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CHAPTER 60 INTRODUCTORY PROVISIONS

60.100 TITLE

This ordinance shall be known and cited as the "Zoning Ordinance and Land Development Manual of the City of Rochester, Minnesota" and may be referred to herein as the "zoning ordinance" or "ordinance".

60.110 AUTHORITY

The 1965 Laws of Minnesota, Chapter 462, authorizes the municipality to administer planning and zoning activities, establish a Zoning Board of Appeals, enact official controls, and provide penalties for violation thereof. Chapter 104 and 105 of the Minnesota Statutes authorize minimum standards and criteria for the management of "Shoreland" and "Floodplain" Areas within the City of Rochester.

60.111 **Statement of Purpose:** In order to protect the public health, safety and general welfare of the community, the Common Council adopts this ordinance:

- A. For the purposes identified in chapter 462 of the Minnesota Statutes which related to municipal planning (sections 462.351 through 462.365);
- B. For the purpose of implementing the policies set forth in Rochester's Comprehensive Plan;
- C. For the purpose of encouraging innovation in land development by removing regulatory barriers to the consideration of new or unique ideas which are consistent with the purposes and policies referenced;
- D. For the purpose of encouraging patterns of land use that will reduce the need for personal vehicular travel and in turn reduce vehicular energy consumption and emissions by encouraging the use of alternative modes of transportation through improved public access to transit, sidewalks, trails and bicycle facilities, improved internal site design for non-motorized modes, and by locating work, home, shopping and service land uses in relation to each other such that trip consolidation is feasible and modal substitution can occur;
- E. For the purpose of minimizing the adverse environmental impacts of development;
- F. For the purpose of improving the design, quality and character of new and mixed use development to support an active living environment; and,
- G. To create a system of land use regulation that is designed to find equitable solutions to the land use conflicts that routinely arise as development occurs, so as to provide for the orderly development of land within Rochester and to conserve the value of land and buildings.

60.112 The provisions of this ordinance shall be regarded as the minimum requirements for the protection of the public health, safety, and general welfare.

60.113 The ordinance and the various articles and paragraphs thereof are hereby declared to be severable. If any article, section, subsection, paragraph, sentence or phrase of the ordinance is adjudged unconstitutional or invalid by any court of competent jurisdiction, the remainder of the ordinance shall not be affected thereby.

60.120 ADMINISTRATIVE BODIES

60.121 **Zoning Administrator:** There is hereby established the office of Zoning Administrator. It shall be the duty of the zoning administrator to enforce the ordinance in accordance with its administrative provisions. The Planning Director, as provided for in RCO, Chapter 20.16, or his authorized representative shall serve as the zoning administrator.

60.122 **Zoning Board of Appeals:** There shall be a zoning board of appeals consisting of seven members, one of whom shall be a member of the commission. All members shall be appointed by the Mayor with the approval of the council. Members shall serve for a term of three years, except the commission representative, who shall serve for a term of one year. No member shall serve more than two consecutive terms. The board shall choose a chair from among its membership and determine its rules of proceeding, a copy of which shall be filed with the zoning administrator.

60.123 **Planning and Zoning Commission:** There shall be a Planning and Zoning Commission established as organized under Chapter 20 of the Rochester Code of Ordinances. The Commission shall have advisory and decision making powers relative to various administrative procedures as identified in the ordinance.

60.124 **City Council:** The City Council as organized under Chapter VIII of the Charter of the City of Rochester, Minnesota, which shall have various decision making powers granted to it as identified in the ordinance.

60.130 ENFORCEMENT POLICY

It is the policy of the City that the purpose and intent of this section will normally be served best if the zoning administrator first seeks to have a violation brought into compliance.

60.131 **Zoning Administrator to be notified of Violations:** Whenever a violation of this ordinance is known or suspected to exist or expected to be committed, any person may so notify the zoning administrator. All officers and agencies of the City of Rochester shall notify the zoning administrator of any information which suggests that a violation exists or is expected to be committed.

60.132 **Zoning Administrator to Investigate Violations:** Upon receiving any information which suggests a violation, the zoning administrator shall conduct an investigation to determine whether a violation exists or is reasonably expected to be committed. To this end, the zoning administrator and his authorized representatives are hereby empowered to cause any building, other structure, or tract of land to be inspected and examined. Where necessary, the zoning administrator may call upon the Chief of Police for assistance.

60.133 **Notice of Violation:** The zoning administrator shall, if he determines a violation to exist or is reasonably expected to be committed, promptly give notice by regular mail, or by personal service to the owners of record for tax purposes of the property

involved. The notice shall indicate the location and nature of the violation, the provision or provisions of the ordinance which have been or are expected to be violated, and whether immediate enforcement will be sought or up to thirty days allowed to correct or remove the violation. The zoning administrator, or employees under his supervision, may issue a citation for those offenses which are listed on the local fine and bail schedule by the District Court. A defect in the notice of violation with respect to any such matters shall not prevent the enforcement of this ordinance.

- 60.134 **Discontinuance of Work:** Once the notice of violation has been served, no work shall proceed on any development covered by such orders, except in a manner consistent with those orders and this ordinance. It shall be a separate misdemeanor violation for any person to continue any development in a manner inconsistent with the orders or this ordinance.
- 60.135 **Enforcement After Expiration of Time Period:** If, after the time period provided in the notice of violation has elapsed and the alleged violation has not been corrected or brought into compliance, the zoning administrator shall consult with the city attorney, and the city attorney shall initiate any legal or equitable action which is deemed appropriate. Such action shall not be initiated if: a) an appeal of the notification of violation has been filed with the Department of Planning and Housing, or b) the City Council or court of competent jurisdiction has stayed enforcement pending the outcome of a proceeding before it concerning the violation. The zoning administrator or his designee shall act as a complaining witness when necessary to initiate a criminal action against a violation. If a civil action is required, the zoning administrator shall request that the city attorney have the matter placed on the agenda of the City Council and that the Council authorize such action.
- 60.136 **Violation and Penalties:** Any person, firm or corporation violating any of the provisions of the ordinance, or any amendment thereto, is guilty of a misdemeanor. Each and every day during which such violation continues shall be deemed to be a separate offense. Fines and imprisonment are appropriate as a penalty for violations and a deterrent against future violations.

60.140 APPLICATION AND SCOPE OF ORDINANCE:

This ordinance applies within the municipal limits of the City of Rochester as now and hereafter established, along with those areas outside the established municipal limits where, through joint legislative agreement with the appropriate governing body, the ordinance shall be put into effect.

- 60.141 This ordinance applies to all development. No development may be approved if such approval would result in a violation of federal or state law, or city or county ordinance. No City of Rochester official or employee may knowingly issue a development permit or license if such issuance would result in a violation of federal or state law, or city or county ordinance.
- 60.142 **Compliance Required:** It shall be the responsibility of all property owners, architects, contractors, subcontractors, builders and other persons involved in any development, before beginning any development activity, to contact the zoning administrator to determine what approvals will be required, to obtain any necessary permits or certificates, and to comply with any conditions of approval imposed upon those permits or certificates. Individuals or firms doing or performing any work on behalf of

the property owner are subject to any and all charges and sanctions applicable to doing work in violation of the provisions of this ordinance. This includes performing work prior to the issuance of the necessary permits or certificates, and for performing such work in violation of the conditions set forth in the permit or certificate.

- 60.143 Any use or occupation of land approved prior to the effective date of this ordinance as a conditional use or as a Planned Unit Development shall be permitted to continue as a lawful use or occupancy. The approved site plan and all terms, covenants and conditions shall remain in effect and shall continue to control the use or occupation of such land. Changes or modifications to the use, occupancy or site design, or interpretations necessary to clarify detail not addressed in the approved plan, shall be made in accordance with the standards and procedures of this ordinance. Where a Conditional Use or Planned Unit Development has been approved for a site but the development has not been constructed, the approved plans remain in effect and may be used to guide the development of the site unless a revised plan is submitted and approved under this ordinance.
- 60.144 It is not intended by this ordinance to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulation, ordinances or permits previously adopted or issued pursuant to law. However, wherever this ordinance imposes greater restrictions, the provisions of this ordinance shall govern.
- 60.145 This zoning ordinance shall take effect and be enforced on January 1, 1992.
- 60.146 For all applications filed under the regulations of this ordinance, the burden shall be upon the applicant to provide the necessary information that will show that the proposed development will comply with the provisions of this ordinance. For applications related to zoning text or district changes, general development plans, incentive developments and restricted developments, the applicant shall also demonstrate compliance with applicable elements of the comprehensive plan.
- 60.147 All permits and certificates shall be processed under either a Type I, Type II, or Type III review procedure as these procedures are described in Article 60.500.
- 60.148 Subd. 1: In considering an application for a zoning certificate, development permit, or other form of land use approval, the zoning administrator or the approving legislative body may impose such conditions upon the approval of that application as the issuing authority deems necessary to ensure compliance with the applicable review criteria or standards. The zoning administrator or the approving legislative body may revoke an approved zoning certificate, development permit, or other land use approval upon the failure to comply with all applicable conditions of approval. The revocation shall occur consistent with the notice of violation provisions of sections 60.130 – 60.136. It shall not be necessary for the City to initiate criminal action or seek revocation of any permit prior to seeking injunctive relief from the District Court.

Subd. 2. This section is inapplicable to an application for a land use amendment or a zoning district amendment.

60.150 VESTING OF RIGHTS:

A permit or license issued in conflict with the provision of this ordinance shall be null and void and of no effect whatsoever. Where a landowner has, in good faith and in reliance upon a permit issued in error, begun construction, the matter shall be referred to the Council for disposition.

- 60.151 Permits, certificates and variances are valid only for the development specified therein. Conditions attached to an approved development permit are given the same force as if they appeared in the text of the Zoning Ordinance. A development permit is permanent in nature unless the approving body or this Ordinance limits its effective period. An approved permit or certificate is assignable, but an assignment does not discharge any assignee from any obligation owed any local governmental unit in connection with the development, unless the applicable unit of government consents to the discharge.
- 60.152 Applications for permits or certificates which may be affected by proposed amendments to this ordinance shall not be approved unless the zoning administrator is satisfied that the proposed development will meet the requirements of the existing ordinance as well as the proposed ordinance language.
- 60.153 Changes in the zoning ordinance that become effective after an application for a certificate or permit has been filed but before the certificate or permit has been issued apply to the pending application unless the amendment provides otherwise or it is determined that the former ordinance should be made applicable in a particular case in the interest of justice. The mere filing of an application for a zoning certificate, development permit, or variance confers no rights upon the applicant, petitioner, or appellant.
- 60.154 If this zoning ordinance is amended to prohibit or change the standards applicable to a development authorized by a certificate or permit, the permit becomes void by operation of the law on the effective date of the amendment, unless the ordinance establishing the amendment provides otherwise or the applicant, in good faith and in reliance upon the permit, within ninety (90) days, began construction subsequent to the issuance of the permit but before adoption of the amendment.

60.160 INTERPRETATION OF THE ORDINANCE

- 60.161 **Purpose:** The provisions of this section are intended to establish guidelines to follow in clarifying ambiguities that may arise regarding the meaning of text in the Ordinance, the interpretation of the zoning map it incorporates, or the application of rules and regulations adopted pursuant to the Ordinance.
- 60.162 **Authority:** Subject to the requirements set forth in this section, the zoning administrator shall render interpretations to any provision of this ordinance or any rule or regulation issued pursuant to it.
- 60.163 **Rounding of Numeral Requirements:** The application of ordinance standards resulting in fractional requirements shall be treated in the following way:

Off-Street Parking Spaces: The requirement for a fractional space shall be rounded up to the next whole number, resulting in the provision of one full space.

Setbacks: No rounding of fractional requirements shall occur. When checking actual on-site measurements, the zoning administrator shall recognize the inherent difficulty in providing for an exact building location and shall permit minor deviations to occur as long as the spirit and intent of the ordinance is met.

Density or Floor Area: Calculations resulting in a fractional unit may be rounded up to the next whole number.

Height: No rounding of fractional requirements shall occur. When checking actual on-site measurements, the zoning administrator shall recognize the inherent difficulties in establishing final grade lines during construction and shall permit minor deviations to occur as long as the spirit and intent of the ordinance is met.

Plant materials: Calculations resulting in provision of a fractional plant unit shall be rounded up to the next whole number.

60.164 **Meaning of Words:** All words and terms used in this ordinance have their commonly accepted, dictionary meaning unless they are specifically defined in this ordinance or the context in which they are used clearly indicates to the contrary. For the purpose of the ordinance, certain terms or words used herein shall be interpreted as follows:

- 1) All words used in the present tense include the future tense.
- 2) All words used in the singular number include the plural, and words in the plural number include the singular.
- 3) The masculine gender shall include the female and neuter.
- 4) The word "shall" is mandatory, and not discretionary, and the word "may" is permissive.
- 5) The word "building" shall include the word "structures".
- 6) The phrase "used for" includes the phrases "arranged for", "designed for", "intended for", "maintained for", and "occupied for".
- 7) The word "land", "property", "parcel", "premise", "tract" are all interchangeable unless the context clearly indicates to the contrary.
- 8) The word "individual" includes a "firm" "association", "organization", "partnership", "trust", "company", or "corporation" as well as a single individual.

60.165 **Diagrams, Table and Figures:** Tables and illustrations labeled as figures are hereby made a part of this ordinance and given the same force and effect as if they appeared in the text of this ordinance. Illustrations labeled as diagrams are for illustrative purposes only and do not constitute a part of the official zoning ordinance.

60.166 **Interpretation:** The Zoning Administrator shall be responsible for the initial interpretation of ordinance provisions and requirements when a question arises regarding the meaning of specific provisions. An individual may request that the

Zoning Administrator provide a written interpretation according to the following procedures.

- 1) **Submission of Request for Interpretation:** An individual requesting an interpretation shall submit a written request to the zoning administrator on a form supplied by the zoning administrator. The completed form shall include:
 - a) The name and address of the individual requesting the interpretation, the owner of the property (if different) and any professional or paid consultants advising the applicant with respect to the proposed development.
 - b) Identification of the specific provision to be interpreted.
 - c) The facts on the specific situation giving rise to the request for an interpretation.
 - d) The interpretation claimed by the applicant to be correct.
 - e) In the case of a use interpretation, a complete description of the proposed use and a listing of permitted uses in the applicable zoning district which are most similar to the proposed use.

Before rendering an interpretation, the zoning administrator may request such further facts and information as in his judgment is necessary to permit a meaningful interpretation of the provision question.

- 2) **Preparation of Report:** Within five (5) days following the receipt by the zoning administrator of a completed request or application for interpretation, the zoning officer shall mail a written copy of interpretation to the applicant. The zoning administrator shall state the specific precedent, reasons, and analysis on which such interpretation is based. The failure of the zoning administrator to render an interpretation within such time, or such longer period of time as may be agreed to by the applicant, shall be deemed to be a rejection of the applicant's proposed interpretation on file and shall make a copy of each interpretation available for public inspection during reasonable hours.
- 3) **Guidelines for Non-Use Interpretation:** For interpretations not involving a determination of which use category a proposed development most closely corresponds to, the zoning administrator shall use the following guidelines in rendering an interpretation:

An interpretation shall not result in any identifiable loss of protection afforded to adjacent landowners (both present and future) and the general public by the regulation as originally drafted and previously interpreted. To this end, the public purpose of the regulation should be identified, the impact of the proposed interpretation relative to this purpose considered, and a determination made that the proposed interpretation will ensure a just balance between the rights of the landowner and all others who will be affected by the proposal and that it will not result in any identifiable loss of protection afforded to others unless the authority to impose additional conditions to protect the public exists within the framework of administering the Ordinance.

- 4) **Guidelines For a Use Interpretation:** The following guidelines shall govern the zoning administrator in determining which use category a proposed development most closely corresponds to:
 - a) No use interpretation shall allow the establishment of any use which was previously considered and rejected by the Board of Appeals on an appeal from a zoning administrator's decision where it is determined that similar or identical circumstances exist.
 - b) No use interpretation shall permit a use in any district when such use is specifically listed as a permitted or conditional use in another district.
 - c) No use interpretation shall permit any use in a particular district unless such use is substantially similar to other uses permitted in such district and is more similar to other such uses than to uses permitted or conditionally permitted in a less restrictive district.
 - d) If the proposed use is more similar to a use permitted only as a conditional use in the district in which it is proposed to be located, then any use interpretation permitting such use shall be conditioned on the issuance of a conditional use permit pursuant to this chapter.
- 5) **Effect of an Interpretation:** The effect of an interpretation shall be to 1) to permit an individual to file the appropriate permit or certificate application, requesting approval of a proposed development, which incorporates a site design consistent with the interpretation rendered, or 2) provide the basis for an appeal of the interpretation under the regulations of Article 60.700 of this ordinance.
- 6) **Limitations of Interpretations:** An interpretation shall be valid without limitation on the period of time except where the Council, following the Zoning Administrator's submittal of the Annual Report provided for in 60.166 (7), has not affirmed the interpretation or has taken action to initiate proceedings to amend the ordinance in such a manner so as to render invalid the interpretation rendered. In such instances, if after ninety (90) days have lapsed, a proposed development which could be authorized pursuant to the initial interpretation but which is not under construction shall not be established, and the permit or certificate authorizing the development shall be void upon the date of Council auction, unless in the interest of justice, it is determined that the initial interpretation shall be made applicable to the approved development.
- 7) **Annual Report:** The zoning administrator shall keep a record of each interpretation rendered and shall make an annual report on all use interpretations to the Council and Commission. The report shall include any recommendations for ordinance amendments needed to clarify existing language within the ordinance.

60.170 ADMINISTRATION AND RECORD KEEPING

- 60.171 **Duties of the Zoning Administrator:** All forms required in the administration of this ordinance shall be available through the zoning administrator, regardless of the agency or officer responsible for determining whether an application should be approved.

60.172 **Issuing Office:** The Department of Planning and Housing shall be the office at which requests forms necessary in the administration of this ordinance may be obtained, permits shall be issued, and the files and records of the zoning administrator are kept.

60.173 **Rules and Forms:** The zoning administrator may make such rules and prescribe such forms, placards, or other material as may be necessary to perform his duties and responsibilities consistent with this ordinance or other competent authority. Such rules or forms shall be maintained separately in the nature of a public record in the issuing office. Such rules may be published and sold or distributed for their actual cost.

60.174 **Appendices:** Appendices which are adopted by resolution of the City Council are included with the formal text of the ordinance and are designed to supplement the regulations contained herein.

60.175 **Fees.** Subdivision 1. The fees provided for in this Section shall apply to various land use and development applications and requests for information. The fees adopted on the last date of the schedule below will remain in effect until otherwise amended.

Subd. 2. Zoning Certificate Fees:

A. Residential Uses:

(Values of improvement building, grading, etc., according to the following schedule)

Total Valuation	2013	January 1, 2014	January 1, 2015	January 1, 2016
\$1to \$500	\$27 per permit	\$28 per permit	\$29 per permit	\$30 per permit
\$501to \$2,000	\$27 +\$1.5 per \$ 100	\$28 +\$1.6 per \$ 100	\$29 +\$1.7 per \$ 100	\$30 +\$1.8 per \$ 100
\$2,001to \$25,000	\$49.5 +\$2.9 per \$ 1000	\$52 +\$3 per \$ 1000	\$54.5 +\$3.2 per \$ 1000	\$57 +\$3.4 per \$ 1000
\$25,001to \$50,000	\$116.2 +\$2.1per \$ 1000	\$121+\$2.2 per \$ 1000	\$128.1+\$2.3 per \$ 1000	\$135.2 +\$2.4 per \$ 1000
\$50,001to \$100,000	\$168.7 +\$0.7 per \$ 1000	\$176 +\$0.75 per \$ 1000	\$185.6 +\$0.8 per \$ 1000	\$195.2 +\$0.8 per \$ 1000
\$100,001and up	\$203.7 +\$0.25 per \$ 1000	\$213.5 +\$0.25 per \$ 1000	\$225.6 +\$0.25 per \$ 1000	\$235.2 +\$0.25 per \$ 1000

B. Multiple Family and Non-Residential Uses:

(Values of improvement building, grading, etc., according to the following schedule)

Total Valuation	2013	January 1, 2014	January 1, 2015	January 1, 2016
\$1to \$500	\$27 per permit	\$28 per permit	\$29 per permit	\$30 per permit
\$501to \$2,000	\$27 +\$2 per \$ 100	\$28 +\$2.1per \$ 100	\$29 +\$2.2 per \$ 100	\$30 +\$2.3 per \$ 100
\$2,001to \$25,000	\$57 +\$4.2 per \$ 1000	\$59.5 +\$4.4 per \$ 1000	\$62 +\$4.6 per \$ 1000	\$64.5 +\$4.8 per \$ 1000
\$25,001to \$50,000	\$153.6 +\$1.8 per \$ 1000	\$160.7 +\$1.9 per \$ 1000	\$167.8 +\$2 per \$ 1000	\$174.9 +\$2.1per \$ 1000
\$50,001to \$100,000	\$198.6 +\$1.1per \$ 1000	\$208.2 +\$1.2 per \$ 1000	\$217.8 +\$1.3 per \$ 1000	\$227.4 +\$1.4 per \$ 1000
\$100,001and up	\$253.6 +\$0.25 per \$ 1000	\$268.2 +\$0.25 per \$ 1000	\$282.8 +\$0.25 per \$ 1000	\$297.4 +\$0.25 per \$ 1000

C. Double Fee: When the building construction or remodeling has occurred prior to issuing of the zoning certificate, a double fee maybe imposed.

