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CHAPTER 1 GENERAL GOVERNMENT

1-1. ELECTED OFFICIALS.

The following Village officials shall be elected as follows:

A. Village President for a term of two years elected in odd numbered years.

B. Six Trustees. In the Spring election of 2009, there shall be elected at large six Trustees. The three Trustees receiving the greatest number of votes in the election shall hold their offices for a term of two years. The remaining three Trustees shall hold their offices for a term of one year. Beginning with the annual Spring election in 2010, all newly elected Trustees shall hold their offices for a term of two years.

C. Candidates shall file nomination papers and there shall be a non-partisan primary whenever three or more candidates file nomination papers for a single office pursuant to Wis. Stats. ss. 8.05(4), 8.05(5), and 8.11(1m)(a) and (b).

1-2. APPOINTED OFFICIALS.

A. The Village Board may modify the term of office, method of appointment, method of removal, or other provisions of any appointed public official by ordinance or contract.

B. Appointed Officials and Terms.

Except as set forth in section 1-2.A, the appointed officials of the Village and their terms shall be the following:

Official	How Appointed	Term
Clerk	Majority of the Village Board	Indefinite
Treasurer	Majority of the Village Board	Indefinite
Attorney	Majority of the Village Board	Indefinite
Assessor	Majority of the Village Board	Indefinite
Coordinator of Emergency Management	Village President, subject to confirmation by the Village Board	3 years
Humane Officer	Village President, subject to confirmation by the Village Board	3 years
Election Officials	Village President, subject to confirmation by the Village Board	2 years
Building Inspector	Majority of the Village Board	Indefinite
Electrical Inspector	Majority of the Village Board	Indefinite
Plumbing Inspector	Majority of the Village Board	Indefinite
Zoning Administrator	Village President, subject to confirmation by the Village Board	2 years

Public Works Manager	Village President, subject to confirmation by the Village Board	Indefinite
Village Engineer	Village Board	Indefinite
Health Officer	Board of Health	See ss. 1.18 and 1-23[1]

1-3. OATH.

Village officials shall take and file the official oath as required by Wis. Stat. s. 19.01.

1-4. REMOVALS.

A. Elected officials may be removed by the Village Board as provided in Wis. Stat. s. 17.13(2), or by the judge of the circuit court, for cause, pursuant to Wis. Stat. ss. 17.13(3) and 17.16.

B. Appointed officials may be removed as provided in Wis. Stat. ss. 17.13(1), 17.13(3), and 17.16.

1-5. VACANCIES.

Vacancies in elective or appointive offices are caused as provided in Wis. Stat. ss. 17.03, 17.035, and 61.27, and shall be filled as provided in Wis. Stat. ss. 17.24 and 61.27.

1-6. SALARIES; PER DIEM.

A. Salaries and/or per diem (meeting pay) of elected and appointed officials including board and commission members, shall be set by the Village Board from time to time, subject to Wis. Stat. s. 66.0505.

B. The Village Board shall establish and provide for the compensation (per diem/meeting pay) of those boards and commissions necessary to effectively govern the Village, as specifically set forth in the various chapters of this code, including, but not limited to, the Board of Review, the Library Board, the Plan Commission, and the Board of Appeals

C. Meeting pay (per diem) for committee member attendance at committee meetings shall be set by the Village Board from time to time. Meeting pay shall be allowed for Board Member attendance at Western Racine County Sewerage District Meetings, unless the Board Member is also a member of the Sewerage District Board.

D. All meetings attended by Board Members or committee members outside of the Village shall qualify for mileage reimbursement, at the then-current Internal Revenue Service allowed amount, along with meeting pay.

E. Maintenance pay. Village Board members who do Village maintenance work or other duties shall be paid an hourly rate as set by the Village Board.

1-7. VILLAGE PRESIDENT AND TRUSTEES.

A. The Village President shall have the powers and duties as specified in Wis. Stat. s. 61.24, along with such additional powers as may be delegated from time to time by the Village Board. The Village President shall:

1. Appoint a chairperson from among the members of the Plan Commission. The

[1] Amended 10-13-2014, Ordinance #2014-5

appointment shall be subject to confirmation by the Village Board.

2. Make necessary appointments to the Village Board Standing Committees and submit the appointments to the Village Board for confirmation.

3. Make appointments of Village officers as provided by this Code or by applicable statute and submit said appointments to the Village Board for confirmation where necessary.

B. The Village President and Trustees shall collectively constitute the Village Board and shall have the authority and power of the Village not specifically given another body or officer. The Village Board shall have the powers enumerated in Wis. Stat. s. 61.34 and other applicable sections of the statutes and shall act to manage and control Village interests, including its commercial benefit, and for the health, safety, and welfare of the public.

C. The Village Board shall establish those boards, commissions, and committees necessary to effectively govern the Village, as specifically set forth by statute and in the various chapters of this Code, all of which shall be organized pursuant to various controlling Wisconsin Statutes and the provisions of this Code.

1-8. VILLAGE CLERK AND VILLAGE TREASURER.

A. Village Clerk. The Village elects not to be governed by the provisions of Wis. Stat. s. 61.19, providing for the election of a Clerk. The Village Clerk shall have all of the powers and duties set forth in Wis. Stat. s. 61.25 and such further duties as shall be assigned by the Village Board from time to time. Further, the Clerk shall be responsible for preparing and preserving the official records of the Village, for the issuance of licenses and permits, except where otherwise stated herein, and for the supervision of Village election activities.

B. Village Treasurer. The Village elects not to be governed by the provisions of Wis. Stat. s. 61.19, providing for the election of a Treasurer. The Village Treasurer shall have all of the powers and duties set forth in Wis. Stat. s. 61.26 and such further duties as shall be assigned by the Village Board from time to time. Further, the Treasurer shall be responsible for preparing and preserving the financial records of the Village, and for the collection and disbursement of Village funds.

C. Annual audits shall be made of the records and accounts of the Village Treasurer by a certified public accountant designated by the Village Board. Reports as required by Wis. Stat. s. 73.10 shall be submitted by the Treasurer.

D. The positions of Village Clerk and Village Treasurer may be held by the same individual, in which case the Village Board shall determine a salary for the combined position.

1-9. VILLAGE ATTORNEY.

A. The Village Attorney shall be one or more attorneys licensed to practice law in the State of Wisconsin. The Village Board may contract with any such attorney or law firm to serve in the capacity of Village Attorney, and may designate special counsel where necessary due to the disqualification of the Village Attorney or for any reason determined appropriate by the Village Board.

B. The duties of the Village Attorney shall be to advise the Village Board in those matters requiring legal opinion, to draft ordinances, resolutions, and regulations as from time to time may be required, and to represent the Village in legal proceedings in which it is a party, as which may from time to time be required.

C. Any person or firm appointed to the office of Village Attorney shall serve at the pleasure of the Village Board.

1-10. VILLAGE ASSESSOR.

A. The Village elects not to be governed by the provisions of Wis. Stat. s. 61.19 providing for the election of an Assessor. The Village Assessor shall be qualified pursuant to, and have the duties designated by, Wis. Stat. s. 61.27 and/or Wis. Stat. s. 61.197(1)(f).

B. Any person or firm appointed to the office of Village Assessor shall serve at the pleasure of the Village Board.

1-11. COORDINATOR OF EMERGENCY MANAGEMENT

The Coordinator of Emergency Management shall have the duties set forth in Chapter 4 of this Municipal Code.

1-12. HUMANE OFFICER.

The Human Officer shall have all of the powers and duties set forth in Wis. Stat. s. 173.07.

1-13. ELECTION OFFICIALS; APPOINTMENT AND HOURS.

There shall be five election inspectors at each poll at each election, provided, however, that additional election inspectors may be appointed to serve at any poll where election day registration makes it necessary. Pursuant to Wis. Stat. s. 7.30(1), the Village of Rochester shall allow for the selection of two or more sets of officials to work at different times on election day and permits the Clerk or his/her designee to establish different working hours for different officials assigned at the same polling place.

1-14. BUILDING, PLUMBING, AND ELECTRICAL INSPECTORS.

A. The Village Board may elect to have the functions of the Building, Plumbing and Electrical Inspectors carried out through contracted services of any qualified person, firm or corporation. In the event such services are provided by contract, the term of office shall be as provided in the contract.

B. The duties of the Village Building Inspector, Plumbing Inspector and Electrical Inspector shall be set forth in Chapter 11 of this Municipal Code, the Building, Plumbing, Electrical and Mechanical Code. Building, Plumbing, Electrical and HVAC Permits shall be on file at the Village Hall within three working days of issuance.

1-15. ZONING ADMINISTRATOR.

The duties of the Village Zoning Administrator are to oversee compliance with Chapter 35, Planning and Zoning and the other zoning chapters of this Municipal Code, and to issue such permits as are required under the zoning chapters. The Zoning Administrator shall also perform such other reviews as are necessary under other provisions of this Municipal Code and as directed by the Village Board. Permits issued shall be on file at the Village Hall within three working days of issuance.

1-16. PUBLIC WORKS MANAGER.

A. A Public Works Manager may be appointed upon resolution of the Village Board on the basis of merit, training, experience, administrative ability, efficiency and general qualifications and fitness for performing the duties of the position.

B. Duties and Powers. The Public Works Manager shall have the following duties and responsibilities:

1. The Public Works Manager shall have general charge and supervision of all public works

in the Village.

2. The Public Works Manager shall be responsible for the maintenance, repair and construction of streets, alleys, curbs and gutters, sidewalks, bridges, street signs, storm sewer systems, sanitary sewer systems, Village buildings and structures and all machinery, equipment and property used in any activity under his control.

3. The Public Works Manager shall have charge of all public services, including garbage and refuse collection and disposal, snow and ice removal, street cleaning and flushing, and mosquito and rodent control.

4. The Public Works Manager shall be appointed as, and perform the duties of, the Weed Commissioner as part of his or her regular duties.

5. The Public Works Manager shall perform such other activities and duties as are imposed upon him or her from time to time by the Village Board, his or her job description or employment contract.

1-17 VILLAGE ENGINEER.

A. The Village Engineer shall serve at the pleasure of the Board. In lieu of appointing a person to the position of Engineer, the Village Board may engage an engineering firm, and if such is the case, the engineering firm shall perform the duties required of the Engineer throughout this Code, except where specifically excepted. In the event that a firm is engaged, the term of office shall be the term of the contract.

B. Duties. When authorized by the Village Board, the Village Engineer shall have the following duties:

1. The Village Engineer shall be responsible for the preparation of plans and specifications for Village public improvements and for such field survey and construction inspection work as may be required during the course of Village public improvement projects.

2. The Village Engineer shall advise the Village Board and Public Works Manager in engineering and financial planning for public improvement programs.

3. The Village Engineer shall be responsible for the preparation and maintenance of all official Village maps and engineering records.

1-18. HEALTH OFFICER.[2]

The Health Officer shall be appointed by the Board of Health as set forth in s. 1-23. The Health Officer shall have the powers and perform the duties assigned to the Health Officer by this Municipal Code, any intermunicipal agreement to which the Village is a party, and State Statutes.

1-19. PLAN COMMISSION.

A. Appointment. The Plan Commission shall consist of seven members, who shall be appointed by the Village President as set forth in Wis. Stat. s. 62.23(1), and confirmed by the Village Board. The Village President shall designate the Chair of the Plan Commission, with the confirmation of the Village Board. The Commission shall always have at least three citizen members who are not Village officials.

[2] Amended 10-13-2014, Ordinance #2014-5

B. Term of Office.

1. An equal number of the initial members of the Commission shall hold office for terms of 1, 2 and 3 years as determined by the Village President by certification to the Village Board. Terms shall be for staggered three-year periods. Of those first appointed, two shall serve for one year, two for two years, and three for three years. The term of office of each member shall terminate on May 1 of the applicable year. All members of the Commission shall be eligible for reappointment upon expiration of their respective terms. All members shall continue to serve until their successors are duly appointed and qualified.

2. Prior to April 1 of each year, the Village President shall appoint a replacement for each commissioner whose term expires on the following May 1 and submit the appointments to the Village Board for confirmation. The procedure for appointments provided in this paragraph shall be subject to modification by an ordinance enacted by the Village Board at any time, provided that no such ordinance shall affect the term of any member then holding office.

C. Powers and Duties.

1. Commission Organization. The Plan Commission shall hold an organizational meeting as soon as practicable after each annual appointment on the call of the Chairperson and shall adopt within a reasonable time thereafter rules of internal operating procedure in compliance with all applicable statutes and provisions of Chapter 15, Planning and Zoning.

2. The Plan Commission shall have the powers and duties set forth in Wis. Stat. s. 62.23 and such other powers and duties as set forth in this Municipal Code and in state statutes.

1-20. BOARD OF APPEALS.

A. Members.

1. The Board of Appeals shall consist of five citizens of the Village, not more than one of whom may be a member of the Village Board.

2. In addition to the regular members, there shall be two alternate citizen members, designated as the first and second alternate at the time of appointment, who shall act with full power only when a member of the Board is absent or refuses to vote because of a conflict of interest as provided in Wis. Stat. s. 62.23(7)(e).

B. Appointment and Term. Members and alternate members of the Board of Appeals shall be appointed by the Village President for a term of three years, subject to confirmation by the Village Board.

C. Powers and Duties. The Board of Appeals shall have the powers and duties described in the Village of Rochester Municipal Code and the Wisconsin Statutes.

1-21. BOARD OF REVIEW.

A. Members; Appointment.

1. The Board of Review shall consist of the Village President, the Village Clerk and three Village residents, which may include public officers and public employees. The Village President shall appoint the three additional members to serve on the Board of Review, subject to confirmation by the Village Board.

2. No Board of Review may be constituted unless it includes at least one voting member who, within two years of the Board's first meeting, has attended a training session as required by Wis. Stat. s. 70.46(4) and unless that member is the Village President or the President's designee. The Village Clerk shall provide an affidavit to the Wisconsin Department of Revenue stating that the requirement of that statute has been fulfilled.

B. Term. The members appointed hereunder shall serve as members of the Board of Review for a term of one year.

C. Powers and Duties.

1. The proceedings of the Board of Review shall be governed by the provisions of Wis. Stat. s. 70.47.

2. The Board of Review shall meet during the seven-day period beginning with the second Monday of May. If the assessment roll is not complete, the Board may adjourn as is necessary to complete the roll. Notice of the meeting shall be posted on the meeting room door advising as to when the Board shall reconvene.

1-22. LIBRARY BOARD.

A. Members; Appointment and Term. The Library Board shall consist of seven members appointed for three year terms pursuant to Wis. Stat. s. 43.54. The members shall be appointed by the Village President, with the approval of the Village Board. Up to five additional members may be appointed by Racine County pursuant to Wis. Stat. s. 43.60.

B. Powers and Duties. The Library Board shall have the powers and duties set forth in Wis. Stat. s. 43.58.

1-23. BOARD OF HEALTH.[3]

A. The Village may fulfill its duties of enforcement of state laws and policies and of this Code regarding public health by entering into an intergovernmental agreement for the provision of services consistent with Wis. Stat. s. 251.02(3r), and may appoint representatives to a Board of Health established thereunder. In the event that the Village does not participate in a multiple municipal local health department pursuant to Wis. Stat. s. 251.02(3r), the Village Board shall continue and establish a local health department as set forth in Wis. Stat. s. 251.02(3m), and shall act as the Board of Health pursuant to Wis. Stat. s. 251.03(4m), shall elect a chairperson and a clerk from among its members, and shall have all the duties and powers delegated the Board of Health by this Code and state statutes. The Village Board may enter into all contracts and make such expenditures as are necessary to fulfill its duties hereunder.

B. Duties. The Board of Health that the Village is a member of, or which is established hereunder, shall assume the general administration of health and sanitation laws and regulations in the Village, supervise the work of the Health Officer and attend to the administration and enforcement of the health laws of the state and the rules and regulations prescribed by the State Department of Health Services and the ordinances of the Village.

C. Powers. The Board of Health shall take such measures and make such rules and regulations as are necessary and effectual for preserving and promoting the public health in the Village.

D. The Board of Health shall appoint a local health officer who shall meet the qualifications set forth in Wis. Stat. ss. 251.06.

[3] Adopted 10-13-2014, Ordinance #2014-5

1-24. COMMITTEES.

A. Committees, Number of Members, Appointment and Terms.

There shall be five standing committees and one ad hoc committee to assist the Village Board, which committees shall be authorized to meet at the Village Hall upon due public notice. The number of members and terms of committee members shall be as set forth below:

COMMITTEE NAME	NUMBER OF MEMBERS*		TERM**
	Board	Citizen	
Public Works	3+	(As Applicable)	1 yr
Finance	3+	(As Applicable)	1 yr.
Building	3+	0	1 yr.
Ordinance	3+	(As Applicable)	1yr.
Ad Hoc	3+	(As Applicable)	***
Emergency Management	*All*	0	**

* The number of members, both Board and Citizen, shall be assigned by the Board based upon the purpose of the committee.

