers within 15 days after the new attacher has completed OTMR work on a particular pole.²⁵⁶ In its post-make ready notice, the new attacher must provide the utility and existing attachers at least a 90-day period for the inspection of make-ready work performed by the new attacher's contractors.²⁵⁷ This post-make-ready inspection and remedy requirement gives the utility and existing attachers their own opportunity to ensure that work has been done correctly.

71. To allow new attachers to timely address allegations of needed repair work, we adopt rules requiring that within 14 days after any post-make ready inspection, the utility and the existing attachers notify the new attacher of any damage or any code (e.g., safety, electrical, engineering, construction) violations caused to their equipment by the new attacher's make-ready work and provide adequate documentation of the damage or the violations.²⁵⁸ The utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or violations, or require the new attacher to fix the damage or violations at its expense within 14 days following notice from the utility or existing attacher.²⁵⁹ We provide the utility or existing attacher options regarding repair to maximize their flexibility in addressing issues for which they are not at fault. The safeguards we establish in the OTMR process collectively give the new attacher the

²⁵⁴ See BDAC January 2018 Recommendations at 27; Charter Wireline & Wireless NPRM Comments at 39-43; Comcast Wireline NPRM Comments at 21-22; NCTA Wireline NPRM Reply at 16-17.

²⁵⁵ See AT&T Wireline NPRM Comments at 18; CenturyLink Wireline NPRM Comments at 15; Charter Wireline & Wireless NPRM Comments at 56-57; COMPTIA Wireline NPRM Comments at 2; Electric Utilities Wireline NPRM Comments at 6; Google Fiber Wireline NPRM Comments at 6; Oregon Electric Utilities Wireline NPRM Comments at 8; CPS Energy Wireline NPRM Reply at 11; UTC Wireline NPRM Reply at 19; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at 4.

²⁵⁶ BDAC January 2018 Recommendations at 22; see also Electric Utilities Wireline NPRM Comments at 6; CPS Energy Wireline NPRM Reply at 11. To minimize paperwork burdens, the new attacher may batch in one post-make-ready notice all poles completed in a particular 15-day span. For example, if a pole attachment project took 30 days to complete, the new attacher could provide one notice to the existing attacher with the first 15 days' worth of work and a second notice on day 30 with the remainder of the work.

²⁵⁷ See, e.g., CPS Energy Wireline NPRM Reply at 11; Electric Utilities Wireline NPRM Comments at 6; NCTA July 18, 2018 Wireline *Ex Parte* Letter at 4; Google Fiber July 26, 2018 Wireline *Ex Parte* Letter at 2.

²⁵⁸ See EEI July 26, 2018 Wireline *Ex Parte* Letter at 6; Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 4-5.

²⁵⁹ See, e.g., Charter Wireline & Wireless NPRM Comments at 56-57; CPS Energy Wireline NPRM Reply at 11; Electric Utilities Wireline NPRM Comments at 6; Frontier Wireline NPRM Comments at 19-20; Midwest Electric Utilities Wireline NPRM Comments at 8; POWER Coalition Wireline NPRM Comments at 12; UTC Wireline NPRM Comments at 14; AT&T-CWA Jan. 16, 2018 Wireline *Ex Parte* Letter at 1; see also Level 3 Wireline NPRM Comments at 3 (submitting that remediation should take place within 30 days). We decline the request of EEI and Xcel/Alliant that we adopt a re-inspection timeframe after repairs have been made by the new attacher. See EEI July 26, 2018 Wireline *Ex Parte* Letter at 6; Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 4-5. While the utility or an existing attacher is free to conduct an inspection of the new attacher's repairs, formalizing the process is not needed as we require the parties to work together to ensure that repairs are completed.

incentive to ensure its contractor performs work correctly; we therefore expect the invocation of this remediation procedure to be infrequent.

72. We disagree with Verizon's argument that we should refrain from establishing a timeframe for the utility and existing attachers to inspect completed make-ready work because deadlines for raising claims about property damage are "typically governed by state contract or property law."²⁶⁰ We find it appropriate to establish a post-inspection timeline at the federal level so that parties can identify any defective make-ready work that has the potential to cause harm or injury to persons or equipment and remedy it as soon as possible. We also find that the deadlines we establish for the post-make-ready timeline give the existing attachers and the utility time that is sufficient but not unnecessarily long to inspect the work and give the new attacher reasonable time to fix any equipment damage and to rectify any potentially unsafe conditions.

d. Indemnification

73. We conclude that new attachers should be responsible and liable for any damage or non-compliance resulting from work completed by the new attacher during OTMR. The OTMR rules we adopt provide a process for existing attachers to timely identify damage to their equipment that occurs during the OTMR process and to arrange for its repair.²⁶¹ To the extent that process proves insufficient, injured parties may seek judicial relief based on state law claims.

74. We find, consistent with the BDAC's recommendation,²⁶² that federally-imposed indemnification is not necessary.²⁶³ The record indicates that the existing legal regime, including contract²⁶⁴ and tort law,²⁶⁵ provides sufficient protection for existing attachers without broad federal regulatory

²⁶⁰ Verizon Wireline NPRM Reply at 9.

²⁶¹ See *supra* section III.A.1.c.(vi). OTMR contractors will be required to carry adequate insurance or establish a performance bond, which should ensure there is compensation available should the contractor's work be faulty. See *supra* section III.A.1.b. To reduce disputes over the cause of damages, NCTA proposes that we require new attachers' contractors to "document, via photograph or video, the condition of the existing attachers' facilities both before performing any make-ready work and after make-ready work is complete." NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter Attach. 6; NCTA July 12, 2018 Wireline *Ex Parte* at 3. While we agree with NCTA that such documentation could potentially help to resolve disputes surrounding the cause of damage, there is no record evidence as to how effective or burdensome such a requirement would be, and NCTA does not indicate how widespread this practice currently is. Therefore, we decline to mandate it at this time.

²⁶² See January 2018 BDAC Recommendations at 47.

²⁶³ Several commenters propose such a requirement. See AT&T Wireline NPRM Comments at 18; Electric Utilities Wireline NPRM Comments at 6; Frontier Wireline NPRM Comments at 18; UTC Wireline NPRM Comments at 14; Comcast Wireline NPRM Reply at 11; NCTA Wireline NPRM Reply at 20; NCTA July 12, 2018 Wireline *Ex Parte* Letter at 2-3; NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2, 4; CenturyLink July 23, 2018 Wireline *Ex Parte* Letter at 4; Charter July 25, 2018 Wireline *Ex Parte* Letter at 1-2; CWA July 26, 2018 Wireline *Ex Parte* Letter at 4.

²⁶⁴ See Google Fiber Apr. 12, 2018 Wireline *Ex Parte* Letter at 3 (contending that contractual negotiations are sufficient to address new attacher liability to existing attachers beyond liability for damage the new attacher or the new attacher's contractor causes to the existing attacher's facilities); Verizon Mar. 8, 2018 Wireline *Ex Parte* Letter at 6 (arguing that "[a]ny third party or indirect damages should be addressed in the attachment agreement(s) between the parties already in place"). Google Fiber observes that it is common practice today for liability concerns to be addressed in pole attachment agreements, "under which attachers routinely agree to indemnify pole owners for property damage, bodily injury, and death arising from their work on, and attachments to utility poles." Letter from Kristine Laudadio Devine, Counsel to Google Fiber, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3 n. 8 (filed Nov. 30, 2017) (Google Fiber Nov. 30, 2017 Wireline *Ex Parte* Letter).

²⁶⁵ See Charter Wireline & Wireless NPRM Comments at 51 (contending that without contractual privity between the existing and new attachers, the only method of resolving disputes over deficient make-ready work is through tort litigation); CenturyLink Wireline NPRM Reply at 14 (stating that the only likely remedy for an attaching entity, like Century Link, with no contract with another communications company "would be litigation against the IOU for breach or the attacher or its contractor in tort"). Google and CPS Energy also argue that indemnification is not

intrusion. The repair process we adopt in our OTMR rules adds an additional layer of protection.²⁶⁶ With these other remedies already available, we disagree with NCTA that a Commission-mandated indemnification requirement is the “only practical mechanism by which an existing attacher can hold a new attacher or its contractor accountable for the consequences of performing shoddy work” in situations where there is no privity of contract between the parties or a statutory requirement to hold harmless existing attachers.²⁶⁷ Rather, we find that adding a federal layer of indemnification would not be efficient or assist in speeding broadband deployment.²⁶⁸ Further, we agree with Google Fiber that indemnification obligations are typically not one-size-fits-all provisions,²⁶⁹ such that it would be difficult to craft a regulatory solution that is workable in all situations.

75. We disagree with NCTA’s assertion that section 224(i) of the Act requires federally mandated “[b]road indemnification of existing attachers,” including indemnification for consequential damages.²⁷⁰ Section 224(i) provides that existing attachers “shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).”²⁷¹ NCTA claims that this language requires new attachers to pay for “any damages – such as damages caused by service downtime – resulting from such work.”²⁷²

76. We find NCTA’s reading of section 224(i) to be overly broad. In our view, the statute is best read to allow the existing attacher to recover only those costs directly connected to “rearranging or replacing the attachment,” i.e., the direct costs of moving or replacing the attachment.²⁷³ These costs do not include consequential damages. While NCTA relies on the modifier “any of” for its broad reading, contending that the phrase “any of” means the statute requires compensation for consequential damages,²⁷⁴ the more natural reading of “any of” is that the statute prohibits holding existing attachers responsible for any *portion* of “the costs of rearranging or replacing its attachment.”²⁷⁵ NCTA cites no precedent that supports its broad reading, and the Commission’s bonding and insurance requirements that NCTA does

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appropriate in situations where there is not privity of contract between new and existing attachers. See CPS Energy Wireline NPRM Reply at 19-21; Google Fiber Nov. 30, 2017 Wireline *Ex Parte* Letter at 2-3. State tort law remains available regardless of whether there is contractual privity.

²⁶⁶ See FBA July 20, 2018 Wireline *Ex Parte* Letter at 3.

²⁶⁷ Letter from Steven F. Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 6 (filed Apr. 4, 2018) (NCTA Apr. 4, 2018 Wireline *Ex Parte* Letter); see also CenturyLink July 23, 2018 Wireline *Ex Parte* Letter at 4.

²⁶⁸ See FBA July 20, 2018 Wireline *Ex Parte* Letter at 3. Although CenturyLink claims that without Commission-imposed indemnification, disputes over damages “will have to be” resolved via litigation, CenturyLink fails to demonstrate how a federal indemnification remedy would change the risk of litigation. CenturyLink July 23, 2018 Wireline *Ex Parte* Letter at 4. Parties frequently resolve contractual and tort issues out of court, and conversely a federal indemnification remedy does not foreclose litigation. We also disagree with CenturyLink’s assertion that the approach we adopt “unfairly shift[s] the burden from [new] attachers to existing attachers for legal and regulatory obligations”—rather, we preserve the regulatory status quo under existing law. *Id.*

²⁶⁹ Google Fiber Nov. 30, 2017 Wireline *Ex Parte* Letter at 2-3.

²⁷⁰ See NCTA Apr. 4, 2018 Wireline *Ex Parte* Letter at 5.

²⁷¹ 47 U.S.C. § 224(i).

²⁷² NCTA Apr. 4, 2018 Wireline *Ex Parte* Letter at 5 n.19.

²⁷³ 47 U.S.C. § 224(i).

²⁷⁴ See NCTA Apr. 4, 2018 Wireline *Ex Parte* Letter at 5 n.19.

²⁷⁵ Contrary to NCTA’s assertion, in reaching this conclusion, we are not “add[ing] qualifying language” but rather construing the statute. NCTA July 18, 2018 Wireline *Ex Parte* Letter at 4.

cite²⁷⁶ are far more narrow than the broad indemnification it argues for in this instance.²⁷⁷ In fact, we have previously declined to adopt rules requiring broad indemnification for consequential damages, instead finding that indemnification obligations should be left for commercial negotiations.²⁷⁸

2. Targeted Changes to the Commission's Existing Pole Attachment Process

77. To speed broadband deployment for new attachments that are not eligible for our OTMR process and for new attachers that prefer not to use the OTMR process, we make targeted changes to the rules governing the existing pole attachment timeline. Our targeted changes include:

- Revising the definition of a complete pole attachment application and establishing a timeline for a utility's determination whether an application is complete;
- Requiring utilities to provide at least three business days' advance notice of any surveys to the new attacher and each existing attacher;
- Establishing a 30-day deadline for completion of all make-ready work in the communications space;
- Eliminating the 15-day utility make-ready period for communications space attachments;
- Streamlining the utility's notice requirements;
- Enhancing the new attacher's self-help remedy by making the remedy available for surveys and make-ready work for all attachments anywhere on the pole in the event that the utility or the existing attachers fail to meet the required deadlines;
- Revising the contractor selection process for a new attacher's self-help work; and
- Requiring utilities to provide detailed estimates and final invoices to new attachers regarding make-ready costs.

78. We agree with numerous commenters that with respect to the Commission's current pole attachment timeline, we should refrain from adopting wholesale changes at this time.²⁷⁹ We agree with

²⁷⁶ *Id.* at 5; *2011 Pole Attachment Order*, 26 FCC Rcd. at 5266-69, para. 56 (“If a requirement is customary and prudent whenever a [utility-approved] contractor [for self-help] is hired, such as requiring a service bond . . . it is likely reasonable.”); *In the Matter of Leased Commercial Access*, MB Docket No. 07-42, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 2909, 2922-23, para. 27-28 (2008) (*2008 Leased Access Order*) (finding it reasonable for a cable system operator to require a leased access programmer “to obtain reasonable liability insurance coverage[,]” but confirming that the Commission would “continue to address complaints about specific contract terms and conditions on a case-by-case basis”). The *2008 Leased Access Order*'s rules never went into effect due to a stay by the Sixth Circuit. *See Order*, *United Church of Christ Office of Communications, Inc. et al. v. FCC*, No. 08-3245 (and consolidated cases) (6th Cir., May 22, 2008). In June of this year, the Commission tentatively concluded that it should vacate the *2008 Leased Access Order*. *Leased Commercial Access Modernization of Media Regulation Initiative*, MB Docket Nos. 07-42, 17-105, Further Notice of Proposed Rulemaking, FCC 18-80, para. 2 (June 8, 2018). Consistent with the Commission's approach in the *2011 Pole Attachment Order*, our Order today requires analogous bonding or insurance requirements for new attachers' third-party OTMR contractors. *See supra* section III.A.1.b.

²⁷⁷ *Cf.* Verizon July 2, 2018 Wireline *Ex Parte* Letter at 5 (submitting that “[t]he fact that the Commission has stated that, as a general matter, a utility can impose reasonable service bond requirements on contractors and that a cable system operator can impose reasonable insurance requirements in leased access contracts does not answer whether broad indemnification is reasonable for OTMR.”).

²⁷⁸ *See 2011 Pole Attachment Order*, 26 FCC Rcd. at 5261, para. 39 (concluding in response to commenters seeking broad indemnification for self-help make-ready work that “we presume that utilities could structure attachment agreements to . . . address liability or other concerns they might have in cases where they elect to perform make-ready themselves.”).

²⁷⁹ *See* CCU Wireline NPRM Comments at 24-25; CenturyLink Wireline NPRM Comments at 3; Comcast Wireline NPRM Comments at 18; Charter Wireline NPRM Comments at 37-38; EEI Wireline NPRM Comments at 3, 22;

Verizon that “any timeline change should be very cautious and include only targeted, incremental reforms” and with AT&T that “[e]xisting timelines are already challenging for some utilities to meet, and shortening those deadlines even further could compromise safety by encouraging workforces to rush or to take shortcuts to meet deadlines.”²⁸⁰ As a result, while we make changes aimed at speeding broadband deployment where the record indicates such changes would be workable and beneficial, we leave unchanged the pole attachment deadlines for the existing application review/survey, estimate, and acceptance stages.

a. Creating a More Efficient Pole Attachment Timeline

(i) Review of application for completeness

79. For the reasons discussed above, we adopt rules reflecting the same improvements to our definition of a complete pole attachment application and the same completeness review process as we do for the OTMR timeline, subject to one change to adjust for the fact that the utility conducts the survey under the non-OTMR process.²⁸¹ We adopt the BDAC’s recommendation and revise our existing pole attachment rules to define an application as complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-available requirements at the time of submission of the application, to begin to survey the affected poles.²⁸² While the current definition of a complete application only requires “information necessary under [the utility’s] procedures,”²⁸³ this revised definition requires more transparency on behalf of the utility as the master service agreement and public requirements will be available to new attachers as they prepare their applications. In addition, to prevent unnecessary delays in starting the pole attachment process, we adopt the same BDAC-recommended timeline as in our OTMR process for a utility to determine whether a pole attachment application is complete.²⁸⁴ We agree with ACA that providing a specific timeline for determining completeness offers all parties predictability about the start of the OTMR process and avoids unnecessary delays.²⁸⁵

80. We decline to make further changes at this time to our rules governing the process prior to the utility’s substantive review of a pole attachment application. Some new attachers ask that we curtail or eliminate what they describe as “burdensome” pre-application requirements imposed by some

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Electric Utilities Wireline NPRM Comments at 11-13; Frontier Wireline NPRM Comments at 15; POWER Coalition Wireline NPRM Comments at 5; Puget Sound Energy Wireline NPRM Comments at 3-5; Texas Office of Public Utility Counsel Wireline NPRM Comments at 2; APPA Wireline & Wireless NPRM Reply at 30; AT&T Wireline NPRM Reply at 1, 4-5; CWA Wireline NPRM Reply at 1; Midwest Electric Utilities Wireline NPRM Reply at 4-5; Verizon Wireline NPRM Reply at 10.

²⁸⁰ See AT&T Wireline NPRM Reply at 4-5; Verizon Wireline NPRM Reply at 10.

²⁸¹ See *supra* section III.A.1.c.(iii). Except for the distinction we identify, nothing about the complete application definition and completeness review process we adopt is dependent on or justified by which party performs the make-ready work.

²⁸² BDAC January 2018 Recommendations at 32; ACA Sep. 14, 2017 Wireline *Ex Parte* Letter at 5; CenterPoint Energy et al. May 25, 2018 *Ex Parte* Letter at 3 n.19.

²⁸³ 47 CFR § 1.1411(c).

²⁸⁴ See *supra* section III.A.1.c.(iii); BDAC January 2018 Recommendations at 32; see also ACA Sep. 14, 2017 Wireline *Ex Parte* Letter at 5.

²⁸⁵ ACA Sep. 14, 2017 Wireline *Ex Parte* Letter at 4-5; see also FBA July 20, 2018 Wireline *Ex Parte* at 3-4 (“The FBA believes these [application completeness and timing] rules will help reduce uncertainty and expedite the processing of applications.”). We decline to adopt ACA’s request that we tie review deadlines to an application’s submission date, rather than the date it is received. See ACA July 23, 2018 Wireline *Ex Parte* Letter at 5. Instead, we follow the BDAC OTMR recommendation that ties deadlines to receipt of the application by the utility, because the utility cannot begin to review the application until it has been received. See BDAC January 2018 Recommendations at 32.

utilities,²⁸⁶ such as “unnecessary” pole design and engineering analyses, the submission of a “pre-application” to allow utilities to determine make-ready costs, and the pre-payment of pole surveys and other fees.²⁸⁷ Because it is unclear from the record whether any pre-application requirements have the systematic effect of delaying broadband deployment, we find it premature to adopt rules governing these requirements and instead will address any onerous pre-application requirements on a case-by-case basis via our complaint procedures. We recognize that utility-imposed pre-application procedures can have value²⁸⁸ and can help to avoid incomplete or erroneous pole attachment applications, thus saving time in the process.²⁸⁹ Certain pre-application requests for information (e.g., the submission of pole loading analyses) can be important tools to address safety, reliability, and engineering concerns.²⁹⁰ We caution utilities, however, that any such requirements must be reasonable, nondiscriminatory, and applied fairly and efficiently.²⁹¹

(ii) Review of whether to grant complete application and survey

81. We decline to shorten the 45-day period in our existing rules during which the utility must review a complete pole attachment application and survey the affected poles for non-OTMR projects.²⁹² In so doing, we reject proposals by some attachers that we shorten the application review and survey stage²⁹³ because we agree with utility commenters that the existing 45-day timeframe accounts for demands on existing workforce, safety concerns, volume of pole attachment applications, and timing constraints.²⁹⁴ We also decline to adopt ACA’s proposal that a pole attachment application be deemed granted if the utility fails to act on an application within the 45-day timeframe.²⁹⁵ Failure by the utility to

²⁸⁶ See, e.g., Charter Wireline NPRM Comments at 36-37; ExteNet Wireline & Wireless NPRM Comments at 51; Lighttower Wireline NPRM Comments at 4-5; NCTA Wireline NPRM Comments at 6-7; ACA Wireline NPRM Reply at 19; Comcast Wireline & Wireless NPRM Reply at 10; Crown Castle Wireline NPRM Reply at 3-4.

²⁸⁷ See Charter Wireline NPRM Comments at 36-37; Lighttower Wireline NPRM Comments at 4-5; ACA Wireline NPRM Reply at 19; Crown Castle Wireline NPRM Reply at 3-5.

²⁸⁸ See CCU Wireline NPRM Reply at 18 (“Each pole must be analyzed to ensure that it has sufficient strength and space to accommodate the new pole attachment, and that applicable safety codes and standards can be achieved.”).

²⁸⁹ See Midwest Electric Utilities Wireline NPRM Comments at 17-18; CCU Wireline NPRM Reply at 12-13.

²⁹⁰ CCU Wireline NPRM Reply at 12-13, 16; Electric Utilities Wireline NPRM Reply at 17-19; POWER Coalition Wireline NPRM Reply at 11.

²⁹¹ See *2011 Pole Attachment Order*, 26 FCC Rcd at 5274, para. 73; see also POWER Coalition Wireline NPRM Reply at 11 (explaining that pre-application requirements “are designed precisely to facilitate the pole owner’s determination of whether any requested attachment would raise concerns of safety, reliability, and engineering”).

²⁹² We also clarify that nothing in our rules precludes a utility from using a new attacher to conduct a survey of the affected poles, at the utility’s expense, consistent with the requirements in section 1.1411(i)(1). See ACA July 23, 3018 Wireline *Ex Parte* Letter at 3, Attach. at 3.

²⁹³ See, e.g., NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter at Attach. at 1 (proposing 15-day application review and survey period); Charter Feb. 5, 2018 Wireline *Ex Parte* Letter at Attach. at 1 (proposing 30-day application review and survey period); ExteNet Wireline & Wireless NPRM Comments at 51-52 (same proposal as Charter); Lighttower Wireline NPRM Comments at 4.

²⁹⁴ See, e.g., AT&T Wireline NPRM Comments at 7-8; CCU Wireline NPRM Comments at 23; CenturyLink Wireline NPRM Comments at 8; CWA Wireline NPRM Comments at 7-8; EEI Wireline NPRM Comments at 20-21; Electric Utilities Wireline NPRM Comments at 11; Frontier Wireline NPRM Comments at 16; POWER Coalition Wireline NPRM Comments at i; Puget Sound Energy Wireline NPRM Comments at 3; Verizon Wireline NPRM Comments at 9; APPA Wireline NPRM Reply at 3, 30; Midwest Electric Utilities Wireline NPRM Reply at 5-6, 16; UTC Wireline NPRM Reply at 1.

²⁹⁵ See ACA July 23, 3018 Wireline *Ex Parte* Letter at 2, Attach. at 3; Letter from Thomas Cohen, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed July 25, 2018) (ACA July 25, 2018 Wireline *Ex Parte* Letter).

act on an application within the prescribed time period is a violation of our rules and, accordingly, use of our recently-adopted expedited pole access complaint procedure is available as a remedy.²⁹⁶

82. To make the survey and application review process more efficient and transparent, however, we adopt a change recommended by the BDAC and several commenters to require utilities to facilitate survey participation by new and existing attachers.²⁹⁷ Specifically, in performing a field inspection as part of any pre-construction survey, we modify our rules to require a utility to permit the new attacher and any existing attachers potentially affected by the new attachment to be present for any pole surveys.²⁹⁸ We require the utility to use commercially reasonable efforts to provide at least three business days' advance notice of any surveys to the new attacher and each existing attacher, such notice to include the date, time, and location of the survey, and the name of the contractor performing the survey.²⁹⁹ We find that advance notice of three business days strikes the right balance between providing sufficient time to accommodate coordination with the attachers and the need to keep the pole attachment process moving forward in a timely manner.³⁰⁰ We agree with ACA that by encouraging collaboration between all interested parties at an early stage in the pole attachment process, this requirement will facilitate "the expeditious development of solutions in advance of attachments, as well as reduce the potential for future disputes" and that it "reduce[s] the possibility of improper attachments, a concern raised by virtually all utility commenters."³⁰¹

83. In addition, to prevent unnecessary and wasteful duplication of surveys, we adopt a change to our rules that allows utilities to meet the survey requirement of our existing timeline by electing to use surveys previously prepared on the poles in question by new attachers. In the OTMR context, new attachers will perform the necessary surveys to determine whether make-ready work is simple or complex prior to the submission of an application.³⁰² To the extent such work is complex, it will be governed by our existing pole attachment timeline where the utility performs the survey and must give advance notice

²⁹⁶ See *Wireline Infrastructure Order*, 32 FCC Rcd at 11132-34, paras. 9-14.

²⁹⁷ See BDAC January 2018 Recommendations at 37; ACA Wireline NPRM Reply at 18-19; FBA Apr. 10, 2018 Wireline *Ex Parte* Letter at 4; FBA July 20, 2018 Wireline *Ex Parte* Letter at 4.

²⁹⁸ See, e.g., BDAC January 2018 Recommendations at 37 (stating that a joint survey requirement "would speed up the application process and lower the cost of attachments"); ACA Wireline NPRM Comments at 16-17.

²⁹⁹ See BDAC January 2018 Recommendations at 37. To prevent coordination problems that may invite delay, we do not require a utility to set a date for the survey that is convenient for the affected attachers. *Id.* at 40. However, in the case of reasonable scheduling conflicts, we encourage the parties to work together to find a mutually-agreeable time for the survey. As we did in the OTMR context, we reject AT&T's request to eliminate the notification requirement for surveys. See *supra* section III.A.1.c.(i); AT&T July 23, 2018 Wireline *Ex Parte* Letter at 5. Giving existing attachers the ability to attend the survey by providing advance notification increases collaboration between the parties and assists in identifying potential issues to ensure safety and network reliability. The failure of a utility to maintain adequate records to enable the utility to identify the attachers on its poles, which AT&T claims is typical, is not a sufficient reason for us to eliminate the notification requirement. See *id.*

³⁰⁰ In light of the BDAC's recommendation, reached after much deliberation by a wide variety of stakeholders, we deny ACA's request that we use calendar days rather than business days. See ACA July 23, 2018 Wireline *Ex Parte* Letter at Attach. at 2.

³⁰¹ ACA Wireline NPRM Reply at 18-19 (footnotes omitted); see also ACA Wireline NPRM Comments at 39 (noting that Central Hudson Gas & Electric Corp. gives attachers five days' notice of the survey and permits attachers to be present); FBA July 20, 2018 Wireline *Ex Parte* Letter at 4. But see Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 7 (claiming that the advance notification requirement would provide "no practical benefit to attachers because survey schedules "are often unpredictable.""). To provide utilities some measure of flexibility in complying with this requirement while still encouraging joint surveys to occur, we hold utilities to a "commercially reasonable efforts standard" to make the notifications.

³⁰² See *supra* section III.A.1.c.(i).

of the survey to affected attachers.³⁰³ However, we will allow the utility to elect to use the new attacher's previously performed survey (performed as part of the OTMR pole attachment process) to fulfill its survey requirements, rather than require the utility to perform a potentially duplicative survey. The utility still must notify affected attachers of its intent to use the new attacher's survey and provide a copy of the new attacher's survey in its notice. If the utility is relying solely on the new attacher's survey to fulfill the survey requirements, we agree with Crown Castle that it is appropriate to shorten the survey period from 45 days to 15 days to speed deployment.³⁰⁴

(iii) Make-ready stage

84. To speed broadband deployment, we amend our rules to reduce the deadlines for both simple and complex make-ready from 60 to 30 days (and from 105 to 75 days for large requests in the communications space). To account for the unique circumstances involved with attachments above the communications space,³⁰⁵ we maintain the current make-ready deadline of 90 days (and 135 days for large requests) for these attachments. We also adopt modified notice requirements to apportion more of the responsibility for promoting make-ready timeline compliance from utilities to new attachers, because new attachers have the greater incentive to drive adherence to the make-ready deadline.

85. *Make-ready deadlines.* Based on the current record and the BDAC's recommendation, we adopt a change to our rules that shortens the make-ready deadline for new pole attachments in the communications space to promote broadband deployment without imposing undue risk to safety or reliability.³⁰⁶ We agree with Crown Castle that adoption of a shorter make-ready period in the communications space will promote the efficient completion of make-ready by encouraging utilities and existing attachers to prioritize attachment work.³⁰⁷ We also agree with Google Fiber that a 30-day period for communications space make-ready (and 75 days for larger requests) "will ensure that existing attachers have the opportunity to control make-ready that is expected to affect their services, while reducing delays and increasing efficiency for new attachers."³⁰⁸ The make-ready timelines we adopt for work in the communication space should be sufficient for both simple and complex work.

86. While the BDAC recommended that we impose a 30-day deadline for complex make-ready work in the communications space,³⁰⁹ it did not make a recommendation on the deadline for simple make-ready work that is not subject to OTMR. We find that there is value to maintaining consistency of deadlines in the communications space; thus, we adopt the 30-day deadline for all communications space make-ready work.

87. To account for the safety concerns of working above the communications space, we maintain our current make-ready deadlines of 90 days (and 135 days for large requests).³¹⁰ In establishing the existing deadlines for make-ready above the communications space, which are 30 days longer than the existing deadlines for make-ready work in the communications space, the Commission pointed to the

³⁰³ See *infra* Appx. A, 47 CFR § 1.1411(c)(3).

³⁰⁴ Crown Castle July 25, 2018 Wireline *Ex Parte* Letter at 5.

³⁰⁵ See, e.g., Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 2; EEI July 26, 2018 Wireline *Ex Parte* Letter at 7-8.

³⁰⁶ See BDAC January 2018 Recommendations at 21, 24; ExteNet Wireline NPRM Comments at 52; Lightower Wireline NPRM Comments at 7; Crown Castle Wireline NPRM Reply at 11-12; Google Fiber Wireline NPRM Reply at 6.

³⁰⁷ Crown Castle Wireline NPRM Comments at 17.

³⁰⁸ Google Fiber Wireline NPRM Reply at 6.

³⁰⁹ BDAC January 2018 Recommendations at 21, 24; see also Google Fiber Wireline NPRM Comments at 7-8.

³¹⁰ See CCU Wireline NPRM Comments at 26-28; EEI Wireline NPRM Comments at 28-29; Midwest Electric Utilities Wireline NPRM Comments at 28-29; APPA Wireline NPRM Reply at 30; UTC July 26, 2018 Wireline *Ex Parte* Letter at 1; Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 2.

safety risks associated with working on attachments in, near, or above the electric space and the recognized lack of real-world experience at the time with pole-top attachments.³¹¹ We recognize that both utilities and attachers have more experience with these types of attachments than when the Commission adopted these deadlines in 2011,³¹² but the same safety risks identified by the Commission in 2011 are still relevant today,³¹³ and therefore we continue to allow for more time to complete make-ready above the communications space because such attachments involve work near electrical wires that require more careful work and more experienced contractors. However, we recognize the important role that attachments above the communications space can have in facilitating faster and more efficient wireless deployment (particularly the small cell deployments necessary for advanced 5G networks),³¹⁴ and therefore, as described below, we make the self-help remedy applicable to these attachments for the first time, which we anticipate will speed deployment by providing a strong incentive for utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when deadlines are not met.³¹⁵

88. For all attachments, we retain as a safeguard our existing rule allowing utilities to deviate from the make-ready timelines for good and sufficient cause when it is infeasible for the utility to complete make-ready work within the prescribed time frame.³¹⁶ This safeguard will mitigate the effects of our decrease in the make-ready time periods by carving out edge cases where timely completion is truly infeasible and the utility wishes to retain control of the make-ready process. It aids us in balancing the interests of utilities to control make-ready in non-OTMR circumstances and the needs of new attachers to obtain timely completion of OTMR or the ability to employ self-help.

89. Recognizing that our new timeline will put pressure on existing attachers, particularly with respect to poles that have multiple attachers that must conduct complex make-ready work within a shorter timeframe, we adopt a new safeguard for existing attachers. Specifically, we adopt the BDAC recommendation that an existing attacher may deviate from the 30-day deadline for complex make-ready in the communications space (or the 75-day deadline in the case of larger orders) for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready by the deadline.³¹⁷ An existing attacher that so deviates must immediately notify, in writing, the new attacher

³¹¹ See *2011 Pole Attachment Order*, 26 FCC Rcd at 5258-59, para. 33.

³¹² See AT&T Wireline NPRM Comments at 14; Verizon Wireline NPRM Reply at 11; Crown Castle Wireline NPRM Comments at 18; see also AT&T Wireline NPRM Reply at 6 (commenting that since 2011, “pole owners, wireless providers, and contractors have become more, not less, knowledgeable about and proficient at safely deploying antennas and other equipment on utility poles”).

³¹³ See CCU Wireline NPRM Comments at 26-28; EEI Wireline NPRM Comments at 28-29; Midwest Electric Utilities Wireline NPRM Comments at 28-29; APPA Wireline NPRM Reply at 30; UTC July 26, 2018 Wireline *Ex Parte* Letter at 1; Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 2.

³¹⁴ See ExteNet Wireline NPRM Comments at 52; AT&T Wireline NPRM Reply at 6-7; Crown Castle Wireline NPRM Reply at 12-13; Verizon Wireline NPRM Reply at 11.

³¹⁵ See *infra* section III.A.2.b.

³¹⁶ *2011 Pole Attachment Order*, 26 FCC Rcd at 5272-73, para. 68. We agree with ACA that a utility that so deviates may do so for a period no longer than necessary to complete make-ready on the affected poles and must immediately notify, in writing, the new attacher and affected existing attachers, identify the affected poles, and include a detailed explanation of the basis for the deviation and a new completion date. See ACA July 23, 2018 Wireline *Ex Parte* Letter at Attach. at 6; see also *infra*, Appx. A, 47 CFR § 1.1411(h)(2). A new attacher may challenge the utility’s determination for deviating from the make-ready timeline if the utility’s rationale is not justified by good and sufficient cause. *2011 Pole Attachment Order*, 26 FCC Rcd at 5273, para. 68.

³¹⁷ BDAC January 2018 Recommendations at 21; see also Level 3 Wireline NPRM Comments at 3 (“New attachers must provide 30 days’ written notice for complex make ready to allow a field meeting to be scheduled within that 30 days . . . The existing attacher will have 60 days from the date of notice to perform Complex Make Ready if the technicians mutually agree to such extension in the field meeting.”); Oregon Electric Utilities Wireline NPRM

and other affected existing attachers, identify the affected poles, and include a detailed explanation of the basis for the deviation and a new completion date, which cannot extend beyond 60 days from the date of the utility make-ready notice to existing attachers (or 105 days in the case of larger orders). The existing attacher shall deviate from the complex make-ready time limits for a period no longer than necessary to complete make-ready on the affected poles. If the complex make-ready work is not complete within 60 days from the date that the existing attacher sends the notice to the new attacher, then the new attacher can complete the work using a utility-approved contractor.³¹⁸ We require existing attachers to act in good faith in obtaining an extension, and we caution that obtaining an extension as a routine matter or for the purpose of delaying the new attachment is inconsistent with acting in good faith. If a new attacher believes the existing attacher is not using the extension period in good faith, it may file a complaint with the Commission.

90. We reject AT&T's request for a uniform 60-day time period for complex make-ready.³¹⁹ Although AT&T's proposal might provide more predictability, we find that the BDAC recommendation better speeds deployment by setting a shorter 30-day period for complex make-ready in the communications space and allowing for additional time in that context only on a case-by-case basis.

91. We further accelerate communications space attachments by eliminating the optional 15-day extension period for the utility to complete the make-ready work.³²⁰ Many commenters and the BDAC support elimination of the extra 15 days at the end of the make-ready stage because few, if any, utilities actually invoke the extension.³²¹ However, with respect to work above the communications space, we retain the optional 15-day extension period for utility make-ready.³²² Because we are extending a new attacher's self-help remedy to attachments above the communications space, more utilities may need to use the additional 15 days to perform such make-ready work themselves.³²³ Further, retaining this extra period promotes safety and reliability of the electric grid by granting the utility extra time to undertake the work itself. To the extent utilities do not intend to avail themselves of the additional 15 days before a new attacher resorts to self-help above the communications space, we strongly encourage utilities to communicate that intent as soon as possible to new attachers so that the new attacher can promptly begin make-ready work.

92. We decline to reduce the timeline for large attachments beyond the 30-day decrease for communications space attachments set forth above. While Crown Castle advocates for eliminating the additional time afforded to large pole attachment requests because of the resulting extra delay to the pole

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Comments at 5 (when make-ready requires more than 45 days to complete, the parties must negotiate "a mutually satisfactory longer period to complete the make ready work.").

³¹⁸ BDAC January 2018 Recommendations at 21; *see also* AT&T-CWA Jan. 16, 2018 Wireline *Ex Parte* Letter at 3. If no utility-approved contractor is available, then the new attacher must follow the procedures outlined *infra* in section III.A.2.c. for choosing an appropriate contractor.

³¹⁹ Letter from Ola Oyefusi, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2 (filed Mar. 23, 2018).

³²⁰ *See* 47 CFR § 1.1411(e)(1)(iv).

³²¹ *See* BDAC January 2018 Recommendations at 46 ("[B]ased on information that utilities rarely, if ever, assert their right to complete make-ready work that is uncompleted by existing attachers within 15 days, Committee members agreed to remove this obligation on utilities, which would facilitate a requesting attacher completing make-ready work as quickly as possible."); AT&T Wireline NPRM Comments at 13; Frontier Wireline NPRM Comments at 15; USTelecom Wireline NPRM Comments at 17; Lumos Wireline NPRM Reply at 6-7.

³²² *See* 47 CFR § 1.1411(e)(2)(iv).

³²³ *Cf.* CenturyLink Wireline NPRM Comments at 10.

attachment process,³²⁴ we agree with commenters that argue that the additional time is often needed for utilities to carefully process larger requests.³²⁵ As AT&T explains “more attachments on more poles require more surveys, more coordination with attachers, and more make-ready work. That additional work, much of which involves site visits, requires additional time.”³²⁶

93. We also decline the request of some commenters to adopt a shorter timeline for routine pole attachment requests involving a small number of poles.³²⁷ We agree with the Coalition of Concerned Utilities that mandating shorter deadlines for smaller requests could cause the utilities to give undue priority to those requests merely because they are smaller in order to meet the compressed deadlines.³²⁸ In addition, the Coalition of Concerned Utilities claims that new attachers have been shown to abuse the process in states where utilities are required to process smaller applications more quickly by submitting a series of smaller applications (as opposed to one large application) to ensure that utilities focus on their applications first.³²⁹ We do not want to incentivize possible gamesmanship by instituting a federal requirement of shorter deadlines for smaller requests.