D. Other Zoning Permits:

Other Zoning Permits	2013	January 1, 2014	January 1, 2015	January 1, 2016
Staff Authorized Zoning Certificates	\$27 per application	\$28 per application	\$29 per application	\$30 per application
Mobile Home Installation	\$35 per application	\$37 per application	\$38 per application	\$40 per application
Sign	Use Non-Residential Zoning Certificate fee			
Advertising Sign				
New Sign	\$210 per application	\$220 per application	\$230 per application	\$240 per application
Sign Credit	\$150 per application	\$160 per application	\$170 per application	\$180 per application
Moving Permit	\$100 per application	\$110 per application	\$120 per application	\$130 per application
Grading/Erosion Permit	\$210 per application	\$220 per application	\$230 per application	\$240 per application
Demolition Permit	Use Non-Residential Zoning Certificate fee			
Housing Certificate	\$35 per application	\$37 per application	\$38 per application	\$40 per application
Compliance Letter				
Single Family	\$100 per application	\$110 per application	\$120 per application	\$130 per application
Other	\$190 per application	\$200 per application	\$210 per application	\$220 per application
Temporary Use Permit	\$100 per application	\$105 per application	\$110 per application	\$115 per application

Subd. 2. Wetland Fees:

Other Zoning Permits	2013	January 1, 2014	January 1, 2015	January 1, 2016
Wetlands				
Exemption Determination	\$270 per application	\$280 per application	\$290 per application	\$300 per application
No-Loss Determination	\$260 per application	\$260 per application	\$260 per application	\$260 per application
Delineation Review				
1 acre or less	\$350 per application	\$370 per application	\$390 per application	\$410 per application
1- 10 acres	\$780 per application	\$820 per application	\$860 per application	\$900 per application
11+ acres	\$110 per application	\$1170 per application	\$1230 per application	\$1290 per application
Replacement Plan				
1 acre or less	\$670 per application	\$700 per application	\$740 per application	\$780 per application
1- 10 acres	\$1440 per application	\$1510 per application	\$1590 per application	\$1670 per application
11+ acres	\$2130 per application	\$2240 per application	\$2350 per application	\$2470 per application
Sequencing Plan	\$660 per application	\$690 per application	\$720 per application	\$760 per application
Appeal	\$400 per application	\$420 per application	\$440 per application	\$460 per application
Banking Plan				
1 acre or less	\$670 per application	\$700 per application	\$740 per application	\$780 per application
1- 10 acres	\$1440 per application	\$1510 per application	\$1590 per application	\$1670 per application
11+ acres	\$2130 per application	\$2240 per application	\$2350 per application	\$2470 per application
Annual Monitoring Report	\$114 per application	\$120 per application	\$126 per application	\$132 per application

Subd. 3. Development Application Fees:

	2013	January 1, 2014	January 1, 2015	January 1, 2016
Rochester Urban Service Area Land Use Plan Amendment	\$ 1910 per application	\$ 2010 per application	\$ 2110 per application	\$ 2220 per application
General Development Plan	\$ 1540 per application	\$ 1690 per application	\$ 1860 per application	\$ 2050 per application
Type I				
Home Occupation	\$ 200 per application	\$ 220 per application	\$ 240 per application	\$ 260 per application
Site Development	\$ 460 per application	\$ 510 per application	\$ 560 per application	\$ 620 per application
Design Modification	\$ 150 per application	\$ 170 per application	\$ 190 per application	\$ 210 per application
Land Subdivision Permit	\$ 530 per application	\$ 580 per application	\$ 640 per application	\$ 700 per application
PUD Amendments	\$ 600 per application	\$ 660 per application	\$ 730 per application	\$ 800 per application
Performance Residential	\$ 600 per application	\$ 660 per application	\$ 730 per application	\$ 800 per application
Conditional Use Changes	\$ 600 per application	\$ 660 per application	\$ 730 per application	\$ 800 per application
Amendment to GDP	\$ 600 per application	\$ 660 per application	\$ 730 per application	\$ 800 per application
Type II	\$ 1060 per application	\$ 1170 per application	\$ 1290 per application	\$ 1420 per application
if Public Hearing is requested	\$ 110 per hearing	\$ 120 per hearing	\$ 130 per hearing	\$ 140 per hearing
Type III - Phase I	\$ 1430 per application	\$ 1570 per application	\$ 1730 per application	\$ 1900 per application
Type III - Phase II	\$ 1660 per application	\$ 1830 per application	\$ 2010 per application	\$ 2210 per application
Type III - Phase III	\$ 1430 per application	\$ 1570 per application	\$ 1730 per application	\$ 1900 per application
Type III - Phase I - Variance				
Residential Use	\$ 540 per application	\$ 590 per application	\$ 650 per application	\$ 720 per application
Residential Use with Multiple Lots	\$ 538 per application \$ 190 per additional lot	\$ 592 per application \$ 210 per additional lot	\$ 651 per application \$ 230 per additional lot	\$ 716 per application \$ 250 per additional lot
Non-Residential Use	\$ 1080 per application	\$ 1190 per application	\$ 1310 per application	\$ 1440 per application
Appeals	\$ 270 per application	\$ 300 per application	\$ 330 per application	\$ 360 per application
Type II Land Subdivision Permit	\$ 1260 per application \$ 23 per lot	\$ 1390 per application \$ 25 per lot	\$ 1530 per application \$ 27 per lot	\$ 1680 per application \$ 30 per lot
Type III Land Subdivision Permit	\$ 1510 per application \$ 23 per lot	\$ 1660 per application \$ 25 per lot	\$ 1830 per application \$ 27 per lot	\$ 2010 per application \$ 30 per lot
Type III Final Plat	\$ 1080 per application plus \$ 23 per lot	\$ 1190 per application \$ 25 per lot	\$ 1310 per application \$ 27 per lot	\$ 1440 per application \$ 30 per lot

	2013	January 1, 2014	January 1, 2015	January 1, 2016
New Special District				
1 acre or less	\$2000 per application	\$2200 per application	\$2420 per application	\$2660 per application
1- 10 acres	\$2000 +\$57 per acre	\$2200 +\$63 per acre	\$2420 +\$69 per acre	\$2660 +\$76 per acre
11- 99 acres	\$2570 +\$18 per acre	\$2830 +\$20 per acre	\$3110 +\$22 per acre	\$3420 +\$24 per acre
100 +acres	\$4172 +\$1per acre	\$4610 +\$1per acre	\$5068 +\$1per acre	\$5556 +\$1per acre
Special District				
Project Development Plan, Amendments, or Final Site Plan				
1 acre or less	\$1660 per application	\$1830 per application	\$2010 per application	\$2210 per application
1- 10 acres	\$1660 +\$78 per acre	\$1830 +\$86 per acre	\$2010 +\$95 per acre	\$2210 +\$105 per acre
11- 99 acres	\$2440 +\$18 per acre	\$2690 +\$20 per acre	\$2960 +\$22 per acre	\$3260 +\$24 per acre
100 +acres	\$4042 +\$1per acre	\$4470 +\$1per acre	\$4918 +\$1per acre	\$5396 +\$1per acre
Annexation	\$1080 per application	\$1190 per application	\$1310 per application	\$1440 per application
Orderly Annexation	\$900 per application	\$990 per application	\$1090 per application	\$1200 per application
Vacations				
Utility Easement	\$540 per application	\$590 per application	\$650 per application	\$720 per application
Right of Way, Alley & Other	\$1100 per application	\$1210 per application	\$1330 per application	\$1460 per application
Traffic Impact Study				
Traffic Analysis or Traffic Impact Report	\$240 per application	\$260 per application	\$290 per application	\$320 per application
Thoroughfare Plan Amendment	\$1080 per application	\$1190 per application	\$1310 per application	\$1440 per application
Environmental Worksheet	\$1600 per application	\$1760 per application	\$1940 per application	\$2130 per application
Environmental Impact Statement	To be determined on a contractual basis			
Manufactured Home Park				
1- 10 homes	\$1660 per application	\$1830 per application	\$2010 per application	\$2210 per application
11- 99 homes	\$1660 +\$22 per home	\$1830 +\$24 per home	\$2010 +\$26 per home	\$2210 +\$28 per home
100+ homes	\$3640 +\$6 per home	\$3990 +\$7 per home	\$4350 +\$8 per home	\$4730 +\$9 per home
Manufactured Home Park Amendment or Park Closure	\$1060 per application	\$1170 per application	\$1290 per application	\$1420 per application

Subd. 4. Applications Changes or Delays: Incomplete applications, application changes or delays initiated by the applicant during the review process that result in additional expenses to review the application, resubmit referrals, notices, etc. require the applicant compensate the Planning Department for these additional costs. If the application has been tabled for period of nine months or more, at the applicant request, the applicant is required to file a new application and pay the entire application fee.

Subd. 5 Waiver or Reimbursement of Fees.

- A. An applicant required by this section to pay a filing fee may request the Council to waive the payment of that fee or to reimburse the applicant after the fee has been paid. Any such request must occur no later than the time the Council, Planning Commission, Zoning Board of Appeals or Zoning Administrator takes final action on the land use application. The Council, in its sole discretion and subject to clause C, may waive the payment of or reimburse fees required by this section to be paid if it makes at least one of the following findings.
 - (1) The applicant is financially unable to pay the fee;
 - (2) The applicant is a not-for-profit organization engaged in services benefitting the public's health, safety or welfare; or
 - (3) The applicant's filing is the result of city staff's inaccurate actions or omissions; or
 - (4) The applicant's filing addresses a substantial public matter of city-wide impact and significance which can only be addressed and resolved by the Common Council.
- B. The cost to the County for reimbursement and any costs incurred by the County or City for publication in the newspaper or mailing notices shall be deducted from the fees prior to reimbursement or waiver.
- C. The Council may not waive or reimburse fees under either of the following conditions:
 - (1) The applicant fails to submit any evidence satisfying the requirements of clause A; or
 - (2) A city department has entered into a contract with the applicant or other entity to complete a study related directly to the development application under consideration.

60.176 **Minutes:** In all matters pursuant to this ordinance, the official record of such matters considered by the City Council, the Commission, and the Board of Appeals is contained in their minutes. The minutes shall be maintained as a public record.

60.177 For any purpose, any writing or map may be incorporated by reference into official minutes if the writing or map is sufficiently described therein or is a published work in general circulation. Any map or writing so referenced shall itself be maintained as a public record.

60.200 DEFINITIONS

For the purposes of this ordinance, the following listed specific words and terms are defined as follows:

ABUT: To share a common lot line for a distance greater than a point.

ACCESS: A way or means of approach to provide physical vehicular entrance to a property.

ACCESS ROADWAY: A roadway, privately owned and maintained and established on an easement or common area, providing joint right of access for more than four (4) lots.

ACCESSORY APARTMENT: A second dwelling unit permitted as an accessory use to a single family detached dwelling.

ACCESSORY APARTMENT DWELLING UNIT, ATTACHED: A subordinate, second dwelling unit permitted as an accessory use that contains one kitchen and one bathroom as defined by the adopted building code that is created within or added on to a single-family detached dwelling,

ACCESSORY DWELLING UNIT, DETACHED: A subordinate, second dwelling unit that contains one kitchen and one bathroom as defined by the adopted building code, that is detached from a single-family detached dwelling, but located on the same lot or parcel as the single-family detached dwelling.

ACCESSORY BUILDING, STRUCTURE OR USE: A building, structure or use located or conducted upon the same lot (or on a contiguous lot in the same ownership) as the principal building, structure or use to which it is related, which is 1) clearly incidental to, and customarily found in connection with, such principal building or use and 2) is operated and maintained for the benefit or convenience of the owners, occupants, employees, customers or visitors of the lot.

ACTIVE LIVING: A way of life that incorporates physical activity into daily routines.

ADEQUATE BUILDABLE AREA: An area that can accommodate a typical building anticipated for development on the lot after considering building setbacks, building envelopes, required parking areas and landscaping requirements.

ADULT BODY PAINTING STUDIO: An establishment or business which provides the service of applying paint or other substance whether transparent or nontransparent to or on the body of a patron when such body is wholly or partially nude in terms of "specified anatomical areas."

ADULT BOOKSTORE: A business engaging in the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audiotapes, videotapes or motion picture film, if such shop is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas". The phrase "substantial or significant portion of such items" as used in the definition of an adult bookstore means at least twenty-five (25) percent of the

inventory, stock and trade, or publicly displayed merchandise, or at least twenty-five (25) percent of the floor area of the business (not including storerooms, stock areas, bathrooms, basement or any portion of the business not open to the public).

ADULT CABARET: An establishment which provides dancing or other live entertainment, if such establishment excludes minors by virtue of age (except any business licensed under Rochester Code of Ordinance Chapter 125A) or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, dedication or description of "specified sexual activities" or "specified anatomical areas."

ADULT COMPANIONSHIP ESTABLISHMENT: A companionship establishment as defined in Rochester Code of Ordinances, Section 105.01 which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

ADULT ESTABLISHMENT: A business engaged in any of the following activities or which utilizes any of the following business procedures or practices:

- 1) Any business which is conducted exclusively for the patronage of adults and as to which minors are specifically excluded from patronage thereat either by law or by the operators of such business, except any business licensed under Chapter 125A of the Rochester Code of Ordinances; or
- 2) Any other business which offers its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing, or relating to specified sexual activities or specified anatomical areas.

Specifically included in the term, but without limitation, are adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel, and adult body painting studios.

ADULT HOTEL: Adult hotel means a hotel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ADULT MASSAGE PARLOR, HEALTH CLUB: A massage parlor as required to be licensed by Rochester Code of Ordinances, Chapter 115 or a health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

ADULT MINI-MOTION PICTURE THEATER: A business premises within an enclosed building with a capacity for less than 50 persons used for presenting visual media material if such business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

ADULT MODELING STUDIO: An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical area while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

ADULT MOTION PICTURE ARCADE: Any place to which the public is permitted or invited wherein coin or slug-operated or electronically or mechanically controlled still or motor picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

ADULT MOTION PICTURE THEATERS: A business premises within an enclosed building with a capacity of 50 or more persons used for presenting visual media material if said business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

ADULT NOVELTY BUSINESS: A business which has as a principal activity the sale of devices which simulate human genitals or devices which are designed for sexual stimulation.

ADULT SAUNA: A sauna as defined in Rochester Code of Ordinances, Chapter 115, which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

AFFECTED PARTY: For purposes of this ordinance, the phrase includes any applicant or petitioner, the owner or occupant of the property under consideration if different from the applicant, and any owners of adjacent properties who are entitled to receive a notice of public hearing or a notice of action for the application involved. An individual may qualify as an affected party upon showing that he owns, controls, leases, or otherwise has an interest in property which will be substantially and directly affected by a proposal and which is located within 350 feet of the boundary of the property involved in the proposal.

AISLE: A traveled way in a parking lot by which cars enter and depart parking spaces.

ALCOHOLIC BEVERAGE: Any beverage containing more than one-half of one percent alcohol by volume.

ALLEY: A public or private street primarily designed to serve as secondary access to the site or rear of those properties whose principal frontage is on some other street.

ALTERATION: See Structural Alteration

ANIMAL FEEDLOT: A lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising or holding of animals exceeding ten (10) animal units and specifically designated as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. A pasture shall not be considered an animal feedlot.

ANIMAL UNIT: A unit of measure used to compare differences in the production of animal manure that employs as a standard the amount of manure produced on a regular basis by different types of animals. For purposes of this zoning ordinance, the animal unit or animal unit calculation measure shall be the same unit of measure currently used by the Minnesota Pollution Control Agency in Chapter 7020 of the Minnesota Rules relating to animal feedlots and storage, transportation and utilization of animal manure.

ANNEXATION: The incorporation of a land area into the City of Rochester with a resulting change in the boundaries of the City.

ANTENNA: Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to, directional antennas such as panels, microwave dishes, satellite dishes and omni-directional antennas, such a whip antenna.

AO ZONE: An area of shallow flooding shown on the City of Rochester's Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and undetermined, and where low velocity flow may be evident.

APPLICABLE ZONING DISTRICT: The specific zoning district classification as delineated on the Official Zoning Map of Rochester which has been attached to a particular parcel of land.

ARCADE: A covered passageway, typically found at street level and often comprised of a series of arches supported by columns, which is accessible and open to the public.

ARCHERY RANGE: An area or facility designated or operated primarily for the use of Archery Equipment.

ARCHERY EQUIPMENT: The equipment of an archer, bow & arrow, long bow, recurve bow, compound bow or crossbow.

AUTO DEALERSHIP: An establishment engaged in the retail sale, leasing, repair and servicing of automobiles and light trucks, where vehicles for sale are on display in a showroom or on a lot for the traveling public.

AWNING: A shelter projecting from and supported by the exterior wall of a building constructed of non-rigid materials on a supporting framework, often made of wood, cloth, vinyl, or other flexible material. Can be retractable or fixed.

BALCONY: A porch or other partially enclosed exterior platform designed for outdoor use attached to the upper floors of a building.

BASE FLOOD: the flood having a one percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION: The elevation of the “regional flood.” The term “base flood elevation” is used in the flood insurance study.

BASEMENT: Any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

BED & BREAKFAST: A private, owner occupied residence, with up to five (5) guest rooms, which is subordinate and incidental to the residential use of the structure.

BEDROOM: In a multi-family or attached dwelling, a private room planned and intended for sleeping, separated from other rooms by a door, and accessible to a bathroom without crossing another bedroom or other living area.

BLANK WALL: A wall (including building facades and retaining walls) if it meets any of the following:

- A. A wall or portion of a wall with a surface area of at least 400 square feet having both a length and a width of at least ten feet without a transparent window or door, building modulation at least one foot in depth, or other architectural feature;
- B. Any portion of a wall between three and 13 feet above ground level with a horizontal dimension longer than 15 feet without a window, door, building modulation at least one foot in depth, or other architectural feature including art work (mosaic, mural, sculpture, relief, etc.), or qualifying landscaping as described herein as:
 - (1) A landscape planting bed at least five feet wide or a raised planter bed at least two feet high and three feet wide in front of the wall with planting materials that are sufficient to obscure or screen at least 35 percent of the wall’s surface within three years.

BLOCK: A parcel or group of parcels forming a unit of land bounded on all sides by a street or other transportation routes or by physical barriers such as water, or public open space.

BLUFF: A topographic feature such as a hill, cliff, or embankment having the following characteristics (an area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff):

- 1) Part or all of the feature is located in a shoreland area;
- 2) The slope rises at least 25 feet above the ordinary high water level of the waterbody;

- 3) The grade or slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and
- 4) The slope must drain toward the waterbody.

BLUFF IMPACT ZONE: A bluff and land located within 20 feet from the top of a bluff.

BOARD OF APPEALS: The zoning board of appeals of the City of Rochester, Minnesota.

BOARDER: An individual who, for a consideration, is furnished a habitable room(s) for sleeping and/or living purposes, and may be furnished meals or other services as part of the consideration, in a dwelling unit or manufactured home.

BOULEVARD: That portion of the street outside the roadway that may contain sidewalks, landscaped area, infrastructure, or amenities.

BUFFERYARD: A unit of yard together with the plantings required thereon designed to mitigate nuisance between adjacent land uses or between a land use and a public street.

BUILD-TO LINE: The line at which construction of a building, excluding porches, bay windows, covered porches, decks, and patios, is to occur on a lot. A build-to line typically runs parallel to the front property line and is established to create an even building façade line on a street.

BUILDABLE AREA: The area of a lot remaining after the minimum yard or setback requirements of this ordinance have been met.

BUILDING: Any structure having a roof supported by columns or walls intended for the shelter or enclosure of persons or property. Where roofed structures are separated from each other by party walls having no openings for passage, each portion so separated shall be deemed a separate building.

BUILDING CODE: Chapter 50 of the Rochester Code of Ordinances.

BUILDING CODE, STATE: The Minnesota State Building Code, setting forth standards for the construction, addition, modification, and repair of buildings and other structures for the purpose of protecting the health, safety, and general welfare of the public, which has been adopted by the City of Rochester.

BUILDING FRONT: The wall of a building which faces the front lot line of a lot.

BUILDING LINE: A line parallel to the front lot line at a distance equal to the minimum depth of the front yard required for the zoning district in which the lot is located.

BUILDING PERIMETER: The horizontal distance measured along those walls from which, when viewed from above, lines drawn perpendicular to the wall will intersect a lot line without intersecting another wall of the building.

BUILDING, PRINCIPAL: A building in which is conducted, or which is intended to be conducted, the main or principal use of the lot on which it is located.

BUILDING, TEMPORARY: See Structure, Temporary

BUSINESS CENTER: A building or group of buildings planned, constructed and managed as a total entity, with common on-site parking for a group of commercial, office or service establishments. In the Central Development Core, the requirement for common on-site parking need not be met to classify a development as a business center.

BUSINESS PARK: A development planned as a total entity for a group of commercial, light industrial, office or service establishments with coordinated standards for lighting, sign, grading, landscaping and storage and with development-level controls on trip generation.

CALIPER: A nursery stock measurement in inches of tree trunk diameter used to standardize plant size. Trunk caliper for trees up to four inches is to be measured six inches above the soil line and trees greater than four inches in caliper are measured 12 inches above the soil line.

CAPACITY: The maximum number of persons which may be accommodated by a development as determined by building code or fire code requirements.

CARPORT: An open-sided shelter for an automotive vehicle, formed by a roof projecting from the side of a building or a detached structure of the same type.

CHAIN-LINK FENCE: A fence of steel or aluminum posts and wires woven into a diamond pattern which may have a galvanized, painted or vinyl coated exterior finish.

CHANGE OF USE: Any use which differs from the previous use of a building or land in terms of major retail product mix, services offered, production methods, type or intensity of residential use.

CHILD: Any individual who has not reached his eighteenth (18) birthday.

CHURCH: A building or structure, or groups of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and associated accessory uses.

CITY: The incorporated City of Rochester, Olmsted County, State of Minnesota.

CITY ENGINEER: The Director of the City of Rochester, Minnesota, Public Works Department.

CLINIC: An establishment engaged in the care, diagnosis and treatment of sick, ailing, infirm and injured persons and those in need of medical and surgical attention, but who are not provided with board or room, nor kept overnight on the premises.

COMMERCIAL WIRELESS TELECOMMUNICATION SERVICES: Licensed commercial wireless telecommunication services including cellular, personal

communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and similar services that are marketed to the general public.

COMMISSION: The Planning and Zoning Commission.

COMMISSIONER: "Commissioner" means the commissioner of the Department of Natural Resources.

COMMON DRIVEWAY: A driveway shared jointly and used jointly to provide access to two residential properties or two or more non-residential properties.

COMMUNITY PARKING LOT: A public or private land area designed for the off-street parking of motor vehicles which is not associated with any principal use or building on the same lot.

COMPREHENSIVE PLAN: The adopted goals, policy statements, standards, programs and maps for guiding the physical, social and economic development, both public and private, of the City and its environs. Said plan includes any unit or part of such plan separately adopted and any amendment to such plans or parts thereof.

CONTIGUOUS: Next to, abutting, or touching and having a boundary, or portion thereof, which is coterminous.

CONTRACTOR'S YARD: An area on a lot, either unroofed or roofed but open on the side, where material, machinery or vehicles used in construction related development activity are kept on a regular basis when not stored on a job site. Overnight parking in a driveway area does not constitute a contractor's yard.

CORNICE: A horizontal decorative projection located at the top of a building near the roof line, which may include a roof overhang.

CORRECTIONAL FACILITY: A building along with associated lot area designed for the confinement of individuals for the purpose of discipline or punishment or incarceration of convicted criminals.

COTTAGE DEVELOPMENT: A residential development that combines small individually-owned dwellings on a single lot with common open space on the same lot, and that may also include a community building, kitchen, dining room, or other facility intended for communal use by the residents of the individually-owned dwellings on a regular basis. The residents in a cottage development may agree to share in the provision of communal services such as cooking meals, maintenance of grounds, and child care.

COUNCIL: The City Council of the City of Rochester, Minnesota.