** All Committee members who are also Board members shall be appointed at the first general Village Board meeting in May of each successive year, or, in the event of a resignation, as soon after the resignation as possible.

*** Until the committee has submitted its recommendation to the Board, or until the Board dissolves the committee, whichever comes first.

B. Public Works. This Committee shall investigate, consider, report on, and recommend action on matters pertaining to the following functions:

1. Installation, maintenance, repair, and replacement of culverts, sidewalks, storm and sanitary sewers, roads and streets, and trimming of trees in rights of way.

2. Investigation of all potential problems concerning roads, streets and sewers located within the Village limits and report on or recommend to the Village Board thereon, and further, to carry out directives of the Board thereon.

3. A designated member of this committee will attend all meetings of the Western Racine County Sewerage District and report to the Village Board thereon. This member shall act as a representative of the Village at such meetings.

4. Maintenance of public areas within the Village limits, such as rights of way.

5. Maintenance of Village Parks.

6. Maintenance and improvement of the conditions of waterways flowing through the Village.

7. Representation of the Village in matters concerning the quality of the waterways located within the Village limits.

8. Planting of trees and plants located on public property within the Village limits.

9. Act upon all other matters as directed by the Village Board.

C. Finance Committee. This Committee shall assist the Village Treasurer in his or her responsibility for the management of Village Funds and assets, including investment and disbursement in the best interest of the Village, including, but not limited to:

1. Review and recommendation to the Board of payments of invoices presented to the Village.

2. Review and recommendation to the Board of investment of funds not immediately needed in accordance with Wis. Stat. s. 66.0603(1m).

3. Formulation and recommendation of the Village Budget to the Board.

4. Semi-Annual review of performance as compared to budget forecast, with report of findings to the Board.

D. Building Committee. This Committee will investigate, consider, report on, or recommend action on matters pertaining to the construction, maintenance, repair or replacement of all buildings in which the Village has a proprietary interest. This will include but not be limited to the Library, Village Hall, and Fire Department Buildings, and to carry out directives of the Board on such recommendations. This committee shall be comprised of Village Board members.

E. Ordinance Committee. The duties of this committee shall be:

1. Formulation and recommendation to the Village Board for enactment, modification or repeal of ordinances.

2. Interpretation of existing ordinances, with recommendations of legal counsel, to the Board.

F. Ad Hoc Committee. The duties of this Committee shall be to investigate, recommend and, upon the Village Board approval, act upon those matters assigned to the Committee by the Village Board.

G. Emergency Management Committee. See Chapter 4 of this Municipal Code.

1-25. PUBLIC RECORDS.

A. Definitions. As used in this section, the following terms shall have the meanings indicated. Any term not defined herein shall be defined as set forth in Wis. Stat. s. 19.32.

"Authority" means any of the following Village entities having custody of a Village record: an officer, elected official, agency, board, commission, committee, council, department or public body corporate or politic created by constitution, law, ordinance, rule or order; or a formally constituted sub-unit of the foregoing.

"Custodian" means that officer, department head, division head, or employee of the Village designated under subsection C. or otherwise responsible by law to keep and preserve any Village records or file, deposit or keep such records in his or her office, or who is lawfully in possession or entitled to possession of such public records and who is required by this section to respond to requests for access to such records.

"Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has

been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

B. Duty to Maintain Records.

1. Except as provided under subsection G., each officer and employee of the Village shall safely keep and preserve all records received from his or her predecessor or other persons and required by law to be filed, deposited or kept in his or her office or which are in the lawful possession or control of the officer or employee or his or her deputies, or to the possession or control of which he or she or they may be lawfully entitled as such officers and employees.

2. Upon the expiration of an officer's term of office or an employee's term of employment, or whenever the office or position of employment becomes vacant, each such officer or employee shall deliver to his or her successor all records then in his or her custody and the successor shall receipt therefor to the officer or employee, who shall file said receipt with the Village Clerk. If a vacancy occurs before a successor is selected or qualified, such records shall be delivered to and receipted for by the Clerk, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

C. Legal Custodian(s).

1. Elected officials are the legal custodians of their records and the records of their offices.

2. The Village Clerk, or in his or her absence or disability, or in case of vacancy, the deputy clerk, is hereby designated the legal custodian of all Village records, including those of all committees, commissions, boards, or other authorities created by ordinance or resolution of the Village Board, except as otherwise set forth in this section.

3. The following persons are designated the legal custodians of the Village records under their custody and control:

   a. Village Assessor.

   b. Village Zoning Administrator.

   c. The highest ranking officer of a law enforcement agency with which the Village of Rochester contracts for police protective services pursuant to Chapter 2 of this Municipal Code.

4. Each legal custodian shall name a person to act as legal custodian in his or her absence or in the absence of his or her designee.

5. The legal custodian shall have full legal power to render decisions and to carry out the duties of an authority under Wis. Stat. ch. 19, subch. II, and this section. The designation of a legal custodian does not affect the powers and duties of an authority under this section.

D. Public Access to Records.

1. Except as provided in subsection G., any person has a right to inspect a record and to make or receive a copy of any record as provided in Wis. Stat. s. 19.35(1).

2. The public may obtain information and access to records in the custody of the Village Clerk, make requests for records, or obtain copies of records during all regular office hours at the Rochester Village Hall.

3. In the event that a record not under the custody and control of the Village Clerk is requested, the Clerk shall receive the request and forward it to the appropriate custodian.

4. The Village Clerk or the appropriate custodian will respond to records requests as soon as practicable and without delay by either filling the request or notifying the requester of the determination to deny the request in whole or in part and the reasons therefor.

    a. Each authority that maintains regular office hours at the location where the records are kept shall permit access to the records at all times during those office hours, unless specifically authorized by law.

    b. Each authority that does not maintain office hours at the location where records in the custody of the authority are kept shall permit access to its records upon at least 48 hours written or oral notice of intent to inspect or copy a record, or establish a period of at least two consecutive hours per week during which access to the records is permitted, and in such case may require 24 hours advance written or oral notice of intent to inspect or copy a record.

5. A requester shall be permitted to use facilities comparable to those available to Village employees to inspect, copy or abstract a record, provided, however, that charges for the use of the facilities may apply as set forth in subsection 7.

6. The legal custodian may require supervision during inspection or may impose other reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

7. A requester shall be charged a fee to defray the cost of locating and copying records in an amount set by the Village Board and set forth in the fee schedule, as follows:

    a. The cost of photocopying, calculated not to exceed the actual, necessary and direct cost of reproduction.

    b. If the form of a written record does not permit copying, the actual and necessary cost of photographing and photographic processing shall be charged.

    c. Fees for copies of other records not in printed form on paper, such as film, computer printouts and audio or videotapes, or oversized items, shall be calculated not to exceed the actual, necessary and direct cost of reproduction, and where the form of said record is not included in the fee schedule, by the actual and necessary cost of reproduction.

    d. If mailing or shipping is necessary, the actual, necessary and direct cost thereof shall also be charged.

    e. There shall be no charge for locating a record unless the actual cost therefor exceeds $50.00, in which case the actual cost shall be determined by the legal custodian and billed to the requester.

f. The legal custodian shall estimate the cost of all applicable fees and may require a cash deposit adequate to assure payment, if such estimate exceeds $5.00, subject to Wis. Stat. s. 19.35(3)(f).

g. Elected and appointed officials of the Village of Rochester shall not be required to pay for public records they may reasonably require for the proper performance of their official duties.

h. The legal custodian may provide copies of a record without charge or at a reduced charge where he or she determines that waiver or reduction of the fee is in the public interest.

i. Pursuant to Wis. Stat. s. 19.34, and the guidelines therein listed, each authority shall adopt, prominently display and make available for inspection and copying at its offices for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the Village Board.

E. Access Procedures.

1. A request to inspect or copy a record shall be made to the legal custodian.

a. A request shall be deemed sufficient if it reasonably describes the requested record or the information requested. However a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request.

b. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under Wis. Stat. s. 19.37. Except as provided below, no request may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. No request may be refused because the request is received by mail, unless prepayment of a fee is required under subsection D.6.f. A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

2. Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefore. If the legal custodian, after conferring with the Village attorney, determines that a written request is too general as to be unduly time consuming, the party making the request may first be required to itemize his or her request in a manner which would permit reasonable compliance.

3. A request for a record may be denied as provided in subsection G. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons denying the request is made by the requester within five business days of the oral denial. If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request. Every written denial of a request shall inform the requester that if the request for the record was made in writing then the determination is subject to review upon petition for a writ of mandamus under Wis. Stat. s. 19.37(1), or upon application to the attorney general or a district attorney.

F. Notice to Record Subject; Right of Action. The provisions of Wis. Stat. s. 19.356, Notice to record subject; right of action, shall apply.

G. Limitations on Right to Access.

1. As provided by Wis. Stat. s. 19.36, the following records are exempt from inspection under this section:

   a. Records specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law, except as public information contained therein may be separated as set forth in ss. 19.36(1) and (6), and sub. G.4., below;

   b. Any record relating to investigative information obtained for law enforcement purposes if federal law or regulations require exemption from disclosure or if exemption from disclosure is a condition to receipt of aids by the state as set forth in Wis. Stat. s. 19.36(2), and identities of law enforcement informants as provided in Wis. Stat. s. 19.36(8);

   c. Computer programs, although the material used as input for a computer program or the material produced as a product of the computer program is subject to inspection, as set forth in Wis. Stat. s. 19.36(4);

   d. A record or any portion of a record containing information qualifying as a trade secret, pursuant to Wis. Stat. s. 134.90.

   e. Identities of applicants for public positions shall be limited as provided by Wis. Stat. s. 19.36(7).

   f. Access to employee personnel records, records of an individual holding a public office, information related to certain employees, and financial identifying information shall be limited as set forth in Wis. Stat. ss. 19.36(10) through (13).

2. As provided by Wis. Stat. s. 43.30, public library circulation records are exempt from inspection under this section.

3. In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure as set forth in this section, or by other law, the legal custodian, after conferring with the Village attorney, may deny the request, in whole or in part, only if he or she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record.

4. If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The custodian shall confer with the Village attorney prior to releasing any such record and shall follow the guidance of the Village attorney when separating out the exempt material.

5. Whenever the Assessor, in the performance of the Assessor's duties, requests or obtains income and expense information pursuant to Wis. Stat. s. 70.47(7)(af), or any successor statute thereto, then, such income and expense information that is provided to the Assessor shall be held by the Assessor on a confidential basis, except, however, that the information may be revealed to and used by person in the discharging of duties imposed by law, in the discharge of duties imposed by office (including, but not limited to use by the Assessor in performance of official duties of the Assessor's office and use by the

Board of Review in performance of its official duties) or pursuant to order of a court. Income and expense information provided to the Assessor under Wis. Stat. s. 70.47(7)(af), unless a court determines that it is inaccurate, is per Wis. Stat. s. 70.47(7)(af), not subject to the right of inspection and copying under Wis. Stat. s. 19.35(1), or this section.

H. Destruction of Records.

1. Except as provided by Wis. Stat. s. 19.35(5), Village officers may destroy the following non-utility financial records of which they are the legal custodians and which are considered obsolete, after completion of any required audit by the Department of Revenue or an auditor licensed under chapter 442 of the Wisconsin Statutes, but not less than seven years after payment or receipt of any sum involved in the particular transaction, unless a shorter period has been fixed by the state public records Board pursuant to Wis. Stat. s. 16.61(3)(e), and then after such shorter period:

   a. Bank statements;

   b. Cancelled checks;

   c. Receipt forms;

   d. Vouchers;

2. Village officers may destroy the following utility records of which they are the legal custodians and which are considered obsolete after completion of any required audit by the Department of Revenue or an auditor licensed under chapter 442 of the Wisconsin Statutes, subject to state public service commission regulations, but not less than seven years after the record was effective unless a shorter period has been fixed by the state Public Records Board pursuant to Wis. Stat. s. 16.61(3)(e), and then after such a shorter period, except that utility stubs, receipts of current billings and customers ledgers may be destroyed after two years.

   a. Contracts;

   b. Permits (excavation);

   c. Inspection records.

3. Village officers may destroy the following records of which they are the legal custodian and which are considered obsolete, but not less than seven years after the record was effective unless another period has been set by statute, and then after such a period, or unless a shorter period has been fixed by the state public records Board pursuant to Wis. Stat. s. 16.61(3)(e), and then after such a shorter period.

   (a) Expired insurance policies;

   (b) Election notices.

4. Unless notice is waived by the state historical society, at least 60 days' notice shall be given the state historical society prior to the destructions of any record as provided by Wis. Stat. s. 19.21(4)(a).

5. Any tape recordings of a governmental meeting of the Village may be destroyed, erased or reused no sooner than 90 days after the minutes of the meeting have been approved and published, if the purpose of the recording was to make minutes of the meeting.

I. Preservation Through Microfilm or Other Device.

Any Village officer, or the director of any department or division of Village government may, subject to the approval of the Village Board by resolution, keep and preserve public records in his or her possession by means of microfilm or another reproductive device, optical imaging or electronic formatting. Such records shall meet the standards for reproduction set forth in Wis. Stat. ss. 16.61(7) and 16.612, and shall be considered original records for all purposes, as provided by Wis. Stat. s. 19.21. Such records shall be preserved along with other files of the department or division and shall be open to public inspection and copying according to the provisions of state law and of this section.

1-26. COSTS AND FEES.

All persons, corporations, firms, limited liability companies, partnerships or other entities applying for a license or permit or performing work which by this Municipal Code requires Village or external review shall pay a fee upon application for the license, permit, review of plans, variance, amendment or other service to help defray the cost of administration, investigation or processing. The applicable fee shall be in an amount as set by the Village Board, which shall maintain a Fee Schedule adopted by Resolution and amended from time to time by a simple majority vote of the Board. Where publication or advertising is required, the cost thereof shall be in addition to the fees noted in the Fee Schedule. If payment is not made in advance, interest at a rate set by the Village Board shall be charged on invoices at least 30 days in arrears, unless otherwise prevented by law, or another interest rate has been set by law or ordinance. See also Chapter 17 of this Municipal Code.

1-27. GIFTS AND GRATUITIES.

A. Prohibition Against Receipt of Gifts. It is unlawful for any public employee or public official to receive or offer to receive, either directly or indirectly, any gift, gratuity, or anything of value that he or she is not authorized to receive from any person, if such person:

1. Has or is seeking to obtain contractual or other business or financial relationships with such public employee's employer or the governmental body of the public official; or

2. Conducts operations or activities which are regulated by such public employee's employer or the governmental body of a public official; or

3. Has interests that may be substantially affected by such public employee's employer or the governmental body of the public official.

B. Public Policy. The receipt of any gift, gratuity, or anything of value as set forth in section A above is contrary to the public policy of the Village.

C. Statutory Code of Ethics. The provisions of Wis. Stat. ch. 19, General Duties of Public Officials, subch. III, Code of Ethics for Public Officials and Employees, may be used in the interpretation of this Section.

1-50. VIOLATIONS AND PENALTIES.

Any person who shall violate any provision of this chapter or any regulation, rule or order made hereunder shall be subject to a penalty as provided in Chapter 50 of this Municipal Code.

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CHAPTER 2 POLICE DEPARTMENT

2-1. VILLAGE MAY CONTRACT FOR POLICE SERVICES.

A. The Village of Rochester Board of Trustees, having no duty to do so under state statutes but pursuant to its power under Wis. Stat. s. 61.34 to act for the good order and for the health, safety, welfare and convenience of the public, and Wis. Stat. s. 61.65, may contract with a county, town, city or village law enforcement agency to provide police protective services on a part-time or full-time basis within the Village of Rochester. If the Board determines to enter such a contract for police services, it shall provide that such services shall include, but not be limited to, the enforcement of Village ordinances.

B. If the Board enters a contract for police services, citations written under such contract for violations of Village traffic ordinances shall be made on uniform traffic citation forms. Violations of other Village ordinances shall be made by citation or summons and complaint drafted by the Village Attorney and served by an officer. All violations will be prosecuted in Racine County Circuit Court by the Village Attorney.

C. Wherever the term “sheriff” is used in this Municipal Code, it shall mean the chief law enforcement officer of the agency with which the Village has entered a contract for law enforcement service pursuant to this section

2-2. PEACE OFFICERS.

Pursuant to Wis. Stat. s. 61.31, the President and each Trustee shall be officers of the peace, and may suppress in a summary manner any riotous or disorderly conduct in the streets or public places of the Village, and may command assistance of all persons present to render assistance.

2-3. ASSISTING OFFICERS.

A. At the request of any law enforcement or peace officer, any person in the Village shall aid and assist such officer in the execution of his or her duties. Whoever refuses or neglects to render such assistance shall be in violation of this section and shall be subject to s. 2-50.