94. *Notice and New Attacher Role.* We adopt the BDAC recommendation that when a utility provides the required make-ready notice to existing attachers, then it must provide the new attacher with a copy of the notice, plus the contact information of existing attachers to which the notices were sent, and thereafter the new attacher (rather than the utility) must take responsibility for encouraging and coordinating with existing attachers to ensure completion of make-ready work on a timely basis.³³⁰ We adopt this additional notice requirement to empower the new attacher to promote the timely completion of make-ready.³³¹ As explained by the POWER Coalition, “the new attacher is in the better position to manage the work of existing attachers, to impose reasonable deadlines, and to negotiate compensation for

³²⁴ See Crown Castle Wireline NPRM Comments at 17-18.

³²⁵ See e.g., AT&T Wireline NPRM Comments at 10; CenturyLink Wireline NPRM Comments at 10; EEI Wireline NPRM Comments at 22; Midwest Electric Utilities Wireline NPRM Comments at 20; UTC Wireline NPRM Reply at 10-11.

³²⁶ AT&T Wireline NPRM Comments at 10.

³²⁷ See NTCA Wireline NPRM Comments at 6-7 (would apply to requests by smaller providers for routine attachments involving 100 or fewer poles in a six-month period); WTA Wireline NPRM Comments at 18 (would apply to pole attachment requests involving 50 or fewer poles); ACA Wireline NPRM Reply at 20-22 (would apply to routine pole attachment requests involving 20 or fewer poles); Charter Feb. 5, 2018 Wireline *Ex Parte* Letter at 3 (would apply to applications of 30 or fewer poles).

³²⁸ See CCU Wireline NPRM Reply at 23.

³²⁹ *Id.* (noting that “[i]n order to treat attaching entities in a nondiscriminatory manner, utilities typically process applications in the order they are received, no matter the size if [*sic*] the application”).

³³⁰ See BDAC January 2018 Recommendations at 46; Electric Utilities Wireline NPRM Comments at 20; POWER Coalition Wireline NPRM Comments at 11-12; Letter from Thomas Cohen and J. Bradford Currier, Counsel to ACA, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-84, at 6 (filed Mar. 26, 2018) (ACA Mar. 26, 2018 Wireline *Ex Parte* Letter); FBA Apr. 10, 2018 Wireline *Ex Parte* Letter at 4; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at Attach. at 3. We decline ACA’s request that we require utilities to provide new attachers with specific contact information, such as e-mail addresses and telephone numbers. See ACA 2018 July 23, 2018 Wireline *Ex Parte* Letter at Attach. at 5. While we encourage utilities to provide as much existing attacher contact information to new attachers as possible, we recognize that utilities may not always have every form of contact information we may specify.

³³¹ At the same time, we expect existing attachers to respond in a timely manner to requests from new attachers for information, including estimated completion dates and work status updates, and to cooperate with new attachers and other existing attachers to complete make-ready prior to the date set in the notice. See ACA July 23, 2018 Wireline *Ex Parte* Letter at 2-3, Attach. at 5.

the work performed.”³³²

95. *Delivery of Power.* We decline to amend our rules to require that the make-ready process include the delivery of electric power to a new attachment.³³³ As pointed out by utility commenters, the provision of electric service is outside of our jurisdiction, as it is governed by the Federal Energy Regulatory Commission and state law.³³⁴ We recognize, however, that electricity is critical to powering wireline and wireless equipment and that any delay in supplying power to a new attachment is an impediment to broadband deployment.³³⁵ We therefore strongly encourage utilities and new attachers to work together to avoid delays in delivering power to new attachments.

b. Enhancing the Self-Help Remedy

96. In the interest of speeding broadband deployment, we modify our rules to provide a self-help remedy to new attachers for work above the communications space, including the installation of wireless 5G small cells, when the utility or existing attachers have failed to complete make-ready work within the required time frames. We recognize that despite widespread agreement that make-ready work often extends past Commission-prescribed timelines,³³⁶ and new attachers’ frustration with delays caused by missed deadlines for make-ready work,³³⁷ the record shows that, at present, new attachers rarely invoke the existing self-help remedy in the communications space.³³⁸ In the interest of ensuring that new attachers are able to exercise the self-help remedy, we take this opportunity to reiterate its availability and modify our rules to provide a process for new attachers to communicate their intent to engage in self-help to the utility and existing attachers. These steps, together with the changes we make to the process for new attachers to hire contractors to conduct self-help work, should encourage the use of self-help where necessary and strengthen the incentive for utilities and existing attachers to complete work on time.

97. *Self-Help Above the Communications Space.* In the *2011 Pole Attachment Order*, the Commission declined to apply a self-help remedy for survey and make-ready work for pole attachments “located in, near, or above the electric space.”³³⁹ After further consideration and in light of the national importance of a speedy rollout of 5G services, we amend our rules to allow new attachers to invoke the self-help remedy for work above the communications space, including the installation of wireless 5G

³³² POWER Coalition Wireline NPRM Comments at 11-12; *see also* Electric Utilities Wireline NPRM Comments at 20 (requesting we make clear that “beyond an initial notification regarding the need for and nature of make-ready, the pole owner has no further notification or coordination obligations.”); ACA Mar. 26, 2018 Wireline *Ex Parte* Letter at 6 (asking that we require “the utility to notify existing attachers about the need for and nature of make-ready work and to provide that information to the new attacher, who then will be responsible for following-up with existing attachers on that work.”); Letter from Ola Oyefusi, Director, Federal Regulatory, AT&T to Marlene H. Dortch, Secretary, FCC, WC Docket 17-84, at 1-2 (filed April 19, 2018) (advocating for the new attacher to serve as “project manager” for the make-ready process).

³³³ *See* Crown Castle Wireline NPRM Comments at 21-22; Lightower Wireline NPRM Comments at 7-8.

³³⁴ *See* CCU Wireline NPRM Reply at 24-25; EEI Wireline NPRM Reply at 9; Electric Utilities Wireline NPRM Reply at 9-12; Midwest Electric Utilities Wireline NPRM Reply at 28; POWER Coalition Wireline NPRM Reply at 10.

³³⁵ *See* Crown Castle Wireline NPRM Comments at 21-22; Lightower Wireline NPRM Comments at 7-8.

³³⁶ *See* CCU Wireline NPRM Comments at 11-12; FBA Wireline NPRM Comments at 4; Google Fiber Wireline NPRM Comments at 11-12; CMA Report at 1-2, 6; INCOMPAS Feb. 13, 2018 Wireline *Ex Parte* Letter at Attach. at 2-3; NCTA Apr. 4, 2018 Wireline *Ex Parte* Letter at 2; *see also* BDAC January 2018 Recommendations at 19-20.

³³⁷ *See* ACA Wireline NPRM Comments at 20; CCU Wireline NPRM Comments at 11; FBA Wireline NPRM Comments at 4; Google Fiber Wireline NPRM Comments at 11-12; CMA Report at 1-2, 6-7; INCOMPAS Feb. 13, 2018 Wireline *Ex Parte* Letter at Attach. at 2-3; NCTA Apr. 4, 2018 Wireline *Ex Parte* Letter at 2.

³³⁸ *See* BDAC January 2018 Recommendations at 43-46; ACA Wireline NPRM Comments at 44; FBA Apr. 10, 2018 Wireline *Ex Parte* Letter at 4; Verizon July 2, 2018 Wireline *Ex Parte* Letter at 3.

³³⁹ *See 2011 Pole Attachment Order*, 26 FCC Red at 5262, para. 42.

small cells, when utilities and existing attachers have not met make-ready work deadlines.³⁴⁰ Accenture estimates that wireless providers will invest \$275 billion dollars over the next decade to deploy 5G, which is expected to create three million new jobs across the country and boost the U.S. gross domestic product by half a trillion dollars.³⁴¹ As CTIA explains, the network infrastructure needed to support 5G cannot wait, and it is incumbent on the Commission to quickly eliminate barriers to, and encourage investment in, 5G deployment.³⁴² Although we do not allow wireless attachers to perform their own work in the first instance for safety and equipment integrity reasons, we nonetheless give them the ability to use self-help to complete make-ready when utilities miss their deadline.

98. Until now, the only remedy for missed deadlines for work above the communications space has been filing a complaint with the Commission's Enforcement Bureau.³⁴³ We agree with commenters that argue that complaints are an important but insufficient tool for encouraging compliance with our deadlines and speeding broadband deployment.³⁴⁴ We expect the availability of self-help above the communications space will strongly encourage utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when they do not.³⁴⁵ As described by Crown Castle, the extension of the self-help remedy to attachments above the communications space closes "a significant gap in the Commission's rules that leaves Crown Castle without a meaningful remedy when the electric utility fails to perform make-ready work in a timely fashion."³⁴⁶

99. We recognize the valid concerns of utilities regarding the importance of safety and equipment integrity, particularly in the electric space,³⁴⁷ and we take several steps to address these

³⁴⁰ We reject the request of AEP/Georgia Power that we "issue a Further Notice of Proposed Rulemaking on this issue." AEP/Georgia Power July 23, 2018 *Ex Parte* Letter at 3; *see also* EEI July 26, 2018 Wireline *Ex Parte* Letter at 9 (requesting a further notice regarding self-help above the communications space); Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 3 (positing that the electric utilities assist in developing "an alternative proposal for rules that incentivize timely performance, rather than penalizing untimely performance"). In response to our request for comments on potential reforms to our current pole attachment timeline to facilitate timely access to poles, we assembled a record on the issue of self-help above the communications space and received comments and additional filings from both those in favor and opposed to the idea. *See Wireline Infrastructure Notice*, 32 FCC Rcd at 3268, paras. 6-7. We also reject Georgia Power's request to limit self-help above the communications space to only wireless attachments. *See* Letter from Allen Bell, Distribution Manager, Georgia Power Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1 (filed July 27, 2018). Although Georgia Power asserts that such a distinction would "reduce the safety and reliability threat," it offers no evidence in support of this claim. *Id.*

³⁴¹ *See* CTIA Wireline NPRM Comments at 4 (quoting Accenture Strategy, Smart Cities – How 5G Can Help Municipalities Become Vibrant Smart Cities at 1 (Jan. 12, 2017), https://newsroom.accenture.com/content/1101/files/Accenture_5G-Municipalities-Become-Smart-Cities.pdf).

³⁴² *See* CTIA Wireline NPRM Comments at 5.

³⁴³ *See 2011 Pole Attachment Order*, 26 FCC Rcd at 5262, paras. 42-43. We are not aware of any such complaints being filed since 2011.

³⁴⁴ *See* ACA Wireline NPRM Comments at 32; *see also* Crown Castle Wireline NPRM Comments at 19.

³⁴⁵ *See* ACA Wireline NPRM Comments at 46 ("The [self-help] process also would provide an incentive for utilities and existing attachers to conduct necessary make-ready works in a timely fashion to prevent other companies from moving their equipment."); FBA July 20, 2018 Wireline *Ex Parte* Letter at 4.

³⁴⁶ Crown Castle Wireline NPRM Comments at 19.

³⁴⁷ *See* CCU Wireline NPRM Comments at 28-29; Electric Utilities Wireline NPRM Comments at 8-11; POWER Coalition Wireline NPRM Comments at 11; Puget Sound Energy Wireline NPRM Comments at 5; Texas Office of Public Utility Counsel Wireline NPRM Comments at 3-4; EEI Wireline NPRM Reply at 20-21; Midwest Electric Utilities Wireline NPRM Reply at 24; Letter from Thomas R. Pryatel, Director, Energy Delivery-Operations Services, FirstEnergy Service Company, to Ajit Pai, Chairman, FCC, WC Docket No. 17-84, at 1-3 (filed July 23, 2018) (FirstEnergy July 23, 2018 Wireline *Ex Parte* Letter); Letter from Thomas B. Magee, Counsel to CCU, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed July 25, 2018) (CCU July 25, 2018 *Ex Parte* Letter); Letter from Ken Johnson, VP Reg. & Gov. Affairs, Puget Sound Energy, to Marlene H. Dortch,

important issues. As an initial matter, in response to concerns expressed by utilities,³⁴⁸ we maintain the 90-day period (135 for larger requests) for the utility to complete make-ready. In the event that new attachers must resort to self-help above the communications space, the new attacher must use a qualified contractor, that is pre-approved by the utility, to do the work.³⁴⁹ While some utilities argue that contractors working for third parties will not adhere to the utility's procedures for ensuring the integrity of electric distribution facilities,³⁵⁰ the utility will have full control over the contractor pre-approval process and therefore will be able to require that contractors who wish to be placed on the utility-approved list adhere to utility protocols for working in the electric space, even when the contractor is retained by a third-party communications attacher. In addition, we reiterate that utilities will have the opportunity to identify and address any safety and equipment concerns when they receive advance self-help notice and post-completion notice from the new attacher.³⁵¹ Our rules also contain additional pre-existing protections for utilities that empower them to promote safety and reliability.³⁵² Finally, utilities may prevent self-help from being invoked by completing make-ready on time. Because electric utilities always will have the opportunity to complete make-ready work before self-help is triggered, have control over which contractors will be allowed to perform self-help, and will have the opportunity to be present when the self-help make-ready work is performed, we disagree with FirstEnergy that our new rules "risk loss of control for every expansion of capacity to accommodate new attachments."³⁵³

100. We also disagree with FirstEnergy's suggestion that we lack jurisdiction to allow for self-help above the communications space because Congress granted jurisdiction to the Commission only over poles and not "electrical equipment attached to the poles."³⁵⁴ Our rules are designed to facilitate timely and non-discriminatory access to poles for attachments, and the action we take herein falls well within the Commission's jurisdiction.³⁵⁵ While Section 224(f)(2) of the Act gives utilities the ability to deny

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Secretary, FCC at 1-2 (filed July 25, 2018) (Puget Sound Energy July 25, 2018 Wireline *Ex Parte* Letter); Hawaiian Electric July 25, 2018 Wireline *Ex Parte* Letter at 5; EEI July 26, 2018 Wireline *Ex Parte* Letter at 8; Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 2; UTC July 26, 2018 Wireline *Ex Parte* Letter at 3. *But see* Verizon July 26, 2018 Wireline OTMR *Ex Parte* Letter at 5 (arguing that the "Commission should reject requests to eliminate the . . . self-help remedy for make-ready work above the communications space).

³⁴⁸ See, e.g., Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 2; EEI July 26, 2018 Wireline *Ex Parte* Letter at 7-8.

³⁴⁹ See ACA Wireline NPRM Comments at 45; Crown Castle Wireline NPRM Comments at 19; Lighttower Wireline NPRM Comments at 13-14.

³⁵⁰ See FirstEnergy July 23, 2018 Wireline *Ex Parte* Letter at 2; AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter at 3; CCU July 25, 2018 Wireline *Ex Parte* Letter at 3; Puget Sound Energy July 25, 2018 Wireline *Ex Parte* Letter at 1-2; EEI July 26, 2018 Wireline *Ex Parte* Letter at 9; UTC July 26, 2018 Wireline *Ex Parte* Letter at 3-4.

³⁵¹ See CenturyLink Wireline NPRM Comments at 11; Liberty Cablevision of Puerto Rico Wireline NPRM Comments at 8-9; Midwest Electric Utilities Wireline NPRM Comments at 27; POWER Coalition Wireline NPRM Comments at 12; ACA Wireline NPRM Reply at 27-28; NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter at Attach. at 6; BDAC January 2018 Recommendations at 42.

³⁵² See *infra* Appx. A, 47 CFR § 1.1412(d) (stating that when self-help surveys and make-ready work result in disputes between attachers and an electric utility, the consulting electric utilities are entitled to make final determinations "on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes"); 47 CFR § 1.1411(e)(2)(iv) (providing the utility 15 days to complete work beyond other attachers).

³⁵³ FirstEnergy July 23, 2018 Wireline *Ex Parte* Letter at 3.

³⁵⁴ *Id.*

³⁵⁵ See *2011 Pole Attachment Order*, 26 FCC Rcd at 5282, para 91 (stating "the broad language of section 224(b)(1) and (b)(2) indicate a delegation of comprehensive rulemaking authority over all attachment issues, including access" and that Section 224(f) is a further broad mandate of "nondiscriminatory" access with a specific carve-out for certain

applications for new attachments due to lack of capacity, as stated by First Energy, and for “safety, reliability, and generally applicable engineering purposes,” their discretion under Section 224(f)(2) is not “unfettered.”³⁵⁶ And in any event, the actions we take here do not abridge a utility’s ability to deny access on a non-discriminatory basis as provided for by Section 224(f)(2).³⁵⁷

101. *Pole Replacements.* We agree with parties that argue that the self-help remedy should not be available when pole replacements are required as part of make-ready.³⁵⁸ The record shows that pole replacements can be complicated to execute and are more likely to cause service outages or facilities damage.³⁵⁹ Given the particularly disruptive nature of this type of work, we make clear that pole replacements are not eligible for self-help.

102. *Self-Help Notices.* Similar to the pre- and post-work notice requirements we adopt in the new OTMR process, and consistent with the BDAC’s recommendation, we require new attachers to give affected utilities and existing attachers (1) no less than three business days advance notice for self-help surveys and five days’ advance notice of when self-help make-ready work will be performed and a reasonable opportunity to be present,³⁶⁰ and (2) notice no later than 15 days after make-ready is complete on a particular pole so that they have an opportunity to inspect the make-ready work.³⁶¹ Just as in the

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conditions where electric utilities may deny access to their “poles, ducts, conduits, or rights-of-way”); *see also Implementation of Section 224 of the Act*, WC Docket No. 07-245, *A National Broadband Plan for our Future*, GN Docket No. 09-51, Order and Further Notice Proposed Rulemaking, 25 FCC Rcd 11864, 11873, para. 17 (2010) (“We hold that access to poles, including the preparation of poles for attachment, commonly termed ‘make-ready,’ must be timely in order to constitute just and reasonable access.”).

³⁵⁶ See 47 U.S.C. § 224(f)(2); First Energy July 23, 2018 Wireline *Ex Parte* Letter at 3; *Southern Co. v. FCC*, 293 F.3d 1338, 1348 (11th Cir. 2002). For example, the D.C. Circuit has upheld the Commission’s interpretation that capacity is not insufficient where facility rearrangement in the existing space using traditional methods of attachment can accommodate the request. *See Gulf Power Co. v. FCC*, 669 F.3d 320, 325 (D.C. Cir. 2012). In the *2011 Pole Attachment Order*, the Commission further clarified that “where rearrangement of a pole’s facilities--whether in the communications space or the electric space--can accommodate an attachment, there is not “insufficient capacity” under section 224(f)(2). . . . We do not equate capacity expansion with facility rearrangement in existing space.” 26 FCC Rcd 5240, paras. 231-32 (2011).

³⁵⁷ The retained and modified rules include opportunities and safeguards for utilities to exercise their right under Section 224(f)(2), including instances where there are valid concerns about “safe and reliable operation of the electric system” or “electrical equipment attached to the poles.” *See* First Energy July 23, 2018 Wireline *Ex Parte* Letter at 2, 3 (emphasis in original); 47 CFR § 1.1413(d); Appx. A, 47 CFR §§ 1.1412(c), 1.1412(h)(2), 1.1412(i)(2)(i).

³⁵⁸ *See* AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter at 3; Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 3; UTC July 26, 2018 Wireline *Ex Parte* Letter at 1, 3.

³⁵⁹ *See* Google Fiber Apr. 12, 2018 Wireline *Ex Parte* Letter at 2; Midwest Electric Utilities Wireline NPRM Reply at 25-26; Puget Sound Energy Wireline NPRM Comments at 7-8.

³⁶⁰ In our new OTMR-based pole attachment process, we require that new attachers provide no less than three business days’ advance notice for surveys and 15 days advance notice for make-ready. *See supra* sections III.A.1.c.(i), (v). The notice period to commence self-help make-ready is 10 days shorter than in the OTMR process because the utility and existing attachers have at least 30 days to perform make-ready prior to the new attacher electing self-help. *See* ACA Wireline NPRM Comments at 46 (proposing 7-day self-help make-ready notice period).

³⁶¹ Just as in the OTMR context, the new attacher’s post-make-ready notice must provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready work done on a particular pole. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage to their equipment or any code (e.g., safety, electrical, engineering, construction) violations caused by make-ready conducted by the new attacher. If the utility or existing attachers discover damage or any code violations caused by make-ready conducted by the new attacher on equipment belonging to the utility or an existing attacher, then the utility or existing attacher shall inform the new attacher and provide adequate documentation of the damage or code violations. The utility or existing attacher may either (A) complete any

OTMR context, the advance notice must include the date and time of the work, the nature of the work, and the name of the contractor being used by the new attacher.³⁶² As in the OTMR context, we also require new attachers to provide immediate notice to the affected utility and existing attachers if the new attacher's contractor damages equipment or causes an outage that is reasonably likely to interrupt the provision of service.³⁶³ We find that these self-help notices will promote safe, reliable work and provide the opportunity for corrections where needed, as well as allow utilities and existing attachers to alert their customers of the work.³⁶⁴ In this context, we also find that the notices will help to address complaints that utilities are not receiving consistent notices from attachers regarding critical steps in the pole attachment process.³⁶⁵

103. At the request of numerous commenters,³⁶⁶ we also take this opportunity to reiterate that under our existing rules, the make-ready clock runs simultaneously and not sequentially for all existing attachers, and the utility must immediately notify at the same time all entities with existing attachments

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necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations, or (B) require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher. *See supra* section III.A.1.c.(vi); CenturyLink Wireline NPRM Comments at 11; Liberty Cablevision of Puerto Rico Wireline NPRM Comments at 9; Midwest Electric Utilities Wireline NPRM Comments at 27; POWER Coalition Wireline NPRM Comments at 11-12; ACA Wireline NPRM Reply at 28; Charter Feb. 5, 2018 Wireline *Ex Parte* Letter at 1; NCTA Mar. 5, 2018 Wireline *Ex Parte* Letter at Attach. at 6; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter at Attach. at 4. To maintain consistency with the OTMR rules, we decline to adopt ACA's suggestion to eliminate the 14-day notice period. *See* ACA July 23, 2018 Wireline *Ex Parte* Letter at Attach. at 7. Similarly, we decline EEI and UTC's proposal to enact an additional period for re-inspection of the new attacher's repair. *See* EEI July 26, 2018 Wireline *Ex Parte* Letter at 6; UTC July 26, 2018 Wireline *Ex Parte* Letter at 3. The utility is free to inspect the new attacher's repair at any time without us having to mandate further processes.

³⁶² *See supra* sections III.A.1.c.(i), (v). Similar to our finding with regard to the OTMR process, we find that the utility and existing attachers should be responsible for any expenses associated with double-checking the self-help work performed by the new attacher's contractors, including any post-make-ready inspections. *See supra* section III.A.1.a.; *see also* Google Fiber July 23, 2018 Wireline *Ex Parte* Letter at 2; Verizon July 26, 2018 Wireline OTMR *Ex Parte* Letter at 7. *But see* NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2, 4 (arguing that existing attachers should be reimbursed by the new attacher for expenses associated with monitoring the new attacher's self-help survey and make-ready work); CWA July 26, 2018 Wireline *Ex Parte* Letter at 4 (arguing same). We find that the new attacher should not be penalized when existing attachers and the utility miss their deadlines by holding a new attacher responsible for both the costs of doing the work itself and reimbursing the expenses of the utility and existing attachers to monitor and inspect that work.

³⁶³ *See supra* section III.A.1.c.(v); *see also infra* Appx. A, 47 CFR § 1.1411(j)(4)(ii). As in the OTMR context, upon receiving notice of damaged equipment or a service outage, the utility or existing attacher can either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or outage or require the new attacher to fix the damage or outage at its expense immediately following notice from the utility or existing attacher. Upon notice from the existing attacher or the utility to fix damages or outages caused by a contractor, the new attacher must complete the repair work before it can resume its make-ready work. Where the utility or the existing attacher elects to fix the damage or outage, the new attacher can only continue with make-ready work if it does not interfere with the repair work being conducted by the utility or existing attacher. *See infra* Appx. A 47 CFR § 1.1411(i)(2)(ii).

³⁶⁴ For the same reasons as in the OTMR context, we decline NCTA's proposal to codify a complaint right under the pole attachment rules for existing attachers for violations of the self-help rules. *See* NCTA July 18, 2018 Wireline *Ex Parte* Letter at 2, 4; *supra* section III.A.1.

³⁶⁵ *See* Midwest Electric Utilities Wireline NPRM Comments at 27.

³⁶⁶ *See* Google Fiber Wireline NPRM Comments at 11-12; AT&T Wireline NPRM Reply at 11 (asserting that concerns with sequential make-ready can be resolved by clarifying that there is only one make-ready period applicable to all existing attachers); Lumos Wireline NPRM Reply at 5; CMA Report at 1-2, 6; *see also* ACA Wireline NPRM Comments at 20; CCU Wireline NPRM Comments at 11; Charter Wireline NPRM Comments at 34-35; BDAC January 2018 Recommendations at 19.

that are affected by the proposed make-ready work.³⁶⁷ We recognize that coordinating work among existing attachers may be difficult, particularly for poles with many attachments, and existing attachers that are not the first to move may in some circumstances receive limited or even no time for work during the make-ready stage.³⁶⁸ Despite these challenges, we expect utilities, new attachers, and existing attachers to work cooperatively to ensure that pole attachment deadlines are met. If others do not meet their deadlines, new attachers then may invoke the self-help remedy.³⁶⁹

c. Contractor Selection for Self-Help

104. We adopt different approaches to new attacher contractor selection for simple and non-simple self-help make-ready. Given that simple self-help and OTMR are substantially similar, we adopt the same approach to contractor selection for simple self-help in the communications space as for OTMR, and we do so for the same reasons set forth above.³⁷⁰ Thus, consistent with the OTMR regime:

- A new attacher electing self-help for simple work in the communications space must select a contractor from a utility-maintained list of qualified contractors, where such a list is available. The contractor must meet the same safety and reliability criteria as contractors authorized to perform OTMR work. New and existing attachers may request that qualified contractors be added to the utility's list and the utility may not unreasonably withhold its consent for such additions.
- Where no utility-maintained list is available, or no utility-approved contractor is available within a reasonable time period, the new attacher must select a contractor that meets the same safety and reliability criteria as contractors authorized to perform OTMR work and any additional non-discriminatory, written, and publicly-available criteria relating to safety and reliability that the utility specifies. The utility may veto the new attacher's contractor selection so long as it offers another available, qualified contractor.

105. For complex work and work above the communications space, we take a different approach and require new attachers to select a contractor from the utility's list. We also require utilities to make available and keep up-to-date a reasonably sufficient list of contractors they authorize to perform complex and non-communications space self-help surveys and make-ready work.³⁷¹ We thus maintain our existing contractor selection requirements as to complex self-help in the communications space and extend those requirements to self-help above the communications space.³⁷²

106. We treat the utility list as mandatory for complex and above the communications space work for several reasons. These types of make-ready can involve greater risks than simple make-ready, and we agree with numerous commenters that utility selection of eligible contractors promotes safe and

³⁶⁷ See 47 CFR § 1.1411(e); see also AT&T-CWA Jan. 16, 2018 Wireline *Ex Parte* Letter at 3 (“Sequential timelines are not and have never been contemplated or required by existing Commission rules.”).

³⁶⁸ See Google Fiber Feb. 1, 2018 Wireline *Ex Parte* Letter at 3; see also *supra* section III.A.1.a. We encourage coordination to ensure that each existing attacher receives the time it needs to complete make-ready.

³⁶⁹ See 47 CFR § 1.1411(e)(1)(v); 2011 *Pole Attachment Order*, 26 FCC Rcd at 5265, para. 49.

³⁷⁰ See *supra* section III.A.1.b.

³⁷¹ We decline AT&T's request to exempt LEC pole owners from the requirement to maintain a list of approved contractors for work above the communications space. See AT&T July 23, 2018 Wireline *Ex Parte* Letter at 4-6. While we agree with AT&T that LEC pole owners may not have direct knowledge of contractors qualified to do such work, their pre-existing relationship with the electric utility places LEC pole owners in a better position to obtain such information than the new attacher, which may not have such a relationship.

³⁷² 47 CFR §§ 1.1412(a)-(b).

reliable work in more challenging circumstances.³⁷³ Although the current selection process sometimes entails delays where utilities fail to provide a list of approved contractors,³⁷⁴ we find that as to complex work and work above the communications space—which poses heightened safety and reliability risks—the benefits of the current approach outweigh its costs.³⁷⁵ We recognize that self-help above the communications space is novel and poses particularly heightened safety and reliability risks.³⁷⁶ We therefore find it especially important to give the utility control over who performs such work.³⁷⁷ In reaching this conclusion, we decline to adopt the BDAC’s recommendation that utilities need no longer provide, and requesting attachers need not use, utility-approved contractors to complete complex make-ready work in the communications space under the self-help remedy.³⁷⁸

107. Although we treat the utility list as mandatory for complex and above the communications space make-ready, we adopt a protective measure to prevent the utility list from being a choke-point that prevents deployment. The record indicates that some new attachers have been unable to exercise their self-help remedy because a list of utility-approved contractors was not available.³⁷⁹ To alleviate this problem for complex and above the communications space work, we set forth in our rules—as we do in the context of OTMR and simple-self-help—that new and existing attachers may request that qualified contractors be added to the utility’s list and that the utility may not unreasonably withhold its consent for such additions.³⁸⁰ As in the context of OTMR and simple self-help, to be reasonable, a utility’s decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.³⁸¹

108. Because we adopt this safeguard for non-simple make-ready, we decline to adopt the BDAC’s recommended multi-step objection and appeal process for adding and removing contractors from the utility-approved contractor list.³⁸² Among other things, the BDAC proposes giving existing attachers

³⁷³ See CCU Wireline NPRM Comments at 28; Verizon Wireline NPRM Reply at 7; Google Fiber Feb. 1, 2018 Wireline *Ex Parte* Letter at 4.

³⁷⁴ See ACA Wireline NPRM Comments at 44-45.

³⁷⁵ AT&T Wireline NPRM Reply at 7-8; see also *2011 Pole Attachment Order*, 26 FCC Rcd at 5267, para. 55 (concluding that the use of a utility-approved contractor by the new attacher “ensures that only qualified contractors work on utility poles”).

³⁷⁶ See CCU Wireline NPRM Comments at 28-29; Midwest Electric Utilities Wireline NPRM Comments at 28; EEI Wireline NPRM Comments at 19 n.18; UTC Wireline NPRM Reply at 16.

³⁷⁷ See Midwest Electric Utilities Wireline NPRM Comments at 28-29; CCU Wireline NPRM Comments at 28-29; UTC Wireline NPRM Reply at 16; CenterPoint Energy et al. May 25, 2018 Wireline *Ex Parte* Letter Attach. at 1.

³⁷⁸ BDAC January 2018 Recommendations at 46. The BDAC’s recommendation also extends to simple work in the communications space, see *id.*, and we adopt that aspect of the recommendation as set forth above.

³⁷⁹ See ACA Wireline NPRM Reply at 24.

³⁸⁰ ACA expresses concern that, unlike with OTMR contractor selection, self-help new attachers are not permitted to select a qualified contractor to perform complex and electric space make-ready work where utilities do not provide a list. See ACA July 25, 2018 Wireline *Ex Parte* Letter at 4. While requiring new attachers to request the addition of a qualified contractor to the list may be a more time-consuming process than simply allowing new attachers to select a contractor and proceed with the self-help work, we find that this approach still provides new attachers with input while better accounting for the heightened safety and reliability risks that may arise in non-simple work.

³⁸¹ See *supra* section III.A.1.b.

³⁸² See FCC, Broadband Deployment Advisory Committee, Approved Recommendations, Addendum to the Report of the Competitive Access to Broadband Infrastructure Working Group at 2-4 (Apr. 25, 2018) <https://www.fcc.gov/sites/default/files/bdac-cabi-report-04252018.pdf> (BDAC April 2018 Recommendations).

the right to request the removal of a contractor from the list,³⁸³ and it proposes allowing appeals to the Commission for an expedited letter ruling by the Commission staff.³⁸⁴ We find the BDAC's process unduly complex and cumbersome, and we believe it provides counterproductive opportunities for delay to competitors to new attachers.³⁸⁵ We agree with Verizon that while utilities should consider feedback on contractors from existing attachers, if existing attachers had rights to object to utility-approved contractors, "the list of approved contractors could vary from pole to pole based on the particular attachers on the poles," creating an administrative burden for new attachers and thereby slowing deployment.³⁸⁶ Further, given that we do not directly regulate and generally have little information about communications pole attachment contractors operating throughout the country, we are not well-positioned at this juncture to adjudicate disputes over specific contractors' qualifications, especially on an expedited basis.

d. Detailed Make-Ready Costs

109. To facilitate the planning of more aggressive deployments, we adopt additional requirements to improve the transparency and usefulness of the make-ready cost estimates currently required under our rules.³⁸⁷ We require estimates of all make-ready charges to be detailed and include documentation that is sufficient to determine the basis for all charges,³⁸⁸ as well as similarly detailed post-make-ready invoices.

110. The record reflects frustration over the lack of transparency of current estimates of make-ready work charges.³⁸⁹ ACA, Lumos, Crown Castle, and other commenters express support for a requirement that utilities provide detailed, itemized estimates and final invoices of all necessary make-ready costs.³⁹⁰ They, along with other commenters, argue that, in many cases, utilities currently do not provide detailed estimates or detailed final invoices.³⁹¹ They claim that where utilities do not detail the basis of potential or actual charges, new attachers may reasonably fear that utilities can "potentially include costs that are unnecessary, inappropriately inflated, or that attaching entities could easily avoid."

³⁸³ See *id.* at 2-3.

³⁸⁴ See *id.* at 4.

³⁸⁵ See *supra* section III.A.1.b. (finding giving existing attachers an objection right to contractors likely to slow broadband deployment).

³⁸⁶ Verizon Wireline NPRM Reply at 7.

³⁸⁷ Under our current rules, a utility must present a new attacher with "an estimate of charges to perform all necessary make-ready work" within 14 days of conducting the survey of the pole or receiving from the new attacher its own conducted survey. 47 CFR § 1.1411(d); see also *2011 Pole Attachment Order*, 26 FCC Rcd at 5255-56, paras. 26-28.

³⁸⁸ See Lumos Wireline NPRM Reply at 13.

³⁸⁹ See ACA Wireline & Wireless NPRM Comments at 24-26, 48; Crown Castle Wireline NPRM Comments at 15; Google Fiber Wireline NPRM Comments at 11; NCTA Wireline & Wireless NPRM Comments at 11-12; Lumos Wireline NPRM Reply at 13.

³⁹⁰ See ACA Wireline & Wireless NPRM Comments at 24-26; Lightower Wireline NPRM Comments at 6; Crown Castle Wireline NPRM Reply at 7-8; Lumos Wireline NPRM Reply at 13.

³⁹¹ See, e.g., ACA Wireline & Wireless NPRM Comments at 25, 49; Crown Castle Wireline NPRM Comments at 14; Lightower Wireline NPRM Comments at 6; Lumos Wireline NPRM Comments at 12-13; ACA Wireline & Wireless NPRM Reply at ii; Charter Feb. 5, 2018 Wireline *Ex Parte* Letter Attach. at 3; ACA Sep. 14, 2017 Wireline *Ex Parte* Letter at 7. Oregon and New York currently require detailed make-ready estimates. See Or. Admin. R. 860-028-0100; N.Y. Pub. Serv. Comm'n, *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachments, Case 03-M0432, Appendix A (Aug. 6, 2004), available at <http://www.utilityregulation.com/content/orders/04NY0432E.pdf>; see also ACA Wireline & Wireless NPRM Comments at 49.

³⁹² Numerous commenters describe experiencing “‘bill shock,’ where a utility’s make-ready invoices far exceed[] the utility’s initial estimates[,]”³⁹³ and add that the lack of transparency of make-ready costs inhibits their ability to plan network expansions.³⁹⁴ Given the frustration reflected in the record, we find that requiring detailed make-ready cost estimates and post-make-ready invoices will improve transparency in the make-ready process and better enable providers to plan broadband buildouts.³⁹⁵

111. We further clarify that our current rules require the utility to provide estimates for all make-ready work to be completed, regardless of what party completes the work.³⁹⁶ Although some utilities claim they are poorly positioned to provide estimates for make-ready work other than their own,³⁹⁷ we continue to find that utilities are best positioned to compile and submit these make-ready estimates to new attachers due to their pre-existing and ongoing relationships with the existing attachers on their poles.³⁹⁸ We recognize that in many circumstances the utility will not be able to prepare on its own an estimate for other existing attachers’ make-ready work;³⁹⁹ therefore, we clarify that utilities may comply

³⁹² Crown Castle Wireline NPRM Comments at 15; *see also* ACA Wireline & Wireless NPRM Comments at 48 (“Utilities . . . have exploited these gaps by providing attachers with vague and un-itemized pre-job estimates and post-job bills for make-ready work and attempting to charge attachers for fixing existing safety code violations and subsidizing the utilities’ own deferred maintenance.”).

³⁹³ ACA Mar. 26, 2018 Wireline *Ex Parte* Letter at 3.

³⁹⁴ *See* Google Fiber Wireline NPRM Comments at 11 (noting that improved cost certainty across markets can allow attachers to plan network expansions with greater confidence); Lumos Wireline NPRM Comments at 14 (noting that requiring utilities to make their charges more transparent “would expedite the performance of necessary make-ready while maintaining cost certainty and ensuring non-discriminatory treatment of attachers”); ACA Wireline & Wireless NPRM Comments at 25-26 (stating that “post-make-ready financial surprises can damage the viability of projects” and providing examples of significant back-billing); NCTA Wireline & Wireless NPRM Comments at 11-12 (recognizing that cost transparency allows attachers to plan upgrades and extensions more effectively).

³⁹⁵ *See* Lumos Wireline NPRM Reply at 13.

³⁹⁶ Our current rule requires that “a utility shall present to a cable operator or telecommunications carrier an estimate of charges to perform all necessary make-ready work” 47 CFR § 1.1411(d).

³⁹⁷ *See* Electric Utilities Wireline NPRM Comments at 15 (contending that utilities are ill-equipped both to estimate the make-ready costs of a third-party attacher on the utilities’ poles and to enforce any requirement that these third parties provide make-ready cost estimates to new attachers); Midwest Electric Utilities Wireline NPRM Reply at 17 (arguing that a utility should be required to provide “an estimate of the costs to perform make-ready work only on the utilities own facilities” and “not . . . an estimate of the costs to perform make-ready work on other attachers’ facilities”); AT&T July 23, 2018 Wireline *Ex Parte* Letter at 2; CCU July 25, 2018 Wireline *Ex Parte* Letter at 2; *see also* CenterPoint Energy et al. May 25, 2018 *Ex Parte* Letter Attach. at 4 (“[M]ake-ready transactions [should] be made directly between the new attacher and the contractor who ultimately performs the make-ready prescribed by the pole owner.”).