COUNTY: The County of Olmsted, Minnesota.

CRAWL SPACE: A low space below the first story of a building, where there has not been excavation deep enough for a basement, but where there is space for installation of and service to pipes, ducts and utilities.

CRITICAL FACILITIES: Facilities necessary to a community's public health and safety, those that store or produce highly volatile, toxic or water-reactive materials, and those that house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include hospitals, correctional facilities, schools, daycare facilities, nursing homes, fire and police stations, wastewater treatment facilities, public electric utilities, water plants, fuel storage facilities, and waste handling and storage facilities.

CURB: A stone, asphalt or concrete boundary marking the edge of a roadway or paved area.

DAY: Those days (as the word is commonly defined and used) when the offices of Olmsted County, Minnesota, are open to the public.

DAY CARE FACILITY: A licensed private or public establishment, which, for gain or otherwise, regularly provides one or more dependents with care, training, supervision, rehabilitation or developmental guidance on a regular basis, for periods of less than 24 hours a day, in a place other than the dependent's home.

dB: A unit of sound level expressed in decibels (dB)

DECIBEL: A unit of sound pressure level, abbreviated as dB.

DECK: A structure open to the sky which is attached to or abuts the wall of a dwelling and which is afforded access to the interior of the dwelling through one or more doors. Any such structure 30" or more above grade is considered an accessory use, while any other such structure is considered a permitted yard projection.

DEDICATION: The transfer of property interests from private to public ownership for a public purpose. The transfer may be of fee-simple interest or of less than fee interest.

DEPENDENT: An adult who is handicapped by reason of mental retardation, mental illness, chemical dependency or physical handicap, and a child, whether handicapped or not.

DEVELOPMENT: Any man-made change to improved or unimproved real estate, including a change in use or the creation of a subdivision.

DORMITORY: (1) A building in a campus setting (i.e., a contiguous collection of buildings and grounds) comprising of at least ten contiguous acres in area operated by a college or university offering an accredited course of study, which is occupied primarily by university or college students and support staff who receive lodging on the premises and whose occupants do not include offenders on supervised or conditional release. (2) A building in a campus setting (i.e., a contiguous collection of buildings and grounds) comprising of at least 20 contiguous acres in area operated by the state or a local government and providing accommodations in habitable units by prior arrangement with or without compensation and without restriction on a time period involved. Occupants may or may not include offenders on supervised or conditional release. The building may include correctional facilities.

DRAINAGE PLAN: An integrated set of documents which identifies the impact of a development on drainage systems and provides pertinent data necessary for the design of drainage facilities.

DRAINAGEWAY: A channel which provides for the collection and conveyance of stormwater runoff from a watershed area of over 1,200 acres in size, which is not part of a designated floodplain. The area of the drainageway shall be calculated as that area needed to convey the water of a 100-year rainfall within the watershed.

DRIVEWAY: A private minor vehicular access between a street or roadway and a designated off-street parking area.

DUPLEX: A building on a single lot containing two dwelling units.

DWELLING, ATTACHED: A building containing not more than two (2) dwelling units, attached at the side or sides to a series of two (2) or more principal buildings, each containing not more than two (2) dwelling units, but not including one family attached dwellings.

DWELLING, MULTI-FAMILY: A building containing three (3) or more dwelling units.

DWELLING, ONE FAMILY ATTACHED: A building containing one dwelling unit attached to one other building containing only one dwelling, with each building on a separate lot.

DWELLING, ONE FAMILY DETACHED: A building containing only one dwelling unit surrounded by landscape area or yards on all sides. The building on the first floor above grade must have a minimum dimension of at least 20 feet over at least 50% of the total first floor area, not including the area of any accessory structure of the building. The required minimum dimension is measured between the outside of non-intersecting perimeter wall sections of the building along a line perpendicular to the non-intersecting walls. The building must be anchored and attached to a permanent frost-depth foundation or foundation system constructed in conformance with the adopted building code. The building must have either a supporting perimeter wall foundation of the same perimeter dimensions of the dwelling, or if a non-perimeter foundation system is used, the supporting foundation system must be permanently screened from view along the front wall of the building and over at least 24 feet or 50% of the length (depth) of the intersecting side walls measured from the front wall facing the street toward the rear of the dwelling, whichever is greater. A perimeter screening wall system of the same perimeter dimensions of the dwelling made of finished exterior masonry or stucco construction, or a screening wall system conforming to the perimeter dimensions of the dwelling of the same exterior material as the exterior finish of the dwelling may be used. The screening wall must extend from the base of the building to or below the adjacent finished grade. If the building is not constructed in accordance with the adopted Building Code, the building as a manufactured home must meet the provisions of Minnesota Statutes, Chapter 327.31 to 327.36. Under the provisions of Minnesota Statutes, Chapter 462.357, Subd. 1, nothing herein shall prevent a manufactured home that meets the criteria in this definition from being considered a one-family detached dwelling.

DWELLING UNIT: A habitable unit in a building that has a permanent foundation system, provided sleeping, cooking, eating, living and sanitation facilities for one family only; occupied by the owner or by another family on a rental or lease agreement basis

for periods of occupancy exceeding one week, and which is physically separated from any other habitable unit or establishment that may be located in the same building.

EARTH BERMED: Buildings constructed so that there is earth covering on above grade portion of building walls and no earth covering on the roof. The total amount of the earth covering is less than 50 percent of the walls and roof surface area.

EARTH SHELTERED: Buildings constructed so that more than 50 percent of the exterior surface area of the building, excluding garages and other accessory buildings, is covered with earth and the building code standards promulgated pursuant to Minnesota Statutes 16.85 are satisfied. Partially completed buildings shall not be considered earth sheltered.

EASEMENT: A grant of one or more of the property rights by the property owner to and for use by the public, a corporation, or another individual or entity.

EASEMENT, DRAINAGE: An easement required for the installation of storm water sewers or surface drainage channels, or the preservation or maintenance of a natural stream or watercourse.

EASEMENT, UTILITY: An easement required for the installation of overhead or underground utilities, including sanitary sewer, water, electric, gas, and audio or visual communication lines.

EFFICIENCY APARTMENT: A dwelling unit in a multi-family dwelling consisting of not more than one habitable room meeting the floor area per occupant requirements of the housing code.

ELDERLY: Characterizing an individual, married or single, sixty-two (62) years of age or more.

EQUAL DEGREE OF ENCROACHMENT: A method of determining the location of floodway boundaries so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

EQUIPMENT STRUCTURES OR CABINETS: A cabinet, structure or building which houses telecommunications and related electrical equipment used by commercial wireless telecommunications services.

EROSION, SOIL: The removal and/or loss of soil by the action of water, ice, gravity or wind, including both the detachment and transport of soil particles.

ESTABLISHMENT: An economic unit, generally at a single physical location, where business is conducted, services provided, or industrial operations performed.

EXCAVATION: The artificial removal of earth material.

EXCAVATION ACTIVITIES: Activities involving "substantial land alteration," "quarry," or "sand or gravel excavation" as those terms are defined by Section 62.1101(2).

EXPOSURE: A method of classifying the walls of a building based on the type of construction and the purposes which glassed areas contained within the wall serve. In this ordinance, the following five classes of exposure are defined.

Class A Exposure: Walls containing twenty-five (25) percent or more of the required glassed area of any dwelling unit, or a wall containing the principal living room exposure to outdoor living areas through major windows or glassed doors. Prime consideration is direct view of and convenient access to the primary landscaped area and recreation space on the lot. In the case where two walls provide this type of exposure from a living room, either may be selected as the Class A exposure, and the other shall be considered Class C.

Class B Exposure: Portions of walls containing the only windows for bedrooms, or the principal windows and/or glassed doors for bedrooms, where privacy, outlook, light and air are principal considerations.

Class C Exposure: Portions of walls containing secondary windows for bedrooms, windows for living rooms, or exterior doors other than entries with Class A orientations, where such windows do not involve privacy or are so located, shielded, or are of such a nature that necessary privacy is assured.

Class D Exposure: Portions of walls containing no windows, doors, or other openings, but not so constructed or safeguarded as to be suitable for attachment to other dwelling units or principal buildings. Principal concern in such cases is with fire protection.

Class E Exposure: Portions of walls containing no windows, doors, or other openings, and so constructed or safeguarded as to provide the fire protection required by the Building Code when attached to other dwelling units or other principal buildings, and to meet the sound transmission limitations of the Building Code.

Exterior Wood: The heartwood from species of wood having natural resistance to decay, including redwood, cedars and black locust; grades of lumber which contain sapwood from species of wood having a natural resistance to decay, including redwood and cedars; or treated wood

FACADE: The exterior walls of a building exposed to public view from a public street. The wall visible from a public street or parking lot and used for the main public access or that has distinguishing architectural features will be considered the primary façade. A wall that is visible from a public street or parking lot serving the business center but not the main access to the building is considered the secondary façade.

FALL ZONE: A graphically represented, geographically identified boundary that encompasses the predicted area of land identified by a registered engineer that will completely contain all the pieces of a collapsed monopole tower as a result of a structural failure.

FAMILY: One or more individuals related by blood, marriage or adoption, including foster children, and excluding servants, or a group of not more than five persons, some

or all of whom are not related by blood, marriage or adoption, occupying a single dwelling unit or manufactured home.

FENCE: An artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

FILL: A deposit of earth material placed by artificial means.

FIREARM: A gun, including but not limited to pistols, revolvers, rifles, muzzleloaders, and shotguns, that discharges shot or a projectile by means of an explosive, a gas, or compressed air.

FITNESS CENTER: A building or portion of a building designed and equipped for the conduct of exercise in a place with facilities and equipment for people to maintain or improve their physical fitness, operated for profit or not-for-profit, and which can be open only to bona fide members and guests of the organization, or open to the public for a fee with limited hours. A Fitness Center is limited to a maximum of 5,000 square feet.

FLAG LOT: A lot which has only sufficient frontage on a street to comply with the required access width requirements of this ordinance, shaped in such a manner that the portion of the lot closest to the street can only be used for access purposes and not as yard or buildable area, and whose width some distance back from the right of way is sufficient to provide adequate space to meet yard or setback requirements. Only that portion of the lot of adequate width to meet lot width requirements or allow for provision of adequate yards or setback shall be counted as part of the lot area.

FLOOD FRINGE: That portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study.

FLOOD-PROOFING: Any combination of structural and nonstructural additions, changes or adjustments to structures and properties which reduce or eliminate flood damage to real estate, water and sanitary facilities, structures and their contents.

FLOODPLAIN: The beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

FLOOD INSURANCE RATE MAP: An official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

FLOODPROOFING: a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

FLOOD PROTECTION ELEVATION: A level one (1) foot above the regional (100-year frequency) flood plus any increase in flood level adopted by DNR study that would be caused by the future flood plain development outside the floodway.

FLOOD, REGIONAL: A flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be

expected to occur on an average frequency in the magnitude of the one hundred (100) year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.

FLOOD, STANDARD PROJECT: A hypothetical flood estimated and mapped by the U.S. Corps of Engineers, representing the critical flood runoff volume and peak discharge that may be expected from the most severe combination of meteorological and hydrologic conditions that are considered reasonable characteristic of the Rochester region, excluding rare combinations.

FLOODWAY: The minimum channel of a watercourse and those portions of the flood plain adjoining the channel, that are reasonably required to carry or store the regional flood discharge.

FLOOR AREA: A sum of the gross horizontal area of the several floors of a building measured from the outside faces of walls or the centerline of party walls separating two buildings, but not including any interior parking spaces, loading spaces, any space where the floor to ceiling height is less than six (6) feet, any space devoted to mechanical equipment, terraces, breezeways or screened porches, or basement or other subterranean area not intended for human habitation or service to the public. The floor area for enclosed space having a floor to ceiling height in excess of 20 feet shall be computed on the basis that each 15 feet of height shall be equal to one floor.

FOUNDATION OR, FOUNDATION SYSTEM: A permanent foundation that provides adequate support of the building's vertical and horizontal loads and transfers these and other imposed forces, without failure, from the building to the undisturbed ground below the frost line and constructed in accordance with the state building code as adopted by the City.

FP-1, FP-2, FP-3, FP-4, FP-5: Different classifications of flood-proofing measures as defined by the state building code.

FRATERNITY OR SORORITY HOUSE: A dwelling maintained exclusively for fraternity or sorority members and their guests or visitors and affiliated with a professional college, university or other institution of higher learning.

FREEBOARD: A factor of safety usually expressed in feet above a design flood level for flood protective or control works. (Freeboard is intended to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected flood or floodway condition such as wave action, bridge opening and floodway obstructions resulting from debris or ice, and the hydrologic effects of urbanization of the watershed).**FRONTAGE:** The distance for which a lot line coincides with the right of way line of a public street or the boundary of a private street.

GARAGE: A detached accessory building, or a portion of the principal building used for the parking and storage of vehicles, merchandise or equipment, and which is not a separate commercial establishment open to the general public. When associated with a residential use in a residential district, it shall be limited to use for parking and storage of vehicles, noncommercial trailers and household equipment.

GARAGE SALE: The sale of used household belongings at a residential dwelling or residential neighborhood. The term “Garage Sale” shall include, but not limited to, “home sale”, “estate sale”, “attic sale” and “basement sale” and any other type of residential sale of tangible personal property.

GARDEN CENTER: A retail business for the display and sale of products either inside or outside of a building or structure. The products for retail sale that may be displayed and stored in a greenhouse or outdoors include those products related to gardening and landscaping including, but not limited to, outdoor live plants; landscaping materials such as lawn ornaments, pavers and landscape walls; bulk materials such as mulch, topsoil, rock and gravel; gardening supplies such as fertilizer, pesticides, and small hand tools. Related retail sales may also be part of a garden center including cut flowers, indoor live plants, Christmas trees and related retail products. Landscaping services may be a part of the garden center. Greenhouses or retail buildings and offices may be part of a permanent garden center.

GLARE: The effect produced by brightness sufficient to cause annoyance, discomfort or loss in visual performance and visibility.

GRADE: The lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line, or between the building and a stabilization structure such as a retaining wall, or, where the property line or structure is more than five (5) feet from the building, between the building and a line five (5) feet from the building.

GRADING: Any excavation or fill combination thereof.

GRADING PLAN: An integrated set of documents which addresses how a proposed development will satisfy the requirements of part 50.01 (2) of the Building Code.

GREENHOUSE: A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale, for personal enjoyment, or for the temporary storage or display of plant material.

GROSS LEASABLE AREA: The total floor area designed for the occupancy and exclusive use of a tenant.

HABITABLE ROOM: Any room used or intended to be used for sleeping, cooking, living or eating purposes, excluding such enclosed spaces as closets, pantries, bath or toilet facilities, service rooms, corridors, laundries, unfinished attics, foyers, storage space, utility rooms or similar spaces.

HABITABLE UNIT: Any habitable room, singularly or in combination with other rooms, which provides sleeping facilities alone or in combination with required cooking, eating or living facilities.

HEIGHT: The vertical distance above grade along the building front measured to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the average height between the eave and ridge of a gable, hip or gambrel roof.

HOME OCCUPATION: Any gainful occupation or profession engaged in by the occupant of a dwelling at or from the dwelling when carried on in accordance with the provisions of this ordinance.

HOTEL: A building or series of buildings operated as an establishment providing accommodations in habitable units by prior arrangements, for compensation, without restriction on the time period involved.

HOUSING CODE: Chapters 32 through 38 of the Rochester Code of Ordinances.

INDOOR GUN RANGE: An indoor area or facility designated or operated primarily for the use of firearms.

INSTITUTIONAL PROPERTY: Land used by a nonprofit, religious or educational organization, such as a church, library, public or private school, hospital or airport. Government owned or operated building, structure or land used for a public purpose shall be considered separate from institutional property.

INTENSIVE VEGETATION CLEARING: Means the complete removal of trees or shrubs in a contiguous patch, strip, row or block.

INTERNAL PARKING LOT LANDSCAPE AREAS: Landscaped areas within a parking lot that are surrounded on at least three sides by paved areas that are used for parking and traffic circulation.

INTERSECTION: Where two or more streets cross at the same grade.

ISLAND: A grassed or landscaped area located within the limits of the roadway portion of a local or limited local street or access roadway, serving both traffic control and aesthetic purpose.

LANDSCAPE AREA: Land set apart for the plantings of grass, shrubs, trees or similar living plants, or other ground surface treatment such as decorative rock, bark, or stone.

LANDSCAPE PLAN: An integrated set of documents which may consist of both drawn and written materials whose purpose is to identify, for a proposed development, the means of compliance with bufferyard, landscaping and screening standards of this ordinance.

LAND USE PLAN: The Land Use Plan for the Rochester Urban Service Area.

LETTER OF MAP AMENDMENT (LOMA): A document issued by the Federal Emergency Management Agency providing documentation for findings that have been made showing that single a lot or single structure is not located in a Special Flood Hazard Area as defined in 44 CFR 59.

LIMITED ACCESS ROADWAY: A roadway, privately owned and maintained and established on an easement, providing joint right of access for up to four (4) lots.

LIVE/WORK DWELLING: A dwelling unit containing integrated living and working spaces that is intended to function predominately as business workspace with related

residential use by the operator of the business workspace. The unit typically has a workspace, public display area, sales areas, or showroom on the ground floor of the unit and the majority of the residence located either on an upper floor or at the back of the unit.

LOADING AREA: An off-street space or berth on the same lot with a building or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts or is connected by means of a driveway to a street or alley.

LOT: The smallest unit of land division defined by plat or by metes and bounds description, which is not divided by a lot line, right of way, or other publicly owned land, and which does not include the right of way of any street upon which said lot abuts, even if ownership to such right of way lies with the owner of the lot.

LOT AREA: The area contained within the lot lines of a lot, excluding any right-of-way or private street.

LOT, CORNER: A lot abutting two or more streets at their intersection, or upon two parts of the same street forming an interior angle less than 135 degrees.

LOT DEPTH: The mean horizontal distance between the front lot line and the rear lot line of a lot.

LOT LINE: A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public space. Where any portion of a lot extends onto a public right-of-way, the lot line shall be deemed to be the boundary of said right-of-way.

LOT, THROUGH: A lot which fronts upon two parallel or approximately parallel streets.

LOT WIDTH: A horizontal distance measured between the side lot lines.

LOT LINE, FRONT: Either a lot line separating a lot from a street or from a roadway as further defined in Section 63.110.

LOT LINE, INTERIOR SIDE: A side lot line which separates a lot from another lot.

LOT LINE, REAR: On a rectangular lot other than a corner lot, the lot line opposite and most distant from the front lot line; on a corner lot, an interior lot line which is designated at the time of development. Triangular shaped lots whose lot width narrows when moving away from the front lot line have no rear lot line. The rear lot line(s) on irregular shaped lots with more than four lot lines are those interior lot lines which, when the endpoints of the line(s) are connected, create a line exceeding the width at the building line.

LOT LINE, SIDE: Any lot line other than a front or rear lot line.

LOT LINE, SIDE STREET: A side lot line separating a lot from a street right-of-way or a private street.

LOT OF RECORD: Any validly recorded lot which, at the time of its recording, complied with all applicable laws, ordinances and regulations.

LOW DENSITY (RESIDENTIAL) DISTRICTS: All established residential districts in the Zoning Ordinance, including and more restrictive than the R-2 (Low Density Residential) zoning district.

LOWEST FLOOR: the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 Code of Regulations, Part 60.3.

LUMBER YARD: An establishment engaged in the retail sale of building supplies and household equipment which is characterized by the presence of an outdoor storage area utilized for the keeping of building supplies such as lumber or masonry products.

MANUFACTURED HOME: A building, fabricated in an off-site facility for installation or assembly at the building site, transportable in one or more sections, which, in the traveling mode, is eight (8) feet or more in width or forty (40) feet or more in length, or when erected is 320 or more square feet in size, and which is built on a permanent chassis and designed to be used as a dwelling for one family, with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical system contained therein, and is certified as constructed in compliance with the "manufactured home building code" as established under Minnesota Statutes, chapter 327. For calculations of permitted densities in this ordinance, a manufactured home shall be considered as one dwelling unit.

MANUFACTURED HOME PARK: A residential development on a site which consists of two or more spaces for the placement of manufactured homes for dwelling or sleeping purposes, regardless of whether or not a fee is charged for the utilization of such space. This development is typified by a land-lease arrangement between the residents of the manufactured homes in the community and a single ownership entity or common owner(s) in a cooperative arrangement as opposed to a development that consists of individually owned lots subdivided for the placement of manufactured homes. A manufactured home park does not include real property used for the display and sale of manufactured homes, unless the manufactured homes for display or sale are permanently sited in conformance with the zoning ordinance as model homes in the park, nor does it include real property used for seasonal recreational purposes only as opposed to year-round occupancy.

MANUFACTURED HOME PARK LOT: A parcel of land in a manufactured home park used for the placement of a single manufactured home for the exclusive use of the residents of said manufactured home. The area of the lot for rezoning purposes shall not include any common or community open space or required perimeter bufferyard area. The area of the lot shall not include any land devoted to the development of streets (public or private) including the required boulevard and any land used for common sidewalk or walkway area located parallel and adjacent to a private street lying adjacent to the lot.

MANUFACTURED HOME STAND: The part of an individual manufactured home park lot which is reserved for the placement of the home, appurtenant structures or additions.

MANUFACTURED HOME SUBDIVISION: A development which consists of individually owned lots created for the placement of manufactured homes which comply with this jurisdiction's regulations for subdivision. All uses, buildings and structures within the approved subdivision must obtain zoning certificate approval prior to their placement or construction.

MIXED BUILDING TYPE DEVELOPMENT: A development which complies with this jurisdiction's regulations for subdivisions, consisting of three or more individually owned lots for either the placement of manufactured homes, subject to the design criteria contained herein, or for the placement of other dwelling types consistent with the standards of the underlying zoning district.

MOBILE HOME: See Manufactured Home.

MODULATION: A stepping back or projecting forward of portions of a building face within specified intervals of building width and depth, as a means of breaking up the apparent bulk of a structure's continuous exterior walls.

NURSERY: Land or greenhouses used to raise flowers, shrubs and plants for later retail or wholesale sales.

OBSTRUCTION: Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

OCCUPANCY: The residing of an individual overnight in a habitable unit, or the installation, storage or use of equipment, merchandise or machinery in any institutional, commercial or industrial building.

OFFENDER TRANSITIONAL HOUSING (OTH): A dwelling unit or one or more habitable units in a rooming house or hotel designed, intended, or used principally to provide short-term housing to offenders on supervised release or conditional release who are receiving housing assistance from the Minnesota Department of Corrections or Olmsted County Community Corrections and/or who are required to live in the housing as a condition of their release. "Offender transitional housing" does not include housing declared by state law to be a permitted single-family residential use. The term "short-term" shall mean a period of time not exceeding one year. A dwelling or lodging facility owned by the offender or a member of the offender's immediate family shall not be considered offender transitional housing.