B. Every person who is ordered by a law enforcement or peace officer to assist in maintaining order, enforcing laws and ordinances, removing or guarding property or other necessary and proper law enforcement work or duties shall be paid for such services by the Village at the minimum wage rate prescribed by Federal or State law, whichever is applicable, per hour or fraction thereof for all time actually devoted by such person to such duties.

2-50. VIOLATIONS AND PENALTIES.

Any person failing to comply with this chapter shall be subject to a penalty as set forth in Chapter 50 of this Municipal Code.

CHAPTER 3 FIRE AND RESCUE SERVICES AND SAFETY

3-1. VILLAGE MAY CONTRACT FOR FIRE AND RESCUE SERVICES.

The Village of Rochester Board of Trustees, having no duty to do so under state statutes but pursuant to its power under Wis. Stat. ss. 61.34 and 61.64, to act for the good order and for the health, safety, welfare and convenience of the public, may contract with a fire company or fire and rescue company (hereinafter referred to as Fire Company) to provide fire protection services and rescue services within the Village of Rochester.

3-2. INSPECTIONS.

A. Statutory Inspections. The Chief of the Fire Company under contract with the Village shall provide for the performance of fire inspections for the Village pursuant to Wis. Stat. s. 101.14.

B. Changes of Use or Occupancy.

1. Whenever there is a change in occupancy of a building subject to fire inspections pursuant to Wis. Stat. s. 101.14, the property owner or his or her duly authorized agent shall submit the changes in writing to the contracted Fire Company within five working days. The information shall consist of the following:

    a. Name and address of occupancy.

    b. Owner's name, address and phone number(s).

    c. Agent's name, address and phone number(s).

    d. Other information as required by the Fire Company.

2. Whenever a change in an alarm system or the service company for an alarm system has occurred within an occupancy, the property owner or authorized agent shall submit the changes in writing to the Fire Company within five working days. The information shall consist of the following:

    a. All information required in s. B.1.

    b. Type(s) of fire protection systems.

    c. Service company name, address and phone number(s).

3. No change may be made in the use or occupancy of any building or structure, or any space within a building, structure, or space of a building or structure either in a different division of the same occupancy group or in a different occupancy group, unless the building or structure complies with this chapter's requirements. This subsection does not apply to an approved temporary use of less than 90 days.

4. An inspection by the Fire Company shall be required for any new or change of occupancy.

C. Reinspections. In the event that a reinspection is required because of violations found at a required inspection, the property owner shall be required to pay a $50.00 reinspection fee for each reinspection. The Fire Company shall bill the property owner directly for the reinspection fee.

3-3. FEE FOR RESCUE SERVICES.

If the Board determines to enter a contract for rescue services, the Fire Company shall be responsible for setting reasonable fees for such rescue services, and will provide its fee schedule to the Village annually. The Fire Company will bill the patients directly, and will not bill the Village for such calls.

3-4 POLICE POWER OF FIRE CHIEF, RESCUE SQUADS.

A. Pursuant to Wis. Stat. s. 213.095, the Fire Chief or other person in charge of a fire scene or rescue call shall have the authority to:

1. Suppress any disorder and order all individuals or companies to leave the neighborhood of any fire or first aid scene.

2. Command from the inhabitants of the Village all necessary assistance for the suppression of fires and the preservation of property exposed to fire.

3. Enter any property or premises to do whatever may reasonably be necessary in the performance of the officer's duties while engaging in the work of extinguishing any fire or performing any duties incidental thereto.

4. Enter any property or premises to do whatever may reasonably be necessary in the performance of the officer’s duties while engaged in the work of aiding persons or minimizing the loss to property at a first aid scene.

B. At the request of the person in charge of a fire scene or rescue call, any person in the Village shall aid and assist such officer and cooperate with such officer in the execution of his or her duties as set forth above. Whoever refuses or neglects to render such assistance shall be in violation of this section.

3-5. INTERFERENCE WITH FIRE FIGHTING OR RESCUE ACTIVITIES.

A. The provisions of Wis. Stat. ss. 941.12(2) and (3) are hereby adopted as though fully set forth herein. No person may interfere or tamper with, or remove, without authorization, any fire extinguisher, fire hose or firefighting equipment. No person may interfere with accessibility to a fire hydrant without first obtaining permission. This provision shall not be applicable to interference with Fire Personnel while extinguishing a fire, or with the proper functioning of a fire alarm system, which are felonies pursuant to Wis. Stat. s. 941.12(1).

B. No person shall drive a vehicle over an unprotected fire hose when the hose is laid down in any street or private driveway to be used at any training exercise, scene of an emergency, or alarm of emergency without the consent of the fire of the fire official in command in violation of Wis. Stat. s. 346.91.

C. No person shall interfere with the efforts of Fire or Rescue Personnel while performing their duties.

3-6. FALSE ALARMS

A. Intentional False Alarms. Wis. Stat. s. 941.13 is adopted as though fully set forth herein. No person may intentionally give a false alarm to any public officer or employee, whether by means of a fire alarm system or otherwise, and such person shall be subject to citation and penalty as set forth in Chapter 50 of this Municipal Code.

B. Penalties for All False Alarms. The Fire Company may charge a fee directly to any property owner for more than two false alarms in any 12-month period, whether intentional, accidental, or made with good intention, as follows: The property owner shall be billed $50 for the third false alarm and $100 for each false alarm received thereafter within the 12-month period. In the event that any such bill is not paid within 30 days of receipt, the property owner shall be subject to a penalty for the third false alarm, and an increased penalty for each false alarm received thereafter, as set forth in ch. 50 of this Municipal Code.

C. In addition to the penalties provided in ss. A. and B, the Fire Company may require that the fire alarm be serviced, upgraded, or replaced to bring the alarm system into compliance with current code, solely at the owner's cost, in order to prevent future false alarms.

3-7. ADOPTION OF STATE CODES.

A. The following Wisconsin Administrative Codes, as the same currently exists or as hereafter may be amended, inclusive of Appendices to the listed Codes, and exclusive of any penalty imposed thereby, are hereby adopted by reference and made a part of this chapter as if fully set forth herein:

SPS 303	Administrative Procedure
SPS 305	Licenses, Certifications and Registrations
SPS 307	Explosives and Fireworks
SPS 308	Mines, Pits and Quarries
SPS 310	Flammable, Combustible and Hazardous Liquids
SPS 314	Fire Prevention
SPS 316	Electrical
SPS 318	Elevators, Escalators and Lift Devices
SPS 323	Heating, Ventilating and Air Conditioning
SPS 326	Manufactured Home Communities
SPS 328	Smoke Detectors and Carbon Monoxide Detectors
SPS 340	Gas Systems
SPS 341	Boilers and Pressure Vessels
SPS 343	Anhydrous Ammonia
SPS 345	Mechanical Refrigeration
SPS 348	Petroleum Products
SPS 361-366	Commercial Building Code
SPS 371	Solar Energy Systems
SPS 375-379	Building Constructed Prior to 1914

B. Compliance. Any act required to be performed or prohibited by any chapter of the Wisconsin Administrative Code incorporated herein by reference is required or prohibited by this section. Any violation of the incorporated provisions constitutes a violation of this chapter.

C. Code Updates. Any future updates to the Wisconsin Administrative Codes are also adopted prospectively by reference.

D. In cases of conflict between Local and State of Wisconsin Codes, the most restrictive provisions shall govern.

3-8. ADOPTION OF NATIONAL FIRE PROTECTION ASSOCIATION CODES AND PUBLICATIONS.

The latest National Fire Protection Association (NFPA) Codes and any amendments thereto are adopted by reference, enforced and incorporated into this chapter as if fully set forth herein. The following codes are routinely referenced:

NFPA 1	Uniform Fire Code, as amended by Wis. Admin. Code ch. SPS 314
NFPA 10	Standard for Portable Fire Extinguishers
NFPA 11	Standard for Low-, Medium- and, High-Expansion Foam
NFPA 12	Standard on Carbon Dioxide Extinguishing Systems
NFPA 13	Standard for the Installation of Sprinkler Systems
NFPA 13D	Standard for Sprinkler Systems in One and Two-Family Dwellings and Manufactured Homes
NFPA 13R	Standard for Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height
NFPA 14	Standard for the Installation of Standpipe and Hose Systems
NFPA 15	Standard for Water Spray Fixed Systems for Fire Protection
NFPA 16	Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems
NFPA 17	Standard for Dry Chemical Extinguishing Systems
NFPA 17A	Standard for Wet Chemical Extinguishing Systems
NFPA 20	Standard for the Installation of Stationary Pumps for Fire Protection
NFPA 22	Standard for Water Tanks for Private Fire Protection
NFPA 24	Standard for the Installation of Private Fire Service Mains and their Appurtenances
NFPA 25	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems
NFPA 30	Flammable and Combustible Liquids Code
NFPA 30A	Code for Motor Fuel Dispensing Facilities and Repair Garages
NFPA 30B	Code for the Manufacture and Storage of Aerosol Products
NFPA 33	Standard for Spray Application Using Flammable or Combustible Materials
NFPA 34	Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids
NFPA 35	Standard for the Manufacture of Organic Coatings
NFPA 36	Standard for Solvent Extraction Plants
NFPA 37	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines
NFPA 40	Standard for the Storage and Handling of Cellulose Nitrate Film
NFPA 42	Code for the Storage of Pyroxylin Plastic
NFPA 45	Standard on Fire Protection for Laboratories Using Chemicals
NFPA 51	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes
NFPA 51A	Standard for Acetylene Cylinder Charging Plants
NFPA 51B	Standard for Fire Prevention During Welding, Cutting, and Other Hot Work
NFPA 54	National Fuel Gas Code
NFPA 55	Compressed Gases and Cryogenic Fluids Code
NFPA 58	Liquefied Petroleum Gas Code
NFPA 59	Utility LP-Gas Plant Code
NFPA 59A	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)
NFPA 61	Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities
NFPA 68	Standard on Explosion Protection by Deflagration Venting
NFPA 69	Standard on Explosion Prevention Systems
NFPA 70	National Electrical Code®
NFPA 72	National Fire Alarm and Signaling Code
NFPA 75	Standard for the Protection of Information Technology Equipment
NFPA 76	Standard for the Fire Protection of Telecommunications Facilities

NFPA 80	Standard for Fire Doors and Other Opening Protectives
NFPA 82	Standard on Incinerators and Waste and Linen Handling Systems and Equipment
NFPA 85	Boiler and Combustion Systems Hazards Code
NFPA 86	Standard for Ovens and Furnaces
NFPA 88A	Standard for Parking Structures
NFPA 88B	Standard for Repair Garages
NFPA 91	Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids
NFPA 92A	Standard for Smoke-Control Systems Using Barriers and Pressure Differences
NFPA 92B	Standard for Smoke Management Systems in Malls, Atria, and Large Spaces
NFPA 96	Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations
NFPA 99B	Standard for Hypobaric Facilities
NFPA 99C	Medical Gas and Vacuum Systems Installation Handbook
NFPA 101	Life Safety Code®
NFPA 101B	Code for Means of Egress for Buildings and Structures
NFPA 102	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures
NFPA 105	Standard for Smoke Door Assemblies and Other Opening Protectives
NFPA 110	Standard for Emergency and Standby Power Systems
NFPA 111	Standard on Stored Electrical Energy Emergency and Standby Power Systems
NFPA 115	Standard for Laser Fire Protection
NFPA 160	Standard for the Use of Flame Effects Before an Audience
NFPA 170	Standard for Fire Safety and Emergency Symbols
NFPA 204	Standard for Smoke and Heat Venting
NFPA 214	Standard on Water-Cooling Towers
NFPA 221	Standard for High Challenge Fire Walls, Fire Walls, and Fire Barrier Walls
NFPA 230	Standard for Fire Protection of Storage
NFPA 232	Standard for the Protection of Records
NFPA 241	Standard for Safeguarding Construction, Alteration, and Demolition Operations
NFPA 291	Recommended Practice for Fire Flow Testing and Marking of Hydrants
NFPA 303	Fire Protection Standards for Marinas and Boatyards
NFPA 307	Standards for the Construction and Fire Protection of Marine Terminals, Piers and Wharves
NFPA 318	Standard for the Protection of Semiconductor Fabrication Facilities
NFPA 400	Hazardous Materials Code
NFPA 418	Standard for Heliports
NFPA 430	Code for the storage of Liquid and Solid Oxidizers
NFPA 432	Code for the Storage of Organic Peroxide Formulations
NFPA 434	Code for the Storage of Pesticides
NFPA 484	Standard for Combustible Metals
NFPA 490	Code for the Storage of Ammonium Nitrate
NFPA 495	Explosive Materials Code
NFPA 499	Recommended Practice for the Classification of Combustible Dusts and of Hazardous Locations for Electrical Installations in Chemical Process Areas
NFPA 560	Standard for the Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation
NFPA 654	Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids
NFPA 655	Standard for Prevention of Sulfur Fires and Explosions
NFPA 664	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities
NFPA 704	Standard System for the Identification of the Hazards of Materials for Emergency Response
NFPA 720	Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment

NFPA 750	Standard on Water Mist Fire Protection Systems
NFPA 780	Standard for the Installation of Lightning Protection Systems
NFPA 801	Standard for Fire Protection for Facilities Handling Radioactive Materials
NFPA 804	Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants
NFPA 850	Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations
NFPA 853	Standard for the Installation of Stationary Fuel Cell Power Systems
NFPA 1123	Code for Fireworks Display
NFPA 1124	Code for the Manufacturing, Transportation, Storage and Retail Sale of Fireworks and Pyrotechnic Articles
NFPA 1125	Code for the Manufacture of Model Rocket and High Power Rocket Motors
NFPA 1126	Standard for the Use of Pyrotechnics before a Proximate Audience
NFPA 2001	Standard on Clean Agent Fire Extinguishing Systems
NFPA 2010	Standard for Fixed Aerosol Fire Extinguishing Systems

3-9. FIRE DEPARTMENT ACCESS.

A. Access in Construction Area.

1. A road shall be provided at the commencement of construction, major alteration or demolition of any building having suitable strength to support the heavy fire fighting apparatus operated by the contracted Fire Company. Such road shall have a minimum clear width of 12 feet and clear height of 15 feet above grade and shall be subject to the approval of the Fire Chief and Building Inspector.

2. During construction operations, free access to permanent, temporary or portable first aid and fire equipment shall be maintained at all times. Arrangements shall be made so that fire fighters and rescue personnel will have immediate access to the premises when called.

B. Driveways; Property Owner Liable; Markers.

1. All permanent driveways shall conform to the requirements of the Planning and Zoning Code, but for all types of uses shall be maintained clear of obstructions, plantings and overhanging tree branches for a width of at least 12 feet and a height of at least 15 feet above the grade of the driveway.

2. The property owner is liable for the repair or replacement of any fire apparatus that is damaged or destroyed while accessing a property in response to a call or alarm.

3. Markers. Every driveway that is greater than 1,000 feet long shall be marked at intervals of 1,000 feet beginning at the residence or other buildings and extending to the roadway with a marker approved by the Fire Company. No marker is required at the intersection of the driveway with the roadway, but the owner shall notify the Fire Company that the driveway exceeds 1,000 feet, and the Fire Company shall request the Racine County Communications Department (Dispatch Center) to flag the property so that the Fire Company is notified of the length of the driveway in the event of an emergency.

C. Access to Fire Hydrants. Fire access from the street to fire hydrants and outside connections for standpipes, sprinklers or other fire extinguishing equipment, whether permanent or temporary, shall be provided and maintained at all times. Protective pedestrian walkways shall not be so constructed as to impede ready access to hydrants. No material or construction shall be placed within ten feet of such hydrants or connections, nor between them and the center line of the street.

3-10. RAPID ENTRY KEY BOXES.

A. Definition. "Rapid entry key boxes" are hereby defined as access boxes, rapid entry lock box devices, or material lock boxes, with a high security lock and designed to be either surface or recess mounted on a building to secure keys to such building, such as those provided by The Knox Box Company currently in use by the contracted Fire Company.

B. Rapid entry key boxes required. The Village of Rochester elects to require the use of rapid entry key boxes as set forth in this section.

1. Where required. Rapid entry key boxes shall be required on all multifamily dwellings of four families or more that have a common entrance or share a common area accessible by all occupants. Rapid entry key boxes shall be required on all assisted senior housing and community-based residential facilities, industrial and commercial facilities as designated by the Fire Chief of the contracted Fire Company, and any location where entry to the property is secured in whole or part by a fence, gate, wall, or connected buildings, or as otherwise directed by the Fire Chief. Entry key override switches shall be required on any exit door at any location which uses a card reader entry system and/or magnetic door lock security system.

2. Location. The Fire Chief or his or her designee shall approve the location prior to installation of any rapid entry key box. Rapid entry key boxes shall be located on the front of a building near the main entrance at grade level, unless otherwise directed by the Chief.