³⁹⁸ *See* ACA July 25, 2018 Wireline *Ex Parte* Letter at 5. We also remind utilities of the 14-day deadline in our rules to provide the estimate of make-ready charges to the new attacher. *See* 47 CFR § 1.1411(d). We decline to extend this time period as such an extension would unduly slow down the make-ready process. *See* UTC July 26, 2018 Wireline *Ex Parte* Letter at 4-5; *see also* Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 5-6 (proposing that estimates should be provided within a reasonable period of time).

³⁹⁹ *See* AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter at 4; AT&T July 23, 2018 Wireline *Ex Parte* Letter at 2; CCU July 25, 2018 Wireline *Ex Parte* Letter at 2; EEI July 26, 2018 Wireline *Ex Parte* Letter at 10-11; Puget Sound Energy July 25, 2018 Wireline *Ex Parte* Letter at 2; Hawaiian Electric July 25, 2018 Wireline *Ex Parte* Letter at 5; Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 6; UTC July 26, 2018 Wireline *Ex Parte* Letter at 5. While Southern Company argues that requiring electric utilities to compile estimates contradicts our decision in this Order to shift the burden to new attachers to coordinate make-ready, we find that this requirement merely clarifies our existing rule requirement and represents a limited and warranted ongoing obligation for utilities. *See* Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 4; *see also* § 1.1411(d).

with this requirement by compiling estimates from third-parties for submission to the new attacher.⁴⁰⁰ We do not require utilities to compile and submit final invoices of make-ready work performed by third-party existing attachers.⁴⁰¹ We anticipate that existing attachers will have sufficient incentives to ensure that their final invoice reaches the new attacher so that they receive compensation for performed work.

112. We require the utility to detail all make-ready cost estimates and final invoices on a per-pole basis when requested by the new attacher.⁴⁰² While we recognize that requiring utilities to provide costs on a per-pole basis may be more burdensome than providing a less granular estimate,⁴⁰³ we find that a pole-by-pole estimate may be necessary to enable new attachers to understand the costs of deployment and to make informed decisions about altering their deployment plans if make-ready costs on specific poles could prove to be cost-prohibitive.⁴⁰⁴ Requiring per-pole estimates and invoices upon request will also enable new attachers to better determine whether invoices are accurate, saving new attachers the unnecessary time and cost they currently devote to such a task.⁴⁰⁵ The record shows that certain fixed costs are not necessarily charged on a per-pole basis (e.g., traffic control, lock-out/tag-out, truck rolls),⁴⁰⁶ and therefore the rules we adopt today allow for such fixed costs to be estimated and submitted on a per-job basis, rather than a pole-by-pole basis, even where a pole-by-pole estimate or invoice is requested.⁴⁰⁷

113. As part of the detailed estimate, the utility must disclose to the new attacher its projected material, labor, and other related costs that form the basis of its estimate, including specifications of what costs, if any, the utility is passing through to the new attacher from the utility's use of a third-party contractor. The utility must also provide documentation that is sufficient to determine the basis of all charges in the final invoice, including any material, labor and other related costs.⁴⁰⁸ While we understand

⁴⁰⁰ See ACA July 25, 2018 Wireline *Ex Parte* Letter at 5. We further clarify that where the utility compiles third-party estimates, it is responsible only for compilation and transmission—it is not responsible for the accuracy or content of the estimates.

⁴⁰¹ See Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 6-7. To the extent that the utility is an existing attacher, it is still responsible, where applicable, for providing a final invoice.

⁴⁰² See ACA Wireline & Wireless NPRM Comments at 24-25, 49-50; NCTA Wireline & Wireless NPRM Comments at 11-12; Crown Castle Wireline NPRM Reply at 8; see also Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 5-6 (suggesting that the Commission allow utilities to make available upon request the cost information on which their estimates and invoices are based). We decline Southern Company's proposal to only require utilities to provide estimates and final invoices on a per-pole basis "where reasonably possible." See Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 3-4. This suggested language could excuse electric utilities from ever providing estimates on a per-pole basis as some utilities currently claim that they do not have the billing system to accommodate pole-by-pole estimates and invoices. See *id.*

⁴⁰³ See CCU Wireline NPRM Reply at 19 (arguing that detailing charges on a per-pole basis would be overly time consuming and cost prohibitive); Electric Utilities Wireline NPRM Reply at 26; AT&T July 23, 2018 Wireline *Ex Parte* Letter at 2; AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter at 3; CCU July 25, 2018 Wireline *Ex Parte* Letter at 2; EEI July 26, 2018 Wireline *Ex Parte* Letter at 12; UTC July 26, 2018 Wireline *Ex Parte* Letter at 4; Puget Sound Energy July 25, 2018 Wireline *Ex Parte* Letter at 2; Hawaiian Electric July 25, 2018 Wireline *Ex Parte* Letter at 5.

⁴⁰⁴ See ACA Wireline & Wireless NPRM Comments at 24-25, 49-50; NCTA Wireline & Wireless NPRM Comments at 11-12; Crown Castle Wireline NPRM Reply at 8.

⁴⁰⁵ See ACA Wireline & Wireless NPRM Comments at 24-25, 49-50; NCTA Wireline & Wireless NPRM Comments at 11-12; Crown Castle Wireline NPRM Reply at 8.

⁴⁰⁶ See AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter at 3; Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 4.

⁴⁰⁷ See *infra* Appx. A, 47 CFR § 1.1411(d).

⁴⁰⁸ See ACA July 23, 2018 Wireline *Ex Parte* at 2, Attach. at 4.

that this requirement places a burden on utilities,⁴⁰⁹ we agree with ACA that this requirement will allow new attachers to understand the basis for each individual make-ready charge and prevent disputes over “unreasonable or simply unnecessary make-ready charges in aggregate cost estimates.”⁴¹⁰ However, if a utility completes make-ready and the final cost of the work does not differ from the estimate, it is not required to provide the new attacher with a final invoice.⁴¹¹

114. We decline to adopt the request of some commenters that we require utilities to provide new attachers with a publicly-available schedule of common make-ready charges. These commenters argue that easy access to make-ready rates could promote fair and predictable rates, a more efficient process, and a level playing field between attachers and utilities during attachment rate negotiations, as well as averting disputes over rates and the process used.⁴¹² The record indicates that make-ready costs vary considerably, however, based on a wide variety of factors, including geographic area, soil, vegetation conditions, the accessibility of the pole, and the availability of contractors in the area.⁴¹³ Contractors charge varying rates for their work based on the “labor requirements, equipment used[,] and travel time to the jobsite” of the particular make-ready job.⁴¹⁴ Other issues, such as the complexity of the job, rights-of-way, age of the pole, what is on the pole, and size of the pole, also contribute to the determination of a make-ready rate.⁴¹⁵ The variety and complexity of these variables suggest that requiring utilities nationwide to produce a schedule of make-ready rates would be unreasonably burdensome unless the schedule were at such a level of generality that it would be of little use to attachers in predicting the actual costs of their planned pole attachments.⁴¹⁶ At the same time, we encourage utilities to voluntarily make publicly available schedules of make-ready charges in circumstances in which it is feasible to do so, such as where the utility operates in an area of the country with homogenous terrain.⁴¹⁷

3. Treatment of Overlapping

115. We codify our longstanding policy that utilities may not require an attacher to obtain its approval for overlapping.⁴¹⁸ Consistent with Commission precedent, the utility also may not require pre-

⁴⁰⁹ See Puget Sound Energy July 25, 2018 Wireline *Ex Parte* Letter at 2; EEI July 26, 2018 Wireline *Ex Parte* Letter at 12; UTC July 26, 2018 Wireline *Ex Parte* Letter at 4-5.

⁴¹⁰ See ACA Wireline & Wireless NPRM Comments at 49-50.

⁴¹¹ See Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 4. To this end, and in order to ensure a transparent make-ready process, we decline Hawaiian Electric’s proposal that utilities should not be required to provide a new attacher with a final invoice when the final make-ready charges differ from those in the estimate. See Hawaiian Electric July 25, 2018 Wireline *Ex Parte* Letter at 5.

⁴¹² See, e.g., ACA Wireline & Wireless NPRM Comments at 47-48; AT&T Wireline NPRM Comments at 24; Comcast Wireline & Wireless NPRM Comments at 28; Lumos Wireline NPRM Comments at 14; NCTA Wireline & Wireless NPRM Comments at 12; Comcast Wireline & Wireless NPRM Reply at 11; Crown Castle Wireline NPRM Reply at 7-8.

⁴¹³ See, e.g., EEI Wireline NPRM Comments at 38; Frontier Wireline NPRM Comments at 21-22; USTelecom Wireline NPRM Comments at 18-19; UTC Wireline NPRM Comments at 15.

⁴¹⁴ UTC Wireline NPRM Comments at 15; see also Electric Utilities Wireline NPRM Comments at 40 (quoting *2011 Pole Attachment Order*, 26 FCC Rcd at 5279, para. 86) (“Actual charges vary depending on numerous unique factors, including material and labor costs which fluctuate. As such, the price of make-ready does not lend itself well to fixed schedule of charges.”).

⁴¹⁵ See CCU Wireline NPRM Comments at 30-31.

⁴¹⁶ See EEI Wireline NPRM Comments at 40.

⁴¹⁷ EEI asserts that utilities that currently provide a schedule of common make-ready charges typically operate in areas of the country with homogenous terrain. EEI Wireline NPRM Comments at 40.

⁴¹⁸ *Amendment of Commission’s Rules and Policies Governing Pole Attachments*, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12141, para. 75 (2001) (*2001 Pole*

approval for third party overlashing of an existing attachment, when such overlashing is conducted with the permission of an existing attacher.⁴¹⁹ In addition, we adopt a rule that allows utilities to establish reasonable advance notice requirements. As the Commission has previously found, the ability to overlash often “marks the difference between being able to serve a customer’s broadband needs within weeks versus six or more months when delivery of service is dependent on a new attachment.”⁴²⁰ In codifying the existing overlashing precedent while adopting a pre-notification option, we seek to promote faster, less expensive broadband deployment while addressing important safety concerns relating to overlashing.⁴²¹ We find that our codification will hasten deployment by resolving disagreements over whether utilities may impose procedural requirements on overlashing by existing attachers.⁴²²

116. While we make clear that pre-approval for overlashing is not permissible, we adopt a rule that utilities may, but are not required to, establish reasonable pre-notification requirements including a requirement that attachers provide 15 days (or fewer) advance notice of overlashing work.⁴²³ Commenters express the concern that poles may not always be able to reliably support additional weight due to age and environmental factors, such as ice and wind, and as a result, overlashing even one additional cable on a pole may cause an overloading.⁴²⁴ Such pole overloading could “hamper the

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Attachment Order) (“We affirm our policy that neither the host attaching entity nor the third-party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.”), *aff’d Southern Co. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002).

⁴¹⁹ *2001 Pole Attachment Order*, 16 FCC Rcd at 12141, para. 75; *see also* AT&T July 23, 2018 Wireline *Ex Parte* Letter at 3 (requesting codification that pre-approval not be required for pre-approved third-party overlashing); ACA July 25, 2018 Wireline *Ex Parte* Letter at 3 (requesting same); Verizon July 26, 2018 Wireline OTMR *Ex Parte* Letter at 7 (requesting same).

⁴²⁰ Crown Castle Wireline FNPRM Comments at 2; *see also* ACA Wireline and Wireless NPRM Comments at 11.

⁴²¹ *See Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, Report and Order 13 FCC Rcd 6777, 6807, para. 62 (1998); *see also* CTIA Wireline FNPRM Reply at 3-4; FBA Wireline FNPRM Reply at 1; FBA July 20, 2018 Wireline *Ex Parte* Letter at 3.

⁴²² *See* ACA Wireline & Wireless NPRM Comments at 10-11; Crown Castle Wireline FNPRM Comments at 4-5; Verizon Wireline FNPRM Comments at 19; FBA July 20, 2018 Wireline *Ex Parte* Letter at 3.

⁴²³ *See* AT&T Wireline FNPRM Comments 15; CPS Energy Wireline FNPRM Comments at 2; EEI Wireline FNPRM Comments at 12; Electric Utilities Wireline FNPRM Comments at 25; NTCA Wireline FNPRM Comments at 5; POWER Coalition Wireline FNPRM Comments at 6; Utility Coalition on Overlashing Wireline FNPRM Comments at 10; UTC Wireline FNPRM Comments at 4; Xcel Energy Wireline FNPRM Comments at 1-2; ACA Wireline FNPRM Reply at 10; CPS Energy Wireline FNPRM Reply at 3; Electric Utilities Wireline FNPRM Reply at ii-iii, 4; NASUCA Wireline FNPRM Reply at 2-3; NRECA Wireline FNPRM Reply at 2; POWER Coalition Wireline FNPRM Reply at 8); UTC Wireline FNPRM Reply at 1-2). Further, a handful of states also require advance notice of overlashing; *see* UTC Wireline FNPRM Comments at 5 (noting that Arkansas, Ohio, Louisiana, Iowa, and Utah provide “for advance notice of overlashing.”); Electric Utilities Wireline FNPRM Comments at 12-18 (stating that the public utility commissions of Arkansas, Ohio, Washington, Louisiana, Iowa, Utah, Connecticut have ratified or adopted an advance notice requirement to some degree); Utility Coalition on Overlashing Wireline FNPRM Comments at ii, 23-24 (noting that states such as Louisiana, California, Ohio, and Michigan recognize the impact of overlashing “must be analyzed in advance of the overlashing”); ACA Wireline FNPRM Reply at 11, n. 47 (“Washington and Louisiana require 15 days’ notice, while Utah requires 10 days’ notice for most overlashing projects and Iowa requires 7 days’ notice”). We decline Southern Company’s proposal to impose a “reasonable penalty” where an overlasher fails to comply with an electric utility’s advance notice requirement. *See* Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 9. The informal complaint process is available to utilities that wish to allege a violation of the notice rule.

⁴²⁴ *See, e.g.*, AT&T Wireline FNPRM Comments at 15; EEI Wireline FNPRM Comments at 5; Electric Utilities Wireline FNPRM Comments at 18-19; UTC Wireline FNPRM Comments at 3; CCU Wireline NPRM Reply at 30; Utility Coalition on Overlashing Wireline FNPRM Reply at 4, 6-7; Letter from Robin F. Bromberg, Counsel, Electric Utilities, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed Nov. 13, 2017)

installation or maintenance of electric facilities, or other on-going wireline or wireless facility installations.”⁴²⁵ We find these concerns to be valid and supported by the record.⁴²⁶ Thus, we agree with commenters that allowing utilities to require advance notice will promote safety and reliability and allow the utility to protect its interests without imposing unnecessary burdens on attachers.⁴²⁷ If after receiving this advance notice, a utility determines, through its own engineering analysis, that there is insufficient capacity on the pole for a noticed overlash, the noticed overlash would be inconsistent with generally applicable engineering practices, or the noticed overlash would compromise the pole’s safety or reliability,⁴²⁸ the utility must provide specific documentation demonstrating that the overlash creates a capacity, safety, reliability, or engineering issue within the 15 day advance notice period and the overlasher must address any identified issues—either by modifying its proposal or by explaining why, in the overlasher’s view, a modification is unnecessary—before continuing with the overlash.⁴²⁹ Consistent with our approach to OTMR and self-help,⁴³⁰ we adopt ACA’s position that a utility may not charge a fee to the party seeking to overlash for the utility’s review of the proposed overlash, as such fees will increase the costs of deployment.⁴³¹

117. We find that an approach to overlashing that allows for pre-notification without requiring

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(Electric Utilities Nov. 13, 2017 Wireline *Ex Parte* Letter); CenterPoint Energy/FPL Feb. 13, 2018 Wireline *Ex Parte* Letter at 2.

⁴²⁵ CPS Energy Wireline FNPRM Comments at 8.

⁴²⁶ For instance, the Coalition of Concerned Utilities argues that overlashing may cause the pole line “to sag to such an extent that it violates required vertical safety clearance requirements over streets and highways.” CCU Wireline NPRM Reply at 30. EEI suggests that overlashing may cause pole failure, interrupt electrical service, and endanger the public. EEI Wireline FNPRM Comments at 5. Similarly, the Electric Utilities contend that the combination of overlashing and environmental factors, such as wind and ice, could cause pole line overload and that a utility-performed engineering analysis may prevent such an overload. Electric Utilities Wireline FNPRM Comments at 18-19.

⁴²⁷ See AT&T Wireline FNPRM Comments at 15; CPS Energy Wireline FNPRM Comments at 2; NTCA Wireline FNPRM Comments at 5; POWER Coalition Wireline FNPRM Comments at 6; Utility Coalition on Overlashing Wireline FNPRM Comments at 10; UTC Wireline FNPRM Comments at 4; Xcel Energy Wireline FNPRM Comments at 1-2; ACA Wireline FNPRM Reply at 10-11; CPS Energy Wireline FNPRM Reply at 3-4; Electric Utilities Wireline FNPRM Reply at ii-iii, 4; NASUCA Wireline FNPRM Reply at 2-3; NRECA Wireline FNPRM Reply at 2; POWER Coalition Wireline FNPRM Reply at 8; UTC Wireline FNPRM Reply at 1-2. The record indicates that several states already require advance notice of overlashing. See UTC Wireline FNPRM Comments at 5; Electric Utilities Wireline FNPRM Comments at 12-18; Utility Coalition on Overlashing Wireline FNPRM Comments at ii, 23-24; ACA Wireline FNPRM Reply at 11, n. 47. This 15-day notice period is consistent with the OTMR notice period that we adopt for simple make-ready work in the communications space. See *supra* section III.A.1.c.(v).

⁴²⁸ 47 U.S.C. § 224(f)(2).

⁴²⁹ See Comcast July 26, 2018 Wireline *Ex Parte* Letter at 2. To the extent a utility can document that an overlash would require modifications to the pole or replacement of the pole, the overlasher will be held responsible for the costs associated with ensuring that the pole can safely accommodate the overlash. See *Southern Co. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002). A utility may not deny access to overlash due to a pre-existing violation on the pole. But see UTC July 26, 2018 Wireline *Ex Parte* Letter at 5. However, a party that chooses to overlash on a pole with a safety violation and causes damage to the pole or other equipment will be held responsible for any necessary repairs.

⁴³⁰ See *supra* sections III.A.1.a. (requiring that utilities pay their own costs to double-check new attachers’ OTMR work); III.A.2.b. (requiring that utilities pay their own costs to double-check new attachers’ self-help work).

⁴³¹ See ACA July 23, 2018 Wireline *Ex Parte* Letter at 6, Attach. at 11. To this end, we reject Southern Company’s assertion that the costs of performing a pre-overlash engineering analysis are incremental costs caused by the new attacher and, as a result, electric utilities are entitled to recover them. See Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 9-10.

pre-approval is superior to more extreme solutions advocated by some commenters.⁴³² We are unpersuaded, for example, by arguments that utility pre-approval for overloading is necessary to ensure safety.⁴³³ Pre-approval is not currently required, and the record does not demonstrate that significant safety or reliability issues have arisen from the application of the current policy. Rather, the record reflects that an advance notice requirement has been sufficient to address safety and reliability concerns, as it provides utilities with the opportunity to conduct any engineering studies or inspections either prior to the overlash being completed or after completion.⁴³⁴ For instance, after an Edison Electric Institute member received advance notice of overloading on 5,186 poles, its inspection found that 716 of those poles “had preexisting violations for failure to meet NESC requirements for clearance between communications attachments and power facilities.”⁴³⁵ Similarly, in 2016, Oncor Electric Delivery in Texas received advance notice of overloading and discovered 13.8% of the poles had existing clearance violations between existing attachments and power facilities.⁴³⁶ Further, requiring that attachers receive prior approval for overloading would unnecessarily increase costs for attachers and delay deployment.⁴³⁷

118. On the other hand, we also reject commenters’ arguments for notice only after overloading (i.e., “attach-and-notify”).⁴³⁸ While attach-and-notify advocates assert that advance notice is time-consuming, cumbersome, and inefficient,⁴³⁹ we find the burden of advance notice minimal compared to the importance of ensuring that any new overloaded facilities will not “compromise the safety or integrity of existing electric distribution and communications infrastructure.”⁴⁴⁰ Providing the utility with advance notice of overloading will allow it to better monitor and ensure the safety, integrity, and reliability of its poles both before and after the overlash is completed⁴⁴¹ without overburdening

⁴³² We reject EEI’s proposal to subject the overloading process to the same OTMR or non-OTMR timeline and processes as this would be tantamount to requiring pre-approval for overloading and would dramatically slow deployment via overloading. *See* EEI July 26, 2018 Wireline *Ex Parte* Letter at 13.

⁴³³ *See, e.g.*, CCU Wireline NPRM Reply at 29-30; EEI Wireline FNPRM Comments at 13.

⁴³⁴ *See, e.g.*, UTC Wireline FNPRM Comments at 4; Utility Coalition on Overloading Wireline FNPRM Comments at 10. Conversely, the record indicates that in at least one case, a utility was not able to detect and prevent a problem because it did not receive advance notice. Specifically, Ameren Missouri identifies a situation in which a truck hit improperly low-hanging wires; it asserts that the problem was exacerbated by overloading and claims that if it had received advance notice of the overloading, it would have been able to perform an inspection, discover the existing violation, and prevent a company from overloading when there was a public safety threat of a low hanging wire over a public road. *See* Electric Utilities Wireline FNPRM Comments at 21-22.

⁴³⁵ EEI Wireline FNPRM Comments at 6.

⁴³⁶ *See* Electric Utilities Wireline FNPRM Comments at 21.

⁴³⁷ *See, e.g.*, ACA Wireline FNPRM Comments at 9; NCTA Wireline FNPRM Comments at 2.

⁴³⁸ *See* FBA Wireline FNPRM Reply at 1, 9; Verizon Wireline FNPRM Reply at 16.

⁴³⁹ *See, e.g.*, Comcast Wireline FNPRM Comments at 3; Verizon Wireline FNPRM Comments at 19; Comcast Wireline FNPRM Reply at 10; FBA Wireline FNPRM Reply at 8; NCTA Wireline FNPRM Reply at 2-3.

⁴⁴⁰ Xcel Energy Wireline FNPRM Comments at 4; *see also* AT&T Wireline FNPRM Comments at 15 (“[A]dvance notice to the pole owner and any host attaching entity . . . promotes safety and the integrity and reliability of the wireline network by affording an opportunity to validate that the attacher has considered the impact overloading will have on the pole and the host cables.”); Electric Utilities Wireline FNPRM Comments at 1 (“[T]he Commission should clarify that pole owners may require advanced notice of overloading in order to ensure that overloading complies with applicable standards for safety, reliability, and engineering.”); AT&T Wireline FNPRM Reply at 1 (“Prior notice of overloading promotes safety and the integrity and reliability of poles.”).

⁴⁴¹ Xcel Energy Wireline FNPRM Comments at 6; *see also* Electric Utilities Wireline FNPRM Comments at ii (“Without advance notice of overloading, electric utilities cannot evaluate the impact of the proposed overloading (loading/clearance) or determine whether there are existing violations (loading/clearance) that must be corrected prior to overloading.”); UTC Wireline FNPRM Comments at 4 (“[U]tilities need *advance* notice of overloading in order to conduct an engineering study and inspect the poles to assess additional loading and ensure there are no existing violations of the electric utilities’ standards or applicable codes on the pole that must be remedied prior to

overlashers or requiring multiple trips to the pole.⁴⁴²

119. We also take this opportunity to clarify several points related to overlashing. First, if the utility elects to establish an advance notice requirement, the utility must provide advanced written notice to attachers or include the requirement in its pole attachment agreements. We find that providing this guidance will give clarity to all parties as to when the utility must receive advance notice, thereby reducing the likelihood of disputes. Utilities may require pre-notification of up to 15 days, the same notice period that we adopt for OTMR attachments.⁴⁴³ We also emphasize that utilities may not use advanced notice requirements to impose quasi-application or quasi-pre-approval requirements, such as requiring engineering studies.⁴⁴⁴ Finally, just as new attachers electing OTMR are responsible for any corrective measures needed because of their work,⁴⁴⁵ in the event that damage to the pole or other existing attachment or safety or engineering standard violations result from overlashing, the overlasher will be responsible for any necessary repairs arising from such overlashing.⁴⁴⁶ Poorly performed overlashing can create safety and reliability risks,⁴⁴⁷ and the Commission has consistently found that overlashers must

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the proposed overlashing.”); Utility Coalition on Overlashing Wireline FNPRM Comments at 10 (“[A]dequate advance notice containing adequate information about the overlashing is necessary to enable utilities to analyze the capacity, safety, reliability and generally applicable engineering concerns of the utility pole owner.”).

⁴⁴² See, e.g., Xcel Energy Wireline FNPRM Comments at 6; CPS Energy Wireline FNPRM Comments at 6-7.

⁴⁴³ See *supra* section III.A.1.c.(v). We therefore reject requests that utilities be allowed to require up to 45 days prior notice of overlashing. See AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter at 2; Hawaiian Electric July 25, 2018 Wireline *Ex Parte* Letter at 3; Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 8; UTC July 26, 2018 Wireline *Ex Parte* Letter at 5. Given that pre-approval for overlashing is not required, such a lengthy notice period should not be necessary.

⁴⁴⁴ See ACA Wireline FNPRM Reply at 12; FBA July 20, 2018 Wireline *Ex Parte* Letter at 3. We reject AT&T’s proposal to require that overlashers confirm to the pole owner in the advance notice “that they have fulfilled their responsibility” to comply with reasonable safety, reliability, and engineering practices. AT&T July 23, 2018 Wireline *Ex Parte* Letter at 3; see also ACA July 25, 2018 Wireline *Ex Parte* Letter at 4. *But see* Letter from Steven F. Morris, VP and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 at 1-2 (arguing that “AT&T provide[s] no justification for the Commission to depart from its longstanding policy and its thorough consideration of the safety of overlashing”). Requiring engineering studies, pre-certifications, or any other similar requirement is unnecessary because the overlasher is ultimately responsible for any necessary repairs subsequently discovered by the pole owner. To the extent that the pole owner wishes to perform an engineering analysis of its own either within the 15-day advance notice period or after completion of the overlash, the pole owner bears the cost of such an analysis. *But see* AT&T July 23, 2018 Wireline *Ex Parte* Letter at 3 (proposing that engineering studies conducted by the pole owner after an overlash is completed be paid for by the overlasher in the event that the overlasher did not provide advanced confirmation of the safety, reliability, and engineering suitability of the overlash); Hawaiian Electric July 25, 2018 Wireline *Ex Parte* Letter at 3 (proposing that new attachers be required to provide an engineering analysis of the overlash with its advance notice); Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 9 (proposing that the Order should allow utilities to use advance notice requirements to require an engineering study, otherwise smaller electric utilities will not be able to pre-engineer overlashing, and safety and reliability will suffer); EEI July 26, 2018 Wireline *Ex Parte* Letter at 12-13. We also reject Southern Company’s proposal to permit utilities to require an overlasher to submit specifications of the materials to be overlashed with the notice of overlashing. See Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 8. Such a requirement could unduly slow deployment with little offsetting benefit.

⁴⁴⁵ See *supra* section III.A.1.c.(vi).

⁴⁴⁶ See Crown Castle Wireline FNPRM Reply at 10; Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 7.

⁴⁴⁷ See NRECA Wireline FNPRM Reply at 1-2 (describing “poorly constructed overlashing, overlashing that results in excessive wind and ice loads, overlashing with insufficient guying to maintain pole integrity, [and] vehicles snagging overlashed wires that hang too low to the ground”); AT&T Wireline FNPRM Reply at 3-4 (“AT&T has experienced a number of incidences where sagging cables from overlashing without proper engineering caused

ensure that they are complying with reasonable safety, reliability, and engineering practices.⁴⁴⁸

120. We agree with ACA that we should adopt a post-overlapping notification procedure comparable to the post-make ready notification procedure we adopt for OTMR.⁴⁴⁹ Therefore, we require that an overlapping party shall notify the affected utility within 15 days of completion of the overlap on a particular pole. The notice shall provide the affected utility at least 90 days from receipt in which to inspect the overlap. The utility has 14 days after completion of its inspection to notify the overlapping party of any damage or any code (e.g., safety, electrical, engineering, construction) violations to its equipment caused by the overlap. If the utility discovers damage or code violations caused by the overlap on equipment belonging to the utility, then the utility shall inform the overlapping party and provide adequate documentation of the damage or code violations. The utility may either complete any necessary remedial work and bill the overlapping party for the reasonable costs related to fixing the damage or code violations or require the overlapping party to fix the damage or code violations at its expense within 14 days following notice from the utility.

B. New Attachers are Not Responsible for Preexisting Violations

121. Consistent with the BDAC's recommendation, we clarify that new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment.⁴⁵⁰ Although utilities have sometimes held new attachers responsible for the costs of correcting preexisting violations,⁴⁵¹ this practice is inconsistent with our long-standing principle that a new attacher is responsible only for actual costs incurred to accommodate its attachment.⁴⁵² The new attachment may precipitate correction of the preexisting violation, but it is the violation itself that causes the costs, not the new attacher. Holding the new attacher liable for preexisting violations unfairly penalizes the new attacher for problems it did not cause, thereby deterring deployment, and provides incentives for attachers to complete make-ready work irresponsibly and count on later attachers to fix the problem.⁴⁵³ This is true whether the make-ready work that corrects these preexisting violations is simple or complex.⁴⁵⁴

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trucks to unknowingly snag cables, felling poles on roads and sidewalks, endangering the public from pole impact and energized electric lines, and creating avoidable service outages.”).

⁴⁴⁸ See *2001 Pole Attachment Order*, 16 FCC Rcd at 12141, para. 73. We reach this conclusion under our authority pursuant to 47 U.S.C. § 224(b)(1).

⁴⁴⁹ See ACA July 23, 2018 Wireline *Ex Parte* Letter at 6, Attach. at 11; ACA July 25, 2018 Wireline *Ex Parte* Letter at 3; see also *supra* section III.A.c.(vi).

⁴⁵⁰ BDAC January 2018 Recommendations at 24; see also Lumos Wireline NPRM Comments at 15; Electric Utilities Wireline NPRM Comments at 44; CCU Wireline NPRM Comments at 19-20; Lighttower Wireline NPRM Comments at 12; ACA Wireline NPRM Reply Comments at 28-31; FBA July 20, 2018 Wireline *Ex Parte* Letter at 4; Letter of Lawrence Lackey, Director of Regulatory, FirstLight, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed July 26, 2018) (FirstLight July 26, 2018 Wireline *Ex Parte* Letter). This includes situations where a pole has been “red tagged”—that is, found to be non-complaint with safety standards and placed on a replacement schedule. See Crown Castle July 25, 2018 Wireline *Ex Parte* Letter at 3. When a pole has been red tagged, new attachers are not responsible for the cost of pole replacement.

⁴⁵¹ See, e.g., ACA Wireline NPRM Comments at 22, 48-49; Lumos Wireline NPRM Comments at 15.

⁴⁵² See, e.g., *Knology, Inc. v. Georgia Power Co.*, Memorandum Opinion and Order, 18 FCC Rcd 24615, 24625, para. 26 (2003); *Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City v. Kansas City Power & Light Co.*, File Nos. PA 99-001, PA 99-002, Consolidated Order, 14 FCC Rcd 11599, 11606-07, para. 19 (CSB 1999).

⁴⁵³ See ExteNet Wireline NPRM Comments at 56; Lighttower Wireline NPRM Comments at 12; Lumos Wireline NPRM Comments at 15; ACA Wireline NPRM Reply at 28-31. We therefore reject CPS Energy's approach in which “the applicant is required to remedy existing technical violations of third-party attachments at its expense as part of the one-touch make-ready process.” CPS Energy Wireline NPRM Reply at 10. Similarly, we reject the

122. We also clarify that utilities may not deny new attachers access to the pole solely based on safety concerns arising from a pre-existing violation, as Lightower alleges sometimes occurs.⁴⁵⁵ Simply denying new attachers access prevents broadband deployment and does nothing to correct the safety issue.⁴⁵⁶ We also clarify that a utility cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the preexisting violation.⁴⁵⁷

C. Addressing Outdated Rate Disparities

123. In the interest of promoting infrastructure deployment, the Commission adopted a policy in 2011 that similarly situated attachers should pay similar pole attachment rates for comparable access.⁴⁵⁸ Incumbent LECs allege, however, that electric “utilities continue to charge pole attachment rates significantly higher” than the rates charged to similarly situated telecommunications attachers,⁴⁵⁹ and that these higher rates inhibit broadband deployment.⁴⁶⁰ To address this problem, we revise our rules to

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proposals from utilities that new attachers should be forced to either “wait for the corrective process to run its course” or “cover[] the cost of correcting the violation, without recourse.” AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter at 2-3; *see also* Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 5-6. This approach is tantamount to forcing the new attacher to pay to correct the preexisting violation as the alternative would require the new attacher to postpone make-ready indefinitely. *See* Verizon July 26, 2018 Wireline OTMR *Ex Parte* Letter at 6 (explaining how this approach would force new attachers “to choose between paying to remediate preexisting violations versus risking unpredictable and potentially significant deployment delays”).

⁴⁵⁴ EEI requests clarification that if a new attacher fixes existing violations while performing simple make-ready, it may not charge the utility for such repairs. *See* EEI July 26, 2018 Wireline *Ex Parte* Letter at 6-7. If the new attacher chooses to repair a pre-existing violation it may seek reimbursement from the party responsible for the violation, including, if applicable, the utility.

⁴⁵⁵ Lightower Wireline NPRM Comments at 12; *see also* FirstLight July 26, 2018 Wireline *Ex Parte* Letter at 2-3. This includes situations where a pole has been red-tagged, and new attachers are prevented from accessing a pole until it is replaced. *See* Crown Castle July 25, 2018 Wireline *Ex Parte* Letter at 3-4.

⁴⁵⁶ For this reason, we reject Xcel Energy and Alliant Energy’s suggestion that we provide utilities, where there is a preexisting violation, “the right to stop all work on that pole and prohibit physical access to that pole until the pre-existing safety issue is resolved and the pole is brought into compliance.” Xcel/Alliant July 26, 2018 Wireline *Ex Parte* Letter at 7; *see also* EEI July 26, 2018 Wireline *Ex Parte* Letter at 10.

⁴⁵⁷ *See* FBA July 20, 2018 Wireline *Ex Parte* Letter at 5. We disagree with American Electric Power Service Corporation and Georgia Power that the approach we adopt today denies existing attachers of any contractual right to receive notice of a violation. AEP/Georgia Power July 23, 2018 Wireline *Ex Parte* Letter at 2. Such notice could be provided, for instance, after the survey has been completed, identifying any preexisting violations, and before make-ready work is performed. We further reject the proposal that we establish a formal notice process in which existing attachers are given a timeline to correct preexisting violations. *See* Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 5-6; *see also* Crown Castle July 25, 2018 Wireline *Ex Parte* Letter at 3-4 (proposing a timeline for utilities to replace poles when new attachments are prohibited due to the need for a pole replacement). Such a process largely leaves new attachers in the same unacceptable position they confront today—delaying their deployment until the existing attacher makes a repair or being forced to make the repair and attempt to recover their costs from the existing attacher.

⁴⁵⁸ *See 2011 Pole Attachment Order*, 26 FCC Rcd at 5328, 5333-5337, paras. 203, 214-219 (establishing process by which incumbent LECs can show they are similarly situated to telecommunications attachers in order to receive comparable rates to those attachers).

⁴⁵⁹ Verizon Wireline NPRM Comments at 11; *see also* AT&T Wireline NPRM Comments at 23 (describing the “higher attachment rates paid by AT&T’s ILECs to electric utilities relative to competitors that benefit from the telecommunications rate”); Frontier Wireline NPRM Comments at 4 (“ILEC attachers currently pay disproportionately higher rates compared to other broadband attachers.”); USTelecom Wireline NPRM Comments at 7 (“ILEC attachers do not currently benefit from . . . rate parity.”).

⁴⁶⁰ *See* USTelecom Wireline NPRM Comments at 7 (“The lack of regulatory parity between ILECs and their cable and CLEC counterparts in the provision of broadband services complicates investment decisions for ILECs and has undoubtedly inhibited broadband deployment in the United States.”); *see also* Letter from Kevin G. Rupy, Vice

establish a presumption that, for newly-negotiated and newly-renewed pole attachment agreements between incumbent LECs and utilities, an incumbent LEC will receive comparable pole attachment rates, terms, and conditions as a similarly-situated telecommunications carrier or a cable television system (telecommunications attachers).⁴⁶¹ The utility can rebut the presumption with clear and convincing evidence that the incumbent LEC receives net benefits under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers.

124. As the Commission has recognized, historically, incumbent LECs owned approximately the same number of poles as electric utilities and were able to ensure just and reasonable rates, terms, and conditions for their attachments by negotiating long-term joint use agreements with utilities.⁴⁶² These joint use agreements may provide benefits to the incumbent LECs that are not typically found in pole attachment agreements between utilities and other telecommunications attachers, such as lower make-ready costs, the right to attach without advance utility approval, and use of the rights-of-way obtained by the utility, among other benefits.⁴⁶³ By 2011, however, incumbent LECs owned fewer poles than utilities, and the Commission found that incumbent LECs “may not be in equivalent bargaining position with electric utilities in pole attachment negotiations in some cases.”⁴⁶⁴ In 2011, the Commission determined that it had the authority “to ensure that incumbent LECs’ attachments to other utilities’ poles are pursuant to rates, terms and conditions that are just and reasonable,”⁴⁶⁵ and placed the burden on incumbent LECs to rebut the presumption that they are not similarly situated to an existing telecommunications attacher in order to obtain access on rates, terms, and conditions that are comparable to the existing telecommunications attacher.⁴⁶⁶

125. The record clearly demonstrates that incumbent LEC pole ownership continues to decline.⁴⁶⁷ Incumbent LECs argue that a reversal of the current presumption is warranted because incumbent LECs’ bargaining power vis-à-vis utilities has eroded since 2011 as their percentage of pole ownership relative to utilities has dropped, thus resulting in increased attachment rates relative to their

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President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 2-3 (filed June 6, 2018) (USTelecom June 6, 2018 Wireline *Ex Parte* Letter) (arguing that “rationalizing antiquated monopoly-era cost structures for pole inputs is necessary for efficient investment to bring more and better broadband infrastructure to a larger share of Americans, particularly in rural areas.”).

⁴⁶¹ See USTelecom Wireline NPRM Comments at 9; Verizon Wireline NPRM Comments at 10.

⁴⁶² See *2011 Pole Attachment Order*, 26 FCC Rcd at 5244, para. 8. As the Commission explained at the time, “joint use agreements are structured as cost-sharing arrangements, with each party agreeing to own a certain percentage of the joint use poles. This percentage typically is 40–50% for the incumbent LEC and 50–60% for the electric utility, and generally reflects the relative ratio of pole ownership that existed at the time these agreements originally were negotiated. No money changes hands under these agreements if each party owns its specified percentage of joint use poles. . . . When pole ownership deviates from the agreement, the party that owns less than the specified percentage typically pays the other party an amount based on a per pole rate.” *Id.* at 5334-35, n.651 (internal citations omitted).

⁴⁶³ See EEI Wireline NPRM Reply at 14; UTC Wireline NPRM Reply at 27-28.

⁴⁶⁴ *2011 Pole Attachment Order*, 26 FCC Rcd at 5329, para. 206.

⁴⁶⁵ *Id.* at 5330, para. 208.