OFFICE: A room or group of rooms utilized for managing the affairs of an establishment or for the non-retail, non-production conduct of affairs of a service, professional institutional or business nature.

ON-SITE OR OFF-SITE PUBLIC OR PRIVATE FACILITY IMPROVEMENT: The sizing, grading, location or improvement of lots, structures, areas accessible to the general public, streets, roads, trails, walkways, curbs and gutters, water, sewers, storm drainage, lighting, sewers, electricity, gas and other utilities, and the protection and conservation of flood plains, shore lands, soils, water, vegetation, energy, air quality, and geologic and ecologic features, and similar on-site or off-site public or private utilities and improvements that are reasonably related to the proposed subdivision and that are needed so that the facilities can adequately handle the needs created by the proposed subdivision. The term “On-Site or Off-Site Public or Private Facility Improvement” shall include the terms “required improvements,” “on-site and off-site public improvements,” “development improvements,” “off-site improvements” and “public improvements” as they may be found within the Land Development Manual portion of this Code.

OUTDOOR COMMUNITY INFORMATION AND PUBLIC EVENTS: A screen mounted to the exterior of a building for the purposes of broadcasts or displays primarily of music, concerts, movies, meetings, sports events, political events, social events, government events, other programs of local consumer or social interest, public service messages, or other programs that benefit the public’s interests that are free of charge. An Outdoor Community Information and Public Events Screen may broadcast or display advertising so long as such advertising is clearly incidental to the primary community programming.

OPERATIONS PLAN: a plan, including a Site Plan and Report, required to be submitted by applicants for conditional use permit approval of excavation activities which describes the area to be disturbed, required bufferyards and additional information necessary to ensure the excavation activity is safe on the particular site and is compatible with surrounding development and land uses.

ORDINANCE: See Article 60.100.

ORDINARY HIGH WATER LEVEL: Means the boundary of public waters and wetlands and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

OUTDOOR RETAIL SALES: The display and sale of products and services primarily outside of a building or structure, including vehicles, garden supplies, gas, tires and motor oil, food and beverages, boats and aircraft, farm equipment, motor homes, burial monuments, building and landscaping materials, and lumber yards.

OUTDOOR STORAGE AREA: The keeping, in an unroofed area or structure open to view on its sides, of any goods, junk, material or merchandise in the same place for more than 24 hours, and including adjacent land area improved and necessary to provide access to such goods.

OWNER: The fee owner of land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment in contemplation of ultimate ownership. The term includes, but is not limited to venders under a contract for deed.

PARAPET: An extension of the main walls of a building above the roof line.

PARKING BAY: A portion of a site improved for the off-street parking of vehicles, where individual parking spaces are accessed directly from the street. Parking space shall not be from within the right-of-way.

PARKING FACILITY: A structure or at-grade site improved for the parking of four (4) or more vehicles where individual parking spaces are accessed from a roadway by means of a driveway and circulation aisles. In the TOD district a permitted parking facility associated with a City designated park and ride may provide automobile maintenance services, such as oil changes and car washes, as an accessory use.

PARKING, OFF-STREET: Parking spaces required by this ordinance to be provided on-site for each use. These spaces are intended to serve the normal daily parking needs of the use established on the lot.

PARKING SPACE: A space for the parking of a motor vehicle within a private or public parking area, of sufficient size to meet the ordinance requirements.

PASTURE: An area where grass or other growing plants are used for grazing and where the concentration of animals is such that a vegetative cover is maintained during the growing season, except in the immediate vicinity of temporary supplemental feeding or watering devices.

PAVEMENT: A hard, smooth surface of a parking lot, driveway or drive aisle which is made from concrete, asphalt or paving bricks, or similar durable permanent permeable pavement.

PEDESTRIAN: Any person afoot, or using a wheelchair or other mobility aid.

PERIMETER: The boundaries or borders of a lot, tract, or parcel of land.

PHOTOVOLTAIC DEVICE: A system of components that generates electricity from incident sunlight by means of the photovoltaic effect, whether or not the device is able to store the energy produced for later use.

PILASTER: A rectangular, non-bearing column attached to a building façade as an ornamental design feature

PLAT, FINAL: The final map on which a developer's plan of subdivision is presented to the Council for approval and which, if approved, will be submitted to the County Recorder.

PLAYGROUND: All play areas designed primarily for children including, but not limited to, an outdoor area set aside for recreation and play containing playground equipment, such as climbing toys, seesaws and swings.

PUBLIC UTILITY: Any person, corporation or government entity supplying gas, electric, transportation, water, sewer or land line telephone service to the general public. For the purposes of this ordinance, commercial wireless telecommunication

service facilities shall not be considered as public utility uses, and are defined separately.

PUBLIC WATERS: As defined by Minnesota Statutes 103G.

QUARRY: See definition under Section 62.1101(2)(b)(1).

REACH: A hydraulic engineering term to describe a longitudinal segment of a stream or river influenced by a natural or man-made obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would most typically constitute a reach.

RECLAMATION PLAN: A plan, including a Final Site Plan and Report, required to be submitted by applicants for conditional use permit approval of excavation activities which describes how the site will be reclaimed for subsequent use after conclusion of the excavation activity.

RECREATIONAL EQUIPMENT: Craft designed for use on water or snow, as well as motorized vehicles designed for use on surfaces other than public roadways, and including trailers used to transport such craft or vehicles.

RECREATIONAL VEHICLE: A temporary structure, less than forty (40) feet in length, which can be towed, hauled or driven and is primarily designed as temporary housing accommodations for recreational, camping or travel use, including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

REGULATORY FLOOD PROTECTION ELEVATION: A level not less than one (1) foot above the regional (100-year frequency) flood plus any increase in flood elevations that would be caused by the future flood plain development outside the floodway. In Zone AO, the RFPE is established by adding the depth number specified in feet for the Zone AO on the Flood Insurance Rate Maps adopted in Section 62.800 of this ordinance to the highest adjacent grade at the structure's proposed location on the ground.

REPETITIVE LOSS: Flood related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.

RESIDENTIAL FACILITY: A public or private establishment licensed by the State of Minnesota, Commissioner of Human Services or Commissioner of Health, which for gain or otherwise, regularly provides one or more children, or one or more adults meeting the definition of "adult" in Minn. Stat §245A.02, Subd. 2 with 24 hour a day care, food, lodging, training, education, supervision, rehabilitation or treatment.

RESIDENTIAL FLOOR: A story within a building wherein over fifty (50) percent of the floor area is devoted to dwelling units.

RIGHT-OF-ACCESS: The legal authority providing for the right of ingress to or egress from a public street.

RIGHT-OF-WAY: A strip of land acquired by dedication, reservation, prescription or condemnation occupied or intended to be occupied by a road, crosswalk, utility line, railroad, electric transmission line or other similar use.

RIGHT-OF-WAY LINE: The lines that form the boundaries of a right-of-way.

ROAD AUTHORITY: The unit of government having control of the right of access to a right-of-way.

ROADWAY: That portion of a street, common area or easement area improved for utilization by motor vehicles, including travel lanes and parking lanes, but not including driveways.

ROOMING HOUSE: A building designed as a one-family detached dwelling, containing habitable units providing sleeping and/or living accommodations but not eating or cooking accommodations, for three or more individuals who are not members of the owner's or operator's related family. Meals may or may not be provided as part of the services included for compensation.

SAND OR GRAVEL EXCAVATION: See definition under Section 62.1101(2)(c).

SCHOOL: A public school as defined in Minnesota Statutes, Section 120.05, or a nonpublic school as defined in Minnesota Statute 123.932.

SEDIMENTATION: Sedimentation shall mean the settling out of soil particles which have been transported by water or wind. (Sedimentation occurs when the velocity of water or wind in which soil particles are suspended is slowed to a sufficient degree and for a sufficient period of time to allow the particles to settle out of suspension or when the degree of slope is lessened to achieve the same result).

SELF SERVICE STORAGE FACILITY: An establishment designed and utilized for the purpose of renting or leasing individual storage spaces to tenants who have sole private access to such space for storing personal property.

SEMIPUBLIC USE: Means the use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.

SEMI-TRANSIENT ACCOMMODATIONS: Semi-transient accommodations include rooming houses, fraternity or sorority houses, and dormitories as defined by this code.

SENSITIVE RESOURCE MANAGEMENT: Means the preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.

SETBACK: The minimum separation in linear feet, measured on a horizontal plane, required between the wall of a building and each of its lot lines at a given height.

SETBACK PLANE: A theoretical plane extending over the lot and inclined upward from the horizontal by a designated number of degrees and intersecting with the ground at the lot line.

SHARED CAR: A car made available to the residents of a development to use as means of transportation. Such car shall be located on the premises of the development and available for the existence of said use. There shall be an established procedure for use of the shared car

SHELTER, STORM: A structure or portion of a structure intended to provide protection to human life during periods of danger to human life from nuclear fallout, blasts, air raids, storms or other emergencies.

SHOOTING RANGE OR GUN RANGE: An area or facility designated or operated primarily for the use of firearms.

SHOOTING RANGE OR GUN RANGE PERFORMANCE STANDARDS: The best practices for shooting range performance standards. the most current edition of the national rifle association's range source book: a guide to planning and construction shall serve as best practices for shooting range performance standards

SHORE IMPACT ZONE: Land located between the ordinary high-water level of a public water and a line parallel to it at a setback of 50 percent of the structure setback.

SHORELAND: Means land located within the following distances from public waters: 1,000 feet from the ordinary high-water level of a lake, pond, or flowage; and 300 feet from a river or stream, or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances and when approved by the commissioner.

SIGN: Any object, device, display, structure or part thereof, situated outdoors or indoors, which is displayed to attract the attention of the public while on public streets, highways or walkways to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters figures, designs, symbols, fixtures, colors, illumination or projected images. Signs do not include flags of any nation, state, city, religion, fraternal or civic organization, merchandise and pictures or models of products or services incorporated in a window display, works of art which in no way identify a product, scoreboards on athletic fields, sound trucks or other moving advertising media while operated on a public right-of-way, official traffic signs or symbols, banners announcing civic celebrations or events of special interest, mounted house numbers under 12 inches in height, mounted name plates or building address numbers under six square feet in area identifying the occupants or address of a building, or address or public information signs displayed for the convenience of the traveling public, when established by a public patterns which by themselves would not convey a message about a business or product without other sign elements present.

SIGN, ADVERTISING: A sign, other than a sponsorship sign, that directs attention to a business service, event or location not related to or on the premises where the sign is located. An Outdoor Community Information and Public Events Screen is not an advertising sign when it is operated pursuant to the provisions of section 63.2261.

SIGN, BUSINESS: A sign which directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or to an entertainment offered, on the premises where the sign is located.

SIGN CREDIT: A benefit granting the holder of the credit the right to erect a new advertising sign which conforms with all applicable laws upon the furnishing of proof to the Zoning Administrator that an existing legal nonconforming advertising sign and its supporting structure have been removed.

SIGN, POLITICAL CAMPAIGN: A sign which carries a noncommercial message regarding a candidate for political office or an issue arising in a campaign for political office.

SIGN, SPONSORSHIP: A sign that identifies a business name, logo, and/or corporate slogan displayed at the site of an educational or governmental facility that identifies a sponsor in recognition of the sponsor's financial support of an educational or governmental facility. The display of other information including, but not limited to, identifying a product, service or business location, or the use of a neon light, a flashing, moving or intermittent light or a changeable message disqualifies the sign as a sponsorship sign. Any lighting of the sign must comply with the dark sky standards.

SIGN, STACKED MULTIPLE DISPLAY FACES: Any sign structure containing signs which are placed in a vertical or horizontal row and which contain more than one sign designed to provide information to the public.

SIGNIFICANT HISTORIC SITE: Means any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes, section 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota state archaeologist or the director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

SITE: Any lot or parcel or combination of lots or parcels assembled for the purpose of development.

SITE AREA: All land area within the site as defined in the deed. Area shall be from an actual site survey rather than from a deed description.

SITE PLAN: An integral set of documents which may consist of both drawn and written materials whose purpose is to provide the necessary information needed for an approving authority to decide whether the proposed development will comply with the ordinance standards.

SOLAR COLLECTION SYSTEM: A panel, array of panels or other solar energy device, the primary purpose of which is to provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling or water heating. When a solar collection system is built to serve a principal use on a property or as a part of a development site, the system shall be considered an accessory use.

SOLAR ENERGY SYSTEM: A set of devices whose primary purpose is to collect solar energy and convert and store it for useful purposes including heating and cooling buildings or other energy-using processes, or to produce generated power by means of any combination of collecting, transferring or converting solar-generated energy, and including but not limited to photovoltaic devices. When a solar energy system is built to serve a principal use on a property or as a part of a development site, the system shall be considered an accessory use.

SPECIAL FLOOD HAZARD AREA: A term used for flood insurance purposes synonymous with “One Hundred Year Floodplain.”

SPECIFIED ANATOMICAL AREAS: Anatomical areas consisting of:

- 1) Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola; and
- 2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES: Activities consisting of the following:

- 1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphis, zooerasty; or
- 2) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or
- 3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
- 4) Fondling or touching of nude human genitals, pubic region, buttocks, or female breasts; or
- 5) Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons; or
- 6) Erotic or lewd touching, fondling, or other sexually-oriented contact with an animal by a human being; or
- 7) Human excretion, urination, menstruation, vaginal or anal irrigation.

START OF CONSTRUCTION – includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit’s expiration date. The actual start is

either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural

STEEP SLOPE: Means land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this ordinance. Where specific information is not available, steep slopes are lands having average slopes over 12 percent over horizontal distances of 50 feet or more, that are not bluffs.

STORAGE CONTAINER: An all-metal structure, or made of other construction materials, fully enclosed, used for storage purposes, and is accessory and detached from the principal building. Storage containers are individual units that are periodically removed from a property by truck and are considered a structure without any attached foundation or footings. A storage container may be a self-contained unit that includes wheels and is licensed as a vehicle or a unit that must be trucked to a site and removed from the trailer used for transport. This definition excludes warming sheds at city parks and schools, sheds and dumpsters or roll off containers that are used for the collection of solid waste. Storage containers are also referred to as cargo containers, temporary storage containers, portable storage containers, containerized storage devices, semi-trailers or truck-trailers.

STORY: That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six (6) feet above grade for more than fifty (50%) percent of the total perimeter or is more than 12 feet above grade at any point, such usable or unused under-floor space shall be considered as a story.

STORY, FIRST: The lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than 4 feet below grade for more than 50% of the total perimeter, or not more than 8 feet below grade at any point.

STREET: A strip of land used or intended to be used for the passage or travel of motor vehicles, non-motorized vehicles and pedestrians, including roadway, boulevard, medians, islands, paths, sidewalks and related facilities.

STREET, PRIVATE: A street owned and maintained by one or more private property owners.

STREET, PUBLIC: A street established on a right-of-way.

STRUCTURAL ALTERATION: Any change in the supporting members of a building, such as the bearing walls, beams or girders, or any change in the dimension or configuration of the roof or exterior walls.

STRUCTURE: A combination of materials to form construction for use, occupancy, or ornamentation, whether installed on, above or below the surface of land or water.

STRUCTURE, TEMPORARY: A building or structure without foundation or footings which is designed to be transportable and which is not designed for attachment to the ground, to another structure, or to any utility system on the same premises for an undetermined length of time.

SUBDIVISION: The separation of an area, parcel or tract of land into two or more parcels, tracts, lots, or into long term leasehold interests where the creation of the leasehold interests necessitates the creation of streets, roads or alleys, for residential, commercial, industrial or any other use or any combination thereof, except for those subdivisions exempted by Minnesota Statute 462.352 (sub. 12).

SUBSTANTIAL DAMAGE: means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT: within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
- b) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this ordinance, “historic structure” is as defined in 44 Code of Federal Regulations, Part 59.1.

SUBSTANTIAL LAND ALTERATION: See definition under Section 62.1101(2)(a).

SURFACE WATER-ORIENTED COMMERCIAL USE: Means the use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conduct of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.

SWIMMING POOL: Any private recreational pool, pond, lake or open tank not located within a completely enclosed building and capable of containing water to a depth at any point greater than 24 inches.

SWIMMING POOL, ABOVE GROUND: A swimming pool whose exposed sides have a height of four (4) feet or greater above the natural ground located adjacent to said swimming pool.

SWIMMING POOL, IN-GROUND: A swimming pool whose sides are not exposed and are below the natural ground located adjacent to said swimming pool.

SWIMMING POOL, SURFACE: A swimming pool whose exposed sides have a height of more than 24 inches, but less than four feet above the natural ground located adjacent to said swimming pool.

TEMPORARY HOUSING: Any tent, recreational vehicle or other temporary structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utility system on the same premises for the purpose of occupancy for more than thirty (30) consecutive days.

THOROUGHFARE PLAN: The Currently Held Valid Thoroughfare Plan for the City of Rochester and the Townships of Cascade, Marion, Rochester and Haverhill and a portion of High Forest.

TOE OF THE BLUFF: Means the lower point of a 50-foot segment with an average slope exceeding 18 percent.

TOP OF THE BLUFF: Means the higher point of a 50 foot segment with an average slope exceeding 18 percent.

TOWER: Any ground or roof mounted pole, spire, structure, or combination thereof taller than 15 feet, including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna, meteorological device, wind energy conversion system, or similar apparatus above grade.

TOWER-GUYED: A tower that is supported, in whole or in part, by guy wires and ground anchors used to mount an antenna.

TOWER-LATTICE: A guyed or self-supporting three or four sided, open, steel frame tower used to mount an antenna.

TOWER-MONOPOLE (a/k/a Self Support Tower): A tower consisting of a single, enclosed pole, constructed without guy wires and ground anchors used to mount an antenna.

TOWER-TRANSMISSION BROADCASTING: A tower used by establishments as defined in section 62.145 (4).

TRAFFIC ENGINEER: The traffic engineer for the applicable road authority of a public street.

TRANSPARENCY: The ability to see through with clarity. An opening in the building wall allowing light and views between interior and exterior. Measured as glass area for buildings, glass or screen area for porches and as open area for parking structures.

TURNOUT: An area at the end of a dead-end parking lot designed to allow for the backing of vehicles at the end of the parking lot.

UNDISTURBED, AREA OF: Area of special site preservation to qualify for floor area or density bonus. Undisturbed shall mean that the natural ground cover and plant or woodland growth shall not be removed except through actions 1) necessary to limit the spread of disease and noxious weeds, 2) to trim or remove dead trees or parts thereof that are a hazard, or 3) control the erosion of soil from the site.

UPZONING: A change in zoning allowing more intensive development. More intensive development is indicated by an increase in density, a broadened range of authorized uses, an increased floor area ratio, a shift from residential to commercial development, or a shift from commercial to industrial development.

USEABLE RECREATION SPACE: A space provided as an accessory use on the same lot or site as a principal residential use and designed for the conduct of active or passive recreation.

USE: The purpose or activity for which land or buildings are designed, arranged or intended, or for which land or buildings are occupied or maintained.

USE, PERMITTED: A use which conforms with the purposes, requirements, regulations and performance standards of a particular district.

USE, PRINCIPAL: The primary use of land or buildings as distinguished from subordinate or accessory uses.

WALL: The vertical exterior surface of a building.

WATER ORIENTED ACCESSORY STRUCTURE OR FACILITY: Means a small above ground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.

WECS, LARGE (LWECS): A large wind energy conversion system (LWECS) as defined in Minnesota Statute 116C, as amended (“... any combination of WECS with a combined nameplate capacity of 5,000 kilowatts or more”) (MR 7836.0100).

WECS, METEOROLOGICAL TOWER: A tower which is erected primarily to measure wind speed, density, and direction along with other data relevant to siting a WECS.

WECS, SMALL NON-UTILITY: A facility consisting of a single WECS which is incidental and subordinate to a permitted use on the same parcel and that has a rated generating capacity of 100 kW or less which supplies electrical power for on-site use, except that when a parcel on which the system is installed also receives electrical power supplied by a utility company, generated electrical power may be transferred to the utility company.

WECS, SMALL (SWECS): A small wind energy conversion system (SWECS) as defined in Minnesota Statute 116C (“... any combination of WECS with a combined nameplate capacity of less than 5,000 kilowatts”) (MR 7836.0100).

WECS, SMALL UTILITY: A SWECS with more than one WECS; or any SWECS which is intended to produce electricity primarily for sale to a rate-regulated or non-regulated utility, or primarily for use off site; or any SWECS that has a combined generating capacity of more than 100 kW and less than an LWECS.

WETLAND: Means a surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971 edition).

WIND ENERGY CONVERSION SYSTEMS (WECS): A wind energy conversion system as defined in Minnesota Statute 116C, as amended (“... any device such as a wind charger, windmill, or wind turbine and associated facilities that converts wind energy to electrical energy”) (MR 7836.0100).

WIND TURBINE: A machine used to produce electricity by converting the kinetic energy of wind to electrical energy. A wind turbine consists of a rotor, nacelle, tower and supporting cables, and foundation.

WOODLAND: An area of planted material covering one (1) acre or more with a minimum dimension of 66 feet, having a density of twenty trees or more per acre with a caliper of eight inches or more.

YARD: A ground level open space that lies between a principal or accessory building and the nearest lot line. Such yard is unobstructed and open to the sky except as may be specifically provided for in this ordinance.

YARD DEPTH: The shortest distance between a lot line and a wall of a building located on the lot.

YARD LINE: A line drawn parallel to a lot line at a distance therefrom equal to the depth of the minimum required yard or setback which defines the required yard area.

YOUTH FACILITY: A public playground, public swimming pool, public library or licensed day care facility.

ZONING ADMINISTRATOR: The Planning Director as provided for in the Rochester Code of Ordinances, Chapter 20.16 or his authorized representative.

ZONING MAP: The map or maps which are a part of this ordinance and delineate the boundaries of the zoning districts.

60.300 DESCRIPTION OF ZONING DISTRICTS:

The City of Rochester is hereby divided into zoning districts of such number and character as are necessary to achieve compatibility of uses within each district, to implement the Rochester Urban Service Area Land Use Plan and related official plans, and to serve the other purposes of this ordinance which are detailed in Chapter 60 of the Rochester Code of Ordinances.

60.310 ZONING DISTRICTS:

For the purpose of this ordinance, all land and water areas in the City of Rochester are hereby classified into zoning districts which shall be designated as shown in the chart below. To differentiate those areas of the City subject to more traditional zoning controls from those areas subject to performance-oriented controls, all zoning districts are grouped under one of two umbrella classifications entitled “Performance Districts” or “Established Districts”.