3. Contents. The owner, agent or on-site manager shall provide the appropriate keys to the building to be placed in the rapid entry key box. New keys shall be provided when any locks are changed. Examples of keys to be provided are:

a. A master key or keys to locked points of egress, whether interior or exterior.

b. Keys to locked mechanical rooms.

c. Keys to locked elevator rooms.

d. Keys to elevator controls.

e. Keys to fire alarm panels or equipment.

4. Compliance. This section applies to all buildings and businesses set forth in Subsection B.1 that are new construction, currently under construction, or, because of a change of use, an addition, or remodeling must apply for a certificate of occupancy. Compliance with this section is required prior to the grant of an occupancy permit.

5. Costs and ordering. Property owners shall be responsible for all costs of purchase and installation of any rapid entry key box, key override switch or other material required by this section. The contracted Fire Company shall supply forms for ordering any rapid entry key box, key override switch or material required by this section.

6. Maintenance. The owner of any building within the scope of this section shall maintain the rapid entry key box in good working order and be responsible to assure that keys maintained within the rapid entry key box are current keys to the existing locks in the

building. When a change of locks within a building is necessary, the owner shall advise the Fire Chief thereof and place new keys in the rapid entry key box.

7. Unauthorized Key Removal Prohibited. No person, except authorized fire department or law enforcement personnel, shall remove any key from a rapid entry key box without the authorization of the building owner.

3-11. OUTDOOR AND REFUSE BURNING

A. Purpose. This section is intended to promote the public health, safety and welfare, and to safeguard the health, comfort, living conditions, safety and welfare of the citizens of the Village of Rochester due to the air pollution and fire hazards of open burning, outdoor burning and refuse burning.

B. Applicability. This section applies to all outdoor burning and refuse burning within the Village of Rochester.

1. This section does not apply to grilling or cooking using charcoal, wood, propane or natural gas in cooking or grilling appliances.

2. This section does not apply to burning in a stove, furnace, fireplace or other heating device within a building used for human or animal habitation unless the material being burned includes refuse as defined in subsection D of this section.

3. This section does not apply to the use of propane, acetylene, natural gas, gasoline or kerosene in a device intended for heating, construction or maintenance activities.

C. Severability. Should any portion of this section be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this section shall not be affected.

D. Definitions. As used in this section, the following terms shall have the meanings set forth.

"Campfire" means a small outdoor fire intended for recreation or cooking not including a fire intended for disposal of waste wood or refuse.

"Clean Wood" means natural wood which has not been painted, varnished or coated with a similar material, has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.

“Confidential Papers” means printed material containing personal identification or financial information that the owner wishes to destroy.

"Fire Chief" means the Chief of the Fire Company contracted for fire and rescue service by the Village pursuant to section 3-1 of this Municipal Code, or other person authorized by that Fire Chief.

"Open Burning" means kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney.

"Outdoor Burning" means open burning or burning in an outdoor wood-fired furnace.

"Any Outdoor Fired Furnace" means a wood-fired or other material-fired furnace, stove or boiler that is not located within a building intended for habitation by humans or domestic animals.

"Refuse" means any waste material except clean wood.

E. General prohibition on outdoor burning and refuse burning. Open burning, outdoor burning and refuse burning are prohibited in the Village of Rochester unless the burning is specifically permitted by this section.

F. Materials that may not be burned. Unless a specific written approval has been obtained from the Department of Natural Resources, the following materials may not be burned in an open fire, incinerator, burn barrel, furnace, stove or any other indoor or outdoor incineration or heating device:

1. Rubbish or garbage including but not limited to food wastes, food wraps, packaging, animal carcasses, paint or painted materials, furniture, composite shingles, construction or demolition debris or other household or business wastes.

2. Waste oil or other oily wastes except used oil burned in a heating device for energy recovery subject to the restrictions in Wis. Admin. Code ch. NR 590.

3. Asphalt and products containing asphalt.

4. Treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.

5. Any plastic material including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.

6. Rubber including tires and synthetic rubber-like products.

7. Newspaper, corrugated cardboard, container board, office paper and other materials that must be recycled in accordance with the recycling ordinance except as provided in subsection K. of this section.

G. Open burning of leaves, brush, clean wood and other vegetative debris. Open burning of leaves, weeds, brush, stumps, clean wood other vegetative debris is allowed only in accordance with the following provisions:

1. All allowed open burning shall be conducted in a safe nuisance free manner, when wind and weather conditions are such as to minimize adverse effects and not create a health hazard or a visibility hazard on roadways, railroads or airfields. Open burning shall be conducted in conformance with all local and state fire protection regulations.

2. Except for barbecue, gas and charcoal grills, no open burning shall be undertaken during periods when either the Fire Chief or the Wisconsin Department of Natural Resources has issued a burning ban applicable to the area.

3. Open burning shall be conducted only on the property on which the materials were generated or at a facility approved by and in accordance with provisions established by the Department of Natural Resources and the Fire Chief.

4. Unless explicitly allowed elsewhere in this section, a commercial enterprise other than an agricultural or silvicultural operation may open burn only at a facility approved by and in accordance with provisions established by the Department of Natural Resources and the Fire Chief.

5. Open burning of weeds or brush on agricultural lands including fires for cropland management, insect control and rodent control is allowed if dense smoke is not created and if conducted in accordance with other applicable provisions of this section, provided however that such burning may begin at 8:00 a.m. The Racine County Sheriff's Department shall be notified in advance of the agricultural burning. The earlier start time allowed in this subsection does not apply to refuse burning, burning in burn barrels, or any other type of burning – it applies only to burning of vegetation in agricultural fields.

6. Fires set for forest, prairie or wildlife habitat management are allowed with the approval of the Department of Natural Resources.

7. Outdoor campfires and small bonfires for cooking, ceremonies or recreation are allowed provided that the fire is confined by a control device or structure such as a barrel, fire ring, or fire pit. Bonfires are allowed only if approved by and in accordance with provisions established by the Fire Chief.

8. In emergency situations such as natural disasters burning that would otherwise be prohibited is allowed if specifically approved by the Department of Natural Resources.

9. Open burning under this section shall only be conducted at a location no less than 20 feet from a property line or structure.

10. Except for campfires and permitted bonfires, open burning shall only be conducted between 8:00 a.m.[1] and 7:00 p.m. No person shall kindle or start an open fire or a fire in a container as described herein between the hours of 7:00 p.m. and 8:00 a.m., and such fire must be extinguished by 8:00 p.m. Campfires and permitted bonfires that are strictly for recreational purposes may be kindled or started between 7:00 p.m. and 11:00 p.m. and must be extinguished by 1:00 a.m.

11. Open burning shall be constantly attended and supervised by a competent person of at least 18 years of age until the fire is extinguished and is cold. The person shall have readily available for use such fire extinguishing equipment as may be necessary for the total control of the fire.

12. No materials may be burned within five feet of any street, curb, gutter or sidewalk or on the ice of a lake, pond, stream or waterbody.

13. Except for barbecue, gas and charcoal grills, no burning shall be undertaken within 20 feet from any combustible material, combustible wall or partition, exterior window opening, exit access or exit unless authorized by the Fire Chief.

14. No open burning may be conducted on days when the Department of Natural Resources has declared an Air Quality Watch or Air Quality Advisory for ozone or fine particle pollution applicable to the Village of Rochester.

H. Burn barrels. A burn barrel may be used in the Village of Rochester in accordance with the following provisions:

1. The burn barrel shall not be used to burn any of the prohibited materials listed in subsection F of this section and may only be used in accordance with the applicable provisions of subsection G of this section.

[1] Ordinance #2016-1, Adopted 2.8.16

2. The burn barrel shall be located at least 50 feet from the nearest building that is not on the same property as the burn barrel.

3. The burn barrel shall have vent holes above the ash line for combustion air and shall be covered with a heavy wire screen.

4. The burn barrel shall not serve a commercial enterprise.

I. Outdoor Fired Furnaces. An outdoor fired furnace may be installed and used in the Village of Rochester in accordance with the following provisions:

1. The outdoor furnace shall be installed and used only in an area zoned for agricultural use.

2. The outdoor furnace shall not be used to burn any of the prohibited materials listed in subsection F. of this section.

3. The outdoor furnace shall be located at least 150 feet from the nearest building which is not on the same property as the outdoor fired furnace.

4. The outdoor fired furnace shall have a chimney that extends at least ten feet above the ground surface. The Fire Chief may approve a lesser height on a case-by-case basis if necessary to comply with manufacturer's recommendations and if the smoke from the lower chimney height does not create a nuisance for neighbors.

5. The owner of the outdoor wood-fired furnace shall obtain a building or other appropriate permits from the Village Building inspector.

J. Fire Department Practice Burns. Notwithstanding subsections E. and F. of this section, the contracted Fire Company may burn a standing building if necessary for firefighting practice and if the practice burn complies with the requirements of the Department of Natural Resources.

K. Exemption for Burning Certain Papers.

1. Notwithstanding subsection F.7. of this section, paper and cardboard products may be used as a starter fuel for a fire that is allowed under this section.

2. Small quantities of confidential papers from a residence may be burned if necessary to prevent the theft of financial records, identification or other confidential information.

3. Confidential papers from a commercial enterprise shall be shredded or destroyed in a manner other than burning.

L. Burning Moratorium. When weather conditions warrant, the Fire Chief or the Department of Natural Resources may declare a burning moratorium on all open burning.

M. Liability. A person utilizing or maintaining an outdoor fire shall be responsible for all fire suppression costs and any other liability resulting from damage caused by the fire.

N. Right of Entry and Inspection. The Fire Chief or any authorized officer, agent, employee or representative of the Village of Rochester who presents credentials may inspect any property for the purpose of ascertaining compliance with the provisions of this section. If the owner or occupant of the premises denies access to the property for this purpose, a special inspection warrant may be obtained in accordance with Wis. Stat. s. 66.0119.

O. Penalty. The penalty for violation of any portion of this subsection shall be a forfeiture of not less than $100 or more than $500 plus the cost of prosecution. Penalties are doubled for second and subsequent offenses.

3-12 FIRE HAZARD, NOTICE.

Any person allowing any accumulation of rubbish, trash, brush or other combustibles to exist on premises owned, occupied or under the control of said person which is deemed a fire hazard by the Chief of the Fire Company contracted by the Village of Rochester shall, upon receipt of a written notice executed by the Chief of said Fire Company, remove or cause to be removed the said rubbish, trash, brush or other combustible material within five days after receipt of said notice. Failure to remove said combustible materials within the time specified in the written notice shall be a violation of this Chapter and each and every day after expiration of the aforesaid time limitation shall constitute a separate violation.

3-50 ENFORCEMENT, VIOLATIONS AND PENALTIES.

A. Enforcement. The Fire Chief, Village Law Enforcement Officer, Public Works Manager and any other representative of the Village of Rochester are authorized to enforce the provisions of this chapter.

B. Violations and Penalties. Except as otherwise set forth herein, any person failing to comply with this chapter shall be subject to a penalty as provided in ch. 50 of this Municipal Code.

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CHAPTER 4 EMERGENCY MANAGEMENT

4-1. DECLARATION OF POLICY.

To prepare the Village to cope with emergencies resulting from enemy action and natural or manmade disaster, it is declared to be necessary to establish an organization of emergency management for the Village by conferring upon the President of the Village and others, specified duties and powers, consistent with Wis. Stat. chapter 323.

4-2. DEFINITIONS.

"Emergency Management" means all measures undertaken by or undertaken by or on behalf of the Village:

A. To prepare for and minimize the effect of a disaster or the imminent threat of a disaster.

B. Make repairs to or restore infrastructure or critical systems that are destroyed or damaged by a disaster.

"Disaster" means a severe or prolonged, natural or human caused, occurrence that threatens or negatively impacts life, health, property, infrastructure, the environment, the security of the Village or critical systems, including computer, telecommunications, or agricultural systems.

"Hazardous Substance" has the meaning set forth in Wis. Stat. s. 299.01(6).

"Incident Command System" means a functional management system established to control, direct, and manage the roles, responsibilities, and operations of all the agencies involved in a multi-agency or multi-jurisdictional emergency response.

4-3. EMERGENCY MANAGEMENT COMMITTEE.

A. How Constituted. The Village Board shall be the Emergency Management Committee, whose President shall be the President of the Village Board.

B. Duties. The Emergency Management Committee shall be an advisory and planning group and shall advise the Emergency Management Coordinator on all emergency matters. It shall annually prepare and adopt a budget for emergency management.

C. Succession. In the event of an emergency those members of the Village Board who are available shall have authority to conduct the activities of the Village with no requirement of a quorum. In the event the President is unavailable, the Trustee holding the longest continuous seniority as trustee at the time of the emergency and who is available shall be the President of the Emergency Management Committee.

4-4. COORDINATOR OF EMERGENCY MANAGEMENT, DEPUTIES, POWERS/DUTIES.

A. Coordinator. There is created the office of Coordinator of Emergency Management.

B. Appointment. The Coordinator and any deputies shall be appointed by the Village Board President and confirmed by the Village Board.

C. Term. The term of office of the Coordinator shall be until a successor is appointed and qualified.

D. Powers and Duties. The Coordinator, subject to the control and direction of the Village Board, shall:

1. Develop and promulgate emergency plans for the Village consistent with state and county plans.

2. Be in compliance with all federal and state training requirements pertaining to this position.

3. Direct the emergency management program for the Village as required by the Village Board.

4. Direct the Village emergency training programs and exercises;

5. Provide assistance to Village departments during such emergencies requiring a major response or additional resources to support their efforts.

6. During a state of emergency declared by the Governor, the Emergency Management Coordinator, on behalf of the Village, may contract with any person to provide equipment and services on a cost basis to be used to respond to a disaster or the imminent threat of a disaster.

7. Be the National Incident Management (NIMS), point of contact for the Village and track all NIMS and ICS training to assure compliance with federal and state guidelines.

8. Aid, assist, and guide all Village officials and departments in the completion of forms relating to emergencies including, but not limited to, ICS forms, emergency orders and declarations of disaster.

9. Advise the Racine County Emergency Management Coordinator on all local programs and submit any required reports.

E. Deputy Emergency Management Coordinators shall function at the direction of the Village Board and the Coordinator of Emergency Management and shall in the Coordinator's absence act on the Coordinator's behalf in all emergency matters.

4-5. UTILIZATION OF EXISTING SERVICES AND FACILITIES.

A. Policy. In preparing and executing the emergency management program, the services, equipment, supplies and facilities of the existing departments and agencies of the Village shall be utilized to the maximum extent practicable; and the heads and personnel of all such departments and agencies are directed to cooperate and extend such services and facilities as are required of them.

B. Responsibility. In order to assure that in an emergency all the facilities of the existing Village government are expanded to the fullest to meet such emergency, department and agency heads assigned to specific responsibilities under the Village emergency operations plan will fulfill emergency and non-emergency duties as prescribed in the plan.

4-6. DUTIES AND POWERS OF THE VILLAGE.

A. Declaration of Emergency. The Village President and Board of Trustees may declare an emergency existing within the Village whenever conditions arise by reason of a riot or civil commotion, a disaster, or imminent threat of a disaster that impairs transportation, food or fuel supplies, medical care, fire, health or police protection, or other critical systems of the Village. In the absence of the Village President the Trustee holding the longest continuous seniority as trustee at the time of the emergency and who is available may declare an emergency based on the above criteria. The period of the emergency shall be limited by this chapter to the time during which the emergency conditions exist or are likely to exist.

1. In the absence of the Village President or any Trustees and based on the above criteria an issue of expedience exists, any two of the following Village officials may declare an emergency: the Village Clerk, the Public Works Manager, the head of the contracted law enforcement agency, the Fire Chief of the contracted Fire Company, the Emergency Management Coordinator and the Deputy Emergency Management Coordinator.

2. Ratification. With the exception of a declaration by the Village Board, any other declarations shall be subject to ratification, alteration, modification, or repeal by the Village Board as soon as it can meet. Any subsequent action taken shall not affect the validity of the declaration.

B. Powers during an Emergency. The emergency power conferred upon the Village Board by this chapter and Wis. Stat. s. 323.11 includes the general authority to order whatever is necessary and expedient for the health, safety, protection and welfare of persons and property within the Village in the emergency and includes the power to bar, restrict, or remove all unnecessary traffic, both vehicular and pedestrian, from the roadway and limit or restrict the operation of watercraft upon any waterway within the Village. The period of the proclamation is limited to the time during which emergency conditions exist or are likely to exist.

1. Proclamation. If, because of the emergency conditions, the Village Board is unable to meet properly, the Village President or the Trustee holding the longest continuous seniority as trustee at the time of the emergency and who is available shall exercise by proclamation all the powers hereby conferred on the Board.

2. In the absence of the Village President or any Trustees and based on the above criteria and an issue of expedience exits, any two of the following Village officials may declare an emergency: the Village Clerk, the Public Works Manager, the head of the contracted law enforcement agency, the Fire Chief of the contracted Fire Company, the Emergency Management Coordinator and the Deputy Emergency Management Coordinator.