⁴⁶⁶ See 47 CFR § 1.1413; see also *2011 Pole Attachment Order*, 26 FCC Rcd at 5336, para. 217 (stating that, “to the extent that the incumbent LEC demonstrates that it is obtaining pole attachments on terms and conditions that leave them comparably situated to telecommunications carriers or cable operators, we believe it will be appropriate to use the rate of the comparable attacher as [a] ‘just and reasonable’ rate”).

⁴⁶⁷ See AT&T Wireline NPRM Comments at 23; Frontier Wireline NPRM Comments at 6; Letter from Kevin G. Rupy, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at Attach. at 7 (USTelecom Nov. 21, 2017 Wireline *Ex Parte* Letter) (“In the 46 states surveyed, USTelecom’s data show that for every ILEC pole to which IOUs attach, ILECs attach to three IOU poles. Specifically, ILECs attach to approximately 13.9 million IOU poles, whereas IOUs attach to only 4.6 million ILEC poles.”).

fellow telecommunications attachers.⁴⁶⁸ To bolster this claim, USTelecom provides the results of a recent member survey showing that its incumbent LEC members “pay an average of \$26.12 [per year] to [investor-owned utilities] today in Commission-regulated states (an *increase* from \$26.00 in 2008), compared to cable and CLEC provider payments to ILECs, which average \$3.00 and \$3.75 [per year], respectively (a *decrease* from \$3.26 and \$4.45, respectively, in 2008).”⁴⁶⁹

126. We are convinced by the record evidence showing that, since 2008, incumbent LEC pole ownership has declined and incumbent LEC pole attachment rates have increased (while pole attachment rates for cable and telecommunications attachers have decreased).⁴⁷⁰ We therefore conclude that incumbent LEC bargaining power vis-à-vis utilities has continued to decline. Therefore, based on these changed circumstances, we agree with incumbent LEC commenters’ arguments that, for new and newly-renewed pole attachment agreements between utilities and incumbent LECs, we should presume that incumbent LECs are similarly situated to other telecommunications attachers and entitled to pole attachment rates, terms, and conditions that are comparable to the telecommunications attachers.⁴⁷¹ We conclude that, for determining a comparable pole attachment rate for new and newly-renewed pole attachment agreements, the presumption is that the incumbent LEC should be charged no higher than the pole attachment rate for telecommunications attachers calculated in accordance with section 1.1406(e)(2) of the Commission’s rules.⁴⁷² We find that applying the presumption in these circumstances will promote broadband deployment and serve the public interest; we agree with USTelecom that greater rate parity between incumbent LECs and their telecommunications competitors “can energize and further accelerate broadband deployment.”⁴⁷³ However, we recognize there may be some cases in which incumbent LECs may continue to possess greater bargaining power than other attachers, for example in geographic areas where the incumbent LEC continues to own a large number of poles. Therefore, we establish a presumption that may be rebutted, rather than a more rigid rule.⁴⁷⁴

⁴⁶⁸ See AT&T Wireline NPRM Comments at 23; Frontier Wireline NPRM Comments at 4-7; USTelecom Wireline NPRM Comments at 3-4; Verizon Wireline NPRM Comments at 11. According to a recent USTelecom survey, its members in 2017 paid investor owned utilities nearly nine times what incumbent LECs charge cable provider attachers on incumbent LEC-owned poles, and almost seven times the rates incumbent LECs charge competitive LEC attachers on incumbent LEC-owned poles. See USTelecom Nov. 21, 2017 Wireline *Ex Parte* Letter Attach. at 3. According to USTelecom, this disparity has risen from 2008 when its members paid eight times more than cable providers and six times more than competitive LECs. See *id.* at Attach. at 4.

⁴⁶⁹ USTelecom Nov. 21, 2017 Wireline *Ex Parte* Letter Attach. at i (italics in original).

⁴⁷⁰ See AT&T Wireline NPRM Comments at 23; Frontier Wireline NPRM Comments at 4-7; USTelecom Wireline NPRM Comments at 3-4; Verizon Wireline NPRM Comments at 11; USTelecom Nov. 21, 2017 Wireline *Ex Parte* Letter at Attach. at 2-11.

⁴⁷¹ See Letter from Kevin Rupy, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 4 (filed July 27, 2018) (USTelecom July 27, 2018 Wireline *Ex Parte* Letter) (proposing we extend the presumption to newly-renewed agreements); Letter from Thomas W. Whitehead, Vice President, Federal Government Affairs, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-89, WC Docket No. 17-84, at 2 (filed July 25, 2018) (Windstream July 25, 2018 Wireline and Wireless *Ex Parte* Letter) (proposing that we extend the presumption to newly-renewed agreements); see also USTelecom Wireline NPRM Comments at 6-8; AT&T Wireline NPRM Comments at 23; Frontier Wireline NPRM Comments at 5-7; Verizon Wireline NPRM Comments at 11-12; *cf.* Windstream July 25, 2018 Wireline *Ex Parte* Letter at 2 (proposing that we also extend the presumption to all agreements starting two years after the effective date of this Order).

⁴⁷² See 47 CFR § 1.1406(e)(2).

⁴⁷³ USTelecom Nov. 21, 2017 Wireline *Ex Parte* Letter Attach. at 1.

⁴⁷⁴ We find Utilities Technology Council’s claim that the presumption we adopt today will lead to the “wholesale abandonment of joint use agreements” which will, in turn, “undermine investment in the very infrastructure upon

127. We extend this rebuttable presumption to newly-negotiated and newly-renewed joint use agreements.⁴⁷⁵ We conclude that, by applying the presumption to new and newly-renewed agreements, we will give incumbent LECs parity with similarly-situated telecommunications attachers, and encourage infrastructure deployment by addressing incumbent LECs' bargaining power disadvantage.⁴⁷⁶ We recognize that this divergence from past practice will impact privately-negotiated agreements⁴⁷⁷ and so the presumption will only apply, as it relates to existing contracts, upon renewal of those agreements.⁴⁷⁸ We disagree with utilities that argue that we should not apply the presumption to any existing agreements because existing joint use agreements were negotiated at a time of more equal bargaining power between the parties and because incumbent LECs receive unique benefits under joint use agreements.⁴⁷⁹ To the extent incumbent LECs receive net benefits distinct from those given to other telecommunications attachers, a utility may rebut the presumption.

128. Utilities can rebut the presumption we adopt today in a complaint proceeding by

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which all attaching entities depend to provide their services safely and reliably," speculative and unsupported by evidence. UTC July 26, 2018 Wireline *Ex Parte* Letter at 6-7.

⁴⁷⁵ See Electric Utilities Wireline NPRM Comments at 24-25 (suggesting that we apply the presumption to newly-negotiated agreements); Windstream July 25, 2018 Wireline *Ex Parte* Letter at 2 (suggesting that we apply the presumption to newly-renewed agreements). A new or newly-renewed pole attachment agreement is one entered into, renewed, or in evergreen status after the effective date of this Order, and renewal includes agreements that are automatically renewed, extended, or placed in evergreen status. Consistent with the Commission's conclusion in 2011, the pre-2011 pole attachment rate for telecommunications carriers will continue to serve as a reference point in complaint proceedings regarding agreements that materially advantage an incumbent LEC and which were entered into after the 2011 Order and before the effective date of the Order we release today. See *2011 Pole Attachment Order*, 26 FCC Rcd at 5337, para. 218. This includes circumstances where an agreement has been terminated and the parties continue to operate under an "evergreen" clause. See *Verizon Florida LLC v. Florida Power and Light Company*, Pole Attachment Complaint, Docket No. 15-73, File No. EB-15-MD-002, at 6 (filed Mar. 13, 2015) (describing how the parties had terminated a joint use agreement but continued to operate under rates established by the joint use agreement for existing attachments pursuant to the agreement's evergreen clause); cf. Electric Utilities Apr. 24, 2018 Wireline *Ex Parte* Letter at 5-6 ("[I]n almost all joint use agreements, investor-owned electric utilities have no right to demand removal of attachments upon termination.") (emphasis omitted).

⁴⁷⁶ See USTelecom July 27, 2018 Wireline *Ex Parte* Letter at 1-3 (explaining that lower rates will encourage infrastructure deployment, and that incumbent LECs lack the bargaining power to renegotiate existing joint use agreements); see also AT&T July 23, 2018 Wireline *Ex Parte* Letter at 3-5 (explaining same); Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 1-4 (filed July 26, 2018) (explaining how our current scheme has "negatively impacted broadband deployment," and arguing that we adopt the presumption for existing joint use agreements).

⁴⁷⁷ See UTC Wireline NPRM Comments at 20; Midwest Electric Utilities Wireline NPRM Reply at 32; POWER Coalition Wireline NPRM Reply at 24-25; see also CCU Wireline NPRM Comments at 53; Electric Utilities Wireline NPRM Reply at 2; EEI July 26, 2018 Wireline *Ex Parte* Letter at 14-15.

⁴⁷⁸ Until that time, for existing agreements, the *2011 Pole Attachment Order's* guidance regarding review of incumbent LEC pole attachment complaints will continue to apply. See *2011 Pole Attachment Order*, 26 FCC Rcd at 5333-38, paras. 214-19; see also USTelecom July 27, 2018 Wireline *Ex Parte* Letter Appx. A at i; Verizon July 25, 2018 Wireline *Ex Parte* Letter at 2-3. Because our intention is to encourage broadband deployment going forward, we decline to adopt USTelecom's proposal that we give incumbent LECs "the right to refunds for overpayments as far back as the statute of limitations allows." USTelecom July 25, 2018 Wireline *Ex Parte* Letter at 2-3.

⁴⁷⁹ See CCU Wireline NPRM Comments at 41-49; Electric Utilities Wireline NPRM Reply at 3-5; Midwest Electric Utilities Wireline NPRM Reply at 34; Electric Utilities Apr. 24, 2018 Wireline *Ex Parte* Letter at 7-8; see also UTC Wireline NPRM Comments at 20-21; Southern Company July 26, 2018 Wireline *Ex Parte* Letter at 6-8 (arguing that we should not apply the presumption to existing agreements, and suggesting that we limit the presumption for new agreements regarding new attachments).

demonstrating that the incumbent LEC receives net benefits that materially advantage the incumbent LEC over other telecommunications attachers.⁴⁸⁰ Such material benefits may include “[p]laying significantly lower make-ready costs; [n]o advance approval to make attachments; [n]o post-attachment inspection costs; [r]ights-of-way often obtained by electric company; [g]uaranteed space on the pole; [p]referential location on pole; [n]o relocation and rearrangement costs; and [n]umerous additional rights such as approving and denying pole access, collecting attachment rents and input on where new poles are placed.”⁴⁸¹ If the utility can demonstrate that the incumbent LEC receives significant material benefits beyond basic pole attachment or other rights given to another telecommunications attacher, then we leave it to the parties to negotiate the appropriate rate or tradeoffs to account for such additional benefits.

129. If the presumption we adopt today is rebutted, the pre-2011 *Pole Attachment Order* telecommunications carrier rate is the maximum rate that the utility and incumbent LEC may negotiate. This conclusion builds on and clarifies the Commission’s determination in the 2011 *Pole Attachment Order* that the pre-2011 telecommunications carrier rate should serve “as a reference point in complaint proceedings” where a joint use agreement was found to give net advantages to an incumbent LEC as compared to other attachers.⁴⁸² The Commission “[found] it prudent to identify a specific rate to be used as a reference point in these circumstances because it [would] enable better informed pole attachment negotiations . . . [and] reduce the number of disputes” regarding pole attachment rates.⁴⁸³ We reaffirm the conclusion that reference to this rate is appropriate where incumbent LECs receive net material advantages in a pole attachment agreement. And because we agree with commenters that “establishment of . . . an upper bound will provide further certainty within the pole attachment marketplace, and help to further limit pole attachment litigation,”⁴⁸⁴ we make this rate a hard cap.⁴⁸⁵ In so doing, we remove the potential for uncertainty caused by considering the rate merely as a “reference point.”

D. Other Pole Attachment Issues

130. Below, we respond to several pole attachment related proposals raised in the record in the *Wireline Infrastructure* proceeding. We do not at this time address all outstanding issues raised in the notices or record in this proceeding, and we will take further action as warranted in this proceeding to

⁴⁸⁰ See 2011 *Pole Attachment Order*, 26 FCC Rcd at 5336-37, para. 218; see also Verizon Wireline NPRM Comments at 12.

⁴⁸¹ 2011 *Pole Attachment Order*, 26 FCC Rcd at 5335, n.654 (quoting Comcast Reply, WC Docket No. 07-245, GN Docket No. 09-51, at 25 (Oct. 4, 2010)); see also CCU Wireline NPRM Comments at 45-49 (stating that “ILECs receive a host of advantages that third party attachers like cable companies and CLECs do not enjoy,” before enumerating many of those specific advantages); Electric Utilities Wireline NPRM Comments at 26-30 (stating the benefits to ILECs of joint use agreements and claiming that “it is highly unlikely that ILECs made their existing attachments on ‘comparable terms’ to other attachers because the ILECs made them with the immense capital cost savings and operational advantages of joint use agreements”); Midwest Electric Utilities Wireline NPRM Comments at 45-46 (asserting that “ILECs generally obtain numerous benefits under their existing joint use agreements that offset any increased rates they might pay for pole access in certain circumstances”); EEI July 26, 2018 Wireline *Ex Parte* Letter at 15 (“joint use agreements confer upon ILECs, as joint pole owners, a myriad of other benefits that save time and expense”).

⁴⁸² 2011 *Pole Attachment Order*, 26 FCC Rcd at 5337, para. 218.

⁴⁸³ *Id.* The Commission further concluded that this rate, “which historically has been used in the marketplace,” accounted for “particular arrangements that provide net advantages to incumbent LECs” because it was higher than the rate available to telecommunications attachers. *Id.*

⁴⁸⁴ USTelecom Wireline NPRM Comments at 11; see also Verizon Wireline NPRM Comments at 14 (“If the pre-existing telecom rate is . . . an upper bound, it will focus the parties’ negotiations by cabining the range of rates at issue.”).

⁴⁸⁵ See USTelecom Wireline NPRM Comments at 11; POWER Coalition Wireline NPRM Reply at 25 (submitting that if the utility overcomes the presumption, then “the old telecom rate should apply” if the incumbent LEC receives joint use benefits not enjoyed by other telecommunications carriers).

address outstanding issues.

131. *Uniform Pole Attachment Application.* We decline to adopt rules requiring utilities to use a uniform pole application form as requested by certain commenters.⁴⁸⁶ We agree with a previous Commission decision that it is best to “leave the details of specific application criteria and processes to individual utilities,”⁴⁸⁷ and we do not find a compelling case in the record to change course, so long as the criteria and processes a utility uses are reasonable. We also agree with the Coalition of Concerned Utilities that implementation and use of a standard pole application would likely prove difficult because “[e]ach utility has its own operational, design, construction, geographical and state regulatory requirements that call for different pole attachment application information.”⁴⁸⁸

132. *Automated Tracking of Pole Attachment Progress.* We decline to adopt ACA’s proposal that we require utilities to adopt a web-based pole attachment ticket management system.⁴⁸⁹ Attachers and utilities are in the best position to develop systems, and we are reluctant to interfere in the market absent greater evidence of need. Rather, the market appears to be working in this regard. As ACA points out, “the great majority of utilities use NJUNS, NOTIFY, or some other management system.”⁴⁹⁰ Similarly, Alliant Energy developed and implemented its own online portal for processing and tracking pole attachment applications.⁴⁹¹

133. *Utility Construction Standards and Requirements.* We decline the requests of certain commenters to establish limits on the construction standards and requirements that utilities adopt for their poles.⁴⁹² We agree with those utility commenters who argue that one-size-fits-all national pole construction standards (even if they were based on the NESC or similar codes) are not a good idea, and the better policy is to defer to reasonable and targeted construction standards established by states, localities, and the utilities themselves where appropriate.⁴⁹³

134. At this time, we decline to adopt Crown Castle’s request that we prohibit blanket bans by utilities on the attachment of equipment in the unusable space on a pole because we have an insufficient record on which to reach a clear determination.⁴⁹⁴ Crown Castle argues that it “has encountered a growing number of pole owners, whose territories cover many states, who have adopted blanket bans on attaching any equipment in the [unusable] space – despite the fact that this is a well-established and long-standing practice.”⁴⁹⁵ Two utility commenters argue that where utilities prohibit such attachments, they do so based on legitimate safety and engineering considerations, such as fall hazards, climbing obstructions, and the difficulty of moving equipment in the common space when poles have to be

⁴⁸⁶ See, e.g., Charter Feb. 5, 2018 Wireline *Ex Parte* Letter at 3 (“Utilize a pole attachment application that requires applicants to submit only the information reasonably necessary for the application process.”); FBA Wireline NPRM Comments at 8-9; Mobilitie Wireline & Wireless NPRM Comments at 10; ACA Wireline NPRM Reply at 14-17.

⁴⁸⁷ 2011 Pole Attachment Order, 26 FCC Rcd at 5274, para. 73.

⁴⁸⁸ CCU Wireline NPRM Reply at 14; see also Electric Utilities Wireline NPRM Reply at 28-29 (claiming that “[d]ifferences in application forms reflect differences in electric utilities’ internal construction standards, pole attachment policies, and even the specific geography and weather conditions of the utilities’ service area”).

⁴⁸⁹ See ACA Wireline NPRM Reply at 17; Charter Wireline & Wireless NPRM Comments at 56; Crown Castle Wireline NPRM Reply at 9; NCTA Wireline & Wireless NPRM Reply at 22-23; UTC Wireline NPRM Reply at 7.

⁴⁹⁰ ACA Wireline NPRM Reply at 17.

⁴⁹¹ Midwest Electric Utilities Wireline NPRM Reply at 12, 29-30.

⁴⁹² See Crown Castle Wireline NPRM Comments at 4-5; ExteNet Wireline & Wireless NPRM Comments at 55.

⁴⁹³ See CenterPoint Energy/FPL Feb. 13, 2018 Wireline *Ex Parte* Letter at 4.

⁴⁹⁴ Crown Castle Wireline NPRM Comments at 5-6.

⁴⁹⁵ *Id.* at 5.

replaced.⁴⁹⁶ No other commenter addressed this issue. We recognize that there are likely to be circumstances in which using the lower portion of poles to install equipment associated with DAS and other small wireless facilities will be safe and efficient.⁴⁹⁷ However, given the paucity of the record, we are not in a position to be certain whether we should mandate that utilities permit certain uses. We would be open to revisiting this issue in the future.⁴⁹⁸

E. Legal Authority

135. We conclude that we have ample authority under section 224 to take the actions above to adopt a new pole attachment process, amend our current pole attachment process, clarify responsibility for pre-existing violations, and address outdated rate disparities. Section 224 authorizes us to prescribe rules ensuring that the rates, terms, and conditions of pole attachments are just and reasonable.⁴⁹⁹ We find that the actions we take today to speed broadband deployment further these statutory goals.⁵⁰⁰

F. Effective Date of the Commission's Modified Pole Attachment Rules

136. Several parties have requested that the Commission provide a transition period in which to implement its revised rules governing pole attachments.⁵⁰¹ As AT&T notes, this Report and Order would modify “the Commission’s existing timelines for application review, make-ready, and self-help and adopt new timelines for pre-application surveys, OTMR, and post-OTMR and self-help inspection and repair.”⁵⁰² The record indicates that in some cases, these changes will require carriers and industry members to modify the automated electronic systems they use to track and coordinate pole attachment workflow and activities.⁵⁰³ Therefore, we find it appropriate to provide a transitional period. To avoid confusion and facilitate efficient compliance preparation, we also wish to make the transitional period uniform for all pole attachment-related rules. Thus, the pole attachment-related portions of this Report

⁴⁹⁶ CCU Wireline NPRM Reply at 28; Electric Utilities Wireline NPRM Reply at 24-25.

⁴⁹⁷ Cf. *2011 Pole Attachment Order*, 26 FCC Rcd at 5276, para. 77 (prohibiting blanket bans on wireless pole-top attachments).

⁴⁹⁸ While we do not today prohibit utilities from adopting blanket bans on the attachment of equipment in the unusable space on a pole, we take this opportunity to reaffirm our comments in the *2011 Pole Attachment Order* that: (1) a utility must explain in writing its precise concerns—and how they relate to lack of capacity, safety, reliability, or engineering purposes—in a way that is specific with regard to both the particular attachment(s) and the particular pole(s) at issue; and (2) such concerns must be reasonable in nature in order to be considered nondiscriminatory. We expect attachers and utilities to work together to find code-compliant solutions that address any concerns raised by a utility. See *Crown Castle July 25, 2018 Wireline Ex Parte Letter* at 1-3.

⁴⁹⁹ 47 U.S.C. §§ 224(b)(1), (2). As we have stated previously, “the broad language of section 224(b)(1) and (b)(2) indicate a delegation of comprehensive rulemaking authority over all attachment issues, including access.” *2011 Pole Attachment Order*, 26 FCC Rcd at 5282, para. 91. Our comprehensive authority covers the various rules we adopt today, including new requirements on attachers. We note that other provisions of the Act also confer broad authority to regulate providers of telecommunications service or cable television systems. See, e.g., 47 U.S.C. §§ 154(i), 201, 202, 536.

⁵⁰⁰ While we rely solely on section 224 for legal authority, our prioritization of broadband deployment throughout today’s *Report and Order* finds support in section 706(a) of the Telecommunications Act of 1996, which exhorts us to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” by “remov[ing] barriers to infrastructure investment.” 47 U.S.C. § 1302(a). While section 706(a) does not provide a grant of regulatory authority, we look to it as guidance from Congress on how to implement our statutorily-assigned duties. See *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 471-480, paras. 268-83 (2018).

⁵⁰¹ See AT&T July 23, 2018 Wireline *Ex Parte Letter* at 1; EEI July 26, 2018 Wireline *Ex Parte Letter* at 3, 7; Hawaiian Electric July 25, 2018 Wireline *Ex Parte Letter* at 5.

⁵⁰² AT&T July 23, 2018 Wireline *Ex Parte Letter* at 1.

⁵⁰³ See *id.*

and Order (i.e., sections III.A-E) and the rule amendments adopted therein shall become effective on the latter of (1) six months after the release of this item or (2) 30 days after the Commission publishes a notice in the Federal Register announcing approval by the Office of Management and Budget of the rules adopted herein containing modified information collection requirements.⁵⁰⁴ We believe that this period will be sufficient, but no more than necessary, to allow affected industry members to modify their systems to account for the rule amendments adopted in this Report and Order.

G. Rebuilding and Repairing Broadband Infrastructure After Disasters

137. We will not allow state and local laws to stand in the way of post-disaster restoration of essential communications networks. In the November 2017 *Further Notice of Proposed Rulemaking* in this proceeding, we sought comment on whether there are targeted circumstances related to disasters in which the Commission should use its preemption authority.⁵⁰⁵ We find that sections 253 and 332(c)(7) of the Act⁵⁰⁶ provide authority to preempt state or local laws that prohibit or have the effect of prohibiting the rebuilding or restoration of facilities used to provide telecommunications services, and we commit to the exercise of that authority on a case-by-case basis where needed.⁵⁰⁷ Sections 253 and 332(c)(7) both provide for preemption of state and local laws that “prohibit or have the effect of prohibiting” the deployment of telecommunications services, and we conclude that these provisions provide authority to preempt state or local legal action that effectively prohibit the deployment of telecommunications services in the wake of a disaster.⁵⁰⁸ As the Commission has previously recognized, certain federal regulations may impede restoration efforts, and we are working to address those too⁵⁰⁹—where it is within our authority, we are committed to addressing all legal requirements that stand in the way of prompt restoration of communications infrastructure.

138. We prefer to exercise our authority to address the application of section 253 to preempt state and local requirements that inhibit network restoration on an expedited adjudicatory case-by-case basis, in which we can take into account the particularized circumstances of the state or local law in question and the impact of the disaster, and other relevant factors, rather than through adoption of a rule.

⁵⁰⁴ The remainder of this *Report and Order* will be effective 30 days after publication in the Federal Register, and the *Declaratory Ruling* will be effective upon release. See *infra* section VI.

⁵⁰⁵ See *Wireline Infrastructure Order*, 32 FCC Rcd at 11194, paras. 178-79.

⁵⁰⁶ 47 U.S.C. §§ 253, 332(c)(7).

⁵⁰⁷ Our finding that the Commission has such authority should not be construed to mean that the Commission’s preemption authority under Section 253 is limited only to times of natural disasters. See Illinois Electric Cooperative Wireline FNRPM Comments at 4.

⁵⁰⁸ 47 U.S.C. §§ 253(a), 332(c)(7). We find that our authority to interpret or act pursuant to sections 253 and 332 is not limited to natural disasters, and also extends to *force majeure* events generally, including man-made disasters. Cf., e.g., *Wireline Infrastructure Order*, 32 FCC Rcd at 11157-59, paras. 71-78 (adopting streamlined copper retirement notice procedures for *force majeure* events).

⁵⁰⁹ See *Wireline Infrastructure Order*, 32 FCC Rcd at 11157-59, paras. 71-78 (exempting incumbent LECs from certain requirements for copper retirements that are a direct result of damage to network infrastructure caused by a *force majeure* event); *Second Wireline Infrastructure Order* at paras. 58-59 (extending streamlined notice procedures for *force majeure* events to all types of network changes); *Telephone Number Portability; Numbering Resource Optimization*, CC Docket Nos. 95-116, 99-200, Order, 32 FCC Rcd 6723 (2017) (granting a temporary waiver of the Commission’s numbering rules for providers affected by Hurricane Harvey); *Telephone Number Portability; Numbering Resource Optimization*, CC Docket Nos. 95-116, 99-200, Order, 32 FCC Rcd 6831 (2017) (granting a temporary waiver of the Commission’s number assignment rules for providers affected by Hurricane Irma); *Telephone Number Portability; Numbering Resource Optimization*, CC Docket Nos. 95-116, 99-200, Order, 32 FCC Rcd 7005 (2017) (granting a temporary waiver of section 52.15(f)(ii) of the Commission’s rules for providers affected by Hurricanes Maria and Jose).

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139. As the City of New York suggests, state and local officials may be well positioned to respond to disasters and implement disaster response protocol and we will be cognizant not to exercise our preemption authority in a manner that could disrupt these efforts.⁵¹¹ In the wake of Hurricanes Harvey, Irma, and Maria, the Commission worked closely with state and local partners to support restoration of communications networks in affected areas,⁵¹² and going forward, we reiterate the need for ongoing coordination and cooperation between the Commission and state and local governments to rebuild damaged telecommunications infrastructure as quickly as possible.⁵¹³ As the Public Safety and Homeland Security Bureau is responsible for coordinating the Commission's disaster response and recovery activities⁵¹⁴ and is most closely in contact with state, local, and Federal public safety, disaster relief and restoration agencies in such instances, it should work with the Wireline Competition Bureau and Wireless Telecommunications Bureau to report, and provide assistance to, the Commission in its adjudication of such matters.

IV. DECLARATORY RULING

140. Section 253(a) of the Act specifies that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”⁵¹⁵ Notwithstanding that clear admonition, some states and localities have adopted moratoria on the deployment of telecommunications services or telecommunications facilities, including explicit refusals to authorize deployment and dilatory tactics that amount to *de facto* refusals to allow deployment. To provide regulatory certainty and further deployment, we issue this Declaratory Ruling making clear that such state and local moratoria violate section 253(a) and strike at the heart of the ban on barriers to entry that Congress enacted in that provision.

A. Background

141. As the Eighth Circuit has explained, section 253(a) of the Act provides “a rule of preemption[]” that “articulates a reasonably broad limitation on state and local governments’ authority to regulate telecommunications providers.”⁵¹⁶ Section 253(b) provides an exception for state requirements that are competitively neutral, consistent with section 254 of the Act, and “necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of

⁵¹⁰ See Verizon Wireline FNPRM Comments at 20-22.

⁵¹¹ See City of New York Wireline FNPRM Comments at 3.

⁵¹² See Statement of Chairman Ajit Pai, *FCC Response to Hurricanes Harvey, Irma, and Maria* (Sept. 26, 2017), <https://www.fcc.gov/document/presentation-fcc-response-hurricanes-harvey-irma-and-maria>. As of December 7, 2017, in response to all three hurricanes, the FCC issued over 30 public notices and orders, permitting the flexible use of spectrum or other non-standard actions to support incident response; granted over 200 requests for Special Temporary Authorizations; granted temporary waivers of Lifeline requirements; and waived number portability rules to facilitate restoration of telephone services. See *Public Safety and Homeland Security Bureau Seeks Comment on Response Efforts Undertaken During 2017 Hurricane Season*, PS Docket No. 17-344, Public Notice, DA 17-1180, at 2-3 (PSHSB Dec. 7, 2017); see also *Uniendo a Puerto Rico Fund and the Connect USVI Fund* at paras. 13-27 (establishing the Uniendo a Puerto Rico Fund and the Connect USVI Fund to rebuild, improve and expand voice and broadband networks in Puerto Rico and the U.S. Virgin Islands).

⁵¹³ See CWA Wireline FNPRM Comments at 7; Uniti Fiber Wireline FNPRM Comments at 5.

⁵¹⁴ See 47 CFR § 0.191.

⁵¹⁵ 47 U.S.C. § 253(a).

⁵¹⁶ *Level 3 Commc'ns, LLC. v. City of St. Louis, Mo.*, 477 F.3d 528, 531-32 (8th Cir. 2007) (*Level 3*).

telecommunications services, and safeguard the rights of consumers.”⁵¹⁷ Section 253(c) provides another set of exceptions to the limits on state and local authority by specifying that nothing in section 253 “affects the authority of a State or local government to manage their public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for the use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”⁵¹⁸ Section 253(d) requires the Commission, after notice and comment, to preempt the enforcement of specific state or local requirements that are contrary to section 253(a) or (b) “to the extent necessary to correct such violation or inconsistency.”⁵¹⁹ Pursuant to section 253(d), the Commission has preempted both state and local actions that prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services, such as a locality’s denial of franchise applications from a new competitor,⁵²⁰ provisions in state codes that protect rural incumbents,⁵²¹ and a state grant of an exclusive license to provide telecommunications services.⁵²²

142. Section 253 applies to wireless and wireline telecommunications services.⁵²³ In the *Wireline Infrastructure Notice of Inquiry*, the Commission asked whether “moratoria on market entry or the deployment of telecommunications facilities[]” are inconsistent with section 253(a).⁵²⁴ The Commission also sought comment on whether to provide an exception if moratoria were imposed with

⁵¹⁷ 47 U.S.C. § 253(b); see also *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, Memorandum Opinion and Order, 15 FCC Rcd 16227, 16231–32, para. 9 (2000).

⁵¹⁸ 47 U.S.C. § 253(c).

⁵¹⁹ 47 U.S.C. § 253(d). In the discussion below, we discuss the relation between subsections (d) and (a) and find that the former does not preclude us from issuing this *Declaratory Ruling* under subsection (a). See *infra* section IV.B.3.

⁵²⁰ See *Classic Telephone, Inc.; Petition for Preemption, Declaratory Ruling and Injunctive Relief*, CCBPol 96-10, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13101, para. 36 (1996) (*Classic Telephone*).

⁵²¹ See *Public Utility Commission of Texas et al., Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCBPol 96-14 et al., Memorandum Opinion and Order, 13 FCC Rcd 3460, 3466, para. 13 (1997) (*Public Utility Comm’n of Texas*); *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, CCB Pol 97-1, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15658, para. 42 (1997), *aff’d sub nom. RT Commc’ns, Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000) (*RT Commc’ns*).

⁵²² See *Connect America Fund (Sandwich Isles Communications, Inc.) Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission’s Rules*, WC Docket No. 10-90, CC Docket No. 96-45, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5888, para. 26 (2017).

⁵²³ Section 253(a) on its face applies to “any interstate or intrastate telecommunications service[,]” and the Supreme Court has held that wireless telecommunications services are included in that term. 47 U.S.C. § 253(a); *Nat’l Cable & Telecomm. Ass’n, Inc. v. Gulf Power Co.*, 534 U.S. 327, 340 (2002) (“[a] provider of wireless telecommunications service is a ‘provider of telecommunications service’”). The Commission has previously recognized that section 253 applies to Commercial Mobile Radio Services (CMRS). See *Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45 et al., Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, 5486, para. 302 (1997) (“To demonstrate that state universal service contribution requirements for CMRS providers violate section 253, there must be a showing that the state universal service programs act as a barrier to entry for CMRS providers and are not competitively neutral.”). We therefore disagree with Smart Communities that section 253 does not apply to wireless facilities. See Smart Communities Wireless NPRM Comments at 56-57.

⁵²⁴ *Wireline Infrastructure Notice*, 32 FCC Rcd at 3297, para. 102.

“sharply restricted time limits[.]” or under “exigent circumstances[.]”⁵²⁵ In the *Wireless Infrastructure NPRM*, the Commission sought comment on promulgating a preemption rule to address state or local zoning authorities’ unreasonable delays in acting on applications.⁵²⁶ That item also initiated a Notice of Inquiry, which sought comment, among other things, on whether state or local governments have imposed restrictions on deployment comparable to moratoria.⁵²⁷

143. In response to the *Wireline Infrastructure Notice of Inquiry* and the *Wireless Infrastructure NPRM*, we received numerous comments about states and localities imposing moratoria on the deployment of telecommunications infrastructure. The record includes comments from a broad array of large and small wireline and wireless providers operating throughout the country. For example, AT&T describes an Ohio municipality that “enacted a 145-day moratorium on permits for construction in rights-of-way” and an Illinois city that “imposed a five-year moratorium on pavement cuts to roadways that have been resurfaced or reconstructed.”⁵²⁸ Uniti Fiber identifies 44 jurisdictions in Florida that have implemented wireless moratoria.⁵²⁹ Frontier offers examples of several states that have issued moratoria, including Indiana, which “issued a complete moratorium” on broadband deployment in March 2017; Illinois, where localities “often refuse to issue work permits unless a carrier pays”; Michigan, which “has frost and freeze laws that prevent construction of facilities for extended periods of time during the winter”; and Washington, which “issued a moratorium banning Frontier from building new infrastructure” between August 2016 and January 2017.⁵³⁰ The record demonstrates that moratoria are numerous, geographically diverse, and occur at both the state and local level, showing that this issue affects the deployment of telecommunications services in many cases across the nation.

B. Discussion

144. The records in both the wireline and wireless infrastructure proceedings reflect the existence of two types of moratoria, express and *de facto*. We find that both types of moratoria violate section 253(a) and generally do not fall within the section 253(b) and (c) exceptions.

1. Moratoria Violate Section 253(a)

145. *Express Moratoria*. For purposes of this Declaratory Ruling, we define express moratoria as state or local statutes, regulations, or other written legal requirements that expressly, by their very terms, prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities.⁵³¹ Commenters identify numerous

⁵²⁵ *Id.*

⁵²⁶ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Second Report and Order, 32 FCC Rcd 3330, 3336-37, paras. 15-16 & n.30 (*Wireless NPRM*).

⁵²⁷ *Id.* at 3364-65, paras. 95-96.

⁵²⁸ AT&T Wireline NPRM Comments at 74.

⁵²⁹ See Letter from Ronald W. Del Sesto, Jr., Counsel for Uniti Fiber, to Marleen H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket No. 17-79, at Exh. A (filed Oct. 30, 2017) (Uniti Fiber Oct. 30, 2017 Wireless NPRM *Ex Parte* Letter); see also Conterra Broadband Services et al. (Conterra) Wireline NPRM Comments at 28 (describing one instance where a municipality placed a moratorium on competitive deployments, and others where state highway officials “refused to issue permits for deploying fiber on bridges, even where spare conduit is available”); T-Mobile Wireline & Wireless NPRM Comments at 37 (describing a *de facto* moratorium outside Indianapolis); Wireless Infrastructure Association (WIA) Wireline & Wireless NPRM Comments at 11-12 (describing *de facto* moratoria in jurisdictions in Massachusetts and Illinois).

⁵³⁰ Frontier Wireline NPRM Comments at 32-33; see also Mobilite Wireline & Wireless NPRM Comments at Attach. 2, 11-12 (describing *de facto* moratoria in jurisdictions in Arizona, California, Michigan, Minnesota, New York, Ohio, and Oregon); Sprint Wireline & Wireless NPRM Comments at 41-42 (describing instances of *de facto* moratoria in the south and with a state DOT).

⁵³¹ We specifically include facilities where such facilities are necessary for the provision of covered services within the scope of section 253. See *Public Utility Comm’n of Texas*, 13 FCC Rcd at 3496, para. 74 (finding that “section

instances of express moratoria that harm the public by prohibiting or having the effect of prohibiting the provision and deployment of telecommunications services and/or facilities. For example, despite the Commission's direction in 2009 and 2014 that states and localities must complete their review of wireless siting applications for collocation deployments within 90 days and for deployments other than collocation within 150 days,⁵³² the record in response to the *Wireless Infrastructure NPRM* shows that express moratoria on wireless deployments are all too common. Uniti Fiber, for example, identifies dozens of local jurisdictions that have implemented moratoria on wireless deployment.⁵³³ Commenters also provide specific examples of moratoria related to the processing of siting applications involving deployment of small cells.⁵³⁴ For instance, Crown Castle describes an Amherst, New York resolution prohibiting town staff from accepting or processing any applications or issuing any permits "relating to the placement or installation of telecommunication towers, facilities and antennae within the Town's public rights-of-way until the moratorium is rescinded and/or a Local Law addressing this matter is adopted."⁵³⁵ Similarly, Uniti Fiber identifies a Jacksonville, Florida ordinance which was passed on an 'emergency' basis,⁵³⁶ and which imposed a "temporary moratorium on the acceptance, processing or approval of rights-of-way permit applications for personal wireless communication systems in the City's rights-of-way."⁵³⁷

146. Likewise, in response to the *Wireline Infrastructure Notice of Inquiry*, several commenters provide examples of state and local moratoria that have prohibited or had the effect of prohibiting the deployment of telecommunications services.⁵³⁸ For example, Crown Castle highlights

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253(a) bars state or local requirements that restrict the means or facilities through which a party is permitted to provide service"); *Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, CC Docket No. 98-1, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21705, para. 14 (1999) (*Minnesota Preemption Order*) (concluding that Section 253(a) preempts a state's agreement with an infrastructure developer—even though the developer deployed facilities rather than provided telecommunications services—because the operative inquiry is whether the state's action has an effect on the provision of telecommunications services); *cf. Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5922-23, paras. 60-62 (2007) (concluding that where the same infrastructure would provide "both telecommunications and wireless broadband Internet access service," the provisions of section 224 governing pole attachments would continue to apply to such infrastructure used to provide both types of service).

⁵³² See *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd 13994, 14016-19, paras. 56-65 (2009) (*2009 Wireless Siting Declaratory Ruling*), *aff'd sub nom. City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 569 U.S. 290 (2013); *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32, WC Docket No. 11-59, Report and Order, 29 FCC Rcd 12865, 12971, para. 265 (2014) (*Wireless Facilities Siting Order*).

⁵³³ See Uniti Fiber Oct. 30, 2017 Wireless NPRM *Ex Parte* Letter at Exh. A (providing a list of 44 jurisdictions in Florida that have implemented wireless moratoria).