PERFORMANCE DISTRICTS	
SYMBOL	DISTRICT TITLE
D	Developing District
CDC	Central Development Core
*CN	Core Neighborhood Districts
ESTABLISHED DISTRICTS	
*R-Sa	Mixed Single Family Overlay
*R-1	Mixed Single Family
*R-1x	Mixed Single Family Extra
*R-2	Low Density Residential
*R-2x	Low Density Residential Extra
*R-3	Medium Density Residential
*R-4	High Density Residential
B-1	Restricted Commercial
B-2	Pedestrian Oriented Restricted Commercial
B-4	General Commercial
B-5	Residential Commercial
M-1	Mixed Commercial-Industrial
M-2	Industrial
M-3	Low Intensity Mixed Commercial Industrial
TOD Node	Mixed use
TOD Corridor	Mixed use
AG	Agricultural
MRD	Mixed Redevelopment
FF	Flood Fringe
FW	Floodway
FP	Flood Prone
PUD	Planned Unit Development
SD	Special District
H	Holding Zone
I	Interim Zone

*Indicates residential zoning district

Where the symbol for a zoning district is used in the ordinance, it has the same meaning as the entire classification title.

60.320 DESCRIPTION OF DISTRICTS:

The following paragraphs specify the purpose and intent of the zoning districts established by this ordinance.

60.321 **Developing District:** This district is intended to accommodate the expansion of the City of Rochester into the presently undeveloped fringe areas designated for future urban development on the Land Use Plan, through the administration of regulations allowing maximum flexibility in the choice and siting of different development types.

60.322 **Central Development Core:** The intent of this district is to provide for the highest intensity of commercial, residential and medical/institutional development within the City of Rochester, resulting in a mixture of uses that are mutually supporting and which will optimize in-place public facilities and contribute to the creation of a sound tax base for the downtown area.

The Central Development Core is composed of four subareas described as follows:

- 1) **Medical Area:** Those areas within the Central Development Core designated as "medical" on the Land Use Plan, wherein it is the intent to preserve and enhance the area primarily for medical facilities and major public and quasi-public uses, along with related supporting facilities and uses.
- 2) **Central Business District (CBD):** Consistent with the goals of the plan for the Downtown Development District, that portion of the area designated as "central business district" on the Land Use Plan, where it is the intent to develop the highest intensity of concentrated and integrated retail, financial, office, service and entertainment uses, with an emphasis on pedestrian amenities.
- 3) **Fringe Area:** That portion of the Central Development Core which lies outside the identified "central business district", "medical", and "high density residential" designations on the Land Use Plan, where it is the intent to provide a location for less intensive commercial and service uses which are necessary or tend to support and enhance the activities within the CBD area.
- 4) **Residential Area:** Those areas within the Central Development Core designated as "high density residential" on the Land Use Plan, where it is the intent to preserve and enhance the development of high intensity multi-family residential in conjunction with a mixture of low intensity service/retail uses.

60.3221 **Core Neighborhood Districts.** Subdivision 1. The Core Neighborhood Zoning Districts are Developing Districts primarily intended for application planned neighborhoods in the undeveloped urban growth area. Core Neighborhood zones are designed to reflect the planning objectives of site specific planning documents such as the Second Street Corridor Plan. As presented when offered for amendment, the Core Neighborhood Districts may be drafted to supplant established low density, medium density, high density, commercial or mixed use zoning districts.

- Subd. 2. The Core Neighborhood districts are intended to:
 - A. Allow land use consistent with historically dense, mixed use urban neighborhoods;
 - B. Provide flexibility in lot size, configuration, vehicular access, and parking to facilitate infill development;
 - C. Provide urban neighborhoods with efficient land use and cost-effective delivery of urban services;
 - D. Promote development that meets current needs without compromising the ability of future generations to meet their own needs;
 - E. Encourage development of needed housing in close proximity to employment and services;
 - F. Provide clear development standards that promote compatibility between new and existing development and promote certainty in the marketplace;
 - G. Encourage development and preservation of affordable housing through infill development; and
 - H. Foster greater civic community by developing attractive streets and public spaces that promote active living through increased pedestrian activity, minimization of automobile trips, and encourage social interaction and gatherings.

- Subd. 3. The Core Neighborhood Districts presently contain the following specific zoning district(s) and in the future other districts may be added by amendment:
 - A. CN-NR – Neighborhood Residential. The CN-NR, Neighborhood Residential, district is intended to maintain and promote low density, pedestrian oriented residential area primarily composed of one-family detached dwellings. This district encourages infill development with greater flexibility in density, lot size and shape, building siting, and parking standards appropriate for compact neighborhoods that contain nearby commercial uses and public open spaces. This district is considered appropriate in areas designated “Low Density Residential” on the Land Use Plan. This district is a defined “residential” and a “Low Density Residential” district considered interchangeable with the R-1X (Mixed Single Family Extra) Established zoning district if such a interpretation is necessary to effectively administer the Zoning Ordinance and Land Development Manual.

60.323 **Established Districts:** Subdivision 1. A set of districts, applied to lands partially or fully developed, or which become developed in the future. Lands initially in the

Developing District will eventually be rezoned to an Established District once development of an area is complete.

Subd. 2. **R-1 Mixed Single Family District:** This district is intended to maintain areas where the emphasis has historically been on the development of single-family detached dwellings. Uses supportive and in character with such a style of development can also be provided.

Subd. 3. **R-Sa Mixed Single Family Overlay District:** This district is intended to maintain the character of existing residential areas which have been developed with single family detached dwellings on large lots with significant amounts of open space, resulting in the creation of spacious residential environments.

Subd. 4. **R-1x Mixed Single Family Extra District:** This district is intended to maintain and promote areas of relatively low residential density where the emphasis is generally on the development of one-family dwellings of various styles designed to meet the housing needs of the complete range of one-family households. This district also provides opportunities for in-fill development in established areas through the efficient use of the existing housing stock and infrastructure. This district is established where it is compatible with the overall low density character of the area without significantly compromising the acceptable levels of traffic on the immediate local or limited local street system to the detriment of an established lower density residential area.

Subd. 5. **R-2 Low Density Residential District:** This district is intended to maintain and promote areas with a mixture of residential dwelling types that are of an overall low density, or which are undergoing a conversion from predominantly single-family detached dwellings to low density multi-family use. Certain supportive non residential uses, and compatible infill development, consistent with the policies of the Land Use Plan, are provided for.

Subd. 6. **R-2x:** This district is intended to maintain and promote areas with a mixture of residential dwelling types of overall low to medium density near the downtown core. This district is established to support residential infill and reinvestment that is compatible with the existing characteristics of development, as identified in the Planning 2 Succeed Comprehensive Plan. Certain supportive non-residential uses may be provided within the district.

Subd. 8. **R-3 Medium Density Residential:** This district is intended to maintain areas developed predominantly with multi-unit residential buildings outside of the Central Development Core, or areas of existing low density development where the need to encourage redevelopment has been identified on the Land Use Plan. Certain supportive non residential uses, and compatible residential infill development, consistent with the policies of the Land Use Plan, are provided for.

Subd. 9. **R-4 High Density Residential:** This district is intended to maintain areas for multi-family residential uses of the highest intensity, along with supportive commercial, office and service uses of similar intensity, in locations with proximity to the Central Development Core and major employment centers.

Subd. 10. **B-1 Restricted Commercial District:** This district is intended to maintain and provide for areas of low intensity business uses that are located adjacent to residential areas, but along major thoroughfares so as not to encourage customer traffic through the adjacent residential areas.

Subd. 11. **B-2 Pedestrian Oriented Restricted Commercial District:** This district is intended to maintain and provide for a mix of low to mid-intensity business and residential uses in areas adjacent to more traditional residential districts. Typically oriented along major thoroughfares so as to not encourage non-local customer traffic through residential districts, the B-2 District contributes to the vitality and health of the community by providing walking, biking and transit access to major employment centers and supporting pedestrian friendly uses and design.

Subd. 12. **B-4 General Commercial District:** This district is intended to provide for areas of concentrated commercial development outside the Central Development Core, oriented towards thoroughfare locations because of the access and visibility those locations provide, and consistent with the locational criteria for such uses in the Land Use Plan. Uses in the district are generally of a type providing service to the residents of the entire region or community.

Subd. 13. **B-5 Residential Commercial District:** This district is intended to provide for limited low intensity business uses and limited neighborhood retail and neighborhood food sales/service uses that are located within residential areas consistent with the Land Use Plan, in a manner which buffers the adjacent residential area from the effects of the commercial activities; and to provide housing and retail options that offer residents and business owners the opportunity to meet some of their daily needs by walking or bicycling and/or via reduced vehicle travel distance and time.

Subd. 14 **TOD – Transit Oriented Development District:** The Transit-Oriented Development (TOD) District is intended to protect opportunities for transit-supportive and transit oriented development. This district requires intensities and patterns of development that support vibrant pedestrian activity, promote the use of transit, and discourage specific land uses and types of development that could potentially interfere with future growth of TOD and transit ridership. The standards of this district are intended to encourage compact urban growth patterns, opportunities for increased transportation mode choice, reduced reliance on the automobile, and a safe and pleasant pedestrian environment.

Subd. 15. **M-1 Mixed Commercial-Industrial District:** This district provides an area for a mixture of commercial uses and industrial uses which do not generate significant adverse impacts, which are served by major thoroughfares providing direct access or a local street system with direct access to major thoroughfares, and which with an adequate level of buffering, could be located in reasonable proximity to residential areas.

Subd. 16. **M-2 Industrial District:** This district is intended to accommodate those uses which are potentially incompatible with uses in other districts because of the negative impacts they generate in terms of truck traffic and nuisance characteristics, and to provide areas where different levels of infrastructure and transportation improvements can be provided in a cost effective and efficient means to serve the needs of industrial, transportation, and manufacturing uses.

Subd. 17. **M-3 Low Intensity Mixed Commercial-Industrial District:** This district is intended to accommodate business park development with high levels of landscaping, constraints on grading and substantial land alteration, an overall park-level and individual site-level maximum rate of trip generation, restrictions on outside storage, signs and lighting; and requirements for connectivity with the intent that such development will be compatible with and connected to adjacent residential development.

Subd. 18. **AG Agricultural District:** This district is established to accomplish the general purposes of the zoning code and for the purpose of accommodating large lot rural residential and agricultural development in recently annexed undeveloped areas.

60.324 **Flood Related Districts:** The flood related districts are a set of three districts established to guide development within the flood plain consistent with current flood plain management practices. The specific purposes and regulations for the Flood Fringe, Floodway, and Flood Prone districts are found in Article 62.800 of the Rochester Code of Ordinances.

60.325 **MRD Mixed Redevelopment District:** This district is intended to recognize that the land use composition of certain areas are in transition as a result of public policy and private investment decisions which in effect are encouraging redevelopment of these areas to higher intensity or different character of use. The regulations of the district are intended to provide for an orderly conversion between existing and future use, providing a level of protection to existing viable uses while discouraging their expansion where not compatible with the long term development pattern of the area.

The following mixed redevelopment zoning districts have been established:

A. **MRD 1 Mixed Redevelopment District – Education and Public Service**

Campus: The Education and Public Service Campus Mixed Redevelopment District recognizes the special needs of public educational, public recreational, and public or private institutional and medical facilities, and the benefits to be realized by concentrating such uses within close proximity to each other. The district facilitates the interaction between such uses and provides efficiency in the provision of public facilities to serve the traffic demand, utility expansion and information exchange needs of the development within the district. The district will allow related public recreational facilities and land uses that support the existing higher education institution located within the district. These land uses that support the post secondary educational campus meet the needs of students and staff while also providing for community needs.

60.326 **P.U.D. Planned Unit Developments:** Unique and separate zoning districts established by action of the Rochester Common Council on specific parcels of land according to the provision of the previous Rochester Zoning Code Ordinance No. 1659 as amended. The use of land and buildings within the boundaries of a Planned Unit Development District continues to be governed by unique set of development plan documents approved by a Resolution of the Common Council which may include but are not limited to site plans, grading plans, amenity/landscaping plans, architectural plans and ownership association documents. The approved P.U.D. documents are kept on file by the Zoning Administrator and continue to be used in regulating the use of land within the boundary of the P.U.D. The term Planned Unit Development shall

also include all Community Development Projects and Neighborhood and Community Shopping Center Plans heretofore approved by resolution of the Rochester Common Council pursuant to the provisions of Ordinance #1296 (Zoning Ordinance of the City of Rochester prior to Ordinance #1659).

Changes to Planned Unit Developments will be processed according to the regulations applicable to conditional use permits. The Zoning Administrator shall determine the conventional zoning district under the Rochester Zoning Ordinance and Land Development Manual which most closely parallels the former underlying zoning of the Planned Unit Development at the time of its adoption. Any subsequent change to a Planned Unit Development shall be evaluated based on this determination of underlying zoning.

The Zoning Administrator may authorize certain minor changes to approved Planned Unit Developments guided by paragraph 61.148. Any other changes to a P.U.D. shall be processed through the Type III review procedure with the Phase II hearing process. The applicable criteria for incentive or restrictive development shall be use in the evaluation of the proposed change.

- 60.327 **SD Special Districts:** Existing Special Districts approved by Ordinance numbers 3443, 3404, 2726, 2516, 2247, 3385, 3468, 3497, 3503, 3520, 3534, 3604, 3615, 3691, 3730, 3814, and 3889, 3919, and 4003 are recognized as separate zoning districts and the plans and procedures established for each Special District will continue in force. When a Special District Ordinance does not specify the procedure or criteria to amend an approved site/development plan, the proposed amendment will be reviewed under Section 61.148. When a Special District requires a specific site/development plan review process, but does not specify the criteria by which to review the site/development plan, the development will be reviewed under Section 61.148. When a Special District Ordinance requires a two phase review, the development will be reviewed under Section 61.146 and either Section 62.708 Subd 2 (for preliminary plans) or Section 62.708 Subd 3 (for final plans).
- 60.328 **H Holding Zone:** This district is intended to provide a temporary zoning classification for certain recently annexed (consolidated) lands where the determination of the permanent zoning classification has not been made by the City at the time of annexation. This district provides a period of time after annexation when permanent development or reuse of land is not permitted and affords the City the opportunity to establish, according to the procedural requirements of Section 60.330, the appropriate zoning district for the property. The Holding Zone district will be established on property if it is determined by the City that the default designation of R-1 (Mixed Single Family Residential) for annexed property as regulated on Section 60.350 would be inappropriate because of the designation of the property on the Rochester Future Land Use Map, changing conditions applicable to the property or the general area which could result in modifications to the designation of the property on the Rochester Future Land Use Map, or the developed character of the area and the established land uses on the property suggest that the R-Sa, AG, MRD or SD districts would be more appropriate zones for the property.

On land in the Holding Zone, no building or structure shall be erected, enlarged or moved and no change in the use of land or existing buildings or structures shall be made.

60.329 **I Interim Zone:** Subdivision 1. This district is intended to provide a zoning designation on the official zoning map for the City of Rochester that will alert the general public that the future zoning of selected, undeveloped land will be subject to change at some time in the future. The Interim Zone provides the owner of the property the time needed to analyze and organize an official request for permanent zoning district boundaries according to the procedural requirements of Section 60.330. The City may establish an Interim Zone district on undeveloped property at the time of annexation and upon the request of the property owner. The City will adopt an Interim Zone on property if it is determined that it would be in the best interest of the public and consistent with the Statement and Purpose of City of Rochester, Minnesota found in Section 60.111. The Common Council will review all Interim Zone districts at the same time it reviews urban rural service districts. Upon petition by the landowner, a public hearing will be held pursuant to Section 60.330, et. seq., and the Council will establish a zoning classification other than I for the property.

Subd. 2. Except as provided in subdivision 3 of this section, no building or structure will be enlarged or moved, and no change in the use of land or existing buildings or structures will be permitted on land in the Interim Zone.

Subd. 3. A building or structure may be enlarged or moved and a change in the use of land or existing buildings or structures may be made as follows:

- A. Any change to an existing building or structure, including maintenance and minor repair, and any erection of a new building or structure, must be limited to a total cumulative value over any consecutive five year period of 15 % of the County Assessor's market value of buildings or \$30,000, whichever is greater. Repairs not requiring a permit under the Uniform Building Code are allowed without limitation on the value of the work completed.
- B. The maintenance and minor repair of an existing building or structure not resulting in an increase in the number of dwelling units or the amount of floor area of the principal use may be allowed through the Type I review procedure.
- C. Buildings or structures accessory to residential uses and meeting the standards of the R-1 Zoning District may be erected on the same parcel of land occupied or under the same ownership on the effective date that the property was included in the Interim Zone subject to the issuance of a zoning certificate by the zoning administrator.
- D. The following modifications to an existing use are allowed subject to approval through the identified procedure:
 - (1) The addition or expansion of nonstructural off-street parking facilities to serve an existing use of land in order to relieve on-street parking or loading pressures caused by the development may be allowed through the Type II review procedure.
 - (2) The establishment of nuisance abatement measures such as fences, screening, landscaping, drainage controls or the permanent all weather surfacing of yards or parking areas may be allowed through the Type I review procedure.

- (3) The addition of security features such as lighting and temporary buildings that would reduce security risks to the general area or to the nonconforming use may be allowed through the Type I review procedure.
- (4) The expansion of an existing residential use subject to the value limitation in Section 60.329 Subd. 1 may be permitted using a Type II review procedure. A proposal where the Commission or Council finds significant injurious impact should be denied or approved with conditions which will mitigate the impact of the proposal. In acting upon an application for expanding an existing residential use, the Commission and Council must use the following criteria to evaluate the impact of the proposed change on the existing development:
 - (a) Consistency with the Land Use Plan, the character and history of the use and the character and history of development in the surrounding area.
 - (b) Adverse impacts that may affect residential uses on the property or in the vicinity, including traffic noise and adjacent land use.
 - (c) Other factors related to compatibility with the character or needs of the area.

60.330 AMENDMENT PROCEDURE:

As provided for in this section, the City Council may from time to time amend the boundaries of the zoning districts established on the zoning map or amend the formal text of the zoning ordinance.

60.331 Initiation of Amendments: Amendments to this ordinance may be initiated in one of four ways, as follows:

- 1) The zoning administrator or Commission has the primary responsibility for identifying the need for amendments. The Commission may initiate the review of such amendments by motion.
- 2) The City Council may on its own motion initiate amendments by referring them to the zoning administrator and Commission for review.
- 3) Any owner may formally petition the Council to grant an amendment to the zoning map for land for which he is property owner. The petition shall be filed with the zoning administrator, according to the provisions in paragraph 60.332.
- 4) Any individual may suggest to the City Council or the Commission that it initiate an amendment on its own motion. Such suggestions are entitled to such consideration as the Council or Commission deem appropriate.

60.332 Filing of Formal Petition: In the case of amendments initiated under paragraph 60.331 (3) above, the application shall be submitted to the Zoning Administrator in accordance with the standards and procedures in paragraphs 60.504 and 60.505.

- 60.333 **Procedure:** Any proposed amendment to the Zoning Ordinance shall be processed under the Type III Review Procedure, with the Phase II Hearing process being used, as described in Paragraph 60.532.
- 60.334 **Notification:** For all amendments, notice shall be provided by publication once in the official newspaper at least 10 days before the date of the hearing scheduled by the Zoning Administrator. In addition, for any amendment initiated under paragraph 60.331 (3), mailed notice shall be sent to all owners of land situated wholly or partly within 350 feet of the outer perimeter of the subject property. Where the zoning map is to be changed or amended incidental or as part of a general revision to the zoning ordinance, whether such revision is made by repeal of the existing zoning ordinance and enactment of a new ordinance, or otherwise, notice of mail shall not be required.
- 60.335 **Submission Criteria:** Appendix B outlines the information that is to be submitted with an application for a rezoning amendment initiated under paragraph 60.331 (3).
- 60.336 **Withdrawal of a Petition:** If a formal petition is withdrawn before it is heard by the Commission, the withdrawal shall be without prejudice and shall have no effect upon any subsequent petition. If a formal petition is withdrawn after it is heard by the Commission, the withdrawal shall be with or without prejudice as the governing body shall decide.
- 60.337 **Ordinance Adoption:** where the Council wishes to proceed with an amendment it shall instruct the City Attorney to prepare an ordinance for subsequent adoption by the Council. This determination shall be made within 60 days of the final Commission action on the application.

Any determination by the Council shall be supported by findings based on the policies in Paragraph 60.338 and these findings shall be reflected in the minutes of the Council proceedings.

A determination to proceed shall not bind the Council to subsequently approve or approve with conditions any ordinance prepared relative to the zone change application. The second reading of the ordinance shall be considered the official action on the matter.

Where the applicant or a representative of the applicant was not present when the determination was made, the applicant shall be notified by registered mail of the Council determination.

- 60.338 **Policy for Rezoning:** Subdivision 1. The Commission shall recommend for approval, and the Council shall approve, a request to amend the zoning map or the text of the zoning ordinance if the amendment satisfies the criteria provided in this section:

Subd. 2. The criteria of this subdivision apply to those amendments to the zoning map filed by formal petition. An amendment need only satisfy one of the following criteria:

- A. the area, as presently zoned, is inconsistent with the policies and goals of the Comprehensive Plan;

- B. the area was originally zoned erroneously due to a technical or administrative error;
- C. while both the present and proposed zoning districts are consistent with the Plan, the proposed district better furthers the policies and goals of the Comprehensive Plan as found in Chapters 2 and 3 of the Rochester Urban Service Area Land Use Plan, Chapter 3 of the Housing Plan, and Chapter 10 of the ROCOG Long Range Transportation Plan; or
- D. The area has changed or is changing to such a degree that it is in the public interest to rezone so as to encourage development or redevelopment of the area.
- E. The area includes lands identified as Decorah Edge in accordance with Chapter 59 and application of the site capacity calculation pursuant to Section 61.531 would provide for beneficial development that maintains typical urban density while preserving habitat and protecting processes that maintain groundwater quality and quantity.

Subd. 3. The criteria of this subdivision also apply to those amendments to the zoning map filed by formal petition. However, an amendment must satisfy all of the following criteria:

- A. the permitted uses allowed within the proposed zoning district will be appropriate on the subject property and compatible with adjacent properties and the neighborhood; and
- B. the proposed amendment does not involve spot zoning. (Spot Zoning involves the classification of a single lot or several small lots to a district which is different than that assigned to surrounding properties, for reasons inconsistent with the proposes set forth in this ordinance, the state enabling legislation, or the decisions of courts in this state.)

Subd. 4. The criteria of this subdivision apply to an amendment to the text of the Zoning Ordinance. An amendment must satisfy all of the following criteria:

- A. whether there is a public need for the amendment;
- B. whether the amendment will accomplish one or more of the purposes of this ordinance, the Comprehensive Plan or other adopted plans or policies of the City of Rochester; and
- C. whether adoption of the amendment will be lawful.