3. Ratification. With the exception of a proclamation by the Village Board any other emergency proclamations shall be subject to ratification, alteration, modification, or repeal by the Village Board as soon as it can meet, but subsequent action taken shall not affect the validity of the proclamation.

4-7. EMERGENCY USE OF VEHICLES.

A. In responding to an official request for help during any declared state of emergency, any person may operate a boat or any motor vehicle, including a snowmobile or all-terrain vehicle that is not registered in this state.

B. Emergency management personnel, in accordance with Wis. Stat. s. 340.01(3)(e), are authorized to use any vehicle of the Village and/or their private vehicles as an emergency vehicle in the event of a bona-fide emergency.

4-8. RESPONSIBILITY FOR WORKERS COMPENSATION.

A. A member of the Village’s emergency management program is considered an employee of the Village when providing his or her labor during a disaster, an imminent threat of a disaster or a related training exercise or equipment maintenance.

B. A volunteer who registers in writing with the Village Emergency Management Committee to provide his or her own labor without compensation, other than reimbursement for travel, lodging, or meals during a disaster, an imminent threat of a disaster or a related training exercise is

considered an employee of the Village for workers compensation under Wis. Stat. ch. 102 for purposes of any claim relating to the labor provided.

4-9. TEMPORARY LOCATION OF VILLAGE GOVERNMENT.

A. Whenever during a state of emergency it becomes imprudent, inexpedient, or impossible to conduct the affairs of the Village at the Village Hall, the Village Board of Trustees may meet at any place within or outside of the territorial limits of the Village of Rochester by call of the Village President or his/her successor, and shall proceed to establish and designate by ordinance, resolution, or other manner, alternate or substitute places as temporary locations of the government where all, or any part of, the public business may be transacted and conducted during the emergency situation.

B. Exercise of Governmental Authority. While the public business is being conducted at a temporary location, the Village Board and other officers of the Village government shall possess and exercise all the executive, legislative, administrative and judicial powers and functions conferred on the body and officers under state law. Those powers and functions, except judicial, may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law. All acts of the Village Board and Village officers shall be as valid and binding as if performed within the territorial limits of the Village of Rochester.

4-10. NATIONAL INCIDENT MANAGEMENT SYSTEM – INCIDENT COMMAND SYSTEM.

The Village of Rochester has resolved to adopt the National Incident Management System (NIMS), and its component Incident Command System (ICS), as the standard for all incident management in the Village and shall endeavor to remain compliant with all standards and requests of the state and federal officials.

4-11. HAZARDOUS SUBSTANCES.

A. Prohibited Discharge. No person may discharge or release a hazardous substance in violation of state or federal law in the Village of Rochester.

B. Emergency Response. A Declaration of Emergency is not required for the immediate emergency response to a hazardous substance discharge or potential discharge under this section, provided that, if appropriate, a Declaration of Emergency shall be made as soon as possible.

1. A person who possesses or controls a hazardous substance that is released, or who causes the release of a hazardous substance, shall take the actions necessary to protect public health and safety and prevent damage to property.

2. The Village's emergency response to a discharge or potential discharge of a hazardous substance shall be made pursuant to the provisions of Wis. Stat. chapter 323, subchapter VII and the applicable state, county and Village emergency plans. The Fire Chief, the head of the contracted law enforcement agency, and/or the Emergency Management Coordinator may make orders in accordance with said provisions.

3. If no emergency procedure for the response to a reportable hazardous substance discharge, or a potential discharge, is included in the emergency plans, the Fire Chief , the head of the contracted law enforcement agency, and/or the Emergency Management Coordinator shall have the authority to develop an emergency procedure tailored to the specific type of discharge and issue orders in accordance with that procedure.

4. In the event of a hazardous substance discharge that is not required to be reported under state or federal law, the Fire Chief shall have the authority to develop a plan and issue orders for the remediation of the discharge.

C. Recovery of Costs. A person who possessed or controlled a hazardous substance involved in a release or potential release, and/or the person who caused a hazardous substance release or potential release, shall reimburse the Village for actual, reasonable and necessary expenses incurred in responding to the release or potential release.

D. Site access. Access to any site, public or private, where a hazardous substance discharge is indicated or suspected shall be provided to the contracted Fire Company, the Emergency Management Coordinator, law enforcement and any other emergency personnel required for the purpose of evaluating the threat to the public and monitoring containment, cleanup, and restoration activities.

4-50. VIOLATIONS AND PENALTIES; CIVIL LIABILITY

A. Any person who violates any provision of this Chapter or who refuses or intentionally fails to comply with the directives of emergency management authorities promulgated under this Chapter during a state of emergency, during any training program or exercise, or as otherwise set forth in this Chapter shall be subject to a penalty as provided by Chapter 50 of this Municipal Code.

B. Civil liability. Any person in violation of this Chapter shall be liable to the Village of Rochester for any expenses incurred by the Village or for any loss or damage sustained by the Village by reason of any violation of this Chapter.

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CHAPTER 5 TRAFFIC CODE

5-1. STATE TRAFFIC LAWS ADOPTED.

Except as otherwise specifically provided in this chapter, the statutory provisions in Wis. Stat. chs. 340 to 349 and Wis. Stat. ss. 167.31 and 941.01, describing and defining regulations with respect to vehicles and traffic, and Wis. Admin. Code ch. Trans, describing and defining regulations with respect to standards for motor vehicle equipment, for which the penalty for a violation thereof is a forfeiture, are adopted and by reference made a part of this chapter as though fully set forth herein. Any act required to be performed or prohibited by any part of such chapters or sections incorporated herein by reference is required or prohibited by this chapter. Any future amendments, revisions or modifications of the chapters or sections incorporated herein are intended to be made part of this chapter in order to secure uniform statewide regulation of traffic on the highways, street and alleys of the State and to secure uniform regulation of motor vehicle equipment which is used on the highways, streets and alleys of the State and Village. The statutes and regulations adopted herein shall be cited by this chapter number, followed by the applicable statute or regulation number. This chapter shall be enforced by the contracted law enforcement agency of the Village or any law enforcement officer authorized by law. Where the word “sheriff” is used in this Chapter, it shall mean the head of the Village’s contracted law enforcement agency and his or her authorized law enforcement officers and deputies.

5-2. SPEED LIMITS.

A. State Statutes Adopted. The provisions of Wis. Stat. ss. 346.57, 346.58 and 346.59, relating to speed restrictions of vehicles are hereby adopted as though fully set forth herein, except as specified in subsection B.

B. Modified Speed Limits. Pursuant to Wis. Stat. s. 349.11, the Village Board may modify the statutory speed limits in accordance with the requirements of a particular area, and such modified speed limit shall be effective upon the posting of appropriate signs giving notice of such limit.

5-3. DISORDERLY CONDUCT WITH A MOTOR VEHICLE PROHIBITED.

A. No person shall operate a vehicle within the Village upon premises held out to the public for use their motor vehicles whether such premises are publicly or privately owned, and whether or not a fee is charged for the use thereof, in a manner which demonstrates carelessness or indifference to the person or property of the operator or of others, or in a manner which is boisterous, raucous, unreasonably loud or otherwise disorderly.

B. Penalty. Any person who violates the provisions of this section shall be subject to a forfeiture of not less than $50.00 for a first offense, and not more than $100.00 for second and subsequent offenses within 12 months.

5-4. NO PARKING RESTRICTION.

No person shall at any time park or leave a vehicles machinery, equipment or appurtenance to any of the foregoing in the following streets or part thereof, to-wit:

A. Fire Lanes.

1. Fox Street from the East line of Front Street to the Fox River.

2. Spring Street from the West line of Water Street to the Fox River.

3. Washington Street within 100 feet of the Musquequack River.

B. Other.

1. North Rochester Street, on the west side, from the North line of Spring Street to the Northern Village limits.

2. Main Street, on either side, from the West line of Water Street to a point 75 feet from the East line of Front Street.

3. Wade Street on the North side, from its intersection with the West line of Front Street to a point located 200 feet West of the West line of North State Street.

4. Wade Street, on the South side, from the West side of North Front Street to its end.

5. West Fox Street, on the South side, from a point fifteen feet West of the West line of North Front Street to the West line of North Front Street.

6. North State Street, on the East side, North from the North line of Wade Street to a point located 170 feet North of the North line of Wade Street.

7. Musquequack Street, on the East side, from its intersection with the South line of Mink Ranch Road to a point 120 feet South of the South line of Mink Ranch Road.

8. Musquequack Street, on the West side, starting 110 feet South of the North line of Mink Ranch Road to its intersection with the North line of Mink Ranch Road.

9. Mink Ranch Road, on the South side, from its intersection with the East line of Musquequack Street to a point 198 feet East of the East line of Musquequack Street.

10. Mink Ranch Road, on the North side, from its intersection with the East line of Musquequack Street to a point 100 feet East of the East line of Musquequack Street.

11. Evergreen Drive, on the North Side, starting on the common boundary between the Village of Rochester, Racine County, Wisconsin, and the Village of Waterford, Racine County, Wisconsin and ending at a point 712.3 feet along the right-of-way line Southeasterly thereof.

12. Evergreen Drive, on the South Side, from a point 605 feet Southwest of the Village's common boundary with the Village of Waterford along the right of way line to a point 456 feet Southwest of the boundary with the Village of Waterford.

13. Evergreen Drive, on the South Side, from a point 312 feet Southwest of the Village's common boundary with the Village of Waterford along the right of way line to a point 171 feet Southwest of the boundary with the Village of Waterford.

5-5. THIRTY MINUTE PARKING (LOADING ZONE).

Parking shall be limited to 30 minutes between the hours of 7:00 a.m. and 9:00 p.m. on the following streets, for the purpose of loading and unloading vehicles. No parking shall be allowed in these areas at any other time:

A. The North side of Spring Street from the East line of North Rochester Street to the West line of Washington Street; and

B. The West side of South Front Street from the South line of State Street to the Village limits.

5-6 NIGHT PARKING RESTRICTION.

A. All parking is prohibited, except by permit, on all State and County Highways and Village Streets within the Village limits, as follows: no person, excepting physicians on emergency calls or other emergency vehicles, shall park on said streets and highways between the hours of 2:00 a.m. and 6:00 a.m. of any day.

B. Overnight parking permits, for a maximum of two vehicles (as described below) per residence, may however be issued by the Village Clerk. The Village Board reserves the right to review and /or revoke any permit. Such a permit shall be solely for parking of a vehicle in front of said residence between the hours of 2:00 a.m. and 6:00 a.m., and shall be valid for a six month period from January 1 to June 30 and July 1 to December 31. The fee for an overnight parking permit shall be in an amount determined by the Village Board and set forth on the Fee Schedule, and if a permit is issued for a period of less than six months the fee will be prorated, subject to a minimum charge of one-tenth of a six-month permit. No such permit may be issued for any of the restricted parking areas specified in s. 5-4 of this Chapter. The permit shall be prominently displayed in the windshield of the vehicle.

1. No overnight parking permits will be issued for Main Street between Front Street and State Street (both sides), Ag School Road, Beck Drive, Camelback Mountain Road, English Settlement Avenue, Evergreen Drive, Fairview Street, Fox Grove Drive, Mather Drive, Milwaukee Avenue, Oak Street, Oak Knoll Road, Ridge Line Road, N. River Road, Rowntree Road, Schneider Lane, Seidel Drive, Vista View Drive, Washington Avenue, Way-Mar Lane; or for the following subdivisions; Buckley, Camelback Farms, Country Aires, Coyote Territory, Fairview Heights, Hidden Acres, Honey Creek, Longview Heights, Rock Ridge, Scotsdale Estates, Stoneridge, Mink Ranch, Fox Knoll Estates, and Weber Estates.

2. Night parking permits shall be issued for the following types of vehicles only:

   a. Passenger Cars

   b. Light Pick-up Trucks

   c. Light Vans

3. Temporary or emergency on street parking will be permissible in the Village Limits for up to three days. Vehicle owners must provide proper notification to the Racine County Sheriff's Department office.

5-7. ANGLE PARKING RESTRICTION.

Angle parking only is permitted on Main Street from Front Street to State Street; and on South State Street from Fox Street to Main Street on the East side of the street only.

5-8. PARKING AND MODIFIED SPEED LIMIT SIGNS.

The Public Works Manager is hereby authorized and directed to procure, erect, and maintain appropriate standard signs conforming to the rules of the Wisconsin Department of Transportation giving notice of the parking restrictions and modified speed limit provisions of this Chapter. No parking restriction or modified speed limit provision of this Chapter shall be enforced unless and until such signs are erected and in place and sufficiently legible to be seen by an ordinarily observant person.

5-9. SNOW EMERGENCY.

The Village President or Public Works Manager shall be authorized to declare a snow emergency at such times as conditions require, and during such periods of Snow Emergency, parking on one or both sides of Main Street between Front Street and State Street shall be prohibited. The parking restrictions will be announced at the time the Snow Emergency is declared. Enforcement of the parking restrictions herein contained shall not be implemented until notice of the Snow Emergency and parking restrictions has been duly posted and noticed.

5-10. WINTER PARKING RESTRICTIONS.

No person shall park a motor vehicle on Evergreen Drive or Fox Grove Drive between November 1 and April 1.

5-11. REMOVAL OF ILLEGALLY PARKED VEHICLES.

In the event a vehicle remains illegally parked for more than a 24-hour period without being moved, or in an emergency, or when impeding traffic or posing a danger, or to facilitate snow removal, the Village may cause to be removed any vehicle parked in violation of the restrictions contained herein. The cost of such removal and vehicle storage shall be charged to the owner of the vehicle in addition to any forfeiture imposed as a penalty. Vehicles not reclaimed within seven days shall be deemed abandoned and the provisions of section 5-12 shall apply.

5-12. ABANDONED VEHICLES.

A. Prohibition. No person shall leave unattended any motor vehicle, trailer, semitrailer or mobile home on any public highway or public or private property for such time and under such circumstances as to cause the vehicle to reasonably appear to have been abandoned. Any such vehicle in the same place for 48 hours or more, or parked on a public roadway in such a manner as to constitute a hazard, or parked in a posted no-parking zone shall be deemed abandoned and a public nuisance. A motor vehicle shall not be considered abandoned when it is out of ordinary public view or when designated as not abandoned by the sheriff or his or her duly authorized representative. See also s. 8-4 of this Municipal Code.

B. Removal of Abandoned Vehicles. Any law enforcement officer who discovers any motor vehicle, trailer, semitrailer or mobile home which has been abandoned on any public highway or public property shall cause the vehicle to be removed or towed to a suitable place of impoundment. Upon removal, the law enforcement officer shall notify the sheriff of the abandonment and the location of the vehicle.

C. Impoundment; Disposal of Junked Vehicles. Any vehicle in violation of subsection A. shall be impounded until lawfully claimed or disposed of under subsection E., except that if it is deemed by the sheriff that the cost of towing and storage charges for the impoundment would exceed the value of the vehicle, the vehicle may be junked or sold prior to expiration of the impoundment period upon determination by the sheriff or chief of police that the vehicle is not stolen or otherwise wanted for evidence or other reason. All substantially complete vehicles in excess of 19 model years of age shall be disposed of in accordance with subsection E.

D. Responsibility for Costs. The sheriff is authorized to charge a reasonable fee for storage of the vehicle and may also recover the actual cost of towing from the owner or lienholders of record. Pursuant to Wis. Stat. s. 342.40(3)(b), this section does not apply to stolen vehicles.

E. Sale of Abandoned Vehicles.

1. Any vehicle which is deemed abandoned by the sheriff or a duly authorized Village representative and not disposed of under subsection C. shall be retained in storage for a

minimum period of ten days after certified mail notice has been sent to the owner and lienholders of record to permit reclamation of the vehicle after payment of accrued charges. Such notice shall set forth the year, make, model and serial number of the abandoned vehicles, the place where the vehicle is being held, and shall inform the owner and lienholders of record of their right to reclaim the vehicle. The notice shall state that failure of the owner or lienholders to exercise their rights to reclaim the vehicle under this section shall be deemed a waiver of all right, title and interest in the vehicle and a consent to the sale of the vehicle.

2. A public notice of the sale shall be posted at the office of the sheriff or in the courthouse. The posted notice shall be in the same form as the certified notice sent to owners and lienholders of record under subsection 1.

3. Each vehicle not reclaimed by the owner or lienholders may be sold. The Village may dispose of the vehicle by sealed bid or auction sale. Any interested person may offer bids on each abandoned vehicle to be sold. At such sale the highest bid for any vehicle shall be accepted unless the bid is deemed inadequate by the sheriff or a duly authorized Village representative, in which event all bids may be rejected. If all bids are rejected or no bid is received, the Village may re-advertise the sale, adjourn the sale to a definite date, sell the vehicle at a private sale or junk the vehicle.