⁵³⁴ See, e.g., Crown Castle Wireless NPRM Comments at 14-19; CTIA Wireline & Wireless NPRM Comments, Attach. 1 at 12; Verizon Wireline & Wireless NPRM Comments at 6; AT&T Wireless NPRM Comments at 14.

⁵³⁵ Crown Castle Wireless NPRM Comments at 32 (quoting Town of Amherst, New York, Resolution 2017-674, adopted June 5, 2017).

⁵³⁶ Uniti Fiber Oct. 30, 2017 Wireless NPRM *Ex Parte* Letter at Exh. B.

⁵³⁷ *Id.*

⁵³⁸ See e.g., Frontier Wireline NPRM Comments at 32-33; Conterra Wireline & Wireless NPRM Comments at 28; AT&T Wireline NPRM Comments at 74; Letter from T. Scott Thompson, Counsel to Crown Castle, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 3-4 (filed Aug. 29, 2017) (Crown Castle Aug. 29, 2017 Wireline *Ex Parte* Letter); Letter from T. Scott Thompson, Counsel to Crown Castle, to Marlene H. Dortch, Secretary, FCC,

persistent problems of moratoria imposed by local governments on the processing and acceptance of applications for new sites.⁵³⁹ As another example, AT&T states that a community in Ohio enacted a 145-day moratorium on permits for construction in rights-of-ways.⁵⁴⁰

147. Express moratoria are facially inconsistent with section 253(a). By their terms, express moratoria prohibit the provision of telecommunications services by halting the acceptance, processing, or approval of applications or permits for such services or the facilities used to provide such services.⁵⁴¹ Express moratoria also “have the effect of prohibiting” the provision of telecommunications service. As the record demonstrates, express moratoria limit the provision of service, harm competition, and impose significant costs that impede the deployment of telecommunications infrastructure and thereby exacerbate the digital divide.⁵⁴² And the impact of moratoria extend beyond the telecommunications services market. As the Wireless Internet Service Providers Association states, “a blanket moratorium that freezes all applications across the board will by definition impede the deployment of broadband services and effectively serve as a complete ban on market entry by small broadband providers that cannot afford to endure excessive delays.”⁵⁴³

148. We reject the argument that all “temporary” moratoria are permissible simply because they are of a limited, defined duration.⁵⁴⁴ As an initial matter, the record indicates that some states and localities impose so-called “temporary” moratoria without setting an end date, or continually extend temporary moratoria to create *de facto* indefinite moratoria on deployment.⁵⁴⁵ We agree with commenters

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WC Docket No. 17-84, GN Docket No. 17-83, at 4 (filed Nov. 13, 2017) (Crown Castle Nov. 13, 2017 Wireline *Ex Parte* Letter).

⁵³⁹ See Crown Castle Aug. 29, 2017 Wireline *Ex Parte* Letter at 3-4; Crown Castle Nov. 13, 2017 Wireline *Ex Parte* Letter at 4.

⁵⁴⁰ See AT&T Wireline NPRM Comments at 74.

⁵⁴¹ See Letter from Scott K. Bergmann, SVP Regulatory Aff., CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 and WTB Docket Nos. 17-79 and 16-421, at 3 (filed July 19, 2018) (stating that “there is no more absolute prohibition on deployment than refusing to accept or act on applications” and that “[a] local law that bars acceptance of applications and a local agency’s refusal to act on them have precisely the same impact—no deployment is permitted—and they are thus per se unlawful”); see also CTIA June 27, 2018 Wireline *Ex Parte* Letter at 4.

⁵⁴² See Conterra Wireline NPRM Comments at 29; Frontier Wireline NPRM Comments at 32; CTIA Wireline & Wireless NPRM Comments, Attach. 1 at 25; Mobile Future Wireless NPRM Comments at 9; Mobilite Wireline & Wireless NPRM Comments at 7; R Street Institute Wireline NPRM Comments at 13-14; Samsung Wireless NPRM Comments at 7-8; see also Conterra Wireline & Wireless NPRM Comments at 29 (describing situations where deployment on bridges and highways was prohibited, creating situations where the only alternative was to “bore under a significant body of water” at a cost-prohibitive price of \$500,000). Cf. Conterra Wireline & Wireless NPRM Comments at 28 (“In one municipality, applicants were informed there was a moratorium on competitive deployments, allowing incumbent phone companies and cable operators to operate without fear of competitive deployment on the horizon.”); see also *California Payphone*, 12 FCC Rcd at 14206, para. 31 (state or local action effectively prohibits provision of service when it “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment”).

⁵⁴³ Wireless Internet Service Providers Ass’n (WISPA) Wireline NPRM Comments at 5.

⁵⁴⁴ See City of Norfolk Wireline NPRM Comments at 16; Minnesota Cities Coalition (MCC) Wireline NPRM Comments at 18-19; Washington State City Coalition (WSCC) Wireline NPRM Comments at 17-18; Illinois Municipal League (IML) Wireless NPRM Comments at 2; League of Minnesota Cities (LMC) Wireline NPRM Comments at 10-11; City of New York Wireline NPRM Comments at 4; League of Arizona Cities and Towns et al. (LACT) Wireless NPRM Comments at 12.

⁵⁴⁵ See, e.g., AT&T Wireless NPRM Comments at 14 (“A Florida city imposed a ‘six-month’ moratorium on [right-of-way] wireless siting that was extended multiple times over two years.”); Sprint Wireless NPRM Comments at 41-42 (“One Southern city . . . imposed a moratorium on new builds in the downtown area until it revises its standards for fees, designs, and deployment in underserved areas. This moratorium has continued for 18 months.”);

that even moratoria that are actually time limited “force providers either to delay or cancel their planned deployments.”⁵⁴⁶ Moreover, assertions that “temporary” moratoria are necessary for planning purposes or government study⁵⁴⁷ provide insufficient justification for imposing such moratoria in light of clear congressional intent to severely limit state and local authorities’ ability to take actions that prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services.⁵⁴⁸ We recognize, and discuss further below, that there may be limited instances where temporary moratorium could fall within the exception of 253(b)⁵⁴⁹ and that 253(c) provides an exception for certain conduct that involves legitimate “rights-of-way” management.⁵⁵⁰ But Congress did not countenance generalized government study and planning that stands in the way of additional competition and service upgrades, and we decline to create additional exceptions beyond those expressed by Congress.

149. *De Facto Moratoria.* We find that section 253(a) also prohibits *de facto* moratoria, which we define for the purpose of this Declaratory Ruling as state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium.⁵⁵¹ *De facto* moratoria are not formally codified by state or local governments as outright prohibitions but have the same effect as express moratoria since they, by their operation, prohibit or have the effect of prohibiting deployment of telecommunications services and/or telecommunications facilities. Examples of *de facto* moratoria in the record include, but are not limited to, blanket refusals to process applications,⁵⁵² refusals to issue permits for a category of structures,⁵⁵³ frequent and lengthy delays of

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CTIA June 27, 2018 Wireline *Ex Parte* Letter at 5 (stating that “localities can and do extend such ‘temporary’ moratoria”).

⁵⁴⁶ See AT&T Wireline NPRM Comments at 74; see also AT&T Wireless NPRM Comments at 13-14 (explaining how AT&T had to cancel deployment plans after being faced with a supposedly temporary six-month moratorium that was repeatedly extended by a Florida city); CTIA June 27, 2018 Wireline *Ex Parte* Letter at 5 (arguing that section 253 does not exempt temporary bans “because they have the same impact [as permanent moratoria]—no deployment can occur”).

⁵⁴⁷ See City of Norfolk Wireline NPRM Comments at 16; MCC Wireline NPRM Comments at 18–19; WSCC Wireline NPRM Comments at 17; IML Wireless NPRM Comments at 2.

⁵⁴⁸ We observe that if describing a law or regulation as “temporary” was sufficient to insulate that law against section 253(a), every express moratorium would be adopted as “temporary” in order to evade the statute.

⁵⁴⁹ See *infra* at Section IV.B.2.

⁵⁵⁰ 47 U.S.C. § 253(c). We find below that express and *de facto* moratoria do not fall within the section 253(c) exception. See *infra* at Section IV.B.2.

⁵⁵¹ For purposes of this Declaratory Ruling we exclude fees—even highly excessive fees—from the definition of *de facto* moratoria. In doing so, we do not consider what fees may be consistent with section 253(a). Rather, we choose to proceed incrementally and limit our discussion to moratoria as defined herein.

⁵⁵² See WIA Wireless NPRM Comments at 11 (noting multiple jurisdictions in Massachusetts and Illinois that “have not specifically passed ordinances putting moratoria in place, but have informally suspended applications or indicated that all applications will be denied while small wireless facility-targeted policies, procedures, and proposed ordinances are considered”); Mobilite Wireless NPRM Comments at Attach. 2, 11–12 (citing local practices, including refusals to process site permit applications or negotiate master rights-of-way agreements, which, while not explicit moratoria, still have the same practical effect).

⁵⁵³ See Conterra Wireline & Wireless NPRM Comment at 28 (citing instances where “state highway officials have refused to issue permits for deploying fiber on bridges, even where spare conduit is available”); Sprint Wireless NPRM Comments at 41 (stating that “[s]ome municipalities have dragged their feet for such a long time in establishing a process [to act on permitting applications for small cell deployment] that their actions have imposed a *de facto* moratorium on the use of the rights of way”); WIA Wireless NPRM Comments at 11 (stating that while some jurisdictions “have not specifically passed ordinances putting moratoria in place,” they have refused to process requests to deploy small cell facilities or issue permits for small cells); CTIA Wireline & Wireless NPRM

months or even years in issuing permits and processing applications,⁵⁵⁴ and claims that applications cannot be granted until pending local, state, or federal legislation is adopted.⁵⁵⁵

150. We distinguish *de facto* moratoria, which inherently violate section 253(a), from state and local actions that simply entail some delay in deployment.⁵⁵⁶ Situations cross the line into *de facto* moratoria where the delay continues for an unreasonably long or indefinite amount of time such that providers are discouraged from filing applications, or the action or inaction has the effect of preventing carriers from deploying certain types of facilities or technologies. For example, T-Mobile describes one jurisdiction outside Indianapolis, in which small cell right-of-way applications “have been pending for nearly three years, but the jurisdiction will neither approve nor deny the applications.”⁵⁵⁷ WIA states that its members have encountered refusals to process small cell applications in Myrtle Beach, South Carolina, and DeKalb County, Georgia.⁵⁵⁸ CTIA describes situations where localities refuse to process applications to locate or modify wireless facilities until and unless the locality adopts regulations governing small cell deployment.⁵⁵⁹ Other localities allegedly place onerous conditions on accepting or reviewing applications

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Comments, Attach. 1 at 12 (describing several localities that have imposed *de facto* moratoria by declining to process applications to locate new wireless facilities or modify existing facilities).

⁵⁵⁴ See Conterra Wireline & Wireless NPRM Comments at 28 (claiming that “municipally-owned utilities frequently delay issuance of pole attachment applications”); Lighttower Wireline NPRM Comments at 18 (claiming that it has been “involved in a number of scenarios in which, in spite of no pronouncement by local government that a moratorium has been imposed, the governmental entity is simply not moving forward in such a way as to process applications” related to deployment”); T-Mobile Wireline & Wireless NPRM Comments at 37 (complaining of *de facto* moratoria where localities simply fail to act on applications, and citing the example of one jurisdiction outside Indianapolis where small cell rights-of-way applications have been pending for nearly three years without being either approved or denied). Cf. *Sprint Telephony*, 543 F.3d at 580 (municipal ordinance that “impose[s] an excessively long waiting period [could] amount to an effective prohibition”).

⁵⁵⁵ See Conterra Wireline & Wireless NPRM Comments at 29 (citing some instances where local governments cite to pending state or federal legislation as grounds to halt or delay the filing or processing of right-of-way permits or franchise applications); CTIA Wireline & Wireless NPRM Comments at 24 (citing the example of localities that “refuse to process applications, or that tell applicants to wait until the locality develops siting policies, without making any commitment” as to whether or when they will do so).

⁵⁵⁶ This Declaratory Ruling is limited to express and *de facto* moratoria. We do not reach the limits of what actions violate section 253(a) or other provisions of the Act. See Crown Castle July 25, 2018 Wireline *Ex Parte* Letter at 5-6. We view express and *de facto* moratoria as some of the most extreme examples of state or local statutes, regulations, or legal requirements that violate 253(a). We note that Congress used the broad language of 253(a) to invalidate all state or local requirements that “may prohibit or have the effect of prohibiting” service regardless of what the requirements are called, and not all such invalidated requirements will rise to the level of an express or *de facto* moratorium.

⁵⁵⁷ T-Mobile Wireline & Wireless NPRM Comments at 37; see also Verizon Wireline & Wireless NPRM Comments at 6 (describing “jurisdictions, like a Midwestern suburb, where Verizon has been trying unsuccessfully to get approval for small cells since 2014, [that] have no established procedures for small cell approvals and are extremely slow to respond”); Mobilite Wireline & Wireless NPRM Comments, Attach. 2 at 11-12 (describing jurisdictions in Arizona, Minnesota, and New York which are not processing or accepting applications).

⁵⁵⁸ See WIA Wireline & Wireless NPRM Comments at 11. While Myrtle Beach disputes these allegations, we do not decide their validity here. See Letter from Gerard Lavery Lederer, Best Best & Krieger LLP, Counsel to the City of Myrtle Beach, South Carolina, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 17-79, 16-421, WC Docket No. 17-84, ET Docket No. 13-84, GN Docket No. 17-83, 1-2 (filed Aug. 1, 2018) (asserting that telecommunications deployment can continue in Myrtle Beach City through the use of excess conduit in major thoroughfares even during periods where access to major thoroughfares is limited by the South Carolina Department of Transportation for traffic management and during hurricane season).

⁵⁵⁹ CTIA Wireline & Wireless NPRM Comments, Attach. 1 at 12; see also WIA Wireless NPRM Comments at 11 (stating that jurisdictions in Massachusetts and Illinois “have not specifically passed ordinances putting moratoria in

that would constitute *de facto* moratoria. For instance, Lighttower describes situations where jurisdictions use *de facto* moratoria as punitive measures, stating that where Lighttower “has contested the conditions or costs[] [of deploying telecommunications infrastructure], jurisdictions have often refused to continue processing or grant pending deployment applications.”⁵⁶⁰ Although we do not reach specific determinations on the numerous examples discussed by parties in our record, we find that these types of conduct are prohibited by section 253(a).

151. Like express moratoria, *de facto* moratoria prohibit or have the effect of prohibiting the provision of service, and are thus prohibited by section 253(a). As the examples above show, the presence of a formal, express moratorium is not necessary for a state or locality to take action that violates 253(a). A *de facto* moratorium can prohibit or effectively prohibit an entity from providing telecommunications service if the provider cannot obtain approval or authorization to deploy from the state or local government due to inaction or refusal, even if there is no statute, regulation, or other express legal requirement restricting the acceptance, processing, or grant of applications or authorizations.⁵⁶¹ This is true even though some *de facto* moratoria may leave the hypothetical possibility of a locality taking action on an application; if applicants cannot reasonably foresee when approval will be granted because of indefinite or unreasonable delay, then an impermissible *de facto* moratorium is in place.⁵⁶²

152. There may be situations in which states or localities impose limitations on deployment, but allow for alternative means of deployment in a manner that is reasonably comparable in cost and ease. Providers sometimes inaccurately characterize these limitations as moratoria, but we find that characterization to be inapt where the limitations do not foreclose deployments and carriers’ ability to build the facilities they need to provide service. For example, some “street-cut” requirements, which providers sometimes refer to as moratoria, are not designed to thwart construction, but to promote “dig once” policies “in order to preserve the roadway and incentivize interested providers to deploy telecommunications conduit,” and would not qualify as unlawful moratoria if the state or locality imposing such street-cut requirements does not bar alternative means of deployment such as aerial lines or sublicensing existing underground conduits.⁵⁶³

2. Moratoria Are Generally Not Protected Under the Section 253(b) and (c) Exceptions

153. With rare exception, neither express nor *de facto* moratoria are protected by the exceptions found in either section 253(b) or section 253(c).⁵⁶⁴

154. Section 253(b) allows certain “State” requirements, even if such requirements otherwise violate section 253(a), that are (i) “competitively neutral”; (ii) “consistent with section 254” of the Act;

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place, but have informally suspended applications or indicated that all applications will be denied while small wireless facility-targeted policies, procedures, and proposed ordinances are considered”).

⁵⁶⁰ Lighttower Wireline NPRM Comments at 21.

⁵⁶¹ See, e.g., T-Mobile Wireline & Wireless NPRM Comments at 37; CTIA Wireline & Wireless NPRM Comments at 24, Attach. 1 at 12; Mobilite Wireline & Wireless NPRM Comments, Attach. 2 at 11; Verizon Wireline & Wireless NPRM Comments at 6; WIA Wireline & Wireless NPRM Comments at 11.

⁵⁶² Section 253(a) does not require that a bar to entry be “insurmountable before the FCC must preempt it.” *RT Commc’ns*, 201 F.3d at 1268.

⁵⁶³ See LACT Wireline NPRM Comments at 13-14; but see Tekify Fiber Wireline NPRM Comments at 2 (arguing against moratoria that require a utility to grind and re-pave entire street lengths). To promote deployment, we encourage state and local governments that enact a street-cut requirement that allows for alternative means of deployment to still provide advance notice to enable providers to deploy in the right-of-way in the least disruptive manner possible. See Liberty Cablevision of Puerto Rico Wireline NPRM Comments at 17 (arguing for six months’ notice in advance of a right-of-way related moratorium for repaving or other work).

⁵⁶⁴ See 47 U.S.C. § 253(b), (c).

and (iii) “necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”⁵⁶⁵ As an initial matter, we find that no local or municipal moratoria can fall within the section 253(b) exception absent a specific delegation of regulatory authority by a state to the locality or municipality in question.⁵⁶⁶ Given that section 253(c) discusses the authority of “a State or local government,” but section 253(b) only discusses the authority of “a State,” we find Congress’s omission of the phrase “local government” from the latter to be persuasive evidence that the section 253(b) exception does not generally apply to the conduct of local governments.⁵⁶⁷ Indeed, some courts have held that the plain text of section 253(b) requires a finding that the provision protects only certain state activities “and does not speak to local regulation.”⁵⁶⁸ However, consistent with past Commission precedent, we need not go so far and make clear that section 253(b) does not apply to local or municipal legal requirements absent a specific delegation of authority from the state.⁵⁶⁹

155. Further, we find that most moratoria are not competitively neutral—they almost certainly will favor incumbents over new entrants and existing modalities over new technologies. We also find they are unlikely to fall within the ambit of any of the four public interest exceptions contained in section 253(b).⁵⁷⁰ Neither the Commission nor a court has upheld a state requirement that violated section 253(a) on the grounds that it was necessary to “preserve and advance universal service.”⁵⁷¹ Moreover, as a

⁵⁶⁵ 47 U.S.C. § 253(b).

⁵⁶⁶ See *Classic Telephone*, 11 FCC Rcd at 13100-101, para. 34.

⁵⁶⁷ See 47 U.S.C. § 253(b), (c).

⁵⁶⁸ *TCG N.Y., Inc. v. City of White Plains, N.Y.*, 125 F. Supp. 2d 81, 87 (S.D.N.Y. 2000), *aff’d in part, rev’d in part on other grounds* *TCG N.Y.*, 305 F.3d 67; see also *Southwestern Bell Wireless Inc. v. Johnson Cty. Bd. of Cty. Comm’rs*, 199 F.3d 1185, 1192 (10th Cir. 1999) (“[S]ection 253(b) applies only to state, not local, regulation, since, in the remainder of section 253, Congress clearly says ‘State or local’ when it so intends.”); *City of Dallas v. Metropolitan Fiber Systems of Dallas, Inc.*, [98 civ. 2128, 2000 WL 198104, at *4 \(N.D.Tex. Feb.17, 2000\)](#) (holding that section 253(b) was not applicable to municipalities).

⁵⁶⁹ See *Classic Telephone*, 11 FCC Rcd at 13100-101, para. 34; see also *N.J. Payphone Ass’n, Inc. v. Town of W. N.Y.*, 130 F. Supp. 2d 631, 639 (D.N.J. 2001), *aff’d* *N.J. Payphone Ass’n*, 299 F.3d 235 (3rd Cir. 2001); *Bd. of Cty. Comm’rs of Grant Cty., N.M.*, 169 F. Supp. 2d 1243, 1247 (D.N.M. 2001) (“Local governments may only manage the rights of way, unless specifically delegated authority to impose requirements under § 253(b).”); *AT&T Comm. of the Southwest, Inc. v. City of Dallas*, 8 F. Supp.2d 582, 591 (N.D.Tex.1998), dismissed as moot on other grounds, 243 F.3d 928 (5th Cir. 2001) (“The language of § 253 is straightforward. Absent explicit delegation by the state legislature, cities do not have the more general authority to regulate to protect public safety and welfare, advance universal service and ensure quality—this is a function reserved to states by § 253(b), not to local governments.”); *Cox Comm. PCS, LP v. City of San Marcos*, 204 F. Supp. 2d 1260, 1264 (S.D. Cal. 2002) (section 253(b) only applies to states, and not municipalities, unless a state specifically delegates authority to its local governments); *BellSouth Telecomm., Inc. v. City of Coral Springs*, 42 F. Supp.2d 1304, 1307 (S.D. Fla.1999), *aff’d in part, rev’d in part on other grounds*, 252 F.3d 1169 (11th Cir. 2001) (“While states may regulate universal service, protect consumers, ensure quality and protect the public safety and welfare, local governments can only manage the public rights-of-way, unless of course a state specifically delegated the state authority to its local governments.”); *BellSouth Telecomm., Inc. v. Town of Palm Beach*, 127 F. Supp. 2d 1348, 1356 (S.D. Fla. 1999) (quoting *BellSouth Telecomm. Inc v. City of Coral Springs*, 42 F. Supp. 2d 1304 (S.D. Fla. 1999)), *aff’d in part, rev’d in part on other grounds*, 252 F.3d 1169 (11th Cir. 2001). To the extent that previous Commission decisions discussed section 253(b) as applying to either state or local requirements, we find that such decisions should be understood to be referring to only those local legal requirements that were enacted pursuant to specific delegated authority from a state. See, e.g., *Public Utility Commission of Texas*, 13 FCC Rcd at 3480, 3501, paras. 41, 83; *Silver Star Telephone*, 12 FCC Rcd at 15647, 15658, paras. 17, 42 (1997), *aff’d sub nom. RT Communications, Inc.*, 201 F.3d 1264; *Sandwich Isles Communications, Inc.*, 32 FCC Rcd at 5885, para. 19 (2017).

⁵⁷⁰ See 47 U.S.C. § 253(b).

⁵⁷¹ 47 U.S.C. § 253(b). While the Commission has never upheld a state requirement on such a basis, it has preempted state requirements on the grounds that they are not necessary to preserve and advance universal service.

practical matter, moratoria run counter to the goal of preserving and advancing universal service as moratoria prevent or materially limit deployments that could assist in achieving universal service. Neither the Commission nor a court has ever evaluated whether a state requirement that violated section 253(a) was permissible on the grounds that it was nevertheless necessary to “ensure the continued quality of telecommunications services,”⁵⁷² and it is difficult to envision how a ban on deployment could conceivably improve the quality of such services. If anything, a moratorium is likely to decrease the quality of telecommunications services by barring competitive entry into the market, reducing the quality and quantity of services available to consumers, and inhibiting providers’ ability to deploy the facilities needed to broaden the geographic areas they can serve, fill coverage gaps, expand capacity, and/or upgrade the technology used in their networks.⁵⁷³

156. With limited exception, moratoria are also unlikely to be necessary to “protect the public safety and welfare” or “safeguard the rights of consumers.”⁵⁷⁴ Both the Eighth and Ninth Circuits have noted that these exceptions can be applicable to legal requirements intended to protect the public from deceptive business practices.⁵⁷⁵ On its own, the public safety and welfare exception has been understood to apply, at a minimum, to legal requirements that ensure emergency services such as 911 are made readily available.⁵⁷⁶ Rather than preserving these vital interests, moratoria on deployment that violate section 253(a) decrease competition—thereby dampening the ability of a free and open market to act as a check against unfair or deceptive practices—and prevent the deployment of facilities that may be used in the provision of emergency services.

157. We recognize that there may be limited situations in the case of a natural disaster or other comparable emergency where an express or *de facto* moratoria that violates section 253(a) may nonetheless be “necessary” to “protect the public safety and welfare” or to “ensure the continued quality

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See, e.g., Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of The South Dakota Public Utilities Commission, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15168-69, paras. 1-2 (2000) (*Western Wireless Preemption Declaratory Ruling*) (finding that the regulation at issue—which required common carriers to provide supported services throughout a service area prior to being designated as eligible telecommunications carriers who may receive federal universal service support—was not competitively neutral, consistent with section 254, or necessary to preserve and advance universal service, and thus did “not fall within the authority reserved to the states in section 253(b)”).

⁵⁷² 47 U.S.C. § 253(b).

⁵⁷³ *See, e.g.*, R Street Wireline NPRM Comments at 13-14; Mobile Future Wireless NPRM June 15, 2017 Comments at 9.

⁵⁷⁴ 47 U.S.C. § 253(b).

⁵⁷⁵ *See Cedar Rapids Cellular Tel., L.P. v. Miller*, 280 F.3d 874, 880 (8th Cir. 2002) (“[T]he Supreme Court has recognized that states have an important interest in protecting the public from deceptive business practices. . . . Federal telecommunications law implicitly acknowledges the importance of this interest by leaving states some latitude to ‘protect the public safety and welfare’ and ‘safeguard the rights of consumers.’”); *Comm’ns Telesystems Int’l v. Cal. Pub. Util. Comm’n*, 196 F.3d 1011, 1017 (9th Cir. 1999) (noting that the California Public Utility Commission has the power under section 253(b) to “implement regulations that are ‘necessary’ to ‘protect the public’ against slamming,” or the unauthorized switching of consumers’ long-distance carriers); *see also Classic Telephone*, 11 FCC Rcd at 13101, para. 35 (“Section 253(b) . . . ensures that States continue to have authority to require telecommunications service providers to make emergency services available to the public and comply with local consumer protection laws.”).

⁵⁷⁶ *See Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311, 324 (2d Cir. 2000) (“[T]he legislative history indicates that ‘[b]y “public safety and welfare,” the Committee means, among other things, making certain that emergency services, such as 911, are available to the public.”); *see also Classic Telephone*, 11 FCC Rcd at 13101, para. 35 (“Section 253(b) . . . ensures that States continue to have authority to require telecommunications service providers to make emergency services available to the public and comply with local consumer protection laws.”).

of telecommunications services.”⁵⁷⁷ For example, in the event of a widespread power or telecommunications outage, a state might need to limit access to poles in a specific, affected area until existing power and telecommunications facilities can be restored. We interpret section 253(b) to allow for these state-imposed “emergency” express moratoria only if they are (1) “competitively neutral,” as expressly required by section 253(b),⁵⁷⁸ (2) necessary to address the emergency or disaster or related public safety needs, and (3) targeted only to those geographic areas that are affected by the disaster or emergency. Given that the emergency giving rise to such an express moratorium will be finite in time, a moratorium that extends beyond the duration of the emergency and associated repair efforts would not be permissible under section 253(b) because it would not be “necessary” to protect the safety and welfare of the public as section 253(b) requires.⁵⁷⁹ Similarly, an express, statewide deployment moratorium that is not targeted to the geographic areas affected by the natural disaster or emergency would not be permissible as it would not be “necessary” in the unaffected areas and would thus be impermissibly overbroad.⁵⁸⁰ We caution that mere assertions that express or *de facto* moratoria are necessary to achieve these goals do not suffice to invoke section 253(b).⁵⁸¹ Emergency moratoria must be identified as such and clearly communicated to applicants; states and localities may not use a natural disaster or similar emergency as a guise for implementing *de facto* moratoria. While narrowly tailored emergency moratoria may be legally permissible under section 253, we encourage states to work collaboratively with providers before resorting to express moratoria in the wake of natural disasters or emergencies. The burden is on states to justify the imposition of a moratorium by specifically demonstrating that a moratorium serves, and is narrowly-tailored in a manner that makes it necessary to achieve, one of the goals articulated in section 253(b).

158. We also take this opportunity to remind states that section 253(b) only permits them to impose requirements that are “necessary” to preserve or advance the interests identified in section 253(b).⁵⁸² Moratoria are “blunt instruments.”⁵⁸³ There may well be instances where a more limited legal requirement could reasonably be said to be “necessary” to advance universal service, protect the public safety, ensure the continued quality of telecommunications services, or safeguard the rights of consumers, but most moratoria are, by their very nature, too broad and far-ranging to satisfy such a strict standard. Such bans cannot be considered “necessary” to further a specific interest if that interest could be advanced by the imposition of some other, more targeted measure.⁵⁸⁴

⁵⁷⁷ 47 U.S.C. § 253(b).

⁵⁷⁸ As the Commission has previously held, to be considered “competitively neutral” for purposes of section 253(b), a legal requirement must have a like effect on all types of providers and technologies, and must not unfairly advantage or hamper one type of provider or technology over another. *See Western Wireless Preemption Declaratory Ruling*, 15 FCC Rcd at 15176-177, paras. 21-22 (citing *Federal-State Joint Board on Universal Service*, 12 FCC Rcd at 8801, para. 47); *see also Nixon v. Mo. Mun. League*, 541 U.S. 125, 137 (2004) (citing the Commission’s holding in *Western Wireless Preemption Declaratory Ruling* and reaffirming that the Commission has “understood § 253(b) neutrality to require a statute or regulation affecting all types of utilities in like fashion”).

⁵⁷⁹ 47 U.S.C. § 253(b); *see also New England Public Communications Council Petition for Preemption Pursuant to Section 253*, CCBPol 96-11, Memorandum Opinion and Order, 11 FCC Rcd 19713,19722, para. 21 (1996) (*New England Payphone Order*) (stating that “[a]n interpretation of section 253(b) that a state’s action merely be reasonable ignores the specific language of the statute requiring such state action to be ‘necessary’”).

⁵⁸⁰ 47 U.S.C. § 253(b).

⁵⁸¹ *See, e.g.,* City of Norfolk Wireline NPRM Comments at 16-17 (claiming generally that “[m]oratoria also allow local officials to consider the legitimate concerns of members of the public, such as health, public safety and environmental issues, and how best to responsibly address them”); MCC Wireline NPRM Comments at 18; WSCC Wireline NPRM Comments at 17.

⁵⁸² 47 U.S.C. § 253(b).

⁵⁸³ AT&T Wireline NPRM Comments at 74.

⁵⁸⁴ *See New England Payphone Order*, 11 FCC Rcd at 19722, para. 22 (rejecting a measure prohibiting incumbent LECs from providing in-state payphone services as “the most restrictive means available” and concluding that the

159. It is even less likely that the section 253(c) exceptions could shield moratoria that violate section 253(a) from preemption. Section 253(c) specifies that “[n]othing in this section affects the authority of the State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”⁵⁸⁵ For purposes of this Declaratory Ruling, we exclude the imposition of fees from the definition of *de facto* moratoria.⁵⁸⁶ Thus, the applicability of 253(c) depends on whether moratoria may constitute management of the public rights-of-way.⁵⁸⁷

160. While the Act does not define “manage[ment of] rights-of-way,” the Commission has recognized in the context of section 253(c) that “[l]ocal governments must be allowed to perform the range of vital tasks necessary to preserve the physical integrity of streets and highways, to control the orderly flow of vehicles and pedestrians, [and] to manage gas, water, cable . . . and telephone facilities that crisscross the streets and public rights-of-way.”⁵⁸⁸ The Commission has described the “types of activities that fall within the sphere of appropriate rights-of-way management” as including “coordination of construction schedules, determination of insurance, bonding and indemnity requirements, establishment and enforcement of building codes, and keeping track of the various systems using the rights-of-way to prevent interference between them.”⁵⁸⁹ Thus, section 253(c) protects certain activities

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record “does not support a finding that such an extreme approach is ‘necessary’” under section 253(b); *id.*, 11 FCC Rcd at 19722, para. 21 (“An interpretation of section 253(b) that a state’s action merely be reasonable ignores the specific language of the statute requiring such state action to be ‘necessary.’”); *Classic Telephone*, 11 FCC Rcd at 13102, para. 38 (“Congress envisioned that in the ordinary case, States and localities would enforce the public interest goals delineated in section 253(b) through means other than absolute prohibitions on entry.”) (citing S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 1, at 126 (1996)). We recognize that outside the context of section 253(b), the Commission has sometimes interpreted the term “necessary” as simply meaning “used” or “useful.” See *New England Payphone Order*, 11 FCC Rcd at 19723-25, paras. 24-25 (distinguishing the use of the term “necessary” as used in section 253(b) from the duty imposed on ILECs by section 251(c)(6) to provide collocation of equipment that is “necessary” for interconnection or access to unbundled network elements at the ILEC’s premises, and noting that the term “necessary” is interpreted to mean “used” or “useful” in the context of 251(c)(6)). Several courts have also recognized that the word “necessary” may not automatically mean absolutely essential or required. See *U.S. v. Comstock*, 560 U.S. 126, 134 (2010) (interpreting the term as used in the necessary and proper clause of the Constitution) (citing *McCulloch v. Maryland*, 17 U.S. 316, 413-15 (1819)); *Fish v. Kobach*, 840 F.3d 710, 734 (10th Cir. 2016) (interpreting the term as used in the National Voter Registration Act); *Nat. Res. Def. Council v. Thomas*, 838 F.2d 1224, 1236 (D.C. Cir. 1988) (interpreting the term as used in the Clean Air Act); *FTC v. Rockefeller*, 591 F.2d 182, 188 (2d Cir. 1979) (interpreting the term as used in the Federal Trade Commission Act). However, the Commission in the *New England Payphone Order* and *Classic Telephone*, relying in part on congressional guidance, established that it construes “necessary” in section 253(b) as meaning essential.

⁵⁸⁵ 47 U.S.C. § 253(c).

⁵⁸⁶ We do not take up in this Declaratory Ruling the question of the circumstances in which the imposition of fees may violate section 253(a).

⁵⁸⁷ LMC Wireline NPRM Comments at 8–9; WSCC Wireline NPRM Comments at 20; City of Norfolk Wireline NPRM Comments at 2; LACT Wireline & Wireless NPRM Reply at 51. Cf. IML Wireless NPRM Comments at 3-4 (arguing that municipalities have a public duty to regulate the right-of-way).

⁵⁸⁸ *TCI Cablevision of Oakland County, Inc.; Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e), and 253*, Memorandum Opinion and Order, 12 FCC Rcd 21396, 21441, para. 103 (1997) (*TCI Cablevision of Oakland County*).

⁵⁸⁹ *TCI Cablevision of Oakland County*, 12 FCC Rcd at 21441, para. 103. The Ninth Circuit determined that the following activities were beyond the management of rights-of-way under section 253(c): regulations requiring applicants to submit proof of financial, technical, and legal qualifications; ordinances imposing requirements or other controls over matters not directly related to management of rights-of-way; franchise agreements that contain conditions unrelated to the management of rights-of-way; ordinance requirements that companies provide free and excess capacity for the use of the locality; and ordinances that grant the locality unfettered discretion to insist on unspecified franchise terms and to grant, deny, or revoke a franchise based on unnamed factors. See *City of Auburn*

that involve the actual use of the right-of-way. In contrast, to the extent they implicate rights-of-way issues at all, moratoria bar providers from obtaining approval to access the right-of-way.⁵⁹⁰ Hence, we fail to see how section 253(c) could save a moratorium from preemption.

3. Authority to Act

161. We issue this authoritative interpretation of section 253 pursuant to our authority to interpret key provisions of the Communications Act.⁵⁹¹ We also have authority under the Administrative Procedure Act (APA) and our rules to issue a declaratory ruling to terminate a controversy or remove uncertainty on our own motion.⁵⁹² In this instance, we find issuing a declaratory ruling on our own motion is necessary to remove what the wireline and wireless infrastructure records reveal are substantial uncertainty and significant legal controversies caused by the state and local imposition of moratoria.⁵⁹³

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v. *Qwest Corp.*, 260 F.3d 1160, 1178-79 (9th Cir. 2001), *vacated on other grounds Sprint Telephony*, 543 F.3d at 571.

⁵⁹⁰ See *Minnesota Preemption Order*, 14 FCC Rcd at 12728-29 (while section 253(c) protects state and local governments' authority to issue construction permits regulating how and when road construction may be conducted does not mean that it protects a state or local government's refusal to issue construction permits to most entities); see also AT&T Wireline NPRM Comments at 74 (arguing that moratoria "fall outside the § 253(c) savings clause that allows local governments 'to manage the public rights of way': that authority must be limited to *reasonable* regulations to avoid permitting evasion of the basic purpose of the provision").

⁵⁹¹ See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-44 (1984) (holding that courts must grant considerable weight to an agency's reasonable interpretation of a statute it is charged with administering where the statute is ambiguous); *City of Arlington, Tex. v. FCC*, 569 U.S. 290, 296 (2013) (stating that statutory ambiguities will be resolved, within the bounds of reasonable interpretation, by the agency that administers the statute); *id.* at 307 (holding that "Congress has unambiguously vested the FCC with general authority to administer the Communications Act through rulemaking and adjudication"); see also *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980-84 (2005) (*NCTA v. Brand X*) (holding that the agency's interpretation of the terms "telecommunications service" and "offer" is entitled to *Chevron* deference and is a reasonable construction of the Act); *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 396 (1999) (holding that the Commission's interpretation of the interconnection requirement in 47 U.S.C. § 252(i) was reasonable); Letter from Rebecca Murphy Thompson, Executive Vice President and General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket Nos. 17-79, 15-180, at 1 (filed June 25, 2018) (CCA June 25, 2018 Wireline *Ex Parte* Letter) ("The Commission has broad authority to interpret Section[] 253 . . . and to adopt rules and regulations in furtherance of [that section.]").

⁵⁹² 5 U.S.C. § 554(e); 47 CFR § 1.2; see also *City of Arlington, Tex. v. FCC*, 668 F.3d 229, 243 (5th Cir. 2012) (stating that an "agency need not be presented with a specific dispute between two parties in order to use section 554(e)'s declaratory ruling mechanism" and that section 554 "empowers agencies to use declaratory rulings to 'remove uncertainty'" by issuing statutory interpretations in cases involving "concrete and narrow questions of law the resolutions of which would have an immediate and determinable impact on specific factual scenarios"), *aff'd on other grounds*, 569 U.S. 290 (2013); *Chisholm v. FCC*, 538 F.2d 349, 365 (D.C. Cir. 1976) (reiterating that "the choice whether to proceed by rulemaking or adjudication is primarily one for the agency regardless of whether the decision may affect agency policy and have general prospective application") (citing *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 291-95 (1974)); *N.C. Utilities Comm'n v. FCC*, 537 F.2d 787, 790 n.2 (4th Cir. 1976), *cert. denied*, 429 U.S. 1027 ("[F]ederal administrative agencies are not restricted to adjudication of matters that are 'cases and controversies' within the meaning of Article III of the Constitution."); *N.Y. State Comm'n on Cable Television v. FCC*, 749 F.2d 804, 815 (D.C. Cir. 1984) (holding that the Commission, in preempting state and local entry regulation of satellite master antenna television, did not abuse its discretion in labeling its action a declaratory ruling and a consolidation of precedent, rather than engaging in a rule-making procedure).