60.340 BOUNDARY ESTABLISHMENT:

The Boundary Establishment procedure is created to provide a procedure to allow the routine change from a Developing District to an Established District once permanent development has occurred in the Developing District. The purpose for providing this routine procedure is that the substantive decision about the type of development to occur in a Developing District takes place at the time a site planning permit is issued.

In applying the rules for Boundary Establishment, only those lands within the Developing District shall be considered.

60.341 Administrative Boundary Establishment:

1) The Zoning Administrator shall prepare a report for the Commission identifying all areas provisionally zoned which are currently eligible for classification. Such report shall be submitted to the Commission at its first meeting in February and its first meeting in August every year. Provisionally zoned areas eligible for reclassification shall include:

- a) those developments under construction or completed which are contiguous to land zoned in an Established District where the contiguous Established District applies to the new development;
- b) those developments under construction or completed which include at least 10 acres or 10 separate and contiguous properties.

Phase II of the site planning permit shall serve as the hearing on the Boundary Establishment for purposes of conformance with the state statute, as long as the notice for that hearing made reference to the intent to establish zoning district boundaries.

- c) The Commission may, where it is found necessary to protect the interests of adjacent developed properties in an Established District, forward a recommendation to the Council requesting establishment of permanent zoning district boundaries on a property after approval of the site planning permit but prior to actual development of the property.

2) The Commission shall consider the Zoning Administrator's report and within 30 days forward a recommendation to the Council relative to the areas identified by the Zoning Administrator as being eligible for reclassification. The recommendation of the Commission shall be supported by findings based on the policies included in paragraph 60.344.

60.342 Legislative Boundary Establishment: Land without permanent development which abuts existing development for at least 75% of its perimeter may be included as part of Boundary Establishment action, providing the undeveloped area does not exceed 20% of the entire area to be classified. Where the land involved has not been included as part of an approved site planning permit, the classification may occur only after a Type III Review under a Phase II Hearing Process has been completed.

60.343 Council Action: The Council shall enact all Boundary Establishment action by ordinance. The decision of the Council shall be supported by findings based on the policies included in paragraph 60.344. No Established District shall be created through the Boundary Establishment procedure which will have the effect of causing a majority of the uses within the reclassified area to become nonconforming.

60.344 Policy for Boundary Establishment: Recommendations of the Commission and decisions of the Council shall be supported by findings addressing the relationship of the proposed action to the following policies:

- 1) in approving a change from a developing district to an established district, the development of the area has progressed to the point that the pattern of development is established;
- 2) the proposed pattern of established zoning districts to be created is consistent with accepted zoning principles, the City's Comprehensive Plan and any other policies or plans that have been adopted to guide development in the area of development.

60.350 DESIGNATION OF ANNEXED PROPERTY:

Zoning of land in the process of annexation may be done in conjunction with the annexation proceedings, but shall be subject to the procedure and notice requirements of section 60.330. The proposed zoning ordinance shall not be passed on final reading prior to the date when the annexation ordinance is passed on final reading but the ordinance annexing the property can also zone the property.

60.351 **Designation of Annexed Property: Flood Way and Flood Fringe:** The Flood Insurance Rate Map panels adopted by reference into Section 62.810 may include floodplain areas that lie outside of the corporate boundaries of the City of Rochester at the time of adoption of this ordinance. If any of these floodplain areas are annexed into the City of Rochester after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation. Flood Insurance Rate Maps that are not listed in Section 62.810 but that contain newly annexed land shall automatically be adopted as part of this code and zoning district designation shall be determined as stated in this section.

Lands designated as Floodway on the Flood Insurance Rate Maps for Olmsted County shall be designated Floodway District (FW) upon annexation. Lands designated as Flood Fringe A (FFA) District under the Olmsted County Zoning Ordinance shall be designated as Flood Fringe (FF) District upon annexation. Lands designated as Flood Fringe B (FFB) District under the Olmsted County Zoning Ordinance shall be designated as Flood Prone (FP) District upon annexation. The designation of a floodplain district under this ordinance, both Floodway and the Special Flood Hazard Areas shall be based on the most current Flood Insurance Rate Maps and any amendments thereto.

60.352 **Designation of Annexed Property: Zoning of Land:** Subdivision 1. If the City initiates the annexation and the land use plan shows that the future use of the property is low density residential, or if the factual situation does not satisfy any of the provisions of this section, then the land would be zoned R-1X at the time of annexation, unless surrounded by existing development in a lower intensity district in which case the property would be zoned R-1.

Subd. 2. If the City initiates the annexation and the land use plan shows that the future use of the property is low density residential but there is some question by the Council whether R-1 or R-1X zoning land usage is appropriate due to changing conditions, the land would be zoned H with a hearing to be held within sixty days of the annexation.

Subd. 3. If the City initiates the annexation and the future land use plan shows that the future use of the property is something other than low density residential, the

land would be annexed and zoned H with a hearing to be held within sixty days of the annexation.

Subd. 4. If the land owner initiates the annexation, the land owner must identify the zoning district for the property at the time of annexation:

- A. If R-1X zoning is requested, it is consistent with the future land use plan and there is no question by the Council concerning the future zoning, the land would be zoned R-1X upon annexation.
- B. If zoning other than R-1X is requested, the hearing on the requested zoning district shall occur simultaneously with the hearing on the requested annexation.
- C. If the land owner has not determined what zoning will be requested for some or all portions of the annexed property, the land would be zoned I.

60.353 **Zoning Administrator Report:** Within thirty (30) days after the effective date of an annexation that was adopted without designating a zoning district, or within six (6) months after the passage of a joint resolution designating an area in need of orderly annexation, the zoning administrator shall prepare a report for the Commission examining the existing pattern of development in the area, the character of the property, and the land use plan recommendation for the area, and shall include a recommendation on suitable zoning designation for the property. If the City Council finds it is important to the protection or implementation of City policies, interim regulations may be applied to the annexed area until more permanent action can be taken.

60.360 THE ZONING MAP:

Zoning districts established by this ordinance are bounded and defined as shown on the Official Zoning Map of Rochester which, together with all explanatory materials contained thereon, is hereby made a part of this ordinance. The Official Zoning Map shall be identified by the signature of the President of the City Council and the Mayor, attested to by the City Clerk, indicating it is the zoning map referred to in this chapter and citing the date of adoption and the effective date thereof.

60.361 **Official Copy to be Maintained:** The Official Map, properly attested, shall remain on file in the Office of the City Clerk of Rochester.

60.362 **Amendments to the Zoning Map:** Ordinances adopted by the Council amending the zoning map shall set forth by plat, metes and bounds, or other appropriate description the change made in the district boundaries, and upon final adoption, such amendments shall be recorded by reference on the zoning map and filed in the Office of the City Clerk. The Council may at such time as it deems appropriate, adopt a new Official Zoning Map incorporating all amendments thereto as of that date. Amendments to the boundaries of corporate and extraterritorial limits shall be adopted as provided by state statute and entered on the map in the same manner as amendments to the zoning district boundaries.

60.363 **Zoning Administrator to Maintain Current Map:** The zoning administrator shall maintain a current zoning map drawn on a base material that will provide a reproducible master so that copies may be readily made. The current zoning map shall show the current boundaries of all zoning districts and corporate and extraterritorial limits, but need not show the certifications entered on the Official Zoning Map.

60.364 **Interpretation of Boundaries:** The following rules shall be used to determine the precise location of any zone boundary shown on the Official Zoning Map:

- 1) boundaries indicated as approximately following governmental incorporation or extraterritorial jurisdiction boundaries shall be construed as following such boundaries;
- 2) boundaries indicated as following or approximately following the center lines of streets, highways or alleys shall be construed to follow such centerlines;
- 3) boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- 4) boundaries shown as following or approximately following railroad lines shall be construed to lie midway between the main tracks of such railroad lines;
- 5) boundaries shown as following or approximately following the centerline of streams, rivers or other continuously flowing water courses shall be construed as following the channel centerline of such water courses taken at mean low water, and in the event of a natural change in the location of such streams, rivers or other water courses, the zone boundary shall be construed as moving with the channel centerline;
- 6) boundaries shown as following shorelines of any lake shall be construed to follow the mean high waterline of such lakes, and in the event of change in the mean high waterline, shall be construed as moving with the actual mean high waterline;
- 7) boundaries shown as following section lines, half-section lines, or quarter-section lines shall be construed as following such lines;
- 8) boundaries indicated as following the contours of certain elevations or soils of a particular type shall be construed as following the actual height or soil contour as determined by accepted surveying practice;
- 9) boundaries indicated as separated from, and parallel or approximately parallel to, any of the features listed in paragraphs 1 through 8 above shall be construed to be parallel to such features and at such distances there from as are shown on the map.

Where uncertainties continue to exist after application of the above rules, appeals may be taken as provided in Article 60.160, Interpretations. For the purposes of that section, a zoning district boundary determination is considered a non-use interpretation.

60.400 MODIFYING ORDINANCE PROVISIONS

60.410 VARIANCE:

The opportunity to vary the literal provisions of the ordinance is provided for as required in Chapter 462.357 (sub. 6) of the Laws of Minnesota by the creation of the variance procedure. When practical difficulties or unnecessary hardships unique to an individual property under consideration, and not mere inconvenience, would result from strict enforcement of the literal provisions of this ordinance, application may be made to vary or modify any regulation or provision of the ordinance, subject to the findings in paragraph 60.417, so that the spirit of the ordinance is observed and substantial justice is done. A variance is one remedy available where the zoning administrator has determined that no zoning certificate or development permit may be issued without varying or modifying the regulations or provisions of the ordinance.

- 60.411 **Filing for a Variance:** An application for a variance shall be submitted to the zoning administrator and shall include the appropriate application form completed in full, a legal description of the property, a site plan, a statement on the nature of the variance requested, and such other information as may be pertinent or required for appropriate action by the reviewing body. A fee, as established in Article 60.175, shall accompany the application submittal.
- 60.412 **Procedure:** Variance requests shall be considered under the Type III Review Procedure, with the Phase I Hearing Process used. The Board of Appeals shall be the hearing body. When an application for a variance to the Boulevard Tree Planting standards of Chapters 63 and 64 is submitted the hearing body shall be the City Council.
- 60.413 **Notice:** Notice for a variance shall be sent to all owners of property who have land within 500 feet of, and to at least 50 property owners closest to, the parcel for which the proposed variance is being requested.
- 60.414 **Decision:** The Board of Appeals shall render a formal decision on an application within 21 days of the close of the public hearing on the application. The decision shall include findings of fact and conclusions based thereon, and shall include any conditions or terms to which issuance of the variance is subject.
- 60.415 **Appeal:** The procedure for appeal of a decision by the Board on a variance request shall be as set forth in Article 60.700.
- 60.416 **Order:** Within five (5) days following a decision by the Board the zoning administrator shall reduce the decision of the Board to written form, and a copy of the order shall be served upon the petitioner by first class mail. A copy of the order shall be filed with the County Recorder, and the cost of recording shall be paid by the applicant. The decision regarding a variance shall not become effective until the written order has been served upon the applicant.

Approval of a variance request shall allow the zoning administrator to proceed with the processing of any permits or certificates required for development approval.

- 60.417 **Findings for Variances:** In taking action on a variance request, the approval authority shall make findings supporting the decision based on the following guidelines:

Subdivision 1. The approval authority may grant a variance to the provisions of this ordinance if it finds that:

- A. There are extraordinary conditions or circumstances, such as irregularity, narrowness, or shallowness of the lot or exceptional topographical or physical conditions which are peculiar to the property and do not apply to other lands within the neighborhood or the same class of zoning district;
- B. The extraordinary conditions or circumstances are due to circumstances unique to the property not created by the landowner;
- C. The variance is necessary to overcome practical difficulties in complying with the zoning ordinance so that the property can be used in a reasonable manner not permitted by the ordinance;
- D. The variance will not be materially detrimental to the public welfare or materially injurious to other property in the area, and will not alter the essential character of the locality;
- E. The variance is in harmony with the general purpose and intent of this ordinance; and
- F. The terms of the variance are consistent with the Comprehensive Plan.

The extraordinary conditions or circumstances shall be found not to be the result of an action by the applicant or property owners who have control of the property.

In addition, the approval authority shall find that development of the parcel in question cannot be integrated with development of adjacent parcels under the same ownership in such a manner so as to provide for the reasonable economic use of the total site in a manner consistent with the provisions of this ordinance.

Subd. 2. The Board may grant a variance to the literal provisions of this ordinance if it finds that:

- A. There has been substantial and detrimental reliance in good faith by an applicant who has received a permit or certificate issued in error by the administrative official charged with enforcement of this ordinance, and
- B. the mistaken issuance of the certificate or permit is not the result of an action on the part of the applicant, the property owner, or any other person or party who has had control of the property, to provide misleading or incorrect information, or to knowingly withhold information necessary for the administrative official to accurately review the permit or certificate request.

Subd. 3. The Board shall under no circumstances grant a variance that will allow a use otherwise not permitted within the zoning district or any variance of the elevation or levels for flood protection. The Board shall not grant a variance to a numerical standard where that standard is incorporated into the definition of a use (for example, the definition of a family as including “a group of not more than five persons, some or all of whom are not related by blood, marriage or adoption,” or the definition of a duplex as “a building on a single lot containing two dwelling units”)

Subd. 4. In granting a variance, the zoning administrator or the Board may impose such reasonable and appropriate conditions and safeguards as may be necessary to accomplish, to the extent possible under the circumstances, the purposes of the regulations or provisions which are to be varied or modified and to reduce or minimize potentially injurious effects of the variance upon adjoining properties, the character of the neighborhood, and the health, safety, or general welfare of the community. A variance and any conditions and safeguards which were made a part of the terms under which the variance was granted are binding upon the applicant and any subsequent purchaser, heir, or assign of the property, and any violation of a variance or its conditions and safeguards shall be a violation of this ordinance and punishable as such.

Subd. 5. Any variance granted by the Board of Appeals or Commission is only valid for the proposal outlined in the variance application.

60.418 Variances to the Flood District Regulations

Variances shall be processed according to the Type III review procedure, with the Phase III hearing process utilized. The Board of Appeals shall substitute for the Commission in the Phase III process. The Board may consider the factors listed in Section 62.824 for conditional use permits in reviewing any variance application.

60.4181 Consideration: No variance to a floodplain regulation under this article shall be authorized unless all the following facts and conditions are considered:

- 1) Variances must not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- 2) Variances may only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, not mere inconvenience; and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- 3) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 4) No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the area, or permit standards lower than those required by State law.

60.4182 Upon filing of an application for a variance to the provisions of this article, the zoning administrator shall notify the applicant in writing of the following:

- 1) That the issuance of a variance to construct a structure below the flood protection elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
- 2) Such construction below the flood protection elevation increases risks to life and property.

Such notification must be maintained with a record of all variance actions.

60.4183 Following approval of a variance to the provisions of this article, the zoning administrator shall:

- 1) Maintain a record of the variance action, including the justification for its issuance, and report such variances issued in the annual report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.
- 2) Submit a copy of the decision and its justification for issuance to the Commissioner of Natural Resources within ten (10) days of such action.

60.420 DESIGN MODIFICATIONS:

It is the intent of this ordinance to recognize that in certain instances it may be in the public interest to provide an expedient method to modify the site design and public facility standards of this ordinance as applied to certain types of development.

60.421 **Purpose:** The purpose of the design modification is to permit relief from the strict application of ordinance standards where there is no defined hardship, the proposed modifications will not result in identifiable loss of protection to adjacent properties, or where the proposed development results in an improved design solution to a site design problem and in doing so, still meets the intent of the site design or public facility standards. Guidelines are provided for the approval authority to assess the impact of the proposed design modification.

This ordinance also provides for certain types of development identified as incentive development and restricted development which, though not consistent with normal zoning district standards, will be permitted in certain instances. These developments are supported by the Land Use Plan, but may necessitate relaxation of certain design standards in order to meet site constraints. Design modifications will be considered as part of the normal review of these developments, subject to standards established in this section.

60.422 **Review of Design Modifications:** Design modifications will be processed through either the Type I or Type II review procedures, according to the guidelines established in this section. Where a design modification request accompanies a permit or certificate request that requires processing through a Type III review procedure, the request shall be considered by the Commission and Council as part of the Type III review.

60.423 **Guidelines for Approval:** The following paragraphs identify specific policies or standards for each type of design modification permitted by the Ordinance. The approval authority shall consider these policies or standards in making the findings to approve or deny a request for a design modification. In addition, the following standards shall apply to all requests for Type II Design Modifications:

- 1) The burden shall be upon the applicant to show the design solution will result in an improved use of land while preserving the purposes for which the original regulation was enacted.

- 2) Any such modification shall consider the relationship of the development to its surroundings and shall avoid creating any adverse effects due to noise, traffic circulation, building height or bulk or lack of screening.

60.424 **Specific Policies:** The following paragraphs contain the guidelines applicable to specific types of design modifications which shall be considered by the approval authority.

Subdivision 1. **Yards or Setbacks Along Side or Rear Lot Lines:**

A. **Type I Design Modification:** The zoning administrator may permit as a Type I Design Modification:

- (1) The encroachment of an addition to an existing structure or building into a required yard when a portion of the existing structure already encroaches into that yard and the proposed addition or alteration will not exceed the existing encroachment.
- (2) The reduction of required side yards to 10% of the width of the lot on lots of record not meeting the minimum width at building line requirements found in this ordinance.

B. **Type II Design Modifications, Permitted and Conditional Uses:** The Zoning Administrator may permit the encroachment of an addition to a dwelling or any accessory structure into a required yard where it can be found that;

- (1) The structure will not encroach on any existing easements;
- (2) The design of the structure or addition will not change the pattern of storm water drainage in such a way as to adversely affect adjacent properties;
- (3) The placement of the structure will not adversely affect the privacy afforded to uses on adjacent properties by reducing the open space provided adjacent to the primary living areas and primary windows of buildings on adjacent lots;
- (4) The placement of the building will not adversely affect the ability of adjacent owners to construct new structures or expand existing structures within the normal required zoning setbacks due to potential conflicts with the Building Code;
- (5) The addition or accessory structure will not cut off access to the rear yard of the property, particularly where the rear yard may be needed as the location for a future accessory building or storage; and
- (6) The placement of the new structure will not result in the need for the property owner to utilize adjacent properties for maintenance purposes, unless a written agreement between the owners is submitted along with the request for the design modification.

C. **Policy for Setback Modifications (Restricted and Incentive Development):** The Commission and Council may permit a reduction in side and rear yards below the standards of the applicable zoning district when the proposed development is found to meet the following guidelines:

- (1) **Privacy:** One purpose of side and rear yard setbacks is to provide privacy within the dwelling unit. Where windows are placed in only one of two facing walls or there are no windows, or where the builder provides adequate screening for windows, or where the windows are at such a height or location to provide adequate privacy, the side or rear yard may be reduced.
- (2) **Light and air:** The building spacing provides one method of insuring that each room has adequate light and air. Building spacing may be reduced where there are no windows or very small window areas, and where rooms have adequate provisions for light and air from another direction, or where building orientation, layout and shapes are such that adequate light and air are available.
- (3) **Use:** Areas between buildings are often used as service yards for storage of trash, clotheslines, or other utilitarian purposes. Where this use is similar for both houses, a reduction of building space permitting effective design of a utility space shall be permitted. Kitchens and garages are suitable for rooms abutting such utility yards.

Subd. 2. **Front Yards:**

A. **Type I Design Modification:** The zoning administrator may permit as a Type I Design Modification:

- (1) The reduction of a required front yard so as to be consistent with the front yards of adjacent parcels. Where there are buildings on both abutting parcels with front yards of less than the depth required in the applicable zoning district, the front yard for the undeveloped lot need not exceed the average front yard of the adjacent lots. Where there is a building on one abutting lot with a depth less than that required in the underlying zoning district, the front yard need not exceed a depth one-half way between the depth of the adjacent front yard and the required front yard depth.
- (2) The reduction of front yards for all lots within a block fronting on the same street by up to 40% where existing topography limits the use of the lots without significant re-grading and where the zoning administrator determines it will not have an impact on other dwellings in the vicinity due to topography, street layout, or other subdivision design factors.
- (3) The reduction of front yards by up to 40% where access is provided via an alley and no access is permitted across the front lot line.

B. **Policy for Front Yard Modifications (Restricted and Incentive Development):** The Commission and Council may permit the reduction in the front yard below that required in the underlying zoning district in a restricted or incentive development when the proposal is found to meet the following guidelines:

- (1) The minimum front yard is intended to provide privacy and usable yard area for residents. In practice, however, front yards are rarely used, so that only the privacy factor is important. Where the developer provides privacy by reducing traffic-flow through street layout such as cul-de-sacs, or by screening or planting, or by facing the structure toward open space or a pedestrian way, or through the arrangement of rooms so that primary windows are oriented away from the front yard of the building, it is possible to reduce the front yard requirement.

Subd. 3. **Percentage of Landscaped Area:**

A. **Type I Design Modification:** The Zoning Administrator may permit as a Type I Design Modification:

- (1) A reduction in the required amount of landscaped area by up to 50 percent where a proposed development abuts lands owned in fee title by a public entity which provides open space in amounts exceeding normal zoning district standards, such as parks, parkways, school sites, golf courses and the like. Public lands developed for specific non-open space use, such as water towers, government office buildings, or indoor recreation facilities, shall not qualify for the bonus.
- (2) A reduction in the required amount of landscaped area by up to 25% where a development abuts a right-of-way where excess boulevard exists. The presence of excess boulevard is determined by calculating the amount of boulevard needed for pedestrian facilities, snow storage, normal utility placement, and normal boulevard plantings, and future roadway improvements, and then comparing this amount to the actual boulevard area to see if any excess area exists.

The zoning administrator shall find that the proposed development will still exhibit a similar character to adjacent developments through consistency in building heights, setbacks and floor area ratio, or through the introduction of additional landscaped treatment which will serve to mitigate the effects of increased development intensity on the site.

Subd. 4. **Usable Recreation Area:**

A. **Type I Design Modification:** The zoning administrator may permit as a Type I Design Modification a reduction in the usable recreation space by up to 50 percent where a development has reasonable access to an improved public facility that provides the facilities necessary to meet the

daily recreation needs of the residents of the proposed development. In determining the recreation needs, the zoning administrator shall consider the demographics of the potential residents (age, presence of children, etc.).

A site shall be considered to have reasonable access to a recreation facility if it is located, based on distance separation or travel time to the facility, within a distance or time equal to no more than one quarter of the accepted maximum service area radius for the facility.