4. The purchaser of a vehicle under this section shall have ten calendar days to remove the vehicle from the storage area, but shall pay the storage fee established by the sheriff for each day the vehicle remains in storage after the second business day following the sale. The Village shall supply the purchaser with a completed form supplied by the state department of transportation enabling the purchaser to obtain a regular certificate of title for the vehicle. If the purchaser fails to remove the vehicle within ten calendar days after the sale, the purchaser shall forfeit all interest in the vehicle and it shall be deemed abandoned and may be resold.

5. Within five days after the sale or disposal of a vehicle as provided in this section, the Village shall notify the state department of transportation of the sale or disposition of the vehicle.

F. Release of Personal Property. Personal property contained in all vehicles impounded under this section shall be inventoried. All such property which is determined not to be stolen, evidence, or contraband may be released to the owner upon request and upon proof of identification and ownership. No payment shall be required to obtain release of these items. Personal property shall be released during regular Village Hall office hours. Personal property not claimed by the owner within five days of the sale or disposal of the vehicle shall be disposed of in accordance with the procedures established by state law or this Code for abandoned personal property.

5-13. SIZE, WEIGHT AND LOAD RESTRICTIONS.

A. Class "B" Highways Designated. All streets and alleys within the Village and all heavy traffic routes herein designated, except State highways, and except Racine County trunk highways maintained by the County and designated as Class “A" by the Racine County Board, are hereby designated as Class “B” highways and shall be subject to the weight limitations imposed by Wis. Stat. s. 348.16.

B. Restrictions on Use of Streets by Heavy Traffic. No vehicle or combination of vehicles not operating completely on pneumatic tires or which has a combined vehicle-load weight exceeding 10,000 lbs. shall be operated or moved on any street or alley not part of the heavy traffic route designated in sub. E., except to obtain orders for, move or deliver supplies or commodities to or from a place of business or residence facing thereon, provided the weight of the vehicle and load on such other street, when permitted, shall not exceed the limitations of Wis. Stat. ss. 348.15 or

348.16(3) pertaining to Class “A” highways and deliveries on Class “B” highways.

C. Stopping and Parking Restrictions.

1. Vehicles exceeding 10,000 lbs. permitted to operate and move on streets which are not heavy traffic routes as herein defined shall in no case stop or park upon any such street not a part of the designated heavy traffic routes for a period of time in excess of 30 minutes between 8 a.m. and 6 p.m. No stopping or parking such vehicles on or off streets not designated as heavy traffic routes shall be permitted at any other time.

2. A maximum of one semi-tractor, excluding semi-trailer, or motor vehicle designed to be operated by an individual holding a commercial driver’s license, may be parked at the residence of the operator in a residentially zoned district. Motors shall not idle for more than 15 minutes within a one hour time period.

D. Seasonal and Special Weight Restrictions. The Village Board may authorize the Public Works Manager to post seasonal or special weight restrictions on Village streets as set forth in Wis. Stat. s. 348.17.

E. Heavy Traffic Route.

1. There shall be recognized in the Village a heavy traffic route for the operation of all heavy traffic in the Village of Rochester. Heavy traffic is defined as any vehicle, excluding a motor bus, which exceeds, in its gross weight, 10,000 pounds. The heavy traffic route shall consist of the following streets and highways within the Village:

a. Main Street (County Highway D)

b. Front Street (County Highway W)

c. West Street (County Highway FF)

d. South Rochester Street (County Highway J)

e. Milwaukee Avenue (State Highway 36)

f. Beck Drive (State Highway 20)

g. Plank Road (County Highway A)

h. County DD (County Highway DD)

2. No heavy traffic shall operate on any street, highway or alleyway in the Village not a part of such heavy traffic route, except such operation shall be permitted for the following purposes:

a. For the obtaining of orders for supplies or the moving or delivering of supplies or commodities to or from any place of business or residence which has an entrance on such street or highway.

b. For the passage of emergency vehicles.

c. For the passage of vehicles operated for purposes of performing maintenance to Village streets or installations, snow removal, street cleaning, refuse removal or curb pickup and for the passage of vehicles involved in maintenance or repair of public utility installations within the Village.

3. Notice of the existence of the heavy traffic route shall be posted at all entrances to the corporate limits of the Village. This section is adopted in conformance with Wis. Stat. s. 349.17.

F. Penalties. In every instance where a violation of this section occurs, the penalty to be imposed shall be consistent with the current State of Wisconsin Department of Transportation "per pound" overload violation schedule, which is established by the Wisconsin Department of Transportation and which is amended from time to time, and which is adopted herein in its present format and as from time to time amended.

5-14. COMPRESSION BRAKES PROHIBITED.

It shall be unlawful for any vehicle equipped with compression brakes to down shift and release the clutch to utilize the vehicle's engine to slow in order to meet proper speed restrictions within the Village, except in case of extreme emergency.

5-15. UNATTENDED VEHICLES.

Every passenger motor vehicle, including snowmobiles, shall be equipped with a lock suitable to lock either the starting lever, throttle, steering apparatus, gear shift lever or ignition system, and no person may permit a motor vehicle in the person's custody from standing or remaining unattended on any street, road, or alley or in any other public place, except an attended parking area, unless either the starting lever, throttle, steering apparatus, gear shift or ignition of the vehicle is locked and the key for that lock is removed from the vehicle. This section shall not apply to motor vehicles operated by common carriers of passengers under Wis. Stat. ch. 194.

5-50. VIOLATIONS AND PENALTIES.

Any person who fails to comply with any provision of this Chapter or any regulation, rule or order made hereunder shall be subject to a penalty as provided in Chapter 50 of this Municipal Code. Where a specific penalty is set forth in this chapter for a violation, that penalty shall apply.

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CHAPTER 6 PUBLIC WORKS

6-1. PUBLIC WORKS COMMITTEE.

The Public Works Committee will be comprised of members as specified in s. 1-24 of this Municipal Code.

6-2. SIDEWALK CONSTRUCTION AND RECONSTRUCTION.

Every sidewalk hereafter constructed in the Village shall be:

A. not less than four feet wide in residentially zoned areas and not less than five feet wide in non-residential areas;

B. four inches thick, except where driveways cross the walk where it shall be six inches thick;

C. built of Portland Cement concrete complying with WisDOT Standard Specification s. 602 (minimum six bag mix air entrained);

D. to the grade and line established by the Village;

E. provided with transverse expansion joints every 50 feet at right angles to direction and grade with expansion fillers one-half inch thick;

F. provided with tooled or sawn contraction joints each five feet;

G. constructed on a minimum two-inch thick compacted gravel base;

H. having fill to its grade adjacent except on sides abutting directly on the traveled portion of the street or on a building;

I. located within the public right-of-way not more than one foot from the side of the dedicated boundary of the street; and

J. provided with a cross-slope to drain not exceeding two percent (1/4 inch per foot) pitched toward the ditch or roadway.

6-3. SIDEWALK MAINTENANCE, REPAIR AND SNOW AND ICE REMOVAL.

A. For the purposes of this section "sidewalks" includes approaches to crosswalks at street intersections.

B. Every owner of land in the Village shall, at the owner’s cost and expense:

1. Keep all sidewalks adjacent to the owner’s land in such repair as to be safe for public travel; and

2. Keep all sidewalks adjacent to the owner’s land free and clear of snow, ice, substances and obstructions which cause the same to be unsafe for public travel.

3. When ice has so formed upon any sidewalk that it cannot be removed, the sidewalk shall be sprinkled with sand, salt, or other like material so as to prevent the sidewalk surface from being dangerous.

C. Subject to s. B.3., every owner or occupant of any lot or lots within the corporate limits of the Village of Rochester, in front or near the line of which there is a sidewalk commonly used by the public, shall clear said sidewalk of all snow and/or ice within 24 hours after the cessation of each and every snow and/or ice storm; and if such owner or occupant shall fail to remove the snow and/or ice from any such sidewalk within the time aforesaid, the President of the Village, any member of the Village Board, or the Public Works Manager may cause such sidewalk to be cleared of snow and/or ice forthwith, and the reasonable charges for such services shall be paid out of the village treasury, and the party in violation for not removing such snow and/or ice, shall pay a minimum charge per hour or any portion thereof, in an amount set by the Village Board and placed in the Fee Schedule, for each such incident of snow and/or ice removal, and also be subject to penalties as set forth in ch. 50 hereof. If the charge for snow and/or ice removal is not paid, it shall become a special tax against the property pursuant to Wis. Stat. s. 66.0907(5).

6-4. NOTICE OF AND DUTY TO REPAIR, REMOVE AND REPLACE, OR CONSTRUCT A SIDEWALK.

A. Sidewalk Construction. The Village Board may by ordinance or resolution determine where sidewalks shall be constructed, and may order by ordinance or resolution that sidewalks be laid.

B. Sidewalk Repair or Replacement. The Village Board or the Public Works Committee may order any sidewalk which is unsafe, defective, or insufficient to be repaired or removed and replaced with a sidewalk in accordance with the standard fixed by this chapter.

C. Notice and Order. A copy of the ordinance, resolution or order to lay, remove and replace, or repair a sidewalk shall be served on the owner, or agent of the owner, of the lot fronting the area on which the work is ordered (the “Order”). The Public Works Committee or Public Works Manager may serve the Order as set forth in Wis. Stat. s. 66.0907(3)(c), either by personal service, certified or registered mail, or publication as a Class 1 Notice together with mailing by First Class Mail. The Order shall allow 20 days from the date of service to lay, remove, replace or repair a sidewalk, and shall include the specifications to be followed.

D. Appeal. Any person served with an Order pursuant to subsection C. shall have ten days from the date of service to file an appeal with the Village Clerk and request a hearing before the Village Board. The hearing shall be held at the next Village Board meeting. A written decision by the Village Board shall be issued within ten days of the hearing, and that decision shall affirm the Order, amend the Order, or withdraw the Order. A property owner adversely affected by the Board’s decision may seek judicial review by commencing an action in Circuit Court within 30 days after the decision is issued. While the Order is being appealed, the Order shall not be enforced against that property.

E. Default of Owner. In case of failure to lay, remove, replace or repair such sidewalk within the time required by the Order, or failure to appeal the Order, the Village may cause the work to be done at the expense of the owner. All work for the construction of sidewalks shall be let by contract to the

lowest responsible bidder in conformance with Wis. Stat. s. 66.0907(3)(d), except as provided in Wis. Stat. s. 62.15(1).

F. Minor Repairs. If the cost of repairs of any sidewalk in front of any lot or parcel does not exceed $100.00, the Public Works Committee or Public Works Manager, if so required by the Village Board, may immediately repair the sidewalk, without Notice and Order, and charge the cost of the repair to the owner of the lot or parcel of land, as provided herein.

G. Expense. The Public Works Committee shall keep an accurate account of the expenses of laying, removing and repairing sidewalks pursuant to this section, and shall report the expenses to the Village Clerk. The Clerk shall enter the amount charged to each lot in the tax roll as a special tax, which shall be a lien against the property and collected like other taxes on real estate, pursuant to Wis. Stat. s. 66.0907(3)(f).

H. The Village Board may, in a case by case analysis, determine that it is in the best interest of the Village and its residents to provide for payment of sidewalk repairs in an installment method. Upon such a determination, the Board shall establish an annual installment payment method of up to ten such annual installments, shall approve the same by resolution, and shall advise the treasurer of such resolution, who shall establish an expense statement, all pursuant to Wis. Stat. s. 66.0907(3)(f).

I. As an alternative to the above procedure, the Public Works Committee, with the approval of the Village Board, may, at its discretion, determine that the cost of construction, reconstruction or repair of any sidewalk be made in full or in part at Village expense. In every case, however, where the damage to or destruction of the sidewalk is the fault of the property owner or tenant, the Public Works Committee shall proceed pursuant to subsections A through G above.

J. Nothing in this section shall prevent an abutting property owner from repairing his or her sidewalk at his or her expense, so long as the repair is made to Village specifications.

6-5. CURB MAINTENANCE.

When it is determined necessary to construct curbs within the Village of Rochester by the Public Works Committee, the cost therefore shall be borne by the abutting property owner.

6-6. OCCUPANCY OF RIGHTS-OF-WAY.

A. General Provisions.

1. Purpose and Findings.

a. Purpose.

(1) In the exercise of governmental functions the Village has priority over all other uses of the public rights-of-way. The Village desires to anticipate and minimize the number of obstructions and excavations taking place therein and to regulate the placement of facilities in the rights-of-way to ensure that the rights-of-way remain available for public services and safe for

public use. The taxpayers of the Village bear the financial burden for the upkeep of the rights-of-way and a primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by persons who locate facilities therein.

(2) The purpose of this Section is to provide the Village a legal framework within which to regulate and manage the public rights-of-way, and to provide for recovery of the costs incurred in doing so. This Section provides for the health, safety and welfare of the residents of the Village as they use the rights-of-way of the Village, as well as to ensure the structural integrity of the public rights-of-way.

b. Findings.

(1) The Village finds increased use of the public rights-of-way and increased costs to the taxpayers of the Village and that these costs are likely to continue into the foreseeable future.

(2) The Village finds that occupancy and excavation of its rights-of-way causes costs to be borne by the Village and its taxpayers, including but not limited to:

(a) Administrative costs associated with public right-of-way projects, such as permitting, inspection and supervision, supplies and materials.

(b) Management costs associated with ongoing management activities necessitated by public right-of-way users.

(c) Repair or restoration costs to the roadway associated with the actual excavation into the public right-of-way.

(d) Depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public rights-of-way.

2. In response to the foregoing facts, pursuant to Wis. Stat. ss. 61.34, 61.36, 196.58, and any other statute granting the Village the power to manage and control its rights-of-way and the utilities operating in the Village, the Village hereby enacts this Section of the Municipal Code, relating to administration of and permits to excavate, obstruct and/or occupy the public rights-of-way. This section imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.

B. Definitions. The following definitions apply in this Section. References hereafter to “sections” are unless otherwise specified references to subsections in this Section. Defined terms remain defined terms whether or not capitalized.

“Applicant” means any person requesting permission to excavate, obstruct and/or occupy a

right-of-way.

"Village" means the Village of Rochester, Wisconsin, a Wisconsin municipal corporation.

"Emergency" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property; or requires immediate repair or replacement in order to restore service to a customer.

"Engineer" means the Village Engineer or his/her designee.

"Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

"Facilities" means all equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include but is not limited to poles, wires, pipes, cables, cabinets, boxes, underground conduits, ducts, manholes, vaults, fiber optic cables, lines, and other structures and appurtenances.

"In," when used in conjunction with "right-of-way," means over, above, within, on or under a right-of-way.

"Local representative" means a local person or persons, or designee of such person or persons, authorized by an applicant or permittee to accept service and to make decisions for that applicant or permittee regarding all matters within the scope of this Chapter.

"Obstruct" means to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

"Permittee" means any Person to whom a permit to occupy, excavate or obstruct a right-of-way has been granted by the Village under Chapter 6 of this Code.

"Person" means corporation, company, association, firm, partnership, limited liability company, limited liability partnership or other entity and individuals and their lessors, transferees, assignees and receivers.

"Public Utility" has the meaning provided in Wis. Stat. s. 196.01(5).

"Restore" or "Restoration" means the process by which an excavated right-of-way and surrounding area, including pavement and foundation is reconstructed, per the Standard Specifications for Public Works Construction and Public Works Manager specifications.

"Right-of-Way" means the surface and space above and below an improved or unimproved public roadway, highway, street, bicycle lane and public sidewalk in which the Village has an interest, including other dedicated rights-of-way for travel purposes.

C. Administration. The Public Works Manager and the Village Clerk, or their designees, are responsible for the administration of the rights-of-way, and the permits and ordinances related thereto.

1. Requirements for Right-of-Way Occupancy.

   a. Each person who has, or seeks to have, facilities located in any right-of-way shall meet the requirements set forth herein.

   b. No person may construct, install, maintain, repair, remove, relocate or perform any other work on, or use any equipment or any part thereof in any right-of-way unless that person meets the requirements set forth herein.

   c. Nothing herein shall be construed to repeal or amend the provisions of a Village ordinance requiring persons to plant or maintain the parkway in the area of the right-of-way between their property and the street curb or pavement or other similar activities. Persons performing such activities shall not be required to obtain any permits under this Chapter.