⁵⁹³ See Verizon Wireline NPRM Comments at 33; Conterra Wireline Comments at 30; Frontier Wireline NPRM Comments at 3; Competitive Carriers Association (CCA) Wireline & Wireless NPRM Comments, WC Docket Nos. 17-84 & 17-79, at executive summary (2017); ITTA Wireline NPRM Comments, WC Docket No. 17-84, at 35 (2017); CTIA Wireline & Wireless NPRM Comments at 3; WIA Wireline & Wireless NPRM Reply Comments at executive summary, 17; WISPA Wireline NPRM Comments at 5; Crown Castle Wireline NPRM Reply Comments at iii-iv; Letter from Joshua S. Turner, Counsel to Crown Castle, to Marlene H. Dortch, Secretary, FCC, WC Docket

162. We exercise that authority in this *Declaratory Ruling* to make clear that express and *de facto* moratoria violate section 253(a) as legal requirements that “prohibit or have the effect of prohibiting” the provision of telecommunications service.⁵⁹⁴ We further find the exceptions set forth in sections 253(b) and (c) to be generally inapplicable to express and *de facto* moratoria.

163. We disagree with those commenters that argue that section 253(d) precludes the Commission from interpreting the applicability of section 253(a) to certain kinds of state and local laws or policies.⁵⁹⁵ Nothing in section 253 purports to limit the exercise of our general interpretive authority. There is no dispute that section 253(d) provides an express mechanism for the Commission to preempt specific state or local legal requirements.⁵⁹⁶ However, Congress’ inclusion of this express mechanism to consider whether specific state and local requirements are preempted, does not limit our ability, pursuant to sections 303, 201(b), and other sections of the Act,⁵⁹⁷ to define and provide an authoritative interpretation as to what constitutes a violation of section 253(a) and what qualifies for the section 253(b) or (c) exceptions.

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_____ No. 17-84, at 4 (filed Nov. 10, 2017); Quintillion Networks Wireline & Wireless NPRM Reply, WC Docket Nos. 17-84 & 17-79, at 7; P.R. Telephone Company, Inc. Wireline NPRM Reply, WC Docket No. 17-84, at 16; Lightower Wireline NPRM Comments at 18; Letter from Scott K. Bergmann, VP, Regulatory Aff., CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, at 12 (filed Sept. 8, 2017); *see also* AT&T Wireless NPRM Comments, WC Docket No. 17-79, at 13-14 (2017); Conterra Wireless NPRM Comments at 28; CTIA Wireline & Wireless NPRM Comments at 23-24; Crown Castle Wireless NPRM Comments at 32; Mobile Future Wireless NPRM Comments at 9; Mobilitie Wireless NPRM Comments at 12; NCTA Wireless NPRM Comments, WC Docket No. 17-79, at 29 (2017); R Street Wireless NPRM Comments, WC Docket No. 17-79, at 5 (2017); Samsung Wireless NPRM Comments at 7; T-Mobile Wireless NPRM Comments, WC Docket No. 17-79, at 36-37 (2017); Verizon Wireless NPRM Comments, WC Docket No. 17-79, at 33 (2017); WIA Wireless NPRM Comments at 55; Letter from Kara Romagnino Graves, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84, WT Docket Nos. 17-79, 16-421, at 2 (filed June 27, 2018) (CTIA June 27, 2018 Wireline *Ex Parte* Letter).

⁵⁹⁴ 47 U.S.C. § 253(a); *see also* CCA June 25, 2018 Wireline *Ex Parte* Letter at 1 (stating that section 253 provides the “Commission with the necessary authority to take action regarding state and local siting processes that are effectively prohibiting carriers from providing telecommunications services”). Section 253(a) requires that we examine the effect of a state or local action on “any entity” and the effect with respect to “any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a) (emphasis added). We interpret “service” to mean any covered service a provider wishes to provide, incorporating the abilities and performance characteristics it wishes to employ, including to provide existing services more robustly, or at a higher level of quality—such as through filling a coverage gap, densification, or otherwise improving service capabilities. Thus, a prohibition or effective prohibition could occur not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider, but also by prohibiting or effectively prohibiting the introduction of new services or significant improvements to existing services by an incumbent provider. In this regard, we believe it is appropriate to construe section 253(a) in light of the broader goals outlined by Congress: “to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . .” 47 U.S.C. § 151.

⁵⁹⁵ *See, e.g.*, Public Knowledge Wireline NPRM Comments at 17-18; City of N.Y. Wireline NPRM Comments, WC Docket No. 17-84, at 1-2 (2017); Smart Communities Wireline NPRM Comments, WC Docket No. 17-84, at 10-11 (2017) (Smart Communities Wireline NPRM Comments); City of Alexandria et al. (Virginia Joint Commenters) Wireline NPRM Comments, WC Docket No. 17-84, at 42-43 (2017). *But see* Conterra Wireline & Wireless NPRM Comments at 15-16 (“Section 253(d) is drafted broadly and provides the Commission ample latitude to elect the best procedure for utilizing its preemption power. . . . At a minimum, reviewing courts must afford the Commission broad deference in construing the ambiguous provisions in Section 253.”).

⁵⁹⁶ *See* 47 U.S.C. § 253(d). Section 253(d) expressly grants the Commission preemption authority. As such, we disagree with EEI’s view that the Commission lacks the authority to preempt state and local laws such as moratoria because Congress left such decisions to the states. EEI Wireline NPRM Comments at 4.

⁵⁹⁷ *See Wireless Infrastructure NPRM*, 32 FCC Rcd at 3336, para. 15 & nn. 28-30.

164. Because we interpret section 253(a) and do not specifically preempt any state or local law, the Supreme Court's holding in *City of Rancho Palos Verdes v. Abrams* that "the express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others,"⁵⁹⁸ is not applicable here. In issuing this Declaratory Ruling we are not exercising our authority to enforce a substantive rule; rather, we are interpreting the scope of the substantive prohibition set forth in section 253(a).

165. Moreover, most courts that have considered the matter have *not* read section 253(d) as the exclusive enforcement mechanism for pursuing a claim that a state or local legal requirement violates section 253(a).⁵⁹⁹ Some Circuit courts have held that section 253 includes an implied private cause of action to seek relief.⁶⁰⁰ Other Circuit courts have entertained preemption claims under the Supremacy Clause of the United States Constitution, which is a legal avenue for preemption regardless of whether a statute authorizes a private cause of action.⁶⁰¹ As the First Circuit has explained, "under the Supremacy Clause, any state or local law that is inconsistent with the requirements of §253(a) will be null and void, unless it falls under one of the safe harbor provisions in §253."⁶⁰² Accordingly, courts have concluded that parties may bring section 253(a) preemption challenges directly in federal court, regardless of the availability of the Commission as a forum to resolve preemption disputes pursuant to section 253(d).⁶⁰³ But whatever enforcement mechanisms may be available to preempt specific state and local requirements, nothing in section 253 prevents us from declaring that a category of state or local laws is inconsistent with section 253(a) because it prohibits or has the effect of prohibiting service.

166. Indeed, in issuing our interpretation of section 253(a) and the scope of the section 253(b) and (c) exceptions, we further the notice objectives that underlie section 253(d), which requires that the Commission provide "notice and an opportunity for public comment" prior to taking any preemptive action.⁶⁰⁴ Adopting a general interpretation enhances certainty around frequently arising, factually similar issues. By issuing this Declaratory Ruling, we place states and localities on notice that express and *de facto* moratoria are inconsistent with section 253(a).⁶⁰⁵ In so doing, we provide states and localities the

⁵⁹⁸ *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 121 (2005) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001)).

⁵⁹⁹ See, e.g., *P.R. Tel. Co.*, 450 F.3d at 16; *N.J. Payphone Ass'n*, 299 F.3d at 241-42; *Qwest Corp. v. City of Santa Fe, N.M.*, 380 F.3d 1258, 1266 (10th Cir. 2004) (*Qwest Corp. v. City of Santa Fe*); *BellSouth Telecomm., Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1191 (11th Cir. 2001); *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 624 (6th Cir. 2000).

⁶⁰⁰ See *BellSouth Telecomm., Inc.*, 252 F.3d at 1191; *TCG Detroit v. City of Dearborn*, 206 F.3d at 624. But see *Spectra Comm. Group, LLC v. City of Cameron*, 806 F.3d 1113, 1119-20 (8th Cir. 2015); *NextG Networks of N.Y., Inc. v. City of N.Y.*, 513 F.3d 49, 53 (2d Cir. 2008); *Sprint Telephony*, 543 F.3d at 580-81; *Sw. Bell Tel., L.P. v. City of Houston*, 529 F.3d 257, 261 (5th Cir. 2008); *Qwest Corp. v. City of Santa Fe*, 380 F.3d at 1266-67.

⁶⁰¹ See *P.R. Tel. Co.*, 450 F.3d at 16; *N.J. Payphone Ass'n*, 299 F.3d at 242-43; *Qwest Corp. v. City of Santa Fe*, 380 F.3d at 1266. The Supremacy Clause invalidates state or local laws that "interfere with or are contrary to" federal law. U.S. Const. art. VI, Cl. 2.

⁶⁰² *P.R. Tel. Co.*, 450 F.3d at 16 (citing U.S. Const. art. VI, Cl. 2. and *Qwest Corp. v. City of Santa Fe*, 380 F.3d at 1269).

⁶⁰³ See *P.R. Tel. Co.*, 450 F.3d at 16; *N.J. Payphone Ass'n*, 299 F.3d at 242-43; *Qwest Corp. v. City of Santa Fe*, 380 F.3d at 1266.

⁶⁰⁴ See 47 U.S.C. § 253(d).

⁶⁰⁵ The League of Minnesota Cities claims that "[c]ourts continue to uphold moratoria used in limited circumstance as 'interim controls on the use of land that seek to maintain the status quo with respect to land development in an area by either "freezing" existing land uses or by allowing the issuance of . . . permits for only certain land uses that would not be inconsistent with a contemplated zoning plan or zoning change.'" LMC Wireline NPRM Comments at 10 (citing *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Plan. Agency*, 535 U.S. 302 (2002)). While the *Tahoe* case stands for the proposition that moratoria may be permitted under the Fifth Amendment to the U.S. Constitution, the fact that moratoria may be permissible under the Fifth Amendment does not limit our authority to

opportunity to ensure that their requirements comply with federal law. Therefore, construing section 253(d) as not limiting the Commission's authority to interpret the remainder of section 253 furthers important policy goals as well. Otherwise, the Commission would only have authority to act retrospectively to target individual laws, which would be inefficient, increase uncertainty, and impose additional costs on states and localities both from the sunk costs of enacting subsequently preempted legal requirements and the costs of litigating more section 253(d) preemption proceedings and judicial actions.⁶⁰⁶

167. We also disagree with assertions that the change in regulatory classification of broadband Internet access service in the *Restoring Internet Freedom Order* affects the validity of this Declaratory Ruling.⁶⁰⁷ Consistent with prior Commission decisions, we have authority over infrastructure that can be used for the provision of both telecommunications and other services on a commingled basis.⁶⁰⁸ Infrastructure for wireline and wireless telecommunication services frequently is the same infrastructure used for the provision of broadband Internet access service,⁶⁰⁹ and our ruling today will promote broadband deployment,⁶¹⁰ in concert with our actions in the *Restoring Internet Freedom Order*.

168. We expect that this Declaratory Ruling, which provides our authoritative interpretation of the scope of section 253(a) as it pertains to state and local moratoria, will have several consequences that will benefit the public. First, we expect states and localities to comply with federal law by repealing existing moratoria, refusing to enforce moratoria that remain on the books, and declining to adopt new moratoria. Second, the interpretation of section 253 in this Declaratory Ruling will apply when conducting subsequent proceedings under section 253(d) to preempt specific legal rules permitted or

(Continued from previous page) _____
interpret section 253 as prohibiting moratoria that prohibit or have the effect of prohibiting the ability of an entity to provide telecommunication services.

⁶⁰⁶ Our decision today is consistent with the Commission's earlier decisions that state and local moratoria do not toll the "shot clocks" for state or municipal review of wireless siting applications pursuant to section 332(c)(7)(B)(ii) of the Act; that these "shot clocks continue to run" regardless of whether state or local governments purport to impose moratoria that suspend the acceptance or processing of siting applications for some period of time; and that "applicants can challenge moratoria in court when the shot clock expires without State or local government action." See *Wireless Facilities Siting Order*, 29 FCC Rcd at 12971, paras. 265-67; see also 2009 *Wireless Siting Declaratory Ruling*, 24 FCC Rcd at 14016-19, paras. 56-65 (stating that a state or local agency's failure to render a decision within "shot clock" deadlines – i.e., 90 days for an application to deploy collocated antennas or within 150 days for an application to deploy facilities other than collocations – would presumptively constitute a "failure to act" that may be challenged under section 332(c)(7)(B)(v) of the Act).

⁶⁰⁷ See, e.g., Public Knowledge Wireline NPRM Comments at 13; Smart Communities Wireline NPRM Comments at 5-6; Smart Communities Wireline & Wireless NPRM Reply Comments at 37-39; Cities of San Antonio, Tex. et al. Wireline & Wireless NPRM Reply Comments at 17.

⁶⁰⁸ See *Restoring Internet Freedom*, 33 FCC Rcd at 424-425, para. 188-190 (reaffirming that the Commission retains statutory authority to regulate facilities that provide commingled services where the Commission has statutory authority over one of the services); *Wireless Facilities Siting Order*, 29 FCC Rcd at 12973, para. 270-272 ("[T]o the extent [distributed antenna system] or small-cell facilities, including third-party facilities such as neutral host [distributed antenna system] deployments, are or will be used for the provision of personal wireless services, their siting applications are subject to [section 332(c)(7)]."); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5924, para. 65 (2007) (applying section 224 to facilities that provide both telecommunications and wireless broadband Internet access service, and applying section 332(c)(7)(B) to facilities providing personal wireless service and wireless broadband Internet access service).

⁶⁰⁹ *Restoring Internet Freedom*, 33 FCC Rcd at 423, 425, paras. 185, 190 (citing Cisco Systems, Inc. Comments, WC Docket No. 17-108, at 2-3 (July 17, 2017)); Mobilite, LLC Comments, WC Docket No. 17-108, at 4 (July 17, 2017).

⁶¹⁰ See NCTA July 18, 2018 Wireline *Ex Parte* Letter at 1 (asserting that this Declaratory Ruling "would be helpful in promoting continued broadband deployment by cable operators").

imposed by specific states or localities. To further effectuate the benefits of issuing this Declaratory Ruling, we direct the Wireline Competition Bureau and/or the Wireless Telecommunications Bureau to act expeditiously on section 253(d) petitions challenging alleged state or local moratoria.⁶¹¹ Finally, this Declaratory Ruling sets forth the Commission's reasoned interpretation of section 253(a), which will inform judicial resolution of preemption claims brought by providers, states, or localities under the Supremacy Clause of the United States Constitution.

V. PROCEDURAL MATTERS

169. *Congressional Review Act.* The Commission will send a copy of this Third Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁶¹² In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration (SBA) and will be published in the Federal Register.⁶¹³

170. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),⁶¹⁴ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is contained in Appendix B.

171. *Paperwork Reduction Act of 1995 Analysis.* The Report and Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.⁶¹⁵

172. In this document, we have assessed the effects of reforming our pole attachment regulations and find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

VI. ORDERING CLAUSES

173. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 201, 224, 253, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 224, 253, 303(r), and 332, and section 5(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), this *Third Report and Order and Declaratory Ruling* IS ADOPTED.

174. IT IS FURTHER ORDERED that Part 1 of the Commission's rules IS AMENDED as set

⁶¹¹ Petitioners must follow the Commission's previously adopted procedural guidelines for section 253(d) petitions. *See* 47 CFR §§ 1.1204(b) Note 4; 1.1206(a) Note 1; and 1.1206(a)(13) Note 2; *Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act*, Public Notice, 13 FCC Rcd 22970 (1998); *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings*, GC Docket No. 95-21, Memorandum Opinion and Order, 14 FCC Rcd 18831 (1999). The Commission has adopted similar requirements for certain types of petitions pursuant to section 332(c)(7)(B). *See Procedures for Reviewing Requests for Relief From State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934*, WT Docket No. 97-192, Report and Order, 15 FCC Rcd 22821 (2000).

⁶¹² *See* 5 U.S.C. § 801(a)(1)(A).

⁶¹³ *See* 5 U.S.C. § 605(b).

⁶¹⁴ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁶¹⁵ *See Wireline Infrastructure Notice*, 32 FCC Rcd at 3306, para. 127.

forth in Appendix A.

175. IT IS FURTHER ORDERED that this *Report and Order* SHALL BE effective 30 days after publication in the Federal Register, except for sections III.A-E of this *Report and Order*, which will be effective on the latter of six months after release of this *Report and Order* or 30 days after the announcement in the Federal Register of Office of Management and Budget (OMB) approval of information collection requirements modified in this *Report and Order*. OMB approval is necessary for the information collection requirements in 47 CFR §§ 1.1411(c)(1), 1.1411(c)(3), 1.1411(d), 1.1411(d)(3), 1.1411(e)(3), 1.1411(h)(2)-(3), 1.1411(i)(1)-(2), 1.1411(j)(1)-(5), 1.1412(a)-(b), 1.1413(b), and 1.1415(b).

176. IT IS FURTHER ORDERED that the *Declaratory Ruling* and the obligations set forth therein ARE EFFECTIVE upon release of this Order.

177. IT IS FURTHER ORDERED, pursuant to section 253(d) of the Communications Act of 1934, as amended, that the Wireline Competition Bureau and the Wireless Telecommunications Bureau ARE DIRECTED to review specific petitions and, as necessary, preempt state or local statutes, regulations, or other legal requirements that constitute express moratoria or *de facto* moratoria.

178. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

179. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis and this *Declaratory Ruling*, to the Chief Counsel for Advocacy of the SBA.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons set forth above, Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority for part 1 is amended to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i) and (j), 155, 157, 160, 201, 224, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

SUBPART J – POLE ATTACHMENT COMPLAINT PROCEDURES

Amend section 1.1402 by adding paragraphs (o), (p), (q), and (r) to read as follows:

§ 1.1402 Definitions.

* * *

(o) The term *make-ready* means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(p) The term *complex make-ready* means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

(q) The term *simple make-ready* means make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

(r) The term *communications space* means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.

2. Amend section 1.1403 by revising paragraph (c) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * *

(c) A utility shall provide a cable television system or telecommunications carrier no less than 60 days written notice prior to:

* * *

(3) Any modification of facilities by the utility other than make-ready noticed pursuant to section 1.1411(e), routine maintenance, or modification in response to emergencies.

* * * * *

3. Amend section 1.1411 by revising paragraphs (a), (c), (d), (e), (f), (g), (h), and (i) and adding paragraph (j) to read as follows:

§ 1.1411 Timeline for access to utility poles.

(a) *Definitions.*

(1) The term “attachment” means any attachment by a cable television system or provider of telecommunications service to a pole owned or controlled by a utility.

(2) The term “new attacher” means a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility.

(3) The term “existing attacher” means any entity with equipment on a utility pole.

* * *

(c) *Application Review and Survey.*

(1) *Application Completeness.* A utility shall review a new attacher’s attachment application for completeness before reviewing the application on its merits. A new attacher’s attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.

(i) A utility shall determine within 10 business days after receipt of a new attacher’s attachment application whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the utility timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

(ii) Any resubmitted application need only address the utility’s reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility’s review.

(2) *Application Review on the Merits.* A utility shall respond to the new attacher either by granting access or, consistent with § 1.1403(b), denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section). A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

(3) *Survey.*

(i) A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section).

(ii) A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of the utility’s survey. A utility shall use commercially

reasonable efforts to provide the affected attachers with advance notice of not less than 3 business days of any field inspection as part of the survey and shall provide the date, time, and location of the survey, and name of the contractor performing the survey.

(iii) Where a new attacher has conducted a survey pursuant to § 1.1411(j)(3), a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to § 1.1411(j)(3) and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (c)(3)(i) of this section. A utility relying on a survey conducted pursuant to § 1.1411(j)(3) to satisfy all of its obligations under § 1.1411(c)(3)(i) shall have 15 days to make such a notification to affected attachers rather than a 45 day survey period.

(d) *Estimate.* Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of providing the response required by § 1.1411(c)(2), or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey. Where a pole-by-pole estimate is requested and the utility expects to incur fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole estimate for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

* * *

(2) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn.

(3) *Final invoice.* After the utility completes make-ready, if the final cost of the work differs from the estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new attacher's attachment. Where a pole-by-pole invoice is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole invoice for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all invoiced charges, including any projected material, labor, and other related costs that form the basis of its invoice.

(4) A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards and guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

(e) * * *

(1) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of larger orders as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that if make-ready is not completed by the completion date set by the utility in paragraph

(e)(1)(ii) in this section, the new attacher may complete the make-ready specified pursuant to paragraph (e)(1)(i) in this section.

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

(2) For attachments above the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that the utility may assert its right to 15 additional days to complete make-ready.

(v) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(2)(ii) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to paragraph (e)(2)(i) in this section.

(vi) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

(3) Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (e)(1)(ii) for communications space attachments or paragraph (e)(2)(ii) for attachments above the communications space.

(f) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (e)(1)(ii) or its make-ready above the communications space by the same dates for existing attachers in paragraph (e)(2)(ii) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(g) * * *

(1) A utility shall apply the timeline described in paragraphs (c) through (e) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

* * *

(4) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(5) A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

(h) *Deviation from the time limits specified in this section:*

(1) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.

(2) A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.

(3) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (e)(1) of this section is sent by the utility (or up to 105 days in the case of larger orders described in paragraph (g) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

(i) *Self-help remedy.*

(1) *Surveys.* If a utility fails to complete a survey as specified in paragraph (c)(3)(i) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in §1.1412, hire a contractor to complete a survey.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

(ii) A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(2) *Make-ready.* If make-ready is not complete by the date specified in paragraph (e) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in §1.1412, hire a contractor to complete the make-ready.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any make-ready. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 5 days of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either (A) complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or outage, or (B) require the new attacher to fix the damage or outage at its expense immediately following notice from the utility or existing attacher.

(iii) A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

(3) Self-help shall not be available for pole replacements.

(j) *One-touch make-ready option.* For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (c)-(f) and (i) of this section.

(1) Attachment Application.

(i) A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.

(ii) The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.

(A) A utility has 10 business days after receipt of a new attacher's attachment application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.

(B) If the utility timely notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The applicant may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(2) *Application Review on the Merits.* The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of larger orders as described in paragraph (g) of this section).

(i) If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and

information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

(ii) Within the 15-day application review period (or within 30 days in the case of larger orders as described in paragraph (g) of this section), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

(3) *Surveys.* The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in §1.1412(b).

(i) The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(4) *Make-ready.* If the new attacher's attachment application is approved and if it has provided 15 days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a contractor in the manner specified for simple make-ready in §1.1412(b).

(i) The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either (A) complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or outage, or (B) require the new attacher to fix the damage or outage at its expense immediately following notice from the utility or existing attacher.

(iii) In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready shall then be governed by parts (d)-(i) of this section and the utility shall provide the notice required by part (e) of this section as soon as reasonably practicable.

(5) *Post-make-ready timeline.* A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the

new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

4. Amend section 1.1412 by revising paragraphs (a), (b), and (c) to read as follows:

§ 1.1412 Contractors for surveys and make-ready.

(a) *Contractors for self-help complex and above the communications space make-ready.* A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on its poles. The new attacher must use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in §§1.1412(c)(1)-(5) and the utility may not unreasonably withhold its consent.

(b) *Contractors for simple work.* A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready. If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in §§1.1412(c)(1)-(5) and the utility may not unreasonably withhold its consent.

(i) If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (c) of this section. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in paragraph (c) of this section when providing notices required by §§1.1411(i)(1)(ii), 1.1411(i)(2)(i), 1.1411(j)(3)(i), and 1.1411(j)(4).

(ii) The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in §§1.1411(i)(1)(ii), 1.1411(i)(2)(i), 1.1411(j)(3)(i), and 1.1411(j)(4) and in its objection must identify at least one available qualified contractor.

(c) *Contractor minimum qualification requirements.* Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to paragraph (b)(i) of this section, meet the following minimum requirements:

(1) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;

(2) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;

(3) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;

(4) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and

(5) The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.

* * * * *

5. Amend section 1.1413 by revising to read as follows:

§ 1.1413 Complaints by incumbent local exchange carriers.

(a) A complaint by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a local exchange carrier or that a utility's rate, term, or condition for a pole attachment is not just and reasonable shall follow the same complaint procedures specified for other pole attachment complaints in this part.

(b) In complaint proceedings challenging utility pole attachment rates, terms, and conditions for pole attachment contracts entered into or renewed after the effective date of this section, there is a presumption that an incumbent local exchange carrier (or an association of incumbent local exchange carriers) is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system providing telecommunications services for purposes of obtaining comparable rates, terms, or conditions. In such complaint proceedings challenging pole attachment rates, there is a presumption that incumbent local exchange carriers (or an association of incumbent local exchange carriers) may be charged no higher than the rate determined in accordance with § 1.1406(e)(2). A utility can rebut either or both of the two presumptions in this paragraph (b) with clear and convincing evidence that the incumbent local exchange carrier receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent local exchange carrier over other telecommunications carriers or cable television systems providing telecommunications services on the same poles.

6. Add section 1.1415 to read as follows:

§ 1.1415 Overlashing.

(a) *Prior approval.* A utility shall not require prior approval for: (i) an existing attacher that overlashes its existing wires on a pole; or (ii) for third party overlashing of an existing attachment that is conducted with the permission of an existing attacher.

(b) *Preexisting violations.* A utility may not prevent an attacher from overlashing because another existing attacher has not fixed a preexisting violation. A utility may not require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher.

(c) *Advance notice.* A utility may require no more than 15 days' advance notice of planned overlashing. If a utility requires advance notice for overlashing, then the utility must provide existing attachers with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attacher. If after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the party seeking to overlash within the 15 day advance notice period and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. A utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash.

(d) *Overlashers' Responsibility.* A party that engages in overlashing is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party is responsible at its expense for any necessary repairs.

(e) *Post-Overlashing Review.* An overlashing party shall notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice shall provide the affected utility at least 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations. The utility may either complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations or require the overlashing party to fix the damage or code violations at its expense within 14 days following notice from the utility.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment (*Wireline Infrastructure Notice*) and into the Report and Order and Declaratory Ruling, and Further Notice of Proposed Rulemaking (*Wireline Infrastructure Order*) for the wireline infrastructure proceeding.² The Commission sought written public comment on the proposals in the *Wireline Infrastructure Notice* and in the *Wireline Infrastructure Order*, including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this Order, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.³

A. Need for, and Objectives of, the Rules

2. In the *Wireline Infrastructure Notice*, the Commission continued its efforts to close the digital divide by removing barriers to broadband infrastructure investment. To this end, the Commission proposed numerous regulatory reforms to existing rules and procedures regarding pole attachments.⁴

3. On November 16, 2017, the Commission adopted the *Wireline Infrastructure Order*, which enacted reforms to pole attachment rules that: (1) bar utility pole owners from charging for certain capital costs that already have been recovered from make-ready fees;⁵ (2) set a 180-day shot clock for resolution of pole access complaints;⁶ and (3) grant incumbent local exchange carriers (LECs) reciprocal access to infrastructure controlled by other LECs.⁷ In addition, the Commission adopted reforms to speed the replacement of copper with fiber and Internet Protocol (OP) technologies.⁸ In the *Further Notice of Proposed Rulemaking*, the Commission sought comment on (1) additional steps to streamline the process for retiring legacy services and network change disclosure and discontinuance processes;⁹ (2) the treatment of overlash by utilities;¹⁰ and (3) what actions the Commission can take to facilitate the rebuilding and repairing of broadband infrastructure after natural disasters.¹¹

4. Concurrently, the Commission's Broadband Deployment Advisory Committee (BDAC), a federal advisory committee chartered in 2017, formed five active working groups, as well as an ad hoc

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (*Wireline Infrastructure Notice*).

³ See 5 U.S.C. § 604.

⁴ See *Wireline Infrastructure Notice*, 32 FCC Rcd at 3266.

⁵ See *Wireline Infrastructure Order*, 32 FCC Rcd at 11131-32, paras. 7-8.

⁶ See *id.* at 11132-34, paras. 9-14.

⁷ See *id.* at 11134-37, paras. 51-21.

⁸ See *id.* at 11137-87, paras. 22-155.

⁹ See *id.* at 11187-94, paras. 156-159, 163-177.

¹⁰ See *id.* at 11188-89, paras. 160-62.

¹¹ See *id.* at 11194, paras. 178-79.

committee on rates and fees, to address the issues raised in the *Wireline Infrastructure Notice*.¹² During five public meetings, BDAC adopted recommendations related to competitive access to broadband infrastructure.¹³ These recommendations informed the Commission's policy decisions on pole attachment reform.

5. Pursuant to the objectives set forth in the *Wireline Infrastructure Notice*, this *Report and Order* and *Declaratory Ruling (Order)* adopts changes to Commission rules regarding pole attachments. The Order adopts changes to the current pole attachment rules that: (1) allow new attachers to perform all work, not reasonably likely to cause a service outage or facility damage, to prepare poles for new wireline attachments (make-ready work) in the communications space of a pole;¹⁴ (2) adopt a substantially shortened timeline for such application review and make-ready work (OTMR pole attachment timeline);¹⁵ (3) require new attachers to use a utility-approved contractor if a utility makes available a list of qualified contractors authorized to perform simple make ready work in the communications space;¹⁶ (4) create a more efficient pole attachment timeline;¹⁷ (5) enhance the new attacher's existing self-help remedy for surveys and make-ready work by extending it to all attachments (both wireless and wireline) above the communications space of a pole;¹⁸ (6) require new attachers to use utility-approved contractors when utilities and existing attachers miss their deadlines and the new attacher elects self-help to complete surveys and make-ready work that is complex or that involves work above the communications space on a pole;¹⁹ (7) require utilities to provide new attachers with detailed, itemized estimates and final invoices for all required make-ready work;²⁰ (8) codify the Commission's existing precedent that prohibits a pre-approval requirement for overlashing, and adopt a rule that allows utilities to establish reasonable advance notice requirements of up to 15 days for overlashing and holds overlashers responsible for ensuring that their practices and equipment do not cause safety or engineering issues;²¹ (9) establish a rebuttable presumption that, for newly-negotiated, newly-renewed, and evergreen pole attachment agreements between LECs and utilities, incumbent LECs will receive comparable pole attachment rates, terms, and conditions as similarly-situated telecommunications carriers or cable television system providing telecommunications services;²² and (10) establish that new attachers are not responsible for costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent that such poles or third-party equipment were out of compliance prior to the new attachment.²³ The modifications to our pole attachment rules will facilitate deployment to and reduce barriers to access infrastructure by reducing costs and delays typically associated with the pole attachment process. Ultimately, these pole attachment reforms will contribute to increased broadband deployment, decreased costs for consumers, and increased service speeds.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. The Commission did not receive comments addressing the rules and policies proposed in

¹² See *supra* section I.

¹³ See *supra* section I.

¹⁴ See *supra* section III.A.1.a.

¹⁵ See *supra* section III.A.1.c.

¹⁶ See *supra* section III.A.1.b.

¹⁷ See *supra* section III.A.2.a.

¹⁸ See *supra* section III.A.2.b.

¹⁹ See *supra* section III.A.2.c.

²⁰ See *supra* section III.A.2.d.

²¹ See *supra* section III.A.3.

²² See *supra* section III.C.

²³ See *supra* section III.B.

the IRFAs in either the *Wireline Infrastructure Notice* or the *Wireline Infrastructure Order*.

C. Response to Comments by the Chief Counsel for Advocacy of the SBA

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.²⁴

8. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

9. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *Order*.²⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁶ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.²⁷ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁸

10. The changes to our pole attachment rules affect obligations on utilities that own poles, telecommunications carriers and cable television systems that seek to attach equipment to utility poles, and other LECs that own poles.²⁹

11. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.³⁰ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.³¹ These types of small businesses represent 99.9% of all businesses in the United States which translates to 29.6 million businesses.³²

12. Next, the type of small entity described as a “small organization” is generally “any not-

²⁴ 5 U.S.C. § 604 (a)(3)

²⁵ See 5 U.S.C. § 604(a)(4).

²⁶ See 5 U.S.C. § 601(6).

²⁷ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁸ See 15 U.S.C. § 632.

²⁹ The definitions of utility and telecommunications carrier for purposes of our pole attachment rules are found in 47 U.S.C. § 224(a)(1) and (a)(5), respectively.

³⁰ See 5 U.S.C. § 601(3)-(6).

³¹ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf> (Aug. 2017)

³² See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small business are there in the U.S.?” <https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2017-WEB.pdf> (Aug. 2017).

for-profit enterprise which is independently owned and operated and is not dominant in its field.”³³ Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).³⁴

13. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”³⁵ U.S. Census Bureau data from the 2012 Census of Governments³⁶ indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.³⁷ Of this number there were 37,132 general purpose governments (county³⁸, municipal and town or township³⁹) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts⁴⁰ and special districts⁴¹) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.⁴² Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”⁴³

³³ 5 U.S.C. § 601(4).

³⁴ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccsweb.urban.org/tablewiz/bmf.php> where the report showing this data can be generated by selecting the following data fields: Show: “Registered Nonprofit Organizations”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

³⁵ 5 U.S.C. § 601(5).

³⁶ See 13 U.S.C. § 161. The Census of Government is conducted every five years compiling data for years ending with “2” and “7.” See also Program Description Census of Government, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>.

³⁷ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-State, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

³⁸ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

³⁹ See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

⁴⁰ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

⁴¹ See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

⁴² See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States,

14. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”⁴⁴ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.⁴⁵ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁴⁶ Thus, under this size standard, the majority of firms in this industry can be considered small.

15. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 14 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁷ Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁴⁸ The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

16. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 14 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁹ According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁵⁰ Consequently, the Commission estimates that most providers of incumbent local

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<https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States, <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

⁴³ *Id.*

⁴⁴ U.S. Census Bureau, 2012 NAICS Definitions, “517311 Wired Telecommunications Categories,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁴⁵ See 13 C.F.R. § 120.201, NAICS Code 517311.

⁴⁶ 2012 U.S. Economic Census, NAICS Code 517311, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

⁴⁷ See 13 C.F.R. § 120.201, NAICS Code 517311, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

⁴⁸ 2012 U.S. Economic Census, NAICS Code 517311, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

⁴⁹ See 13 C.F.R. § 120.201, NAICS Code 517311.

⁵⁰ 2012 U.S. Economic Census, NAICS Code 517311, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table

exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.⁵¹ Of this total, an estimated 1,006 have 1,500 or fewer employees.⁵²

17. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 14 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.⁵³ Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.⁵⁴ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁵⁵ In addition, 72 carriers have reported that they are Other Local Service Providers.⁵⁶ Of this total, 70 have 1,500 or fewer employees.⁵⁷ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

18. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 14 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵⁸ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁵⁹ Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.⁶⁰ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the adopted rules.

19. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired

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⁵¹ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at 5-5, Tbl. 5.3 (2010), (*Trends in Telephone Service*).

⁵² *Id.*

⁵³ Employment Size of Firms for the U.S., 2012 Economic Census, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodT ype=table.

⁵⁴ See Trends in Telephone Service at 5-5, Tbl. 5.3.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ 13 C.F.R. § 121.201, NAICS Code 517311.

⁵⁹ See Trends in Telephone Service at 5-5, Tbl. 5.3.

⁶⁰ *Id.*

Telecommunications Carriers, as defined in paragraph 14 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶¹ Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁶² Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁶³ Of these, an estimated 279 have 1,500 or fewer employees.⁶⁴ Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

20. *Wireless Telecommunications Carriers (Except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.⁶⁵ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.⁶⁶ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.⁶⁷ Of this total, an estimated 261 have 1,500 or fewer employees.⁶⁸ Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

21. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.⁶⁹ Industry data indicate that there are currently 4,600 active cable systems in the United States.⁷⁰ Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.⁷¹ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer

⁶¹ 13 C.F.R. § 121.201, NAICS Code 517311.

⁶² Employment Size of Firms for the U.S., 2012 Economic Census, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁶³ See Trends in Telephone Service at 5-5, Tbl. 5.3.

⁶⁴ *Id.*

⁶⁵ NAICS Code 517210 (2012), <https://www.census.gov/econ/isp/sampler.php?naicscode=517210&naicslevel=6#>.

⁶⁶ Employment Size of Firms for the U.S., 2012 Economic Census, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁶⁷ See Trends in Telephone Service at 5-5, Tbl. 5.3.

⁶⁸ *Id.*

⁶⁹ 47 C.F.R. § 76.901(e)

⁷⁰ Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing Aug. 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS)). See www.fcc.gov/coals.

⁷¹ See SNL KAGAN, <https://www.snl.com/interactiveX/MyInteractive.aspx?mode=4&CDID=A-821-38606&KLPT=8> (subscription required).

subscribers.⁷² Current Commission records show 4,600 cable systems nationwide.⁷³ Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁷⁴ Thus, under this standard as well, we estimate that most cable systems are small entities.

22. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000 are approximately 52,403,705 cable video subscribers in the United States today.⁷⁵ Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁷⁶ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁷⁷ We clarify that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁷⁸ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under *the* definition in the Communications Act.

23. *All Other Telecommunications*. “All Other Telecommunications” is defined as follows: “This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client supplied telecommunications connections are also included in this industry.”⁷⁹ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁸⁰ For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual

⁷² 47 C.F.R. § 76.901(c).

⁷³ Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission’s Cable Operations and Licensing System (COALS)). *See* www.fcc.gov/coals.

⁷⁴ *Id.*

⁷⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2016, Notice of Proposed Rulemaking*, 31 FCC Rcd 5757, Appendix E para. 23 (2016) (citing Office of Management and Budget (OMB) Memorandum M-10-06, Open Government Directive, Dec. 8, 2009).

⁷⁶ 47 C.F.R. § 76.901(f).

⁷⁷ *Assessment & Collection of Regulatory Fees for Fiscal Year 2016, Notice of Proposed Rulemaking*, 31 FCC Rcd 5757, Appx. E para. 23 (2016).

⁷⁸ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 C.F.R. § 76.901(f).

⁷⁹ NAICS Code 517919 (2012), <https://www.census.gov/econ/isp/sampler.php?naicscode=517919&naicslevel=6>.

⁸⁰ 13 C.F.R. § 121.201; NAICS Code 517919, <https://www.census.gov/econ/isp/sampler.php?naicscode=517919&naicslevel=6>.

receipts less than \$25 million.⁸¹ Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

24. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: “This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.”⁸² This category includes electric power distribution, hydroelectric power generation, fossil fuel power generation, nuclear electric power generation, solar power generation, and wind power generation. The SBA has developed a small business size standard for firms in this category based on the number of employees working in a given business.⁸³ According to Census Bureau data for 2012, there were 1,742 firms in this category that operated for the entire year.⁸⁴

25. *Natural Gas Distribution.* This economic census category comprises: “(1) establishments primarily engaged in operating gas distribution systems (e.g., mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.”⁸⁵ The SBA has developed a small business size standard for this industry, which is all such firms having 1,000 or fewer employees.⁸⁶ According to Census Bureau data for 2012, there were 422 firms in this category that operated for the entire year.⁸⁷ Of this total, 399 firms had employment of fewer than 1,000 employees, 23 firms had employment of 1,000 employees or more, and 37 firms were not operational.⁸⁸ Thus, the majority of firms in this category can be considered small.