B. Policy on Usable Recreation Space (Incentive and Restricted Development): The Commission and Council may permit a reduction in the amount of Usable Recreation Space required by the underlying zoning district for an Incentive or Restricted Development where the proposed development meets the following guidelines:

- (1) The needs of the development can be met by other facilities in the proximity of the development;
- (2) Specially designed facilities within the development are provided which utilize a more compact space; or
- (3) The nature of the residents with the development will be such so as not to require the amount of useable recreation space specified by the ordinance.

C. Phased Development: In issuing the zoning certificate for one phase of a multi-phase development which has been approved through a site planning or conditional use permit, the zoning administrator may permit a deviation from the required amount of usable recreation space in that phase when the development as a whole is designed to meet the standards.

Subd. 5. Lot Area and Frontage:

A. Type I Design Modifications: The zoning administrator may permit as a Type I Design Modification:

- (1) The development of single family detached dwellings on lots smaller than those required by the ordinance in an R-1, CN-NR₁, R-1x, or R-2 Zoning District if consistent in lot area and frontage with adjacent developed parcels. To determine the frontage or lot area requirement, the following procedure shall be used:
 - (a) List in ascending order the lot area or frontages of all parcels lying in whole or in part within 200 feet of the boundary of the subject site. Only parcels within the same district shall be listed.
 - (b) Determine the median parcel size or frontage, which will be the size or frontage of the parcel one-half way down the list, or in the case of an even number of parcels, the first of the middle two.

- (c) Determine the area or frontage required by adding the frontages or areas of the median parcel and the next parcels above and below and dividing the total by three.
- (2) In any zoning district where single family detached dwellings or duplexes are permitted, a site existing on the effective date of this ordinance may be subdivided into parcels with less than the minimum lot area or frontage for the proposed use (either a single family detached dwelling or duplex) when one of the following tests are met:
 - (a) Two parcels may be permitted on a site containing the area required for one parcel and 90% of the area for a second;
 - (b) Three parcels may be permitted on a site containing the area required for two parcels and 85% of the area for a third, or
 - (c) Four parcels may be permitted on a site containing the area required for three parcels and 80% of the area for a fourth.

The lot area or frontage of any individual lot created may not deviate by more than 10% from the minimum requirement for the district, except where a flag lot configuration is used for one of the lots, in which case the frontage may be reduced further subject to the flag lot provisions of the ordinance.

- (3) The frontage of lots within a block utilizing an alley for access and platted with access restrictions along the front lot line may be reduced to the amount necessary to provide only the minimum required side yards along each side lot line.

Subd. 6. Height:

A. Type I Design Modification: The Zoning Administrator may permit as a Type I Design Modification the following:

- (1) Appurtenances attached to the side of the building or free standing such as private antennas, chimneys, flagpoles, bell towers, smokestacks, steeples, spires, parapet walls, skylights, Small non-utility WECS and WECS meteorological towers.
- (2) Rooftop appurtenances such as fire escapes, antennas, satellite dishes, mechanical penthouses, ventilators observation or bell towers, smokestacks, steeples, elevator bulkheads, rooftop water towers or cooling towers, domes or spires, Small non-utility WECS with no limitation on height, provided they do not occupy more than 25% of the roof area and provided that all mechanical equipment is screened.
- (3) Freestanding structures without limitation as to height subject to the following requirements:

- (a) Silos, barns, grain elevators and water towers shall be setback at least 50 feet from any property line.
- (b) Transmission towers, and communication and wireless telecommunications towers shall be setback from property lines a distance equal to the height of the structure. Guy wires for towers shall be located no closer than ten feet to any property line and suitable protective anti-climbing fencing shall be provided around any transmission tower.
- (c) WECS and WECS Meteorological Towers. The structure setback – 1.1 times the combined height of the tower and rotor.

B. The limited modification of height requirements may be considered as a Type II Design Modification. The zoning administrator and Commission shall investigate the effect of shadows, loss of privacy, and the closing of views resulting from the contrast created between the height and location of the proposed building with existing buildings or adjacent open spaces in making a determination to approve the proposal. In addition, fire officials and building officials shall be consulted to see if any public safety concerns will be created by the additional building height.

No more than 25% increase in height in any Residential District or 50% increase in height on a parcel zoned in a non-residential district which abuts an R-Sa, R-1, CN-NR, R-1x, or R-2 District may be considered as a Design Modification. In all other instances, up to 100% increase in height may be considered.

Subd. 7. Off Street Parking:

A. **Type I Design Modification:** For developments where ordinance requirements may result in the provision of excess off-street parking due to unique characteristics of the development, the zoning administrator may permit the deferral of up to 20% of the required spaces. The developer shall enter into a written agreement with the city that the additional parking spaces up to the total spaces required shall be provided at the owner's expense should the zoning administrator determine that the total required parking spaces are necessary to satisfy the actual needs of the particular use.

Factors the zoning administrator shall consider in granting an off-street parking deferral are:

- (1) Where it can be shown that the number of cars owned by the occupants in a residential development is characteristically different from the norm, or the proximity of the development to employment, shopping, educational and transit developments is such that reduced auto usage may be anticipated.
- (2) That based on trip generation characteristics and time of day usage characteristics for similar uses, it can be shown for non-residential

uses that the typical requirements can be reduced without causing parking to overlap into other nearby developments.

- (3) Immediate proximity to public transportation facilities serving a significant proportion of residents, employees, and/or customers.
- (4) Operation of effective private or company car pool, van pool, bus or similar transportation programs.
- (5) Evidence that a proportion of residents, employees, and/or customers utilize, on a regular basis, bicycle or other transportation alternatives commensurate with reduced parking requirements.

Subd. 8. Bufferyards:

- A. The modification of bufferyard requirements may be considered as a Type II Design Modification. The zoning administrator and Commission shall consider the following guidelines in considering the Design Modification Request:
 - (1) Where it can be shown that adequate separation is achieved by (1) exceptional topographical features, (2) the nature of the existing landscaping, (3) the introduction of special structural elements, or (4) the orientation of existing views in adjacent developments.

Subd. 8a. Public Facility Standards:

- A. Modification to the requirements of Chapter 64 may be approved as part of the review of any general development plan, land subdivision permit, or final plat where the applicant can show by reason of exceptional topography or any other physical condition that strict compliance with these regulations would cause undue hardship or that such relief would not be a detriment to the public welfare and would not impair the intent and purpose of the regulations.

Subd. 9. Exterior Storage Activity:

- A. **Type I Design Modifications:** The zoning administrator may permit as a Type I Design Modification:
 - (1) The conduct of activity associated with a non-residential use outside of a structure when the following guidelines are met;
 - (a) The development is located in a non-residential zoning district and does not abut a residential zoning district.
 - (b) The zoning administrator determines that the proposed activity will not affect any residential uses within the area due to the effects of noise, glare, or the potential for litter.

- (c) The activity will not create potential hazard to traffic by interfering with traffic visibility or by distraction to passing motorists due to glare or lighting patterns.
- (d) The activity is suitably screened and is protected from internal vehicular circulation areas.

Subd. 10. Setback Modifications in the B-5 (Residential Commercial District):

- A. Type II Design Modifications: The Commission may permit a reduction in front yard setbacks up to 15 feet (maintaining a minimum ten-foot setback) in the B-5 zoning district when the development of all land within a contiguous B-5 district is master planned as an urban scale development meeting all of the following design guidelines and criteria:
 - (1) Block Layout – where a development includes a block, the development must be configured to provide an alley or interior parking court. Pedestrian courts between buildings, as necessary to ensure reasonably safe, direct and convenient access to building entrances and off-street parking, must also be provided.
 - (2) Off-street parking, driveways or other vehicular circulation must not be placed between a building and the street.
 - (3) Buildings must have their primary entrances oriented to the street. Corner lot buildings must have entrances oriented to the street corner.
 - (4) Building design/architecture includes all of the following elements:
 - (a) Detailed storefront design;
 - (b) Finished façade on all sides of the building;
 - (c) Maximum visibility and transparency of ground floor space including large display windows at the ground floor;
 - (d) Regularly spaced and similar shaped windows with window hoods or trim (all building stories);
 - (e) Decorative cornice at top of building (flat roof) or eaves provided with pitched roof;
 - (f) Weather protection including building canopy, awning, pergola or similar device with a minimum projection of four feet over a sidewalk or other pedestrian space, along a minimum of 50% of the building frontage, and between eight and 12 feet in height above the sidewalk or other pedestrian space.
 - (5) The development provides pedestrian and transit amenities, and includes at least three of the following:
 - (a) A plaza, courtyard, square or extra-wide sidewalk next to the building entrance with 50% of frontage at a minimum of 15 feet width and depth from the curb;

- (b) Sitting space is provided (dining area, benches, ledges between the building entrance and sidewalk) with a minimum 16 inches in height above grade, 24 inches in width and 48 inches in length;
- (c) Building canopy, awning, pergola or similar weather protection with a minimum projection of four feet over a sidewalk or other pedestrian space, along 75% of the building frontage, and between eight and 12 feet in height above the sidewalk or other pedestrian space;
- (d) Public art that incorporates seating (e.g., fountain, sculpture, etc.);
- (e) Transit amenity, such as a bus shelter in accordance with the City's transportation plan;
- (f) Bicycle parking facility.

Subd. 11. Sign Modifications in the B-5 (Residential Commercial District):

- A. Type I Design Modification: The zoning administrator may permit as a Type I Design Modification an increase to the size and/or height of a free standing sign in the B-5 District, as specified, if all of the following criteria are met:
 - (1) The sign shall be oriented primarily toward an arterial or higher level roadway as identified on the Thoroughfare Plan;
 - (2) The property on which the sign is located has a minimum of 100 feet of frontage on an arterial or higher level roadway as identified on the Thoroughfare Plan and is located at an intersection of two public roadways;
 - (3) The sign must not be oriented to residentially developed or residentially zoned and undeveloped land on the same side of the arterial or higher level roadway as the B-5 use.
- B. Where the posted speed limit on the arterial or higher order is 30 or 35 mph, a maximum increase to 32 square feet may be granted. Where the posted speed limit on the arterial or higher order road is 40 mph or more, a maximum increase to 50 square feet may be granted. Where the criteria found in clause A of this subdivision are met, the zoning administrator may approve an increase to the sign height to a maximum of 15 feet in height.
- C. The zoning administrator may permit as a Type I Design Modification an increase to the size of a wall sign in the B-5 Zoning District, as specified, if all of the following criteria are met:
 - (1) The sign must be oriented primarily toward an arterial or higher level roadway as identified on the Thoroughfare Plan;

- (2) The property on which the sign is located has a minimum of 100 feet of frontage on an arterial or higher level roadway as identified on the Thoroughfare Plan and is located at an intersection of two public roadways; and
 - (3) The sign must not be oriented to residentially developed or residentially zoned and undeveloped land on the same side of the arterial or higher level roadway as the B-5 use.
- D. Where the posted speed limit on the arterial or higher road is 30 or 35 mph, a maximum increase to 32 square feet may be granted. Where the posted speed limit on the arterial or higher order road is 40 mph or more, a maximum increase to 50 square feet may be granted.
- E. The zoning administrator may permit as a Type I Design Modification a sign with internal lighting if all of the following are met:
- (1) The background of the sign must be an opaque material with light colors used for the lettering – light colored backgrounds with dark letters are prohibited. All illuminated signs must have baffle or louver lighting.
 - (2) If it is a free-standing sign, the sign must be set back from all lot lines a minimum of four feet and be separated from an adjacent residentially zoned property by a minimum of 70 feet. No sign will be permitted to be located in a utility or drainage easement.
 - (3) The sign must be oriented toward an arterial or higher level roadway as identified on the Thoroughfare Plan.
 - (4) The sign must not be oriented to residentially developed or residentially zoned and undeveloped land on the same side of the arterial or higher level roadway as the B-5 use.
 - (5) Neon light, flashing, moving or intermittently lighted signs and changeable message signs are not permitted.

Subd. 12. **Policy for Parking Modifications (Restricted and Incentive Development)**

- A. The Commission and Council may permit a reduction in parking below the standards of the applicable zoning district for residential developments when the proposed development is found to meet any of the following guidelines:
- (1) The minimum required number of accessory off-street parking spaces may be reduced to one parking space per residential dwelling unit when the underlying zoning is R-4, CDC-Medical, CDC-Fringe, or CDC-Residential;
 - (2) Shared Car Reduction: A reduction in the minimum number of required off-street parking spaces may be granted if a shared or

community vehicle is available for use by residents of the residential development. Where one or more passenger vehicles are available on-site with an established procedure for private use by residents, the minimum parking requirement for a residential use may be reduced by an additional twenty percent provided there are no more than 40 residential dwelling units per shared vehicle. Any reduction in the number of parking spaces shall be replaced in number with bicycle parking spaces;

- (3) Transit Availability Reduction: The minimum number of off-street parking spaces may be reduced by an additional ten percent if the zoning lot on which the development is located is within 600 feet of the right-of-way for a street that is used as a weekday service bus route and/or within 1,320 feet of a signed bus stop or bus shelter serving a weekday bus route. Any reduction in the number of parking spaces shall be replaced in number with bicycle parking spaces;
- (4) Skyway/Subway Proximity Reduction: The minimum number of off-street parking spaces may be reduced by an additional ten percent if the zoning lot on which the development is located is within 750 feet of the property line of a lot which contains a pedestrian entry point into the skyway and/or subway system available for use by the general public. Any reduction in the number of parking spaces shall be replaced in number with bicycle parking spaces;

- B. In order to receive the Shared Car Reduction, the Transit Availability Reduction, or the Skyway/Subway Proximity Reduction, bicycle parking spaces must be located on the site of the development in an area that is not within the private, habitable portion of a residential dwelling unit that provides the parked bicycle with weather protection and a U-lock friendly, securable bicycle rack that supports the bicycle upright in at least two places or points of contact.

60.500 PROCEDURES FOR PERMIT AND CERTIFICATE APPROVALS:

Review procedures herein identified as the Type I procedure, Type II procedure and Type III procedure are established for use in processing all permit applications filed under this ordinance. References in the ordinance to Type I, Type II, or Type III refer to the procedure to be used for processing an application request.

- 60.501 When an application for a certificate or permit is submitted, the zoning administrator shall determine which procedure type the ordinance specifies for its processing. When there is a question as to the appropriate type procedure, the question shall be resolved in favor of the higher type number.
- 60.502 The zoning administrator shall be responsible for the coordination of the development application and the decision making procedures outlined within this section.
- 60.503 **Pre-Development Meeting:** Subdivision 1. The City requires that applications for general development plans, zoning district and land use plan map amendments, site development plans for commercial, industrial uses and

residential developments containing more than four dwelling units and Type III conditional use permits shall hold a pre-development meeting with staff prior to the submittal of a formal application. Other types of development applications are strongly encouraged to hold a pre-development meeting with staff prior to the submittal of a formal application.

Subd. 2. An applicant or the applicant's representative shall request the zoning administrator, using the "Pre-development Meeting Request Form," to arrange a pre-development meeting. The meeting shall be held within 14 days of the request, unless a longer time is agreed to by the applicant. The purpose of this meeting is to provide feedback to the applicant or applicant's authorized representative that will enable the applicant to better plan and prepare for the formal application submittal of the necessary documents for review.

Subd. 3. The information and feedback includes:

- A. Identification of required development review processes;
- B. What public improvements may be required;
- C. What engineering studies may be required; and
- D. What public hearings may be required.

Subd. 4. This meeting will also offer pertinent information regarding zoning, utility availability, and long term plans that may affect the proposal. The meeting will allow the applicant to ask questions they may have regarding these processes and requirements for their project. The meeting will also allow staff to offer comments, observations, and guidance that will enable the applicant to make informed decisions.

Subd. 5. If requested by the applicant, the zoning administrator shall provide a written summary of the conference within five days of the meeting.

60.504 **Contents of Application:** An application for any development activity shall consist of the material specified in this section, plus other materials as required by this ordinance.

- 1) A completed development application on the appropriate form provided by the zoning administrator.
- 2) Proof, if requested, that the property affected by the application is in the ownership of the applicant, or the applicant has the consent of all partners in ownership of the affected property.
- 3) A complete, typed legal description of the property affected by the application.
- 4) In the case of an application for a conditional use permit, variance, or site planning permit, an explanation of intent including a statement on the nature of the proposed development and any other information the applicant may feel will have a bearing in determining the action to be taken.

- 5) The submittal material indicated in Appendix B for the type of permit or certificate being requested.
- 6) An application fee as required in Article 60.175 of this ordinance.
- 7) In the case of an application for an advertising sign, the applicant must identify all existing advertising signs within 1200 feet of the proposed site. If the application's proposed site does not satisfy the minimum distance requirements from another advertising sign, the application must contain written consent from the owner of the property upon which the existing advertising sign is located indicating the owner will not exercise those rights provided by Section 60.509 (4).

60.505 **Submission of Development Permit Application:** Development application materials must be submitted to the zoning administrator who must have the date of submission indicated on each copy of the material submitted. The zoning administrator must determine whether the application is complete. If the zoning administrator determines that the application is incomplete or otherwise does not conform to the provisions of this Code, the zoning administrator must send a notice to the applicant within six (6) business days of receipt of the application telling the applicant what information is missing. If an application is complete and complies with this Code, the zoning administrator shall accept it and note the date of acceptance.

60.506 **Issuance of Permits and Certificates:** In issuing certificates and permits, the zoning administrator shall be guided by the following provisions:

Subdivision 1. **Action on accepted application:** Following acceptance of an application, the zoning administrator shall either issue or deny a permit or certificate within the following time frames:

Zoning Certificates	10 days
Sign Permits	10 days
Housing Certificates	5 days
For Other Applications not Requiring Approvals by Others	20 days
Applications Requiring Approval or Review by Others	7 days (following approval by others)

Subd. 2. The zoning administrator's decision to either approve or deny the application shall be based on the evidence submitted with the application, its conformance with the provisions of the Rochester Code of Ordinances, comments from referral agencies, information on file with the Planning Department and approvals of other bodies as may be required.

Subd. 3. The zoning administrator must issue the development permit if he finds the applicable approvals by others have been granted and the proposed development otherwise conforms to the requirements of the Rochester Code of Ordinances.

Subd. 4. The zoning administrator must deny the development permit if the required approvals are not obtained or the application fails to comply with the requirements of the Rochester Code of Ordinances.

Subd. 5. The zoning administrator must deny the development permit if:

- A. The property is subject to a pending notice of violation or legal action as a result of a violation of any federal, state, county or city land use law or administrative rule;
- B. The property is subject to a development agreement any provision of which remains unsatisfied.

60.507 **Notice of Action:** The zoning administrator shall notify the applicant as to the final disposition of the application. The notice shall indicate the date when the decision will take effect and shall describe the right of appeal pursuant to Article 60.700 of the ordinance. This notice shall be in written form. In the case of zoning certificates, housing permits and sign permits, the application form may be used to transmit the notice of action. In the case of all other permits required by this ordinance, the zoning administrator shall prepare a written Notice of Action containing findings of fact, and the conclusions based thereon, along with any conditions imposed upon the issuance of the permit, and shall transmit a copy of said notice to the applicant.

60.508 **Action on Resubmission of Denied Application:** An applicant may make appropriate alterations to a denied application and resubmit it, with payment of a new fee required. If a previously denied application is resubmitted within one year, previous approvals need not be reconsidered unless the zoning administrator finds that changed conditions or changes in the proposal warrant such reconsideration.

60.509 **Removal of Advertising Signs Pending Permit Issuance**

- 1) When a proposed advertising sign application satisfies all provisions of the zoning ordinance except for the minimum distance requirement between advertising signs, the zoning administrator shall not issue a zoning certificate for the proposed advertising sign until such time as the minimum distance requirement is satisfied. Instead, the zoning administrator shall issue a letter indicating preliminary approval of the proposed advertising sign application pending removal of the existing advertising sign so that the minimum distance requirement is satisfied. This letter shall reserve the location of the proposed advertising sign and shall prevent encroachment by other advertising signs, except as provided in subsection 4, for a period of not exceeding 120 days from the date of the letter. A zoning certificate for the proposed structure shall not be issued until such time as the existing advertising sign, its supporting structure and that part of the foundation above ground level are completely removed from the property.
- 2) If the zoning administrator receives a copy of a legal unlawful detainer action, then the 120 day time period shall be extended to coincide with the time limitations contained within the court documents.
- 3) If the zoning administrator concludes that poor weather conditions or other extenuating circumstances have hindered the removal of the existing advertising sign, the zoning administrator may extend the 120 day time period for no more than five working days.
- 4) The owner of property upon which an existing advertising sign is located may arrange for the erection of a new advertising sign by a licensed sign contractor on the same lot of record within 90 days of the removal of the existing advertising sign.

The owner must comply with all of the following requirements in erecting the new advertising signs:

- a) Either (i) an advertising sign, or (ii) an advertising sign location which was the subject of an administrative appeal at the time of the 1997 moratorium became effective, may be replaced, relocated or rebuilt upon the same zoning lot in a zoning district that allows advertising signs as a permitted use if it is located at least 500 feet from another advertising sign on the same side of the street.
- b) Any replacement, relocated or rebuilt advertising sign or advertising sign location must comply with all other requirements of the city ordinances, state laws and federal laws generally applicable to advertising signs.
- c) Any replacement sign must contain the same number or fewer faces, the same number or less square footage, lighting that contains no more lights and no more illumination, and be of the same height or shorter than the previous sign. However, the height of a replacement sign may exceed the height of the previous advertising sign but in no case shall the sign exceed 32 feet in height.

60.510 TYPE I REVIEW PROCEDURE:

Following acceptance of an application subject to the Type I Procedure, the Zoning Administrator shall review the proposed development for compliance with the provisions of this ordinance and other relevant city ordinances that may be applicable.

- 60.511 The zoning administrator shall take action to either issue or deny the development permit pursuant to Paragraph 60.506.
- 60.512 A decision of the zoning administrator under a Type I procedure may be appealed by an affected party in accordance with Article 60.700 of this ordinance, except that review of a Type I decision is a review of the record supplemented by oral commentary relevant to the record presented on behalf of the applicant and the zoning administrator.

60.520 TYPE II REVIEW PROCEDURE:

Following acceptance of an application subject to the Type II Procedure, the planning staff shall, within three (3) days, transmit one copy of the application, or appropriate parts of the application, to each referral agency for review and comment. If the referral agency does not comment within seven (7) days, unless an extension of up to seven (7) days is requested by the agency and granted by the zoning administrator, the referral agency shall be presumed to have no comment. The zoning administrator shall also mail a Notice of Proposed Action to all persons designated to receive notice by the relevant section of this ordinance, pursuant to the requirements of Section 60.630. The notice shall contain a synopsis of the development, instructions on where to obtain additional information, and shall advise notified persons of their right to request a public hearing before the Commission by written petition.