2. Reporting Obligations. It is in the best interests of all affected parties to attempt to coordinate construction in the public right-of-way whenever it is reasonably possible. Therefore, periodic reporting by persons intending to work in the right-of-way of known construction plans will be useful to achieve this objective.

   a. Every person intending to work in the right-of way shall, no later than January 1 of each year, file a construction and major maintenance plan with the Public Works Manager. The Public Works Manager shall make available at the time of such filing, and on January 15 of each year the Village's construction and major maintenance plan. The person's plan and the Village's plan shall be submitted on a form prescribed by the Public Works Manager and shall contain the information determined by the Public Works Manager to be necessary to facilitate the coordination and reduction in the frequency of excavations of rights-of-way. The plan shall include, but shall not be limited to, the following information:

      (1) The locations and the estimated beginning and ending dates of all projects planned to be commenced during the next calendar year; and

      (2) The tentative locations and estimated beginning and ending dates for all projects contemplated for the two years following the next calendar year.

   b. By February 15 of each year, the Public Works Manager will have available for inspection in his or her office a composite list of all projects of which the Public Works Manager has been informed in the annual plans. All persons are responsible for keeping themselves informed of the current status of this list.

   c. Thereafter, by February 1, each person may change any project in its list and must notify the Public Works Manager of all such changes in said list. The Public Works Manager will make all such changes available for inspection in his or her office. Notwithstanding the foregoing, a person may at any time join in a project of another person listed by the other person or undertake any maintenance or construction project not listed in person's plan.

D. Permit to Excavate in Right-of-Way Required.

1. Excavation Permit Required. Except as otherwise provided in this chapter or other chapters of the Village of Rochester Municipal Code, no person shall excavate any right-of-way without first having obtained an excavation permit from the Public Works Manager. A copy of any permit issued under this Chapter shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Village upon request.

2. Excavation Permit Application. Application for a permit shall be made to the Public Works Manager. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

a. Applicant Information. The information provided to the Public Works Manager at the time of application shall include, but not be limited to:

(1) Each applicant's name, Diggers Hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers. If the applicant intends to hire a contractor, the name and contact information for the contractor shall be provided, but the applicant shall be liable for the requirements herein.

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of application.

(3) A certificate of insurance on a form prescribed by the Public Works Manager, naming the Village of Rochester as an additional insured, or a cash or performance bond, in an amount determined by the Village Engineer, if the Public Works Manager has reasonable grounds to question the financial responsibility or compliance ability of the applicant.

(4) Execution of an indemnification agreement in a form prescribed by the Public Works Manager.

(5) If the applicant regularly performs work in the Village rights-of-way, the applicant may provide the information required in subsections (1) through (4) herein annually, provided that the applicant shall be liable to keep said information up-to-date and shall notify the Public Works Manager within 10 calendar days following the date on which the applicant has knowledge of any change. If applicable, the applicant's insurer shall be required to notify the Village 30 days prior to a cancellation or reduction of coverage or limits.

b. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities that are part of applicant's proposed project, whether above- or below-ground.

c. Payment of all money due to the Village for:

(1) Applicable permit fees and costs as set forth below;

(2) Subject to section 6-6.D.2.d., unpaid fees or costs due for prior excavations; or

(3) Subject to section 6-6.D.2.d, any loss, damage, or expense suffered by the Village because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the Village.

d. The Public Works Manager shall not deny an applicant an excavation permit because of a dispute between the Village and the applicant, related to sections 6-6.D.2.c(1) or (3) if:

(1) The dispute has been adjudicated in favor of the applicant;

(2) The dispute is the subject of any appeal filed by the applicant and no decision in the matter has as yet been rendered.

e. The Public Works Manager may deny an applicant a permit pursuant to the provisions of this Section. See specifically subsection s. 6-6.I.

3. Excavation Permit Fee. The Excavation Permit Fee shall be established by the Village Board in an amount sufficient to recover the costs incurred by the Village. This fee shall recover administrative and inspection costs. Payment of said fees shall be collected prior to issuance of the permit. However, the Village Clerk may, with the advice and consent of the Village Board, establish a fee collection process from governmental agencies and private utilities in order to expedite the permitting system and recognize that certain excavations are deemed emergencies.

4. Waiving of Fees. Fees shall not be waived unless the work involved is a direct result of the Public Works Manager's demand that a plant owned by a utility be removed or relocated or unless waived by the Finance Committee on appeal.

5. For those permit applications which provide for a substantial undertaking of excavation within the public right-of-way attended by disruption of the general public and traffic, the Public Works Manager is authorized to assess the actual cost of a Village employee's time engaged in the review and inspection of the anticipated work multiplied by a factor determined by the respective department to represent the Village's cost for statutory expense, benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.0, plus the cost of mileage reimbursed to

Village employees which is attributed to the work, plus all consultant fees associated with the work at the invoiced amount plus ten percent for administration, except as may be limited by Wis. Stat. s. 66.0628.

6. Village Exemption. The Village and its contractors shall not pay permit fees for excavations due to general government functions.

7. Permit fees paid for a permit that the Public Works Manager has revoked are not refundable.

E. Right-of-Way Work; Locating Wires; Restoration.

1. Working in the Right-of-Way.

a. Frozen ground. No openings shall be permitted when the ground is frozen in any Village street, sidewalk or parking area between November 15 and April 1 except where necessary or in an emergency as determined by the Public Works Manager.

b. Removal of paving. In opening any street or other public way, all paving or ballasting materials shall be saw cut and removed with the least possible loss of or injury to surfacing materials and, together with the excavated material from trenches, shall be placed so as to cause the least practicable inconvenience to the public and permit free flow of water along gutters. All pavement shall be straightedge or saw cut in a straight line, on all sides of the opening to a minimum depth of two inches.

c. State and county trunk highways. Notwithstanding any other provision to the contrary, state and county trunk highway crossings to install services, laterals, etc., shall be effected through auguring, jacking or tunneling as opposed to making an opening in the highway itself. The applicant shall also obtain the necessary permits from the respective highway commissioners.

d. Protection of the public. Every permittee shall enclose with sufficient barriers each opening which he or she may make in the rights-of-way of the Village. All machinery and equipment shall be locked or otherwise effectively safeguarded from unauthorized use when not being used by the permittee, and/or his or her agents or employees. Amber lights shall be placed at each end of the opening and in other locations necessary to give adequate warning to the traveling public. Except by special permission from the Public Works Manager, no trench shall be excavated more than 250 feet in advance of pipe laying nor left unfilled for more than 500 feet where pipe has been laid. All necessary precautions shall be taken to guard the public effectually from accidents or damage to persons or property through the period of the work.

e. Restoring street surface. In making any opening, the paving materials, sand, gravel and earth or other material moved or penetrated and all surface monuments or hubs shall be removed and replaced as nearly as possible to their original condition or position and the same relation to the remainder as before. Any

excavated material which, in the opinion of the Public Works Manager, is not suitable for refilling shall be replaced with approved backfill material. When the sides of the trench will not stand perpendicular, sheathing and braces shall be used to prevent caving. All trench backfilling under pavement, driveways, shoulders and sidewalk shall be of thoroughly compacted granular backfill. All rubbish shall be immediately removed. In refilling the opening, the granular material shall be puddled or laid in layers not more than six inches deep and in each layer rammed, tamped or flushed to prevent caving. No timber, bracing, lagging, sheathing or other lumber shall be left in any trench. All street openings shall have at least eight inches of compacted crushed road gravel placed on the top of the opening and shall have the original surface restored to the same type and thickness.

f. Backfilling trenches. All trenches shall be backfilled within 24 hours after being opened, unless otherwise permitted by the Public Works Manager, and the surface shall be restored within 72 hours after being opened. The Public Works Manager reserves the option to complete restoration of any excavation if the above-mentioned time limits are exceeded, assessing any cost thereof pursuant to section 6-6.E.5.

g. Parkways. Parkways shall be restored with sod or seed.

2. Locating Wire Required. Any person installing a nonconductive main or lateral shall also install a locating wire for marking the location of the main or lateral, as follows:

a. If the main to which the main or lateral is being connected contains a locating wire, the person shall connect one end of the locating wire for the main or lateral to the existing wire located on the stub or the main.

b. If the main to which the main or lateral is being connected does not contain a locating wire, the person shall attach the locating wire for the main or lateral to its junction with the stub or main.

c. The person shall continue the installation of the locating wire for the full length of the main installed, and from the lateral to point where the lateral enters the structure. The person shall continue to run the locating wire vertically up the outside of the structure, from the location where the lateral entered the structure, and shall encase the uppermost four feet (or more) of the vertical portion of the locating wire in a one-inch Schedule 80 PVC conduit, with cap, which shall be accessible and uniform. The conduit shall extend at least four inches above the final grade, and shall hold at least one foot of excess wire. There shall be no plantings at the site that would damage the conduit or locating wire, or prevent the detection of the location of the locating wire.

3. The Permittee shall be required to restore the public right-of-way in accordance with the Standard Specifications for Public Works Construction and Public Works Manager specifications, subject to inspection and acceptance by the Village Engineer. In addition to restoring its own work, the Permittee must restore the general area of the work, and the

surrounding areas, including the paving and its foundations, to the Standard Specifications for Public Works Construction and the specifications of the Public Works Manager. The Village Engineer shall inspect the area of the work and accept the work when the Engineer determines that proper restoration has been made, per the Standard Specifications for Public Works Construction and the specifications of the Public Works Manager. The Permittee shall not be required to restore the right-of-way or the general area surrounding the work to a condition which improves the pre-excavation condition.

4. Guarantees. The Permittee shall guarantee its work and shall maintain it for 12 months following its completion. During this period it shall, upon notification from the Public Works Manager, correct all work to the extent necessary, using the method required by the Public Works Manager or the Village Engineer. Said work shall be completed within ten calendar days of the receipt of the notice from the Public Works Manager, not including days during which work cannot be done because of circumstances constituting force majeure.

5. Failure to Restore. If the Permittee fails to restore the right-of-way in the manner and to the condition required by the Village Engineer or the Public Works Manager, or fails to satisfactorily and timely complete all work required by the Public Works Manager, the Village at its option may do such work. In that event the Permittee shall pay to the Village, within 30 days of billing, the cost of restoring the right-of-way.

F. Inspection; As-built Drawings.

1. Notice of Completion. When the work under any permit hereunder is begun and completed, the permittee shall notify the Public Works Manager. Upon completion, the permittee shall submit as-built drawings to the Village if required by the Village.

2. Site Inspection. The permittee shall make the work site available to the Village Engineer and the Public Works Manager and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

3. Authority of Public Works Manager. At the time of inspection the Village may order the immediate cessation of any work which poses a threat to the life, health, safety or well-being of the public. The Village may issue an order to the applicant or permittee for any work that does not conform to the applicable Village standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the applicant or permittee shall present proof to the Public Works Manager that the violation has been corrected. If such proof has not been presented within the required time, the Public Works Manager may revoke the permit pursuant to section 6-6.I.

G. Ongoing Management Fees. The cost of trimming trees or maintaining landscaping around facilities is an ongoing cost to the Village. The specific cost will be determined and a fee to offset those costs may be assessed in the future.

H. Compliance with Other Laws. Obtaining a permit to excavate and/or occupy the right-of-way does not relieve the permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other Village, County, State, or Federal rules, laws or regulations. A

permittee shall comply with all requirements of local, state and federal laws. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work. If an applicant is required to obtain a franchise or enter into an agreement pursuant to any other section of this Code, it shall do so prior to making application hereunder.

I. Revocations, Suspensions, Refusals to Issue or Extend Permits.

1. The Public Works Manager may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

   a. The applicant has not submitted the required application materials;

   b. Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival or other event;

   c. Misrepresentation of any fact by the applicant or permittee;

   d. Failure of the applicant or permittee to maintain required bonds and/or insurance;

   e. Failure of the applicant or permittee to complete work in a timely manner;

   f. The proposed activity is contrary to the public health, safety or welfare;

   g. The extent to which right-of-way space where the permit is sought is available;

   h. The competing demands for the particular space in the right-of-way.

   i. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the permittee or applicant;

   j. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;

2. Discretionary Issuance. The Public Works Manager may issue a permit where issuance is necessary:

   a. to prevent substantial economic hardship to a customer of the permittee or applicant; or

   b. to allow such customer to materially improve its utility service; or

   c. to allow the permittee or applicant to comply with state or federal law or Village ordinance or an order of a court or administrative agency.

3. Appeals. Any person aggrieved by a decision of the Public Works Manager revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the Village Board. A request for review shall be filed within ten days of the decision

being appealed. Following a hearing, the Village Board may affirm, reverse or modify the decision of the Public Works Manager.

J. Work Done Without a Permit.

1. Emergency Situations.

a. Each person shall immediately notify the Village by verbal notice on an emergency phone number provided by the Village of any event regarding its facilities that it considers to be an emergency. The person may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency the person shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this Chapter.

b. If the Village becomes aware of any emergency regarding a person's facilities, the Public Works Manager may attempt to contact the local representative of each person affected, or potentially affected, by the emergency. The Village may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the person whose facilities occasioned the emergency.

2. Non-Emergency Situations. Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently obtain a permit, and shall in addition to any penalties prescribed by ordinance, pay double the normal fee for said permit, pay double all the other fees required by this Chapter or other Chapters of the Village of Rochester Municipal Code, deposit with the Public Works Manager the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this Chapter.

K. Location of Facilities.

1. Placement.

a. Unless in conflict with state or federal law, except when existing aboveground facilities are used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.

b. All above-ground structures, cabinets or boxes shall be precisely indicated on the plans submitted pursuant to subsection 6-6.D.2.b., including the size and appearance thereof. The Public Works Manager may require alternative placement of said structures, cabinets or boxes as part of the permitting process if he or she determines that the planned placement interferes with public safety, health or welfare. The Public Works Manager may also reasonably require screening of said structures, cabinets or boxes if he or she determines that the public welfare is harmed by the potential diminution of property values in the area because of the appearance of said structures, cabinets or boxes. No above ground

facility, structure, cabinet or box may interfere with the use of the adjacent property.

c. All underground facilities shall be precisely indicated on the plans submitted pursuant to subsection 6-6.D.2.b. The Public Works Manager may require alternative placement of said facilities as part of the permitting process if he or she determines that said facilities interfere with the public safety, health or welfare. No underground facility may interfere with the use of the adjacent property.

2. Limitation of Space. The Public Works Manager may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of persons to occupy and use the right-of-way. In making such decisions, the Public Works Manager shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect the public, health, safety or welfare. Basic required municipal uses such as sewer and storm sewer mains and laterals shall be given priority in furtherance of such protection of the public health, safety and welfare.

3. Attachment to Bridges. Whenever an applicant or permittee under this section requests permission to attach pipes, conduits, cables or wires to any Village bridge structure, upon the granting of such permission, the applicant shall pay the actual cost to the Village of the administrative and engineering expense in the analysis and inspection of such installation. The owner of such pipes, conduits, cables or wires shall be entitled to no compensation for removal or relocation of the same in the case of repair, removal, or replacement of said bridge structure by the Village.

L. Relocation of Facilities.

1. Permanent Relocation.

a. A person must, promptly and at its own expense, permanently remove and relocate its facilities in the right-of-way whenever the Village, acting in its governmental capacity for the health, safety or public welfare, requests such removal and relocation. If requested, the person shall restore the right-of-way.

b. Notwithstanding subsection a., a person shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the person gives written consent to the vacation, or the person fails to use the easements and rights for a period of four years from the date of the vacation, or the reasonable costs of the relocation are first paid to the person therefore, pursuant to Wis. Stat. s. 66.1005(2).

c. A person must, promptly and at its own expense, permanently relocate its facilities in the public right-of-way if the placement or location of the facilities interferes with an adjacent property's connection to a required utility. A required utility is municipal sewer service and/or a municipal storm water service. The Village mandates connection to said required utilities for the health, safety and welfare of the public, and such connection shall not be considered to be substantially for the benefit of

any person other than the Village.

d. A person must, promptly and its own expense, permanently relocate its facilities in the public right-of-way if the right-of-way is being widened or altered for the public health, safety or welfare and the location of the facilities interferes with such widening or alteration.

2. Temporary Relocation.

a. A person must, promptly and at its own expense, temporarily protect, change or relocate its facilities in the right-of-way whenever the Village, acting in its governmental capacity for the health, safety or public welfare, requests such protection, change or relocation. If requested, the person shall restore the right-of-way.

b. A person must, promptly and at its own expense, temporarily protect, change or relocate its facilities in the public right-of-way if the placement or location of the facilities interferes with an adjacent property's connection to a required utility. A required utility is municipal sewer service and/or municipal storm water service. The Village mandates connection to said required utilities for the health, safety and welfare of the public, and such connection shall not be considered to be substantially for the benefit of any person other than the Village.

M. Interference with Other Facilities during Municipal Construction.

1. When the Village performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a person's facilities, the Village shall notify the local representative. The person or its representative shall meet with the Village's representative within 24 hours and coordinate the protection, maintenance, supporting and/or shoring of the person's facilities. The person shall accomplish the needed work within 72 hours, unless the Village agrees to a longer period.

2. In the event that the person does not proceed to maintain, support, shore or move its facilities, the Village may arrange to do the work and bill the person, said bill to be paid within 30 days.