26. *Water Supply and Irrigation Systems.* This economic census category “comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems. The water supply system may include pumping stations, aqueducts, and/or distribution mains.

⁸¹ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC0751SSSZ1, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 517919, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table.

⁸² U.S. Census Bureau, 2017 NAICS Definitions, “2211 Electric Power Generation, Transmission and Distribution,” https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf.

⁸³ U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Classification System Codes, “Sector 22 - Utilities” at 5 (2016), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

⁸⁴ U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, “Establishment and Firm Size: Summary Statistics by Employment Size of Firms for the U.S.: 2012,” NAICS codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 22112, 221121, (issued Mar. 2016), <https://www.census.gov/data/tables/2012/econ/census/utilities.html>.

⁸⁵ U.S. Census Bureau, 2017 NAICS Definitions, “221210 Natural Gas Distribution,” https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf.

⁸⁶ U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Classification System Codes, “Sector 22 - Utilities” at 5 (2016), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

⁸⁷ U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, “Establishment and Firm Size: Summary Statistics by Employment Size of Firms for the U.S.: 2012,” NAICS code 2212 (issued Mar. 2016), <https://www.census.gov/data/tables/2012/econ/census/utilities.html>.

⁸⁸ *Id.*

The water may be used for drinking, irrigation, or other uses.”⁸⁹ The SBA has developed a small business size standard for this industry, which is all such firms having \$27.5 million or less in annual receipts.⁹⁰ According to Census Bureau data for 2012, there were 3,261 firms in this category that operated for the entire year.⁹¹ Of this total, 3,035 firms had annual sales of less than \$25 million⁹² Thus, the majority of firms in this category can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

27. *One-Touch Make Ready (OTMR) Alternative Pole Attachment Process.* The Order adopts an OTMR pole attachment alternative to the Commission’s existing pole attachment timeline. New attachers may perform all simple make-ready work required to accommodate new wireline attachments in the communications space on a pole. First, any OTMR work will be performed by a utility-approved contractor, although a new attacher can use its own qualified contractor to perform OTMR work when the utility does not provide a list of approved contractors. Second, new attachers must provide advanced notice and allow representatives of existing attachers and the utility a reasonable opportunity to be present when OTMR surveys and make-ready work are performed. Third, new attachers must allow existing attachers and the utility the ability to inspect and request any corrective measures soon after the new attacher performs the OTMR work.

28. The Order sets forth that the OTMR process begins upon utility receipt of a complete application by a new attacher to attach to its facilities. A complete application is defined as one that provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to begin to survey the affected poles. The Order further establishes that a utility has ten business days after receipt of a pole attachment application to determine if the application is complete and notify the attacher of that decision. If the utility notifies the attacher that its application is not complete within the ten business-day review period, then the utility must specify where and how the application is deficient. If the utility provides no response within ten business days, or if the utility rejects the application as incomplete but fails to specify any deficiencies in the application, then the application is deemed complete. If the utility timely notifies the attacher that its application is incomplete and specifies the deficiencies, then a resubmitted application need only supplement the previous application by addressing the issues identified by the utility, and the application will be deemed complete within five business days after its resubmission, unless the utility specifies which deficiencies were not addressed. A new attacher may follow the resubmission procedure as many times as it chooses, so long as in each case it makes a bona fide attempt to correct the issues identified by the utility. A utility must respond to new attachers within 15 days of receiving complete pole attachment, or within 30 days for larger requests.

29. The Order provides that under the OTMR process, it is the responsibility of the new attacher to conduct a survey of the affected poles to determine the make-ready work to be performed. In performing a field inspection as part of any pre-construction survey, the new attacher must permit representatives of the utility and any existing attachers potentially affected by the proposed make-ready

⁸⁹ U.S. Census Bureau, 2017 NAICS Definitions, “221310 Water Supply and Irrigation Systems,” https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf.

⁹⁰ U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Classification System Codes, “Sector 22 - Utilities” at 5 (2016), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

⁹¹ U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, “Establishment and Firm Size: Summary Statistics by Employment Size of Firms for the U.S.: 2012,” NAICS code 221310 (issued Mar. 2016), <https://www.census.gov/data/tables/2012/econ/census/utilities.html>.

⁹² U.S. Census Bureau, 2012 Economic Census, Subject Series: Utilities, “Establishment and Firm Size: Summary Statistics by Revenue Size of Firms for the U.S.: 2012,” NAICS code 221310 (issued Mar. 2016), <https://www.census.gov/data/tables/2012/econ/census/utilities.html>.

work to be present for the survey, using commercially reasonable efforts to provide advance notice of the date, time, and location of the survey of not less than three (3) business days.

30. The Order requires that the new attacher ensures that its contractor determines whether the make-ready work identified in the survey is simple or complex, subject to an electric utility's right to reasonably object to the determination. The new attacher – if it wants to use the OTMR process and is eligible to do so based on the survey – must elect OTMR in its pole attachment application and identify in its application the simple make-ready work to be performed. The Order requires an electric utility that wishes to object to a simple make-ready determination to raise such an objection during the 15-day application review period (or within 30 days in the case of larger orders). Any such objection by the electric utility is final and determinative, so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, provides a good faith explanation of how such evidence and information relate to a determination that the make-ready is not simple. In this case, the work is deemed complex and must follow the existing pole attachment timeline that is modified in this Order. If the make-ready work involves a mix of simple and complex work, then the new attacher may elect to bifurcate the work and must submit separate applications for simple and complex work.

31. The Order provides that the new attacher can elect to proceed with the necessary simple make-ready work by giving 15 days' prior written notice to the utility and all affected existing attachers. The new attacher may provide the required 15-day notice any time after the utility deems its pole attachment application complete. If the new attacher cannot start make-ready work on the date specified in its 15-day notice, then the new attacher must provide 15 days' advance notice of its revised make-ready date. The new attacher's notice must provide representatives of the utility and existing attachers: (1) the date and time of the make-ready work, (2) a description of the make-ready work involved, (3) a reasonable opportunity to be present when the make-ready work is being performed, and (4) the name of the contractor chosen by the new attacher to perform the make-ready work. Further, the new attacher must notify the existing attacher immediately if the new attacher's contractor damages another company's or the utility's equipment or causes an outage that is reasonably likely to interrupt the provision of service.

32. Finally, the Order requires the new attacher to provide notice to the utility and affected existing attachers within 15 days after OTMR make-ready work is completed on a particular pole. In its post-make-ready notice, the new attacher must provide the utility and existing attachers at least a 90-day period for the inspection of make-ready work performed by the new attacher's contractors. The Order requires the utility and the existing attachers to notify the new attacher of any damage or any code violations caused to their equipment by the new attacher's make-ready work and provide adequate documentation of the damage or violations within 14 days after any post-make ready inspection. The utility or existing attacher can either complete any necessary remedial work and bill the new attacher for reasonable costs to fix the damage or violations, or require the new attacher to fix the damage at its expense within 14 days following notice from the utility or existing attacher.

33. The Order also establishes that new attachers must use a utility-approved contractor to perform OTMR if a utility makes available a list of qualified contractors authorized to perform simple make-ready work in the communications space of its poles. New and existing attachers may request that contractors meeting the minimum qualification requirements be added to the utility's list and utilities may not unreasonably withhold consent to add a new contractor to the list. To be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability. If the use of an approved contractor is not required by the utility or no approved contractor is available within a reasonable time period, then the Order allows new attachers to use qualified contractors of their choosing to perform simple make-ready work in the communications space of poles. The utility may mandate additional commercially reasonable requirements for contractors relating to issues of safety and reliability, but such requirements must clearly communicate the safety or reliability issue, be non-discriminatory, in writing, and publicly available. New attachers must provide the name of their chosen contractor in the three-business-day advance notice

for surveys or the 15-day notices sent to utilities and existing attachers in advance of commencing OTMR work. The utility may veto any contractor chosen by the new attacher as long as the veto is based on reasonable safety or reliability concerns related to the contractor's ability to meet one or more of the minimum qualifications or the utility's previously posted safety standards, and the utility identifies at least one qualified contractor available to do the work. When vetoing an attacher's chosen contractor, the utility must identify at least one qualified contractor available to do the work. The utility must exercise its veto within either the three-business-day notice period for surveys or the 15-day notice period for make-ready. The objection by the utility is determinative and final.

34. The utility or new attacher must certify to the utility, within either the three-business-day notice period for surveys or the 15-day notice period for make-ready, that any contractors perform OTMR meet the following minimum requirements: (1) follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor agrees to follow NESC guidelines; (2) read and follow licensed-engineered pole designs for make-ready work, if required by the utility; (3) follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules; (4) meet or exceed any uniformly applied and reasonable safety record thresholds set by the utility, if made available, *i.e.*, the contractor does not have an unsafe record of significant safety violations or worksite accidents; and (5) be adequately insured or be able to establish an adequate performance bond for the make-ready work it will perform, including work it will perform on facilities owned by existing attachers. The utility may mandate additional commercially reasonable requirements for contractors relating to issues of safety and reliability, but such requirements must be non-discriminatory, in writing, and publicly-available (*i.e.*, on the utility's website).

35. *Existing Pole Attachment Process Reforms.* The Order makes targeted changes to the Commission's existing pole attachment timeline for attachments that are not eligible for the OTMR process and attachers that prefer the existing process. These reforms include revising the definition of a complete pole attachment application and establishing a timeline for a utility's determination whether application is complete; requiring utilities to provide at least three business days' advance notice of any surveys to the new attacher; establishing a 30-day deadline for all make-ready work in the communications space; streamlining the utility's notice requirements; eliminating the 15-day utility make-ready period for communications space attachments; streamlining the utility's notice requirements; requiring utilities to provide detailed estimates and final invoices to new attachers regarding make-ready costs; enhancing the new attacher's self-help remedy by making the remedy available for surveys and make-ready work for all attachments anywhere on the pole in the event that the utility or the existing attachers fail to meet the required deadlines; and revising the contractor selection process for a new attacher's self-help work.

36. The Order retains the existing requirement that the pole attachment timeline begins upon utility receipt of a complete application to attach facilities to its poles, but revises the definition of a complete application to an application that provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission, to begin to survey the affected poles. The Order then adopts the same timeline as set out in the OTMR-process for a utility to determine whether a pole attachment application is complete.

37. The Order also requires a utility to permit the new attacher and any existing attachers potentially affected by the new attachment to be present for any pole surveys. The utility must use commercially reasonable efforts to provide at least three business days' advance notice of any surveys to the new attacher and each existing attacher, including the date, time, location of the survey, and the name of the contractor performing the survey. The Order provides that the utility may meet the survey requirement of our existing timeline by electing to use surveys previously prepared on the poles in question by new attachers.

38. The Order amends the existing make-ready timeline by (1) reducing the deadlines for both simple and complex make-ready work from 60 to 30 days (and from 105 to 75 for large requests in

the communications space); and (2) eliminating the optional 15-day extension for the utility to complete communications space make-ready work. The Order maintains the current make-ready deadline of 90 days (and 135 days for large requests) for make-ready above the communications space. However, for all attachments, the Order retains as a safeguard our existing rule allowing utilities to deviate from the make-ready timelines for good and sufficient cause when it is infeasible for the utility to complete make-ready work within the prescribed timeframe. Further, an existing attacher may deviate from the 30-day deadline for complex make-ready in the communications space (or the 75-day deadline in the case of larger orders) for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready by the deadline. An existing attacher that so deviates must immediately notify, in writing, the new attacher and other affected existing attachers, identify the affected poles, and include a detailed explanation of the basis for the deviation and a new completion date, which cannot extend beyond 60 days from the date of the utility make-ready notice to existing attachers (or 105 days in the case of larger orders). The existing attacher cannot deviate from the complex make-ready time limits for a period longer than necessary to complete make-ready on the affected poles. If complex make-ready is not complete within 60 days from the date that the existing attacher sends notice to the new attacher, the new attacher can complete the work using a utility-approved contractor. Existing attachers must act in good faith in obtaining an extension. The Order also provides that when a utility provides the required make-ready notice to existing attachers, then it must provide the new attacher with a copy of the notice, plus the contact information of existing attachers to which the notices were sent, and thereafter the new attacher (rather than the utility) must take responsibility for encouraging and coordinating with existing attachers to ensure completion of make-ready work on a timely basis.

39. Expanding upon the Commission's existing make-ready cost estimate requirement for utilities, the Order requires a utility to detail all make-ready cost estimates and final invoices on a per-pole basis where requested by the new attacher. Fixed costs that are not necessarily charged on a per-pole basis may be submitted on a per-job basis, rather than a pole-by-pole basis, even where a pole-by-pole estimate or invoice is requested. As part of the detailed estimate, the utility is required to disclose to the new attacher its projected material, labor, and other related costs that form the basis of its estimate, including specifying what, if any costs, the utility is passing through to the new attacher from the utility's use of a third-party contractor. The utility must also provide documentation that is sufficient to determine the basis of all charges in the final invoice, including any material, labor and other related costs. If a utility completes make-ready and the final cost of the work does not differ from the estimate, it is not required to provide the new attacher with the invoice.

40. To increase broadband deployment, the Order modifies our existing pole attachment rules by extending a new attacher's self-help remedy for surveys and make-ready work to all attachments above the communications space, including the installation of wireless 5G small cells, when the utility or existing attachers have not met make-ready work deadlines. To address the safety concerns of utilities with regard to self-help work, the Order requires that new attachers, when invoking the self-help remedy, (1) use a utility-approved contractor to do the make-ready work; (2) provide no less than three business days advance notice for self-help surveys and five business days advance notice of when self-help make-ready work will be performed and a reasonable opportunity to be present; (3) provide notice to the utility and existing attachers no later than 15 days after make-ready is complete on a particular pole so that they have an opportunity to inspect the make-ready work. The advance notice must include the date and time of the work, nature of the work, and the name of the contractor being used by the new attacher. The new attacher is required to provide immediate notice to the affected utility and existing attachers if the new attacher's contractor damages equipment or causes an outage that is reasonably likely to interrupt the provision of service.

41. The Order adopts a contractor selection process for self-help that requires a new attacher electing self-help for simple work in the communications space to select a contractor from a utility-maintained list of qualified contractors that meet the same safety and reliability criteria as contractors authorized to perform OTMR work, where such a list is available. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualification requirements and

the utility may not unreasonably withhold consent. If no list is available or no approved contractor is available within a reasonable time period, the new attacher must select a contractor that meets the same safety and reliability criteria as contractors authorized to perform OTMR work and any additional non-discriminatory, written, and publicly-available criteria relating to safety and reliability that the utility specifies. The utility may veto the new attacher's contractor selection so long as such veto is prompt, set forth in writing that describes the reasonable basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety and reliability. Additionally, the utility must offer another available, qualified contractor. For complex work and work above the communications space, the Order requires (1) the utility to make available and keep up-to-date reasonably sufficient list of contractors it authorizes to perform complex and non-communications space self-help surveys and make-ready work; and (2) the new attacher to choose a contractor from the utility's list. New and existing attachers may request that qualified contractors be added to the utility's list and that the utility may not unreasonably withhold its consent for such additions. A utility's decision to withhold consent must be prompt, set forth in writing that describes the reasonable basis for the rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety.

42. *Additional Pole Attachment Reforms.* The Order codifies the Commission's existing precedent that prohibits a pre-approval requirement for overlashing. In addition, the Order adopts a rule on overlashing that allows utilities to establish a reasonable 15-day advance notice requirement, and holds overlashers responsible for ensuring that their practices and equipment do not cause safety or engineering issues. If after receiving advance notice, a utility determines that an overlash create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the party seeking to overlash within the 15 day advance notice period and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. The Order also provides that a utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash. The Order also includes a post-overlashing review process where an overlashing party is required to notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice must provide the affected utility 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage to its equipment caused by the overlash. If the utility discovers damage caused by the overlash on equipment belonging to the utility, then the utility must inform the overlashing party and provide adequate documentation of the damage. The Order sets forth that the utility may either (A) complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage, or (B) require the overlashing party to fix the damage at its expense within 14 days following notice from the utility.

43. The Order provides that a utility may not prevent an attacher from overlashing because another attacher has not fixed a preexisting violation or require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher. The Order sets forth that new attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment. Further, utilities may not deny new attachers access to the pole solely based on safety concerns arising from a pre-existing violation. They also cannot delay completion of make-ready while the utility attempts to identify or collect from the party who should pay for correction of the preexisting violation. The Order also establishes a presumption that, for newly-negotiated, newly renewed, and evergreen pole attachment agreements between incumbent LECs and utilities, an incumbent LEC will receive comparable pole attachment rates, terms, and conditions as a similarly-situated telecommunications carrier or telecommunications attacher, unless the utility can rebut the presumption with clear and convincing evidence that the incumbent LEC receives net benefits under its pole attachment agreement with the utility, that materially advantage the incumbent LEC over other telecommunications attachers. If the presumption is rebutted, the pre-2011 *Pole Attachment Order* telecommunications carrier rate is the maximum rate that the utility and incumbent LEC may negotiate.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

44. In this Order, the Commission modifies its pole attachment rules to improve the efficiency and transparency of the pole attachment process, as well as to increase access to infrastructure for certain types of broadband providers. Overall, we believe the actions in this document will reduce burdens on the affected carriers, including any small entities.

45. The Order also finds that adopting the OTMR process will reduce delays and costs for new attachers, enhance competition, improve public safety and reliability of networks, and accelerate broadband buildout. As detailed in the Order, the Commission rejects alternative proposals, such as “right-touch, make-ready” and NCTA’s “ASAP” proposal – which merely modify the current framework. These approaches diffuse responsibility among parties that lack the new attacher’s incentive to ensure that the work is done quickly, cost effectively, and properly. Further, these proposals fail to address the existing problems created by sequential make-ready, such as numerous separate climbs and construction stoppages in the public-rights-of-way.

46. As described in the Order, applying targeted changes to the existing pole attachment process, such as a more efficient pole attachment timeline, detailed and itemized estimates and final invoices on a per-pole basis, and an enhanced self-help remedy, will increase broadband deployment by reducing the number of unreasonable delays, and encouraging transparency and collaboration between all interested parties at an early stage in the pole attachment process. The Order also concluded that codifying the Commission’s existing precedent prohibiting a pre-approval requirement for overlashing, and adopting a rule allowing utilities to require advance notice of overlashing will eliminate the industry uncertainty that currently exists regarding overlashing, a practice that is essential to broadband deployment. In addition, by eliminating outdated disparities between the pole attachment rates that incumbent carriers must pay compared to other similarly-situated cable and telecommunications attachers, the Order sought to increase incumbent LEC access to infrastructure by addressing the bargaining disparity between utilities and incumbent LECs.

G. Report to Congress

47. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁹³ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁹⁴

⁹³ See 5 U.S.C. § 801(a)(1)(A).

⁹⁴ See 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79.

Last year, I visited Detroit. Some long ago wrote off the Motor City, but as I saw for myself, there's an unmistakable energy and optimism to the place. Part of the reason why is Rocket Fiber. This small startup is aiming to provide high-speed, high-quality Internet access to residents and increase competition along the way. From a boxing ring to a mobile van that they use to sign up customers, I could feel the enthusiasm for the company's work, and by extension, the city's future.

But Rocket Fiber faces some big hurdles—among them the difficulty of attaching its broadband equipment to utility poles. For a competitive entrant, especially a small company, breaking into the market can be hard, if not impossible, if your business plan relies on other entities to make room for you on those poles. Today, a broadband provider that wants to attach fiber or other equipment to a pole first must wait for, and pay for, each existing attacher to sequentially move existing equipment and wires. This can take months. And the bill for multiple truck rolls adds up. For companies of any size, pole attachment problems represent one of the biggest barriers to broadband deployment.

All of this got me thinking about a policy that would allow a single entity to do the requisite work on the utility pole—a policy commonly known as “one-touch make-ready.” Today, we adopt one-touch make-ready (OTMR) in order to help accelerate broadband deployment and competition across the country.

OTMR promises to substantially lower the cost and shorten the time to deploy broadband on utility poles. It allows a new provider who wants to attach to a pole to move all the wires and equipment in just one “touch.” It's a bit like having to go to the grocery, the dry cleaner, and the bank. The slow way to do this would be to visit each business but return home each time. The rational thing we all do is to do each errand, one after the other, all on one trip. That's essentially what OTMR is.

Also, we make clear today that it is a violation of federal law for states or localities to impose moratoria on broadband deployment. There may be many reasonable ways local governments can regulate network deployments in their jurisdiction, but blocking competition and better services for American consumers is not one of them.

Let me address several claims about the OTMR process which have been raised. Some have said that state law will not provide sufficient protection for existing attachers and that we need new attachers to broadly indemnify existing attachers. I certainly believe new attachers should be responsible for damage they cause, which is why we've put in place protections. But Google Fiber has explained that blanket indemnification “would tilt the playing field even further toward existing attachers” and “would expose new attachers to potentially unbounded liability—and without any corresponding benefit.”

It's also been suggested that OTMR undercuts collective bargaining agreements. Again, Google Fiber points out that “no other proposal is more self-serving than . . . insistence that new attachers be obligated to honor existing attachers' collective bargaining agreements Google Fiber has no problem using union contractors that have been approved by the pole owner. But the reality is that, in many areas, no such contractors exist; instead, in some of these places, the only [union] members covered by . . . collective bargaining agreements are [the] employees [of existing attachers].”

And we've heard that an existing attacher should have veto rights on determinations that make-ready work is simple. Google Fiber lays out how this “would gut OTMR by giving existing attachers the power to decide when OTMR can be used. This would perpetuate the existing power imbalance, in which incumbent attachers have the ability to delay and even prevent deployment of new networks by

competitors.” “By allowing existing attachers to both unilaterally determine whether make-ready is simple or complex . . . , [this proposal] would obliterate those few remedies available to new attachers under the current system and would destroy new attachers’ ability to have any control over the timing of their own deployment.”

This Commission is heading forward, not backward. We’re favoring competition, not status quo. We’re embracing the promise of new entrants that want nothing more than a chance to compete, not the fears of those who always find a way to say no.

Finally, we would not have arrived on this pro-competitive path without the tireless work of the Broadband Deployment Advisory Committee, or BDAC. One of the major recommendations from the BDAC’s work was that the Commission should adopt an OTMR regime. And I’m pleased that today’s *Order* largely follows the path prescribed by the BDAC. I know there were many long hours of debate, and plenty of genuine disagreements, but at the end of the day the BDAC was able to coalesce around a solid, balanced policy. I promised the members of the BDAC early on that they wouldn’t just be marking time. And I stood by my word. Make-ready is not make-work—it is a major step toward better, faster, and cheaper Internet access for all Americans.

Lastly, I want to thank the staff who have worked so hard on this item. From the Wireline Competition Bureau: Annick Banoun, Matthew Collins, Adam Copeland, Dan Kahn, Billy Hupp, Lisa Hone, Dick Kwiatkowski, Kris Monteith, Terri Natoli, Eric Ralph, Mike Ray, Jaclyn Rosen, Marvin Sacks, Deborah Salons, Mason Shefa, Anthony Patrone, and John Visclosky; from the Wireless Telecommunications Bureau: Garnet Hanly, Betsy McIntyre, Jiaming Shang, David Sieradzki, Don Stockdale, and Suzanne Tetreault; from the Enforcement Bureau: Michael Engel, Lisa Griffin, Rosemary McEnery, and Lisa Saks; from the Office of General Counsel: Malena Barzilai, Ashley Boizelle, Tom Johnson, Billy Layton, and Rick Mallen; and from the Office of Strategic Planning & Policy Analysis, Paul LaFontaine.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79.

I believe there is near universal agreement, certainly among my colleagues here at the FCC, that broadband services of sufficient functionality should be available to all Americans that seek access. If used properly, broadband can bring enormous benefits to individuals and society as a whole. From critical news and information to educational materials and entertainment, broadband can improve the lives of our citizens in ways not imagined just a few decades ago. It is also completely interwoven into almost every aspect of the business and commercial world. And, the technologies in the works and on drawing boards suggest it will be an astronomically more connected universe.

Persistent and known obstacles, however, are preventing many Americans from accessing private sector broadband services. In many cases, the economics make it incredibly challenging to extend network build-outs to the farthest corners of our nation. It's why I have spent so much time working to modernize and strengthen the Commission's Connect America Fund and have pushed hard for the initiation of the Remote Areas Fund. Similarly, a large percentage of State and local governments are due kudos for stepping forward to make the process for obtaining broadband deployment approvals, to the extent it is necessary, more efficient.

At the same time, a select group of State and local governments have defied reason and actually slowed down or stifled deployment work to feed their own egos, power, or push for shakedown bounties. This is unacceptable. Today, the Commission takes its second step in our larger effort to confront the practices of these bad actors. This has been over a 30-year fight with some of these communities and the associations representing them, so you will excuse me if I don't buy the arguments that all it takes is more cooperation and time working together.

While I support the one-touch make-ready (OTMR) provisions, I want to start my comments on the second portion of today's item, the moratorium section. Anyone who has worked in this space for quite a while knows that State and local governments have been on notice for decades that Congress wanted to end: 1) moratoriums on wireless towers and antennas, and 2) tower siting decisions based on aesthetics. Let me make this clear for those local officials who may not have been listening in the past: **NO MORATORIUMS; NO MORATORIUMS; ABSOLUTELY NO MORATORIUMS.**

It is beyond me that we are still having to deal with this outrageous practice after so many years, especially given how important broadband can be to the very citizens residing in these areas. In addition to the existing provisions of section 332, today's item declares section 253 as a statutory authority for prohibiting applicable moratoriums. While I know it will be challenged in court, my simple reaction is hallelujah. Every ounce of Congressional authority provided to the Commission must be used as a counterforce against moratoriums, which is just another word for "mindless delay" or "extortion attempts to generate some local officials' wish list." And, the record is replete with examples of such out-of-bound practices, such as digital inclusion funds, that unnecessarily create political slush funds and raise the cost of service for consumers.

During to the first portion of the item, I want to thank the Chairman and his team for making a few key edits to the one touch make ready provisions. My revisions will not fundamentally alter the direction of the item or undermine its necessary efforts. Instead, it will smooth some rougher parts of the OTMR by bolstering the recourse for damages or non-compliance resulting from OTMR work, ensuring that make-ready work damage to existing attachers' facilities are rectified immediately, increasing post-OTMR inspection periods, allowing existing attachers to continue work on their networks during the advance notice period, reducing the burdens of per-pole estimates and invoices, permitting overlashing of

facilities upon permission of the host without the pole owners advance approval, amongst others.

In the end, the item will greatly aid the private sector expansion of broadband services throughout America, producing a more competitive and capable nation. I look forward to further actions later this year by Commissioner Carr to further extend wireless buildout relief, including other preemptive measures, to complement our work here today. I approve.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-84; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79.

The first utility poles in the country went up not far from here back in 1844. They formed a 38-mile line between the U.S. Capitol and the Mount Clare railroad station in Baltimore, Maryland. The poles went up along the right-of-way used by the Baltimore and Ohio Railroad. The idea came from an engineer, Ezra Cornell, who had been working with Samuel Morse on a way to quickly and efficiently string a telegraph line between the two points. With the poles and wire line in place, Morse and his partner Alfred Vail were able to send the world's first long-distance telegram on May 24, 1844.

So the humble utility pole is one of the oldest forms of infrastructure used for communications. And it is that same utility pole that will support the next-gen networks of tomorrow. Take 5G – we need thousands of new small cell deployments over the next few years. And the lion's share of these are expected to go up on utility poles in rights-of-ways. You can already see the leading edge of these deployments in communities across the country. I have seen it in Sioux Falls, South Dakota, where city officials showed me some of the small cells that have gone up across their downtown. I have seen it on top of a wooden pole outside a high school in rural Woodstock, Virginia, where a small cell is adding the capacity needed to power students' coding classes and cloud-based learning.

At the FCC, we have been working to streamline and reduce barriers to these small cell deployments. And today's decision is another good step in that direction. By making it easier for providers to safely and efficiently attach broadband-capable fiber and cable lines to utility poles, we can bring down the cost of the backhaul needed to connect all these small cell deployments.

In this decision, we also take the commonsense step of repeating our long-standing view that moratoria on telecom deployments violate federal law. This decision will provide even greater certainty as we look to promote next-gen deployments in communities across the country.

I want to thank the Wireline Competition Bureau and the Wireless Telecommunications Bureau in particular for their work on this item. It has my support.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
APPROVING IN PART, DISSENTING IN PART**

Re: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-84; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79.

In this country we build. We are a nation of doers. Clearing the obstacles in our way is deep in our DNA. I believe this instinct has served us well and over time there has been a lot of evidence this is true before the Federal Communications Commission. You see it in the way as a country we connected all through the public switched telephone network. You see it in the way we led the world in the deployment of 4G wireless services. You see it, too, in the cities and towns that are clamoring for better broadband service, because they know that without it their communities will not have a fair shot in the digital age.

You also see the influence of this spirit in this decision. It is designed to expedite access to utility poles. That may not seem grand at first blush, but clearing the way to access these lowly facilities is a big deal. It means building more broadband in more places, more competitive broadband, and enhanced access to the next generation of wireless services.

For this reason, I support one-touch make-ready pole attachment. By allowing for the modification or replacement of the lines or equipment on a utility pole to accommodate additional facilities, I believe we can speed the way to a future with more digital age infrastructure deployment across the country.

But as with all things, the devil is in the details. We are dealing with a complex and heady mix of federal authority, state preemption, local realities, and the possibility of job losses for workers and service outages for consumers. Getting it right is essential. I believe that in some ways, this decision runs roughshod over the details when clearer and more specific direction is required.

First, in our rush to put out rules, this agency accepts too much ambiguity in the one-touch make-ready regime we adopt today. Ideally these policies would be crystal clear so that there are no disputes about just what deployments qualify for one-touch make-ready procedures. But I am concerned that is not the case here. And I believe this is going to slow down deployment—not speed it up. Indeed, even determining what counts as simple make-ready work is not so simple. That’s because our definitions of simple and complex processes do not provide enough real-world guidance to attachers and utilities, setting the stage for disputes and delays. Worse, we decide not to give any voice in this process to the parties that are well-positioned to make these tricky determinations—the existing attachers. This is hard to justify.

Second, we could do more to protect jobs and safety. By giving short shrift to employees covered by collective bargaining agreements, this decision threatens to invalidate private contracts negotiated between existing attachers and union workers. But going forward, this agency could put those employees out of work. This is not right. Moreover, it is not an outcome we can simply ignore.

Third, we should give more thought to what happens to existing attachers on poles. With only superficial analysis, we conclude that existing contract and tort law will protect their interests. This is not so simple because in many cases there is no privity of contract between these parties. Our one-touch make-ready regime—and the public at large—would be better served by mechanisms that would allow existing attachers to hold a new attacher or contractor accountable for the consequences of performing shoddy work, especially when they lead to consumer outages.


Finally, I fear that for all our desire to expedite deployment all this decision will do is speed the way for litigation. Nowhere is this clearer than in the declaratory ruling. This agency determines that state or local requirements that prevent or have the effect of suspending the processing of siting

applications for new communications infrastructure violate Section 253(a) of the Communications Act and are preempted. The legal analysis here is seriously lacking. A basic canon of statutory interpretation requires that this agency give meaning to all relevant portions of the law. Interpretations that support statutory consistency are valued over those that do not. And yet, there is no way to square this declaratory ruling regarding Section 253(a) with Section 253(d). That's because Section 253(d) provides the express mechanism for this agency to preempt state and local requirements on a case-by-case basis after notice and opportunity for public comment. Moreover, our interpretation of Section 253(a) preemption all but reads Section 332(c) out of the law, which provides a specific due process remedy for the failure to act on wireless facilities siting.

So what does that mean in the real world? Take Myrtle Beach, South Carolina, just for example. It's a coastal community. There are laws that limit the ability of private entities to dig up roads during certain times of the year, namely during the height of hurricane season and during peak tourist times. These rules are limited in time and scope. They are informed by local traffic and public safety authorities. They are reasonably related to the police powers of municipalities. And yet, going forward, three unelected officials sitting here today preempt these local policies because they believe Washington knows better.

This is unfortunate. Because I believe we need smart one-touch make-ready policies—and others like it—to expedite the deployment of more broadband and wireless services in more places. We need to find a modern way to balance the needs for national deployment policies with local realities so that across the board government authorities support what we need everywhere—digital age infrastructure. I believe there is a thoughtful way to do this, but the reasoning in today's decision falls short.

While I approve our adoption of one-touch make-ready policies in concept, the deficiencies in our analysis are too significant for me to offer my full support. As a result, I approve in part and dissent in part.

DATE: January 30, 2020
TO: Joseph A. Valentine, City Manager
FROM: Benjamin I. Myers, HR Manager 
SUBJECT: City Commission Consideration of Birmingham Firefighters Association November 5, 2019 Grievance

I have attached a request by the Birmingham Firefighters Association Local 911 for City Commission consideration of the grievance of November 5, 2019. A copy of the grievance procedure up to this point has been provided under separate cover.

Step four (4) 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 Birmingham Firefighters Association Local 911 grievance of November 5, 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 Birmingham Firefighters Association Local 911 grievance of November 5, 2019.

STANDARD GRIEVANCE FORM I.A.F.F., Local 911		<i>(Use additional pages for any section of this form, if necessary)</i>
NAME OF EMPLOYEE: Mark DeLauder		GRIEVANCE NUMBER: 19-006
STATION: 1	RANK: Firefighter	ECONOMIC OR DISCIPLINARY: Disciplinary
REPRESENTED BY: Local 911	REPRESENTATIVE NAME: Jeff Scaife, President	REP TELEPHONE: 586-588-5378

DESCRIPTION OF GRIEVANCE:

The Employer has violated, *inter alia*, Article Management Responsibility, Paragraph 7, (pg. 5) of the collective bargaining agreement and/or the enforceable past-practice of the parties in the following manner:

On October 17, 2019, the Employer imposed upon Firefighter Mark DeLauder (Grievant) a two (2) duty day disciplinary suspension without pay; the inability (through January 1, 2020) to utilize "buddy time" and "substitution time" as outlined in the current CBA and Letter of Agreement dated August 1, 2005; and further the Employer is mandating the Grievant to submit to an "emotional/behavioral consultation"/evaluation with the City's psychologist, as well as Employer-imposed required counseling. This disciplinary action is the result of alleged incidents that took place on or about September 9th, 11th, 12th, and 16th, 2019. Fifteen (15) fire department rules and regulations and City Rules of Conduct violations were cited in the discipline, as well as referencing hearsay conversations dated as far back as September 12th, 2018. FF DeLauder's suspension was served on November 2nd, and 4th, 2019.

Under the circumstances of this case, this discipline is pretextual, without just cause, excessive, retaliatory, non-progressive, and designed to be punitive rather than corrective.

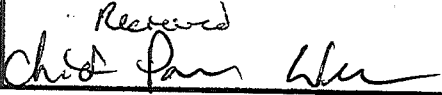
RELIEF SOUGHT:

Make the Grievant whole in every way including, but not limited to, the immediate rescission of all charges and discipline, and removal of any reference to it from his personnel record; the repayment of all back wages withheld during any days the Grievant serves on suspension; payment of any and all fringe benefits for that period including, but not limited to, his DB Retirement and Retirement Health Care accounts being properly credited along with interest for all regularly required contributions; and any other accruals which may have been withheld.

I hereby authorize my representative to examine any appropriate official document, personnel record, or medical information which may be related to the grievance.

EMPLOYEE SIGNATURE: 	DATE: 11-5-19
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STEP 2 SUBMITTED

SUPERVISOR: Received 	TELEPHONE:	ORAL PRESENTATION REQUESTED? (Y/N) <input checked="" type="checkbox"/> YES	DATE RECEIVED 11-5-19
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NOTICE OF INTENTION TO APPOINT TO THE PARKS AND RECREATION BOARD

At the regular meeting of Monday, March 9, 2020, the Birmingham City Commission intends to appoint two regular members and 1 alternate member to the Parks and Recreation Board to serve three-year terms to expire March 13, 2023, and 1 alternate member to complete a three-year term to expire March 13, 2022.

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, November 14, 2018. 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 appointments.

Responsibilities

The Parks & Recreation Board consists of seven members who serve for three-year terms without compensation. The goal of the board is to promote a recreation program and a park development program for the City of Birmingham. The Board shall recommend to the City Commission for adoption such rules and regulations pertaining to the conduct and use of parks and public grounds as are necessary to administer the same and to protect public property and the safety, health, morals, and welfare of the public.

The meetings are held the first Tuesday of the month at 6:30 P.M.

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
MULTI-MODAL TRANSPORTATION BOARD**

At the regular meeting of Monday, March 9, 2020, the Birmingham City Commission intends to appoint one alternate member to the Multi-Modal Transportation Board, to complete a three-year term to expire October 27, 2022.

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, December 4, 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.

In so far as possible, the seven member committee shall be composed of the following: one pedestrian advocate member; one member with a mobility or vision impairment; one member with traffic-focused education and/or experience; one bicycle advocate member; one member with urban planning, architecture or design education and/or experience; and two members at large living in different geographical areas of the City. Applicants for this position do not have to be a qualified elector or property owner in Birmingham.

Duties of the Multi-Modal Transportation Board

The purpose of the Multi-Modal Transportation Board shall be to assist in maintaining the safe and efficient movement of motorized and non-motorized vehicles and pedestrians on the streets and walkways of the city and to advise the City Commission on the implementation of the Multi-Modal Transportation Plan, including reviewing project phasing and budgeting.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
<p>In so far as possible, members shall represent pedestrian advocacy, mobility or vision impairment, traffic-focused education/experience, bicycle advocacy, urban planning, architecture or design education/experience, or different geographical areas of Birmingham.</p> <p>Members may or may not be electors (registered voter) or property owners of the City of Birmingham.</p>	3/6/2020	3/9/2020

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
PLANNING BOARD**

At the regular meeting of Monday, March 9, 2020, the Birmingham City Commission intends to appoint two regular members to serve three-year terms to expire March 28, 2023. Members must consist of an architect duly registered in this state, a building owner in the Central Business or Shain Park Historic District, and the remaining members shall represent, insofar as possible, different occupations and professions such as, but not limited to, the legal profession, the financial or real estate professions, and the planning or design professions. Members must be residents 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 9, 2016. 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 appointments.

PLANNING BOARD DUTIES

The planning board consists of seven members who serve three-year terms without compensation. The board meets at 7:30 P.M. on the second and fourth Wednesdays of each month to hear design reviews, zoning ordinance text amendments and any other matters which bears relation to the physical development or growth of the city.