- 60.521 The zoning administrator shall review any information received under paragraph 60.504 and make a decision within twenty (20) days on the application by issuing a preliminary approval or denial of the application.

- 60.522 Following the preliminary decision on the application, the zoning administrator shall prepare a notice of action as required by 60.507, and shall transmit a copy to the Commission at their next regularly scheduled meeting. Written requests for public hearings received from persons receiving a notice of proposed action shall also be included in the transmittal to the Commission.
- 60.523 Any person who has received a notice of proposed action may request a hearing to be held on the proposed development. Requests for a hearing shall be filed with the zoning administrator in writing within 10 days from the date of the notice of proposed action and shall state the reasons for requesting the hearing. Persons requesting a hearing shall pay a fee, as set by resolution of the Council, to cover the cost of said hearing. Within 5 days of receipt of the request for hearing, the zoning administrator shall schedule a hearing before the Commission pursuant to the requirements of section 60.600.
- 60.524 If a request for a hearing has not been submitted, the Commission may either uphold the decision of the zoning administrator without a de novo hearing, or may conduct a public hearing to consider upholding or reversing the preliminary decision of the zoning administrator. If a de novo hearing is to be held, notice shall be sent to all property owners who have land within 500 feet of, and to at least 50 property owners closest to, the parcel under consideration. In deciding whether to hold a public hearing, the Commission need not receive any oral testimony; its decision may be based solely on the written materials before it.
- 60.525 If a preliminary decision of the zoning administrator is not scheduled for review, or following a scheduled review by the Commission, the zoning administrator shall dispose of the development permit in the manner provided for by paragraph 60.506. If there are any changes to the preliminary notice of action, the zoning administrator shall make such change or transmit a revised copy to the applicant.
- 60.526 The Commission shall take action by majority vote of its members present when the hearing was held, within 25 days of the close of the hearing, unless an extension is agreed to by the applicant.

60.530 TYPE III REVIEW PROCEDURE:

The Type III Procedure includes review of a proposed application at a public hearing(s). Three hearing processes are established, identified as Phase I, Phase II or Phase III Hearing Processes. Ordinance regulations for applications subject to the Type III Review Procedure will always identify which phase(s) of review will be conducted in consideration of the application.

- 60.531 **Phase I Hearing Process:** The Phase I Hearing Process shall be as set forth below:
- A. Following the zoning administrator's acceptance of a completed development permit application, the zoning administrator shall, within three days, transmit one copy of the application, or appropriate parts of the application, to each referral agency for review and comment. If referral agencies do not comment within eight days, the referral agency will be presumed to have no objection.
 - B. The zoning administrator shall schedule a public hearing pursuant to Section 60.600 before the designated review body. Notice of the hearing must be sent to those persons designed to receive notice by the requirements for each type of

application in Chapter 61. The hearing must be scheduled within 16 days after acceptance of the application by the zoning administrator.

- C. Prior to the scheduled public hearing before the designated review body, the zoning administrator shall review the proposed application and prepare a report analyzing the advantages and disadvantages of the proposal. The zoning administrator shall recommend to the designated review body, based upon all of the facts and circumstances, the comprehensive plan (if the application involves a change in a land use ordinance or map, or if it involves a change in standards or street classification from those presented in the Thoroughfare Plan element of the comprehensive plan) and other planning information, the approval, denial or modification of the application. A copy of the report must be transmitted to the applicant and to the professional firm representing the applicant, if any.
- D. Following the close of the public hearing, the designated review body shall file a report within 25 days summarizing the findings of the public hearing and recommending the approval, approval with conditions or denial of the application. The designated review body shall take action by majority vote of its members present when the public hearing was held. Within ten days, the zoning administrator shall transmit a copy of the report to the Council for their information.

60.532 **Phase II Hearing Process:** The Phase II Procedure shall be as set forth below:

- 1) Following the zoning administrator's acceptance of a completed development permit application, the zoning administrator shall, within three (3) days, transmit one copy of the application, or appropriate parts of the application, to each referral agency for review and comment. If referral agencies do not comment within eight (8) days, the referral agency shall be presumed to have no objection.
- 2) The zoning administrator shall schedule a public hearing pursuant to the requirement of section 60.600 to be held before the Commission. Notice of hearing shall be sent to those persons designated to receive notice by the requirements for each type of application in Chapter 61. The hearing shall be scheduled within sixteen (16) days after acceptance of the application by the zoning administrator.
- 3) **Zoning Administrator Review:** Prior to the scheduled public hearing before the Commission the Zoning Administrator shall conduct a review as outlined in 60.531(3).
- 4) Following the public hearing, the Commission shall file a report summarizing the findings of the public hearing and recommending either approval, approval with conditions, or denial of the application, with the City Council, within ten (10) days. The zoning administrator shall also transmit a copy of his report along with the hearing report to the Council.
- 5) The Council, within 20 days after receiving the reports from the Commission and the zoning administrator, shall conduct a public hearing pursuant to the requirements of section 60.600. The Council shall make a decision on the application by either approving, approving with conditions, or denying the application.
- 6) The Council shall have the power to waive subsequent review phases in a multi-phase review process if requested by the applicant upon findings that:

- a) The information considered during the Phase II Hearing Process is sufficient in nature to demonstrate compliance with all the requirements set forth in this ordinance.
 - b) That waiver of the subsequent review phases will not interfere with the purposes and intent of this ordinance.
 - c) That the applicant has provided assurance that all conditions or modifications attached to approval of the project will be met. This assurance shall include, but shall not be limited to, the filing of revised plans, the provision of necessary bonds or other surety to cover the completion of projects, or the filing of necessary legal documents.
- 7) The Phase II approval for a development permit requiring subsequent final development plan and the approval shall continue in force as long as the ordinance has not been amended to cause the application to be in conflict with provisions of the ordinance.

60.533 **Phase III Hearing Process:** The following procedure shall be followed in processing all applications required to go through Phase III of the Type III review procedure:

- 1) The zoning administrator, after accepting an application for a development permit (requiring review through a Type III Hearing process) and finding that it is complete, shall, within three (3) days, transmit one copy of the application to all referral agencies. The referral agencies shall have eight (8) days in which to comment; if no response is received, the referral agency shall be presumed to have no objection.
- 2) The zoning administrator shall within sixteen (16) days of receipt of the application schedule a review of the application before the Commission.

The zoning administrator shall prepare a report of his findings and those of the referral agencies and submit his report to the Commission prior to the scheduled review.

- 3) Following the review, the Commission shall file a report summarizing the findings of the review and recommending either approval, approval with conditions, or denial of the application, with the City Council, within ten (10) days. The zoning administrator shall also transmit a copy of his report along with the hearing report to the Council.
- 4) The Council shall within 20 days of receipt of the Commission decision hold a public hearing on the proposal pursuant to section 60.600. The Council shall make a decision on the application by either approving, approving with conditions or denying the application by resolution upon majority vote of members present at the time the public hearing was held.
- 5) Following final action in the Phase III hearing process, the zoning administrator shall dispose of the permit in the manner provided for in Paragraph 60.507.

60.600 PUBLIC DELIBERATIONS AND HEARINGS:

The requirements of this section identify the general procedures applicable to all public hearings conducted in the administration of this ordinance.

60.605 DEVELOPMENT INFORMATIONAL MEETINGS:

Subd. 1. Development Informational Meetings Required.

- A. Prior to the submission of an application for general development plans, zoning district map amendments, land use map amendments, and Type III conditional use permits, the applicant shall hold a Development Informational Meeting. This includes all Incentive and Restricted Development preliminary plan applications. It also includes an Incentive or Restricted Development final plan application that is received by the Planning Department more than 24 months after the Common Council's approval of that Development's preliminary plan. Multiple applications reviewed concurrently by the Council require a single Development Informational Meeting.
- B. Prior to the submission of an application for Type I site development plans for all non-residential uses and residential uses of 4 or more units in the R2x district the applicant shall hold a Development Informational Meeting

Subd. 2. Location and Notice. The Planning Department shall provide a mailed postcard notice of the Development Informational Meeting at least ten (10) calendar days prior to the meeting in accordance with Section 60.630. The Planning Department shall also notify Registered Neighborhood Association where the proposed development is located, if one exists. The Planning Department shall be notified of the time and location of the Development Informational Meeting at least five (5) business days prior to the deadline for mailing notices that conform to the timelines required by this Ordinance. Development Informational Meetings shall not be scheduled to conflict with regularly scheduled City Council meetings. Development Informational Meetings shall not be scheduled on federal holidays, including Election Day. City staff may attend such meetings to gather information and to highlight relevant requirements of this ordinance as needed, but shall not organize or control the meeting. City staff shall not present, evaluate or approve development proposals at Development Informational Meetings. An application for development outlined in Subd. 1 shall include a written summary stating the time and location of the meeting, the number of attendees and the topics discussed.

Subd. 3. Timing of Meeting. The Development Informational Meeting shall be held no more than 30 days prior to the submission of a development application outlined in Subd. 1.

60.610 RESPONSIBILITIES OF ZONING ADMINISTRATOR:

The zoning administrator, subject to further direction of the governing body, shall perform the following duties related to public hearings resulting from the administration of this ordinance, consistent with the other provisions of this ordinance.

- 1) Schedule and assign the matter for review and hearing.
- 2) Conduct the correspondence of the hearing body.

- 3) Give notice.
- 4) Maintain a record and enter into the record relevant dates such as those of giving notice, hearings, postponement and continuances and a summary of action taken by the hearing body.
- 5) Except in the case of the Council, prepare minutes of the hearing, which include the decision on the matter heard and the reasons for the decision.
- 6) Reduce the decisions of the hearing body to writing within a reasonable time.
- 7) Mail a copy of the decision to a party requesting the same upon payment of a reasonable fee, if a fee has been established.

60.620 NOTICE OF HEARING:

- 1) Notice of a hearing shall contain the following information:
 - a) The date, time and place of the hearing.
 - b) Where the hearing involves a development application for a specific parcel of land, a description reasonably calculated to inform a person of the location of the property for which the development permit or other action is pending, including but not limited to use of a map or postal address and a subdivision lot and block designation, a metes and bounds description or the tax map designation assigned by the County Assessor.
 - c) The nature of the issue up for hearing.
 - d) The interested parties that have a standing to appear and be heard.
 - e) The sections of the ordinance that are pertinent to the hearing procedure.
 - f) Where information regarding the application may be examined and when and how written comments addressing findings required for a decision by the hearing body may be submitted.

60.630 PROCEDURE FOR MAILED NOTICE:

- 1) **Notice Required.** Unless otherwise provided, addresses for a mailed notice required by this ordinance shall be obtained from the County's real property tax records. Mailed notice shall be sent out by the Planning Department at least ten (10) calendar days prior to the day of the hearing. Notice shall be provided to:
 - a) All owners of property within 500 feet of the property subject to the application, provided that no fewer than 50 distinct property owners shall be notified;
 - b) Any township included within or adjacent to the property subject to the application; and
 - c) The City Council.

Omissions. Unless the address is on the file with the zoning administrator, a person whose name is not in the tax records at the time of filing of an application, or of initiating other action not based on an application, need not be furnished mailed notice. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this ordinance for notice. If any omission or defect in the mailing is brought to the attention of the hearing body, either at or prior to the hearing, the hearing body shall consider the defect prior to proceeding on the application. If it is found the omission or defect impaired a surrounding property owner's ability to participate in a public hearing, then the hearing body shall continue the hearing on the proposed application for at least ten (10) days. Any omission or defect which is not brought to the attention of the hearing body, or which is found not to have impaired the ability of a surrounding property owner to participate, shall in no way impair the validity of the proceedings on the proposed application.

60.640 PROCEDURE FOR PUBLISHED NOTICE:

When published notice is required, it shall be published in the designated newspaper of general circulation at least ten calendar days prior to the day of the hearing.

60.645 ON-SITE POSTED NOTICE REQUIRED:

1. On-Site public notice sign(s) required. On-site public notice signage shall be erected on the property for which any Type III Development application is filed. The applicant shall be responsible for posting the sign(s) in accordance with this Ordinance. Said sign will be provided by the Planning Department.

a. The signage must be located and installed so it will be visible to the public, and unobstructed from view from the public right-of-way.

b. Signage must be posted at least ten (10) calendar days prior to the date of the public hearing and remain posted until final action by the City on the Type III application. In the case of a withdrawal, the sign shall be removed within 5 days of withdrawal.

c. Sign Placement: A sign shall be placed along each separate street fronting the subject property. This shall not include alley-ways. If frontage exceeds 300 feet, the zoning administrator may require additional signage be posted.

i. If the subject property does not have street frontage, at least one sign must be placed facing in such a manner as may be most readily seen by the public.

e. Signage must be posted within five (5) feet of any lot line that abuts the street, and shall not be posted within public right-of-way.

f. Maintenance of Signage: The applicant is responsible to preserve and maintain visibility of signage.

2) Signage removal. The applicant shall remove the sign(s) from the property and return said signage to the Planning Department within five (5) calendar days of final action on the application.

3) The applicant shall submit evidence of compliance prior to the date of the first public meeting considering the Type III application. Failure to submit evidence shall be considered an omission or defect in the sign posting.

4) If any omission or defect in the sign posting is brought to the attention of the hearing body, either at or prior to the hearing, the hearing body shall consider the defect prior to proceeding on the application. If it is found the omission or defect impaired a surrounding property owner's ability to participate in a public hearing, then the hearing body shall continue the hearing on the proposed application for at least ten (10) days. Any omission or defect which is not brought to the attention of the hearing body, or which is found not to have impaired the ability of a surrounding property owner to participate, shall in no way impair the validity of the proceedings on the proposed application.

60.650 RULES OF EVIDENCE:

The public hearing is neither an administrative nor an adversary proceeding. Nevertheless, it is necessary that certain rules of procedure and evidence be followed in order to preserve the issue before the hearing body and to protect the rights of interested parties. To this end, the presiding officer may make rulings as are necessary to preserve fairness, order, or proper decorum. The presiding officer, any member of the governing body, the attorney, the zoning administrator, or any interested party may object to and the presiding officer may exclude any evidence, testimony, or comment which is so incompetent, irrelevant, immaterial, or unduly repetitious as to fail in any way to preserve the issue before the governing body. The presiding officer, any member of the governing body, the attorney, and the zoning administrator may question any person giving a summation, presentation, or comment. Any affected parties may offer evidence or testimony in explanation or rebuttal only with respect to evidence or testimony which was not presented at a previous review proceeding, and the presiding officer may determine that testimony for such purposes shall be limited in duration.

60.651 Information at the Hearing: The designation review body shall afford an affected property owner the opportunity to submit written recommendations and comments in advance of the hearing and this information shall be available for public inspection. At the hearing, written recommendations and other information will be received and oral statements may be submitted.

60.660 DECISION:

Following a hearing, the hearing body shall, within the time limits imposed by this ordinance, approve, approve with conditions, or deny the application or, if the hearing is in the nature of an appeal, affirm, reverse or remand the decision that is on appeal. The final decision on a matter under consideration may be extended for a reasonable period of time by agreement between the applicant and the hearing body, but not to exceed six months from the date of the first hearing on the matter.

60.670 FINDINGS AND ORDER:

The hearing body shall prepare findings of fact and an order which shall include:

- 1) A statement of the applicable criteria and standards against which the proposal was tested.
- 2) The reasons supporting a conclusion to approve or deny an application with or without conditions.
- 3) The decision to deny or approve the proposed application and any conditions which may be attached to the decision.

60.680 RECORD OF PROCEEDINGS:

Minutes of the proceedings before the hearing body shall be prepared by the responsible party.

- 1) Testimony shall be transcribed if required for judicial review or if ordered by the hearing body.
- 2) The hearing body shall, where practical, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the same and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained by the zoning administrator until after the applicable appeal period has expired, at which time the exhibits may be released to the person identified thereon, or otherwise disposed of.
- 3) The findings and order shall be included in the record.
- 4) An individual shall have access to the record of the proceedings at reasonable times, places and circumstances. An individual shall be entitled to make copies of the record at the individual's own expense.

60.700 APPEALS:

Decisions made in the administration of this ordinance may be appealed to a higher administrative body according to the regulations of this section. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the Appeal Body that by reasons of acts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by an order of the Appeal Body or by a restraining order issued by the District Court of Olmsted County on application, with notice to the zoning administrator and for due cause shown.

60.710 PROCEDURE TO FILE AN APPEAL:

All appeals shall be in writing on forms prescribed by the zoning administrator and accompanied by the fees established in paragraph 60.175 of this ordinance.

All applications for an appeal shall contain:

- A. an identification of the decision sought to be reviewed, including the date of the decision;
- B. identification of the status of the person seeking review in relation to the applicant (i.e., applicant, adjacent landowner, owner of record receiving notice); and
- C. the specific provisions of the Rochester Code of Ordinances involved in the appeal.

60.720 WHO MAY FILE AN APPEAL:

Appeals may be filed in the following circumstances:

- 1) Any person aggrieved, or any agency or officer of the governing body affected by any decision relating to the interpretation or application of Chapters 60 through 65 of the Rochester Code of Ordinances made by an administrative official or body charged with enforcement of these chapters may file an appeal within ten (10) days of a decision. The basis for such an appeal may be any alleged error of such an official in making a decision, including his failure to make a decision within the prescribed time limit. A decision means any decision, order, requirement or interpretation which the official or body has the power or duty to make under these chapters.

60.730 DESIGNATION OF APPEAL BODY:

The provisions of this section designate the appropriate bodies to hear the various categories of appeals.

60.731 Appeals Heard by the Board of Appeals: Appeals of the following actions shall be heard by the Board of Appeals:

- 1) Any interpretation, made under the provisions of Section 60.160, may be appealed to the Board except for those falling under the provisions of paragraph 60.732 (3) or 60.733 (4).
- 2) Decisions relating to the approval or denial of any zoning certificate, housing certificate or sign permit, may be appealed to the Board.
- 3) Any decision on a Type I or II design modification may be appealed to the Board by an affected party.

60.732 Appeals Heard by the Planning and Zoning Commission: Appeals of the following actions shall be heard by the Planning and Zoning commission:

- 1) Decisions on Land Use Plan conformance may be appealed to the Commission.
- 2) Decisions on any Type I land subdivision permit made by the zoning administrator may be appealed by an affected party.
- 3) Interpretations which may result in the need to amend the ordinance may be appealed to the Commission.
- 4) Decisions rendered by staff under 61.148.

60.733 **Appeals Heard by the City Council:** Appeals of the following decisions shall be heard by the City Council:

- 1) Decisions on any Conditional Use may be appealed by any affected party.
- 2) Any decision by the Board of Appeals may be appealed by an affected party.
- 3) Any decision of the Commission on a Type II application.
- 4) Interpretations to any of the provisions of Article 62.800, Flood Districts.
- 5) A decision on the Boulevard Tree Planting requirements of sections 63.265 or 64.160 may be appealed by an affected party.
- 6) Any decision of the Commission on a Type III, Phase I application, by an affected party.

60.734 **Appeal to District Court:** After all administrative remedies and local appeals have been exhausted, any person or persons jointly or severally aggrieved by a decision, may present to the District Court of Olmsted County, a petition setting forth that such a decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the District Court within thirty (30) days after the zoning administrator has served a copy of the written decision upon the applicant.

60.740 PROCEDURE:

All appeals shall be handled through the Type III review procedure, with a Phase I hearing process utilized.

60.741 **Notification:** At least ten (10) days prior to the hearing, the zoning administrator, acting on behalf of the Appeal body, shall by certified or registered mail, return receipt requested, or by personal service, give notice of the time and place of the hearing to the appellant and/or the official whose decision is being appealed; and by inter-office delivery to the following where they are not already an interested party:

- 1) the City Attorney.
- 2) other affected officers and agencies of the City government.

60.742 If the appeal is likely to result in the issuance of a permit, the zoning administrator shall also within the same period of time by first class mail give notice to an owner of record for tax purposes or an occupant of each separately owned adjoining property. Such notices shall advise that an appeal from an administrative officer is pending and direct further inquiry to the zoning administrator.

60.743 Notices required under this article are for the convenience of adjoining property owners and any defect or omission therein shall not impair the validity of the public hearing with respect to any appeal.

60.750 BOARD OF APPEALS DECISIONS:

No appeal may be disposed of under this article, unless the Board of Appeals, in its minutes with respect to the specific appeal, makes a decision based on findings of fact and conclusions of law together with the reasons thereof, and based upon substantial evidence or testimony which is competent, relevant, and material. Findings as to the existence or nonexistence of crucial facts shall be based upon evidence or testimony unless the party or parties before the Board of Appeals stipulate the facts or waive these requirements. Every decision of the Board shall also include the vote, abstention from voting, or absence of each member. The burden of producing substantial evidence or testimony is upon the party who files the appeal, and if he fails to do so, the Board of Appeals shall deny the appeal. The Board of Appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made under the circumstances. To this end, the Board of Appeals has all of the powers of the official from whom the appeal is taken.

60.751 Findings Board of Appeals: In rendering a decision with respect to an appeal from any order, decision or determination, the Board of Appeals shall strictly interpret the language of the ordinance and shall find that the zoning administrator was correct in his decision or in error. However, the Board shall not render any decision which confers rights or privileges on the appellant than are otherwise permissible under the strict interpretation of the language of this ordinance.

60.760 PROCEDURE AND SCOPE OF REVIEW, PLANNING AND ZONING COMMISSION AND CITY COUNCIL:

The zoning administrator, upon receiving the application, shall transmit to the appropriate body a copy of the application along with all documents constituting the appellate record as described in Section 60.761.

60.761 Standard of Review and Appellate Record: Subdivision 1. Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be de novo, but supplanted with the record of the proceedings before the original hearing body.

Subd. 2. The reviewing body shall base its decision upon the appellate record. The appellate record shall include:

- A. A factual report prepared by the zoning administrator;
- B. The evidence submitted by the appellant and any other person at the previous and appellate public hearings;
- C. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by the appellant and any other person at the previous and appellate public hearings; and
- D. The transcript of the previous hearing if available. Otherwise, a detailed summary of the evidence, but the details need not be set forth verbatim.

Subd. 3. Notice of the public hearing shall be mailed to all property owners entitled to receive notice under the requirements applicable to the original permit application.

60.762 **Appellate Decision:** Subdivision 1. Following the close of the appellate public hearing, the reviewing body may affirm, reverse or modify in whole or in part the determination, requirement or decision that is under review. When the reviewing body modifies or renders a decision that reverses a decision of the zoning administrator or hearing body, the body must set forth its findings and state its reasons for its action. When the reviewing body remands the matter to the original hearing body for such consideration as it deems necessary, it must include a statement explaining the reason for the remand and the action needed.

Subd. 2. The reviewing body must, within a reasonable time following the close of the appellate public hearing, adopt its findings of fact, conclusions of law and order. The body must serve a copy of the findings document upon the appellant by mail.

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