Specifically, the duties of the planning board are as follows:

1. Long range planning
2. Zoning ordinance amendments
3. Recommend action to the city commission regarding special land use permits.
4. Site plan/design review for non-historic properties
5. Joint site plan/design review for non-residential historic properties
6. Rezoning requests.
7. Soil filling permit requests
8. Requests for opening, closing or altering a street or alley

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall represent, insofar as possible, different occupations and professions such as, but not limited to, the legal profession, the financial or real estate professions, and the planning or design professions. Members must be residents of the City of Birmingham.	3/6/2020	3/9/2020

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
CABLECASTING BOARD**

At the regular meeting of Monday, March 9, 2020, the Birmingham City Commission intends to appoint three members to the Cablecasting Board to serve three-year terms expiring March 30, 2023, one regular member to serve the remainder of a three-year term expiring March 30, 2022, one regular member to serve the remainder of a three-year term expiring March 30, 2021, and one alternate member to serve a three-year term expiring March 30, 2022. Applicants must be residents 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, March 6, 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 appointments.

Duties of the Cablecasting Board

- 1) Advise the municipalities on matters relating to cable communications;
- 2) Monitor the franchisee's compliance with the franchise agreement and the cable communications ordinance;
- 3) Conduct performance reviews as outlined in Chapter 30, Article VII of the city code;
- 4) Act as liaison between the franchisee and the public; hear complaints from the public and seek their resolution from the franchisee;
- 5) Advise the various municipalities on rate adjustments and services according to the procedure outlined in Chapter 30; Article VI
- 6) Advise the municipalities on renewal, extension or termination of a franchise;
- 7) Appropriate those moneys deposited in an account in the name of the Cablecasting Board by the member communities;
- 8) Oversee the operation of the education, governmental and public access channels;
- 9) Apprise the municipalities of new developments in cable communications technology;
- 10) Hear and decide all matters or requests by the operator (Comcast Cablevision);
- 11) Hear and make recommendations to the municipalities of any request of the operator for modification of the franchise requirement as to channel capacity and addressable converters or maintenance of the security fund;
- 12) Hear and decide all matters in the franchise agreement which would require the operator to expend moneys up to fifty thousand dollars;
- 13) Enter into contracts as authorized by resolutions of the member municipalities;
- 14) Administer contracts entered into by the Board and terminate such contracts.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Member must be resident of the City of Birmingham.	3/06/2020	3/9/2020

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

Planning Division

DATE: January 15th, 2020
TO: Joseph A. Valentine, City Manager
FROM: Brooks Cowan, City Planner
APPROVED BY: Jana Ecker, Planning Director
SUBJECT: Public Arts Board Annual Report

In accordance with the City ordinance establishing the Public Arts Board, an annual report is to be prepared and submitted to the City Commission to advise as to the Board's activities. The following is the relevant language from the ordinance.

Excerpt from Ordinance 1773, Section 78-110 Duties

The Public Arts Board shall prepare an annual report of its activities, accomplishments and a description of how the Public Arts Board has attempted to achieve its objectives. (See section 78-109). This report shall be presented to the City Commission.

The Public Arts Board reviewed the attached report at its December 18th, 2019 meeting and voted to approve and submit the report to the City Commission.

THE 2019 PUBLIC ARTS BOARD ANNUAL REPORT

With the adoption of ordinance 1773 by the City Commission in December of 2001, the Birmingham Public Arts Board was established to provide a level of expertise and objectivity to recommend to the City Commission works of art to become the property of or for display upon property owned by the City of Birmingham. Pursuant to section 78-110 of ordinance 1773, an annual report is to be prepared and submitted to the City Commission outlining the board's activities, accomplishments and a description of how the Public Arts Board has attempted to achieve its objectives. This report outlines the Board's activities over the previous 12 months. This report is separated into two distinct parts: 1) Accomplishments and 2) Goals. The Accomplishments section cites in narrative form the activities conducted by the Public Arts Board over the past year.

The Goals section lists the items the board plans to pursue for the upcoming year in order to fulfill their objectives.

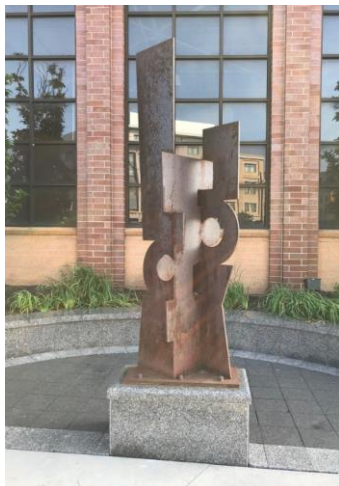
Current Public Arts Board Members

Barbara Heller – Chairperson
Linda Wells – Vice Chairperson
Jason Eddleston
Monica Neville
Anne Ritchie
Natalie Bishai – Alternate

Accomplishments

Sculpture Installations: *Sound Heart* by Jay Lefkowitz and *Eastern Hophornbeam* by Robert Lobe

Sound Heart was donated to the City in 2015 and the Public Arts Board decided upon the Kroger Plaza at Woodward and Maple for installation. Kroger installed the sculpture piece this past January. The *Eastern Hophornbeam* by Robert Lobe was installed in Booth Park in November. The sculpture is on loan from Robert Lobe and the Hill Gallery.



Donated Sculpture:

Michigan Spring by James Miller-Melburg was donated to the City by the family of the artist in December of 2018. The Public Arts Board and Library Board found this piece to be suitable for the southwest corner of the Library lawn where *Journey Home* by Dennis Oppenheimer used to be located. The artist has passed away, and the Public Arts Board has spent 2019 working on coordinating a sculpture mount and installation process for the piece.



City Owned Sculpture:

Chris Yockey's "The Counselor" was a part of the Art in Public Spaces sculpture on loan program from 2008. It is located on the exterior wall of N. Old Woodward parking structure facing the N. Old Woodward Road. The City agreed to purchase the sculpture in October 2019 and make it a permanent fixture in Birmingham.



Interactive Art:

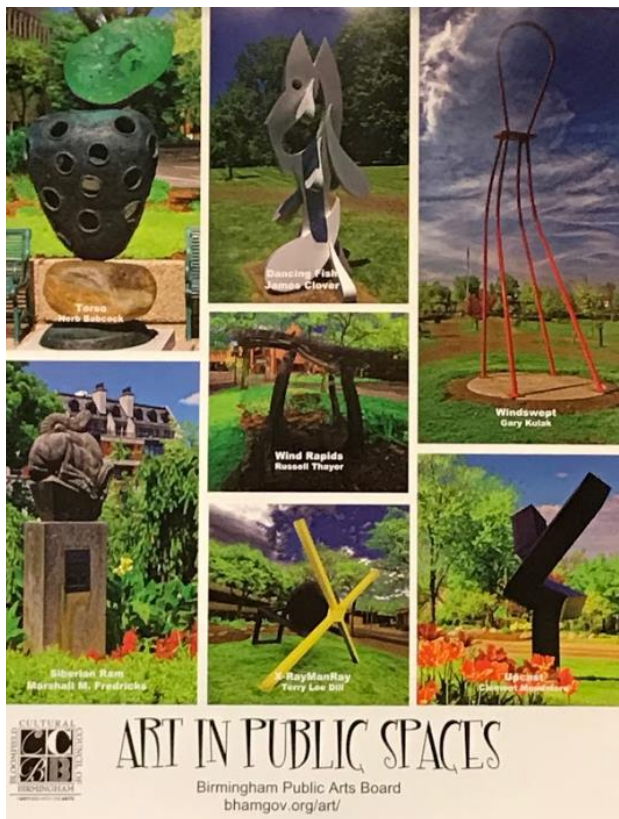
The Public Arts Board indicated an interest in doing more interactive art projects throughout the city for 2019. One such project included Piano in the Park where the Board would find a free piano, host a public painting event, and then have it placed in Shain Park for anyone to play. The painting event was held in the parking lot of St. James Church which provided useful respite from the rain. The piano was also placed on industrial grade, lockable wheels so that DPS could move it out of the way in case of another event. Feedback was consistently positive and there were numerous patrons of the piano playing a variety of sounds and songs.



The Public Arts Board had two student representatives from Seaholm High School in 2018 and 2019. The students wanted to incorporate musical performances with an art event and came up with Art in the Alley. The event was to be held in Willits Alley with multiple singers and bands performing while Seaholm art students displayed their work on easels and walls. Student volunteers were also planning to host an arts and crafts station for kids to make pinwheels, do coloring, and have their faces painted. Unfortunately the event was moved indoors due to rain, but the student representatives gained valuable experience in event management and coordinating with government departments, local businesses, and high school organizations.



To go along with more interactive projects with the city, the Public Arts Board volunteered on four weekends of the Farmers Market throughout the summer. The Board had posters created that included a collage of sculpture photos taken by Carroll Deweese. These posters were handed out along with maps and informational pamphlets about the city's sculptures. Volunteers from the Board also provided arts and crafts opportunities such as coloring books and crafting pinwheels. Over 100 pinwheels were made over the summer.



The Public Arts Board helped coordinate another successful Birmingham in Stitches event in Shain Park. The granite balls in Shain Park were decorated with various creative yarn designs.



Art in Public Spaces:

The Public Arts Board coordinates with the Birmingham Bloomfield Cultural Council with Art in Public Spaces and the City's sculpture on loan program. One of the difficulties this program faces is the installation process for the sculptures and having an acceptable base pad. The Public Arts Board was able to work with the Engineering Department's concrete sidewalk program this year and have three 6'x6' concrete pads installed to be used for sculptures on loan. The locations include Booth Park, Poppleton Park, and Linden Park.

Terminating Vista Planning

The Public Arts Board was asked to consider placing a sculpture on top of the electrical box at the intersection of Merrill and S. Old Woodward to enhance the terminating vista. There was consensus from the Public Arts Board that this was not a good site for a sculpture, although there was desire to paint the electrical box with a creative design. The Board wanted a design that was thematic with the surroundings and added some flavor to downtown; something that would really "pop". The Board decided on a popcorn box design and board member Anne Ritchie and her husband John Ritchie volunteered to paint it. The project received great feedback from the public.

The Public Arts Board has also been studying how other electrical boxes in downtown could be designed, as well as how terminating vistas could be enhanced through the use of public art.



2020 Goals

The Public Arts Board would like to replicate some of their successes from 2019 such as Piano in the Park and volunteering at the Birmingham Farmers Market. Their goal for 2020 is to have another piano painting event and to have the piano placed beneath the bandstand in Shain Park once again. They would also like to volunteer at four farmers markets while offering arts and crafts activities and providing sculpture posters and pamphlets. In regards to informational pamphlets, the Board would like to contract out to a professional designer to put a professional pamphlet together about sculptures throughout Birmingham.

Another interactive project the Public Arts Board would like to take on in 2020 is providing a sculpture tour. This would involve walking from site to site and detailed explanations of the artist and the context of each sculpture.

The Public Arts Board would like to finish its report on ways to enhance terminating vistas in 2020. This report would include design suggestions for electrical boxes on the southwest corner of Merrill and S. Old Woodward and the west sidewalk at N. Old Woodward and Hamilton.

The Public Arts Board would like to expand their online social media presence in 2020. Their goal is to coordinate with the Birmingham communications liason at least once a month and have an informational post on the City's social media about a sculpture or Public Arts Board event. In doing so, the Board aims to enhance the online exposure provided to the artists who have loaned or donated work to the City. The popcorn box and piano in the park provided popular content for the City's social media and the Board would like to continue this trend.

In regards to sculptures, the Public Arts Board would like to do a call for entries to recruit three to five new sculptures on loan. The Public Arts Board has prioritized their preferences for sculpture locations, but will consider the context of each sculpture in relation to the location on a case-by-case basis. The call for entry will include using online social media through the City, as well as sending information to various art programs.

In order to streamline the sculpture installation process, the Public Arts Board would like to adopt a formal policy for the installation of the sculpture and footing. Every sculpture has unique details for installation that requires a certain level of expertise. The Public Arts Board would like to coordinate with a professional mount fabricator for third party review in order to ensure each sculpture is installed in a safe and efficient manner. Art institutions such as the DIA and Cranbrook employ such professionals and the Public Arts Board would like to reach out to them to consult on project installations. The Public Arts Board would also like to secure \$500 to \$1000 of funding to assist each artist with installation for costs such as transportation, mount fabrication, and installation fees. Providing funding would help incentivize sculptures on loan and contribute to a more vibrant art scene throughout Birmingham.



MEMORANDUM

Finance Department

DATE: January 31, 2020
TO: Joseph A. Valentine, City Manager
FROM: Mark Gerber, Director of Finance/Treasurer
SUBJECT: Second 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 first quarter 2019-2020 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, 50% of the fiscal year has lapsed.

General Fund

Overall, the activity in the General Fund for fiscal year 2019-2020 is comparable to the prior fiscal year. Revenues are approximately \$.8 million higher than last year mostly as a result of an increase in property tax revenue. The increase in property tax revenue is the result of an increase in taxable value from the prior year. Licenses and Permits are down approximately \$265,000 from the previous year primarily as a result of large commercial permit fees received in the first half of 2018-2019 compared to 2019-2020. Fines and Forfeitures are down approximately \$156,000 compared to the prior year due to timing of court revenues distributed. Intergovernmental revenue is at 24% of budget due to the timing of when the State releases state shared revenue.

Total current year-to-date expenditures for the General Fund are lower than the prior year by approximately \$445,000, or 2.4%. Engineering and Public Services is approximately \$1,025,000 lower than the previous year as a result of sidewalk construction on Old Woodward in 2018. This decrease was partially offset by an increase in Public Safety of approximately \$272,000 as a result of an increase in retirement contributions and equipment for the new ambulance and an increase in Community Development of approximately \$145,000 as a result of an increase in personnel

costs associated with previously vacant positions and an increase in contractual inspection costs. Transfers Out is over 50% of budget as a result of building improvements for the 48th District Court which were paid in December.

Greenwood Cemetery Fund

Cemetery plot sales are lower than the prior year, but are on track for the year. Investment income is higher than the prior year and higher than expected for the current year. No expenditures have been made so far this fiscal year.

Major Street Fund

Total revenues are approximately \$300,000 more than the prior year as a result of higher budgeted transfers from the General Fund. Intergovernmental is less than the prior year as a result of additional road funding provided by the State in fiscal year 2018-2019. Intergovernmental revenue is less than 50% due to the timing of payments from the State.

Overall expenditures are approximately the same as the prior year. Administrative costs are over 50% as a result of annual audit costs which are paid in the first half of the year. Traffic Controls & Engineering and Construction of Roads and Bridges are currently well below budget in the current year as the expenditures for the Maple Road project have not started yet.

Local Street Fund

Total revenues for the year are approximately the same as the prior year.

Total expenditures are approximately the same as the prior year. Administrative costs are over 50% as a result of annual audit costs which are paid in the first half of the year. Construction of Roads and Bridges is over 50% due to the timing of road projects completed.

Solid Waste Fund

Revenues are approximately \$60,000 higher than the previous year as a result of higher property tax revenue.

Expenditures are approximately the same as the prior fiscal year.

Brownfield Redevelopment Authority Fund

Revenues are approximately \$350,000 lower compared to the prior year as a result of a decrease in property taxes captured. The taxes on the Balmoral project is no longer being captured as the developer has been paid their environmental costs.

Expenditures are approximately \$110,000 higher than the prior year as a result of the settlement with 2400 Lincoln, LLC. This budget variance will be addressed at year-end during the 4th quarter budget amendment in June.

Principal Shopping District

Total revenues and expenditures are comparable to the previous fiscal year.

Community Development Block Grant Fund

Expenditures are lower in the current fiscal year as a result of work performed on the exterior ADA door to the police department in FY 2018-2019.

Triangle District Corridor Improvement Authority

Currently, there is no planned tax capture or expenditure of funds for the Authority this fiscal year.

Law and Drug Enforcement Fund

Expenditures are higher in the current fiscal year as a result of the purchase of the Watchguard video system for the patrol vehicles in the first quarter of 2019-2020.

Baldwin Library

Revenue has increased approximately \$91,000. This is the result of an increase in the property tax revenue as a result of an increase in taxable value.

Expenditures are approximately \$513,000 higher than the prior fiscal year as a result of building improvements.

Debt Service Fund

Revenues and expenditures are slightly higher as a result of scheduled debt service costs for the year compared to the previous year. Expenditures are at 94% spent for the year as a result of making a principal payment in September.

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 GENERAL FUND
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	1,455,619	-	0%	3,228,947	-	0%
TAXES	26,114,630	26,073,051	100%	24,941,490	24,916,327	100%
LICENSES AND PERMITS	3,053,720	1,197,099	39%	3,173,150	1,461,591	46%
INTERGOVERNMENTAL	2,157,650	508,941	24%	2,130,740	459,605	22%
CHARGES FOR SERVICES	3,414,670	1,539,299	45%	3,356,410	1,559,310	46%
FINES AND FORFEITURES	1,776,140	559,995	32%	1,838,990	715,840	39%
INTEREST AND RENT	621,090	285,056	46%	398,230	269,492	68%
OTHER REVENUE	418,820	41,530	10%	536,410	67,712	13%
TRANSFERS IN	200,000	100,000	50%	100,000	50,000	50%
TOTAL REVENUES	39,212,339	30,304,971	77%	39,704,367	29,499,877	74%
EXPENDITURES:						
GENERAL GOVERNMENT	6,099,327	2,457,138	40%	5,778,818	2,370,385	41%
PUBLIC SAFETY	14,392,738	6,685,803	46%	13,788,395	6,413,715	47%
COMMUNITY DEVELOPMENT	3,345,835	1,463,784	44%	3,541,404	1,318,996	37%
ENGINEERING AND PUBLIC SERVICES	7,004,833	2,761,494	39%	7,227,093	3,785,134	52%
TRANSFERS OUT	8,299,879	4,711,837	57%	9,368,657	4,637,183	49%
TOTAL EXPENDITURES	39,142,612	18,080,056	46%	39,704,367	18,525,413	47%

CITY OF BIRMINGHAM
QUARTERLY BUDGET REPORT
GREENWOOD CEMETERY FUND
QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
% OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
CHARGES FOR SERVICES	80,000	40,500	51%	80,000	58,500	73%
INTEREST AND RENT	16,800	11,463	68%	12,000	7,893	66%
TRANSFERS IN	-	-	0%	-	-	0%
TOTAL Revenues	<u>96,800</u>	<u>51,963</u>	54%	<u>92,000</u>	<u>66,393</u>	72%
EXPENDITURES:						
OTHER CONTRACTUAL SERVICE	20,000	-	0%	-	-	0%
TOTAL EXPENDITURES	<u>20,000</u>	<u>-</u>		<u>-</u>	<u>-</u>	

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 MAJOR STREETS
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	2,370,814	-	0%	1,368,826	-	0%
INTERGOVERNMENTAL	1,457,100	510,456	35%	1,297,692	592,622	46%
INTEREST AND RENT	40,950	30,978	76%	12,980	17,464	135%
OTHER REVENUE	-	-	0%	1,850	-	0%
TRANSFERS IN	<u>3,246,000</u>	<u>1,623,000</u>	50%	<u>2,579,900</u>	<u>1,250,000</u>	48%
TOTAL REVENUES	<u><u>7,114,864</u></u>	<u><u>2,164,434</u></u>	<u>30%</u>	<u><u>5,261,248</u></u>	<u><u>1,860,086</u></u>	<u>35%</u>
EXPENDITURES:						
ADMINISTRATIVE	20,510	11,433	56%	19,000	10,654	56%
TRAFFIC CONTROLS & ENGINEERING	1,006,609	119,249	12%	839,453	367,900	44%
CONSTRUCTION OF ROADS & BRIDGES	4,939,515	826,235	17%	2,283,242	546,800	24%
MAINTENANCE OF ROADS & BRIDGES	422,489	171,399	41%	485,804	265,404	55%
STREET CLEANING	157,670	81,212	52%	158,549	78,492	50%
STREET TREES	266,271	107,474	40%	255,671	100,202	39%
SNOW AND ICE REMOVAL	<u>301,800</u>	<u>46,516</u>	15%	<u>322,800</u>	<u>28,949</u>	9%
TOTAL EXPENDITURES	<u><u>7,114,864</u></u>	<u><u>1,363,518</u></u>	<u>19%</u>	<u><u>4,364,519</u></u>	<u><u>1,398,401</u></u>	<u>32%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 LOCAL STREETS
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	1,179,975	-	0%	1,456,423	-	0%
INTERGOVERNMENTAL	592,300	207,438	35%	492,550	194,115	39%
INTEREST AND RENT	26,460	15,775	60%	35,030	15,926	45%
OTHER REVENUE	395,120	30,504	8%	644,970	14,073	2%
TRANSFERS IN	<u>2,500,000</u>	<u>1,250,000</u>	50%	<u>2,500,000</u>	<u>1,250,000</u>	50%
TOTAL REVENUES	<u><u>4,693,855</u></u>	<u><u>1,503,717</u></u>	<u>32%</u>	<u><u>5,128,973</u></u>	<u><u>1,474,114</u></u>	<u>29%</u>
EXPENDITURES:						
ADMINISTRATIVE	28,980	15,668	54%	26,750	14,529	54%
TRAFFIC CONTROLS & ENGINEERING	70,790	34,082	48%	70,020	36,102	52%
CONSTRUCTION OF ROADS & BRIDGES	1,626,103	988,648	61%	2,649,984	896,991	34%
MAINTENANCE OF ROADS & BRIDGES	1,169,943	622,721	53%	1,177,179	821,666	70%
STREET CLEANING	186,190	96,113	52%	180,272	77,046	43%
STREET TREES	526,799	266,402	51%	522,359	263,958	51%
SNOW AND ICE REMOVAL	<u>165,030</u>	<u>39,399</u>	24%	<u>161,670</u>	<u>24,541</u>	15%
TOTAL EXPENDITURES	<u><u>3,773,835</u></u>	<u><u>2,063,033</u></u>	<u>55%</u>	<u><u>4,788,234</u></u>	<u><u>2,134,833</u></u>	<u>45%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 SOLID WASTE
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	95,840	-	0%	84,293	-	0%
TAXES	1,935,000	1,939,922	100%	1,875,000	1,880,043	100%
INTERGOVERNMENTAL CHARGES FOR SERVICES	4,200	4,113	0%	4,450	4,224	0%
INTEREST AND RENT	18,000	8,804	49%	17,600	9,374	53%
OTHER REVENUE	31,820	14,890	47%	20,890	13,135	63%
	<u>-</u>	<u>78</u>	0%	<u>-</u>	<u>249</u>	0%
TOTAL REVENUES	<u><u>2,084,860</u></u>	<u><u>1,967,807</u></u>	<u>94%</u>	<u><u>2,002,233</u></u>	<u><u>1,907,025</u></u>	<u>95%</u>
EXPENDITURES:						
PERSONNEL COSTS	187,380	133,522	71%	162,820	119,423	73%
SUPPLIES	12,000	1,077	9%	12,000	1,895	16%
OTHER CHARGES	1,869,480	833,905	45%	1,809,138	809,355	45%
CAPITAL OUTLAY	16,000	4,762	30%	18,275	8,706	48%
TOTAL EXPENDITURES	<u><u>2,084,860</u></u>	<u><u>973,266</u></u>	<u>47%</u>	<u><u>2,002,233</u></u>	<u><u>939,379</u></u>	<u>47%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 BROWNFIELD REDEVELOPMENT FUND
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	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	264,870	264,870	100%	609,040	609,040	100%
CHARGES FOR SERVICES	1,500	-	0%	1,500	-	0%
INTEREST AND RENT	11,340	1,738	15%	1,620	3,502	216%
OTHER REVENUE	20,000	-	0%	20,000	7,924	40%
TRANSFERS IN	-	-	0%	-	-	0%
TOTAL REVENUES	<u>297,710</u>	<u>266,608</u>	<u>90%</u>	<u>632,160</u>	<u>620,466</u>	<u>98%</u>
EXPENDITURES	<u>189,280</u>	<u>238,771</u>	<u>126%</u>	<u>531,760</u>	<u>126,288</u>	<u>24%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 PRINCIPAL SHOPPING DISTRICT
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	113,700	-	0%	135,330	-	0%
CHARGES FOR SERVICES	150,000	25,000	17%	-	-	0%
SPECIAL ASSESSMENTS	1,054,970	8,794	1%	897,300	19,796	2%
INTEREST AND RENT	13,700	4,126	30%	6,390	3,670	57%
OTHER REVENUE	<u>190,000</u>	<u>163,413</u>	86%	<u>190,000</u>	<u>141,123</u>	74%
TOTAL REVENUES	<u>1,522,370</u>	<u>201,333</u>	13%	<u>1,229,020</u>	<u>164,589</u>	13%
EXPENDITURES	<u>1,522,370</u>	<u>725,936</u>	48%	<u>1,229,020</u>	<u>695,420</u>	57%

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 COMMUNITY DEVELOPMENT BLOCK GRANT
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
INTERGOVERNMENTAL REVENUE	<u>57,299</u>	<u>750</u>	<u>1%</u>	<u>64,778</u>	<u>1,658</u>	<u>3%</u>
EXPENDITURES	<u>57,299</u>	<u>21,390</u>	<u>37%</u>	<u>64,778</u>	<u>32,815</u>	<u>51%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	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%
PROPERTY TAXES	-	-	0%	-	-	0%
INTEREST AND RENT	<u>470</u>	<u>152</u>	32%	<u>290</u>	<u>147</u>	51%
 TOTAL REVENUES	<u><u>470</u></u>	<u><u>152</u></u>	<u>32%</u>	<u><u>290</u></u>	<u><u>147</u></u>	<u>51%</u>
 EXPENDITURES	<u><u>-</u></u>	<u><u>-</u></u>	<u>0%</u>	<u><u>-</u></u>	<u><u>-</u></u>	<u>0%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 LAW & DRUG ENFORCEMENT FUND
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	61,760	-	0%	26,200	-	0%
FINES & FORFEITURES	35,000	38,938	111%	35,000	41,197	118%
OTHER REVENUE	-	-	0%	-	2,750	0%
INTEREST AND RENT	<u>1,100</u>	<u>778</u>	71%	<u>1,620</u>	<u>824</u>	51%
TOTAL REVENUES	<u>97,860</u>	<u>39,716</u>	<u>41%</u>	<u>62,820</u>	<u>44,771</u>	<u>71%</u>
EXPENDITURES:						
PUBLIC SAFETY	-	-	0%	-	-	0%
CAPITAL OUTLAY	<u>97,860</u>	<u>97,854</u>	100%	<u>62,820</u>	<u>59,594</u>	95%
TOTAL EXPENDITURES	<u>97,860</u>	<u>97,854</u>	<u>100%</u>	<u>62,820</u>	<u>59,594</u>	<u>95%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 BALDWIN LIBRARY
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF FUND BALANCE	1,677,170	-	0%	225,000	-	0%
TAXES	3,370,950	3,385,815	100%	3,234,870	3,249,944	100%
INTERGOVERNMENTAL	1,029,190	238,459	23%	1,001,380	277,190	28%
CHARGES FOR SERVICES	81,150	34,442	42%	82,600	48,189	58%
INTEREST AND RENT	52,290	30,406	58%	36,920	22,988	62%
OTHER REVENUE	-	-	0%	-	-	0%
TOTAL REVENUES	<u>6,210,750</u>	<u>3,689,122</u>	<u>59%</u>	<u>4,580,770</u>	<u>3,598,311</u>	<u>79%</u>
EXPENDITURES	<u>6,210,750</u>	<u>2,461,046</u>	<u>40%</u>	<u>3,954,790</u>	<u>1,947,717</u>	<u>49%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 DEBT SERVICE FUND
 QUARTER ENDED: DECEMBER 31, 2019 AND DECEMBER 31, 2018
 % OF FISCAL YEAR COMPLETED: 50%

	2019-2020			2018-2019		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
INTERGOVERNMENTAL						
REVENUES:						
USE OF FUND BALANCE	-	-	0%	-	-	0%
TAXES	1,609,500	1,609,435	100%	1,579,260	1,579,299	100%
INTERGOVERNMENTAL	3,660	3,370	92%	3,950	3,662	93%
INTEREST AND RENT	<u>2,990</u>	<u>3,374</u>	113%	<u>4,290</u>	<u>985</u>	23%
TOTAL REVENUES	<u>1,616,150</u>	<u>1,616,179</u>	<u>100%</u>	<u>1,587,500</u>	<u>1,583,946</u>	<u>100%</u>
EXPENDITURES	<u>1,610,300</u>	<u>1,506,395</u>	<u>94%</u>	<u>1,584,000</u>	<u>1,451,875</u>	<u>92%</u>



MEMORANDUM

Finance Department

DATE: January 31, 2020
TO: Joseph A. Valentine, City Manager
FROM: Mark Gerber, Director of Finance/Treasurer
SUBJECT: December 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 \$90.4 million invested in various securities according to its general investment policy as of December 31, 2019. Included in that amount is approximately \$6.6 million in property taxes receipts which is due to Oakland County and Birmingham Public Schools.

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 \$10.6 million invested in pooled funds at the end of December. 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 12%.

The City also holds approximately \$30.4 million, or 34%, 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%.

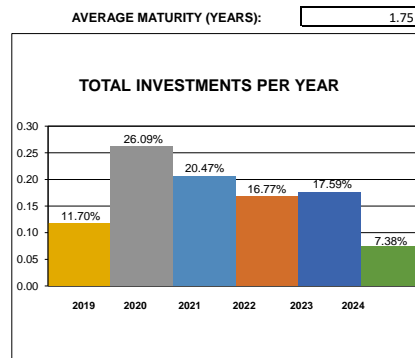
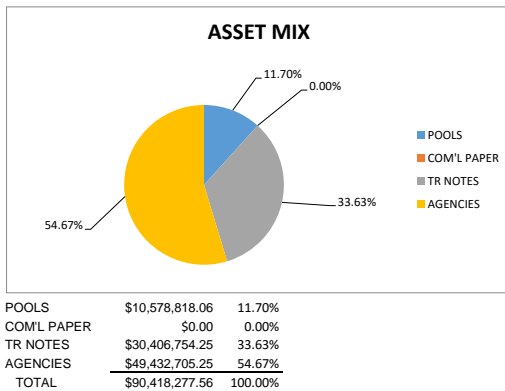
Investments in federal agencies total approximately \$49.4 million, or 55%, of the City's investments. The maximum amount of the portfolio that may be invested in federal agencies is 75%.

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 1.75 years.

**CITY OF BIRMINGHAM
GENERAL INVESTMENT PORTFOLIO SUMMARY**

12/31/2019

YEAR	MATURITY DATE	DESCRIPTION	% YIELD	*	ISSUER	PAR VALUE	COST	CURRENT MARKET VALUE	YEARLY TOTAL	% OF TOTAL
2019	12/31/2019	CLASS POOL	1.820%		MICHIGAN CLASS	2,143,899.24	2,143,899.24	2,143,899.24	10,578,818.06	11.70%
	12/31/2019	J FUND	1.513%	CITY	COMERICA BANK	8,434,918.82	8,434,918.82	8,434,918.82		
2020	1/17/2020	AGENCY	1.459%	INSIGHT	FHLMC	1,750,000.00	1,751,680.00	1,749,825.00	23,589,352.75	26.09%
	1/21/2020	AGENCY	1.084%	INSIGHT	FNMA	1,500,000.00	1,526,535.00	1,500,045.00		
	1/29/2020	AGENCY	2.721%	INSIGHT	FHLB	1,000,000.00	988,229.66	1,000,130.00		
	2/15/2020	TR NOTE	2.733%	INSIGHT	U.S.	2,000,000.00	2,024,147.33	2,004,640.00		
	3/27/2020	AGENCY	1.010%	INSIGHT	FNMA	2,000,000.00	2,044,860.00	2,000,100.00		
	3/31/2020	TR NOTE	1.448%	INSIGHT	U.S.	1,000,000.00	997,773.44	999,340.00		
	4/6/2020	AGENCY	1.396%	INSIGHT	FFCB	1,500,000.00	1,507,725.00	1,499,895.00		
	4/30/2020	TR NOTE	2.784%	INSIGHT	U.S.	1,000,000.00	993,671.88	1,002,420.00		
	5/8/2020	AGENCY	1.166%	INSIGHT	FHLMC	2,000,000.00	2,026,400.00	1,998,920.00		
	6/30/2020	AGENCY	1.300%	INSIGHT	FNMA	1,500,000.00	1,500,000.00	1,497,465.00		
	7/31/2020	TR NOTE	2.798%	INSIGHT	U.S.	2,000,000.00	1,993,756.70	2,011,320.00		
	10/13/2020	AGENCY	1.398%	INSIGHT	FFCB	1,325,000.00	1,322,018.75	1,323,237.75		
	10/26/2020	AGENCY	1.762%	INSIGHT	FFCB	1,500,000.00	1,499,490.00	1,501,305.00		
	11/30/2020	AGENCY	1.224%	INSIGHT	FNMA	2,000,000.00	2,021,902.00	1,999,300.00		
12/31/2020	TR NOTE	1.601%	INSIGHT	U.S.	1,500,000.00	1,507,382.81	1,501,410.00			
2021	2/15/2021	TR NOTE	2.856%	INSIGHT	U.S.	2,000,000.00	2,043,121.51	2,043,760.00	18,510,819.25	20.47%
	2/23/2021	AGENCY	2.791%	INSIGHT	FFCB	2,000,000.00	1,995,800.00	2,025,600.00		
	3/15/2021	TR NOTE	2.754%	INSIGHT	U.S.	1,175,000.00	1,165,315.43	1,185,234.25		
	5/15/2021	TR NOTE	2.829%	INSIGHT	U.S.	1,500,000.00	1,510,610.49	1,530,645.00		
	5/15/2021	TR NOTE	1.695%	INSIGHT	U.S.	1,500,000.00	1,521,152.34	1,520,625.00		
	6/15/2021	TR NOTE	1.704%	INSIGHT	U.S.	1,500,000.00	1,523,090.96	1,521,795.00		
	7/15/2021	TR NOTE	1.693%	INSIGHT	U.S.	1,500,000.00	1,524,497.21	1,523,325.00		
	9/10/2021	AGENCY	3.030%	INSIGHT	FHLB	1,500,000.00	1,498,830.00	1,536,285.00		
	10/12/2021	AGENCY	3.003%	INSIGHT	FHLB	1,500,000.00	1,499,955.00	1,536,690.00		
	11/15/2021	TR NOTE	2.438%	INSIGHT	U.S.	2,000,000.00	2,022,421.88	2,047,180.00		
	12/15/2021	TR NOTE	2.469%	INSIGHT	U.S.	2,000,000.00	2,008,444.20	2,039,680.00		
	2022	1/5/2022	AGENCY	1.533%	INSIGHT	FNMA	2,000,000.00	2,021,480.00		
1/13/2022		AGENCY	2.209%	INSIGHT	FHLMC	1,000,000.00	1,004,248.61	1,015,420.00		
1/13/2022		AGENCY	1.655%	INSIGHT	FHLMC	1,500,000.00	1,524,093.00	1,523,130.00		
3/11/2022		AGENCY	2.433%	INSIGHT	FHLB	1,000,000.00	1,001,850.00	1,018,770.00		
3/14/2022		AGENCY	1.932%	INSIGHT	FFCB	1,000,000.00	997,830.00	1,005,470.00		
6/10/2022		AGENCY	1.882%	INSIGHT	FHLB	1,500,000.00	1,510,635.00	1,517,381.15		
6/10/2022		AGENCY	1.930%	INSIGHT	FHLB	2,000,000.00	2,011,248.00	2,022,938.85		
8/5/2022		AGENCY	1.497%	INSIGHT	FFCB	2,000,000.00	2,020,180.00	2,012,380.00		
9/9/2022		AGENCY	1.613%	INSIGHT	FHLB	1,500,000.00	1,516,588.50	1,516,380.00		
10/31/2022		TR NOTE	1.854%	INSIGHT	U.S.	1,500,000.00	1,506,977.68	1,516,470.00		
2023		1/19/2023	AGENCY	1.617%	INSIGHT	FNMA	2,500,000.00	2,558,475.00	2,556,450.00	15,903,350.00
	2/21/2023	AGENCY	1.491%	INSIGHT	FFCB	2,000,000.00	2,004,653.94	1,995,760.00		
	3/31/2023	TR NOTE	1.421%	INSIGHT	U.S.	1,500,000.00	1,556,430.81	1,541,595.00		
	5/15/2023	TR NOTE	1.578%	INSIGHT	U.S.	1,500,000.00	1,509,028.46	1,505,805.00		
	6/19/2023	AGENCY	1.851%	INSIGHT	FHLMC	1,500,000.00	1,550,467.50	1,557,900.00		
	9/8/2023	AGENCY	1.466%	INSIGHT	FHLB	2,000,000.00	2,070,800.00	2,051,020.00		
	9/12/2023	AGENCY	1.591%	INSIGHT	FNMA	1,500,000.00	1,573,410.00	1,565,790.00		
	10/31/2023	TR NOTE	1.423%	INSIGHT	U.S.	1,500,000.00	1,587,954.24	1,567,800.00		
11/15/2023	TR NOTE	1.572%	INSIGHT	U.S.	1,500,000.00	1,570,258.93	1,561,230.00			
2024	2/5/2024	AGENCY	1.572%	INSIGHT	FNMA	1,500,000.00	1,558,201.50	1,546,410.00	6,672,177.50	7.38%
	2/29/2024	TR NOTE	1.637%	INSIGHT	U.S.	1,750,000.00	1,785,621.10	1,782,480.00		
	7/2/2024	AGENCY	1.719%	INSIGHT	FNMA	1,500,000.00	1,502,037.00	1,501,710.00		
	9/13/2024	AGENCY	1.729%	INSIGHT	FHLB	1,750,000.00	1,843,345.00	1,841,577.50		
			1.831%			89,328,818.06	90,383,443.92	90,418,277.56	90,418,277.56	100.00%



COMPARATIVE RETURNS			
	City Portfolio	1-Yr TR	2-Yr TR
Current Month	1.83%	1.56%	1.68%
Previous Month	1.84%	1.56%	1.56%
1 Year Ago	1.95%	2.64%	2.64%

* INSIGHT: \$79,839,459.50 88.30%
 * ASSIGNED TO CITY: \$10,578,818.06 11.70%

\$90,418,277.56 100.00%



January 23, 2020

Ms. Cherilynn Mynsberge, Clerk
City of Birmingham
151 Martin St.
Birmingham, MI 48012-3001

Re: Xfinity TV Updates

Dear Ms. Mynsberge:

We are committed to keeping you and our customers informed about changes to Xfinity TV services.

We are committed to keeping you and our customers informed about Xfinity TV changes. In a letter dated October 15, 2019, we informed you that as of December 10, 2019, we would add Epix programming to certain packages and remove Starz programming from those packages. While we did add Epix to those packages, we delayed the removal of Starz programming. We will now be removing Starz from those packages as of February 11, 2020.

As part of our new agreement with Starz, the channel will be available to Xfinity customers separately from those packages at a reduced rate of \$8.99 per month and StarzEncore, StarzEncore Westerns, StarzEncore Black and StarzEncore Action will be included with that subscription to Starz.

In addition, we will be removing Movieplex programming on March 24, 2020.

Please feel free to contact me at 734-359-2308 if you have any questions.

Sincerely,

Kyle V. Mazurek
Manager of External Affairs
Comcast, Heartland Region
41112 Concept Drive
Plymouth, MI 48170

INFORMATION ONLY