N. Abandoned Facilities.

1. Discontinued Operations. A person who has determined to discontinue its operations in the Village must either:

a. Provide information satisfactory to the Public Works Manager that the person's obligations for its facilities under this Chapter have been lawfully assumed by another person; or

b. Submit to the Public Works Manager a proposal and instruments for dedication of its facilities to the Village. If a person proceeds under this clause, the Village may, but shall not be required to:

(1) Accept the dedication for all or a portion of the facilities; or

(2) Require the person, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or

(3) Require the person to post a bond or provide payment sufficient to reimburse the Village for reasonably anticipated costs to be incurred in removing the facilities.

c. Notwithstanding the above, any person who has unusable and abandoned facilities in any right-of-way shall remove them from that right-of-way within two years, unless the Village Board waives this requirement.

2. Abandoned Facilities. Facilities of a person who fails to comply with subsection 1., and which, for two years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition, to any remedies or rights it has at law or in equity the Village may, but shall not be required to:

a. abate the nuisance and charge the cost of the abatement to the person; or

b. take possession of the facilities; or

c. require removal of the facilities by the person, or the person's successor in interest.

3. Public Utilities. This subsection N shall not apply to a public utility, as defined by Wis. Stat. s. 196.01(5), that is required to follow the provisions of Wis. Stat. s. 196.81.

O. Reservation of Regulatory and Police Powers. The Village, by the granting of a permit to excavate, obstruct and/or occupy the right-of-way under this Chapter does not surrender or in any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or maybe hereafter granted to the Village under the Constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way by the permittee; and the permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way under this Chapter agrees that all lawful powers and rights, regulatory powers, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the Village, shall be in full force and effect and subject to the regulatory and police powers of the Village to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the Village pursuant to such powers.

P. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Section is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Q. Penalty.

Any person who violates this Section or fails to comply with the provisions of this Section shall be

subject to a forfeiture of not less than $120 nor more than $600. Each day such violation or failure to comply continues shall be considered a separate offense.

6-7. DRIVEWAY PERMITS, PROTECTION OF STREETS DURING CONSTRUCTION.

A. Driveway Permits.

1. For the purpose of this section:

"Driveway" means a private road, drive or roadway giving access from a public street or highway to abutting grounds.

"Highway" includes all public streets and roadways.

"Highway under the jurisdiction of the Village" means a highway that is not a state or county highway upon which the finish course of asphalt or concrete has been placed."

2. Application and Permit. No person may construct or install a driveway in the Village without first filing an application with the Village Clerk and receiving a permit therefore. The application must include driveway plans showing the materials to be used, the location of the driveway on the lot and a typical profile. Each application must receive the approval of the Public Works Manager before the permit is issued.

a. For all driveways abutting public highways under the jurisdiction of the Village, the Public Works Manager shall refer the application and plans to the Zoning Administrator for review for conformance with the Planning and Zoning Chapter. Upon the Zoning Administrator's approval, the Public Works Manager will review the proposed location and construction of the driveway and may direct and order grading, ditching, soil stabilization measures and/or the installation and construction of any culvert necessary for proper drainage as a condition to issuing said permit. Any driveway constructed or installed without said permit being first obtained, or contrary to the orders and directions of the Public Works Manager or the terms of the permit, constitutes a violation of this Chapter.

b. For all driveways abutting highways under the jurisdiction of Racine County or the State of Wisconsin, the applicant shall apply for and receive an access permit from the County or State prior to applying for a Village driveway permit, and shall provide proof thereof with the driveway permit application. The Public Works Manager shall refer the application and driveway plans to the Zoning Administrator for review for conformance with the Planning and Zoning Chapter. Upon the Zoning Administrator's approval, the Public Works Manager will review the conditions of the access permit issued by the County or State, and may make appropriate orders regarding site drainage prior to issuing the permit. Any driveway constructed or installed without said permit being first obtained, or contrary to the orders and directions of the Public Works Manager or the terms of the permit, constitutes a violation of this Chapter.

3. All driveways installed, altered, changed, replaced or extended after the effective date of this Chapter are required to contain Apron End Walls to provide adequate safety and drainage to the satisfaction of the Public Works Manager.

4. All alteration of the plans approved in a driveway permit shall require amendment of the permit.

B. Fees; Bonds

1. Permit Fees. The non-refundable fee for a driveway permit shall be set by the Village Board and included in the Fee Schedule. The Board may set varying permit fees for driveways abutting Village highways and for those abutting state or county highways.

2. Bond. A pavement bond of $5,000 is required for all driveways that are used by heavy machinery and/or vehicles during construction on a property where the driveway enters or exits a highway under the jurisdiction of the Village.

a. The bond may be in the form of a cash deposit or surety bond naming the Village of Rochester as the obligee, and must be deposited with the Village Clerk prior to the issuance of a driveway permit.

b. The pavement bond shall be in addition to all other fees and costs for required permits and approvals, and shall serve to ensure that the public highways adjacent to the owner's land are not damaged during the course of construction.

c. The pavement bond shall remain on file with the Village until one year after the occupancy permit is issued for the construction. A cash deposit shall be held in a Village account and all interest shall accrue to the Village as reimbursement for administrative costs related to the deposit.

d. A pavement bond is not required for driveways directly accessing agricultural land, provided, however, that the landowner shall maintain gravel aprons for these driveways to the Public Works Manager's specifications.

C. Driveway Aprons.

1. Prior to beginning any excavation or construction on a lot abutting a highway under the Village's jurisdiction, where no paved driveway apron exists, the owner of the lot shall install a driveway apron. All construction traffic for the lot shall be required to use said driveway apron for access to the lot.

2. Specifications.

a. Permanent Driveway Apron. Except where a wider driveway is required by the Village as set forth in Chapter 35, Planning and Zoning, the permanent driveway apron for the property shall be a minimum of 20 feet wide, shall consist of at least a four inch depth of asphaltic concrete when compacted, and shall extend from the edge of the right-of-way to the edge of the pavement.

b. Driveway Apron during Construction. The property owner may elect to install a temporary driveway apron during the period of construction which extends at least a minimum of five feet from the edge of the highway pavement, consists of at least a four inch depth of asphaltic concrete when compacted, and which shall be a minimum of 20 feet wide.

(1) A temporary driveway apron constructed of cement concrete may be used during the length of construction, but must be removed and replaced with asphaltic concrete prior to release of the pavement bond.

(2) If hot mix asphaltic concrete is not available during cold weather construction, cold mix asphalt compacted to a four inch thickness, flowable fill poured to a formed thickness of eight inches, at least one bag of Portland cement per yard of flowable fill, or temporary heavy metal plating at least one inch thick, covering the required five by twenty foot apron, may be used, provided that the permanent apron must meet the requirements set forth in the introductory paragraph of subsection 2.a.

3. In the event that a permanent driveway apron is damaged during construction, the Public Works Manager may order its repair or replacement prior to release of the pavement bond. In the event that a temporary driveway apron is used during construction, it shall be replaced with a permanent apron meeting the requirements of subsection 2.a. prior to release of the pavement bond.

D. Inspections and Follow-up.

1. For driveways abutting State or County Highways, the Public Works Manager will inspect the driveway upon notification by the owner that the construction is complete. If the apron and/or the highway appear to have been damaged during the course of construction, the Public Works Manager will notify the appropriate state or county authority. If it appears that the driveway was not constructed in substantial conformance with the approved plans, he will notify the Zoning Administrator for enforcement of the provisions under the Zoning Administrator's jurisdiction.

2. For driveways abutting Village highways, the Public Works Manager will make two inspections of the driveway, apron and the public highway, the first as soon as reasonably possible after notification by the owner that construction is complete, and the second one year after the notification.

a. If the apron and/or the highway have been damaged during the course of construction, the Public Works Manager will order the appropriate repair or replacement. If it appears that the driveway was not constructed in substantial conformance with the approved plans, he will notify the Zoning Administrator for enforcement of the provisions under the Zoning Administrator's jurisdiction.

b. In the event that the apron has been damaged, the owner shall make the repairs to Village specifications as directed by the Public Works Manager, and in the event

that the owner fails to make such repairs within the time required, the pavement bond shall be used by the Village to make the repairs. In the event that the highway is damaged, the Village shall make the repairs reasonably necessary, solely at the owner's cost, and the pavement bond shall be used by the Village to make the repairs.

c. One year after the initial notification by the owner, if the entirety of the pavement bond is not used for the repairs, the difference shall be refunded or released to the then-current owner of the property. In the event that the apron or highways have not been damaged, or the repairs are made by the owner, the bond shall be refunded or released to the then-current owner.

d. In the event that repairs are performed by the Village and cost more than the amount of the bond, the owner shall be billed for the balance, and if the bill is not paid within 30 days, the bill shall become a lien on the property and shall be collected as a special charge pursuant to Wis. Stat. s. 66.0627.

e. If necessary, the Village Engineer will be consulted regarding apron and/or highway damage, and the cost of the Engineer's services shall be the responsibility of the landowner. The bond may be used to reimburse the Village for the Engineer's services; or the owner may be billed for the services and if the bill is not paid within 30 days, the bill shall become a lien on the property and shall be collected as a special charge pursuant to Wis. Stat. s. 66.0627.

f. The Public Works Manager will notify the Village Clerk of the appropriate disposition of the pavement bond.

E. Enforcement Authority.

1. The Public Works Manager, the Village Engineer and the Zoning Administrator are authorized to issue Stop Work Orders in the event of violation of this section. Notice is given by both posting upon the land where the violation occurs one or more copies of a notice and order stating the violation, and by mailing a copy of the notice and order by certified mail to the person whose activity is in violation of this section. The notice and order shall specify that the activity must cease immediately or be brought into compliance within five calendar days.

2. Any order stopping work shall remain in effect unless retracted by the Village Board or by a court of general jurisdiction; or until the activity is brought into compliance with this section.

3. The Public Works Manager, Village Engineer and Zoning Administrator are authorized to refer any violation of this section or of any stop work order issued pursuant to this section to the village attorney or district attorney for commencement of further legal proceedings.

4. The issuance of a stop work order under this section may be appealed to the Village Board within 30 days of the issuance of the order.

6-50. PENALTIES.

In addition to any specific penalty set forth in this Chapter, any person who violates any provision of this Chapter, or who fails, neglects or refuses to comply with any provision of this Chapter, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be subject to any and all of the following penalties:

A. Upon conviction, pay a forfeiture as set forth in Chapter 50 of this Municipal Code. Each day a violation exists or continues is considered a separate offense under this Chapter.

B. The Village Board may seek injunctive relief from a court of record to enjoin further violations.

C. In addition to any other penalty imposed by this section, the cost of abatement of any violation of this section may be collected as set forth herein from the owner of the real estate or the person who violated this Chapter.

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CHAPTER 7 PUBLIC PEACE, HEALTH AND WELFARE

7-1. HUMAN HEALTH HAZARDS.

The Village Board of the Village of Rochester has, by adoption of this section, confirmed the specific statutory authority, powers, and duties noted in this section and has established by this section, regulations, controls and enforcement against uses, activities, businesses and operations by persons that may cause a human health hazard.

A. Definitions. As used in this Section, the following terms have the meanings set forth:

"Human Health Hazard" means a substance, activity or condition that is known to have the potential to cause acute or chronic illness or death if exposure to the substance, activity or condition is not abated.

"Vector" means a carrier, including an arthropod or an insect, that transfers an infective agent from one host to another.

"Dwelling" means any structure, all or part of which is designed or used for human habitation.

"Owner" means a person who has legal title to a building or a person who has charge, care of or control of a dwelling or unit of a dwelling as an agent, executor, administrator, trustee or guardian of the estate of a person.

B. Restrictions. No person shall cause, allow or permit any person to create any human health hazard on premises owned, leased or controlled by that person in the Village of Rochester. Human Health Hazard control or health protections for the community include the following, but should not be construed to exclude other public nuisances affecting public health in the Village of Rochester:

1. Control of rats, stray animals, noise, rabies and other diseases.

2. Control of wild life, including the keeping of wild animals, disease transmission and eradication.

3. Pest control, including community sanitation, rodent and vector control and safe pesticide use.

C. Public Places. The owner and occupant and everyone in charge of a public building, as defined in Wis. Stat. s. 101.01(12), shall keep the building clean and sanitary.

D. Beaches. The health department shall close or restrict swimming, diving, and recreational bathing if a human health hazard exists in any area used for those purposes on a body of water and on associated land and shall require the posting of the area.

E. Buildings. The health department may declare a dilapidated building area where old or dilapidated buildings, structures and equipment are allowed to stand while they are dangerous, unsafe, unsanitary, or uninhabitable, to be a human health hazard.

F. Abatement on private premises/property. If the health officer finds a human health hazard, the officer shall order the abatement or removal of the human health hazard within a reasonable time period. The health officer shall notify the owner by registered mail with return receipt requested, of the presence of the human health hazard and order its removal within 30 days or less of the receipt of the notice. If it is not removed by that date, the health officer shall immediately enter the property and remove the hazard or may contract to have the work performed. The hazard shall be removed in a manner which is approved by the health officer.

G. Cost of Abatement. The cost of the abatement of a human health hazard may be recovered from the person permitting the violation. It may also be paid by the Village Treasurer and filed with the Village Clerk, who shall collect the cost as a special tax pursuant to Wis. Stat. s. 254.59.

7-2. VILLAGE PROPERTY.

A. Definition. The term “property”, wherever used in this Section, unless otherwise stated, shall include the real estate, grounds, buildings, waters and any other property which may be under the control or jurisdiction of the Village of Rochester, Racine County, Wisconsin.

B. Adoption of Rules and Regulations. The Village Board may hereafter adopt by resolution all necessary rules and regulations not in conflict with the laws of the State or the resolutions or ordinances of the Village for the government, management and control and improvement of all public property under the jurisdiction of the Village of Rochester and to secure the quiet, orderly and peaceable use and enjoyment of the people.

C. Prohibited Actions. The following actions are prohibited on or in Village property without the approval of the Village Board or a person authorized by the Village Board:

1. No person shall remove, destroy, break, injure, mutilate, or deface in any way any structure, monument, statue, vase, fountain, wall, fence, railing, vehicle, bench, tree, shrub, fern, plant, or flower.

2. No person shall drive, ride, or push any motorcycle, motor vehicle, all-terrain vehicle, snowmobile, truck, wagon, horse, or any vehicle or animal in or on any part of the property.

3. No person shall place, build, or create any fire on Village property.

4. No person shall bring or permit a dog, cat, or other animal on any Village property at any time (except a service animal).

5. No person shall make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

6. No person shall have in his possession uncased firearms, bows, or crossbows.

7. No person is permitted to remain in or on any Village property between 10:00 p.m. and sunrise.

8. No person shall place any straw, dirt, chips, paper, shavings, shells, ashes, or other rubbish, even though not offensive to health, in or upon Village property.

7-3. [Reserved]

7-4. PROHIBITED DISCHARGES. See Chapter 4 of this Municipal Code.

7-5. SMOKING PROHIBITED.

A. The Village of Rochester adopts Wis. Stat. s. 101.123 as though fully set forth herein, in order to protect the health and comfort of the public, pursuant to Wis. Stat. s. 101.123(4m). The prohibition against smoking in enclosed places set forth in Wis. Stat. s. 101.123, effective on July 5, 2010, includes, but is not limited to, smoking in enclosed public places, places of employment, day care centers, educational facilities, theaters, restaurants, taverns, private clubs, retail

establishments, common areas of certain multiple-unit residential properties, lodging establishments, and Village buildings. The statute also imposes responsibilities of persons in charge of the listed sites, requiring that persons in charge may not allow smoking, and providing that the persons in charge must make reasonable efforts to prohibit persons from smoking in those sites by posting signs, refusing to serve persons who are smoking in restaurants, taverns and private clubs, asking persons to refrain from smoking or leave the premises, and notifying law enforcement of violations if persons refuse to leave the premises.

B. Penalties.

1. The penalty for smoking in a prohibited place is as set forth in Wis. Stat. s. 101.123(2), adopted herein.

2. The penalty for a violation by a person in charge for failure to perform a required responsibility of a person in charge is as set forth in Wis. Stat. ss. 101.123(2m)(b) to (d), adopted herein.

7-6. RESTRICTIONS ON SALE OR GIFT OF CIGARETTES OR TOBACCO PRODUCTS.

A. The Village of Rochester adopts Wis. Stat. s. 134.66 as though fully set forth herein, in strict conformity with the statute. Wis. Stat. s. 134.66 includes restrictions on the sale, or provision for nominal or no consideration, of cigarettes or tobacco products to persons under the age of 18 years of age; the provision of cigarettes or tobacco products for nominal or no consideration in certain places; the sale of cigarettes or tobacco products from vending machines; required signage; and defenses that may be presented.

B. The penalty for a violation of Wis. Stat. s. 134.66, is as set forth therein and set forth on the Village Deposit Schedule. The maximum forfeiture and cigarette license suspension set forth in Wis. Stat. s. 134.66(4), as adopted herein, shall be imposed for second and subsequent offenses within one year.

C. See also s. 9-4 of this Municipal Code.

7-7. PURCHASE OR POSSESSION OF CIGARETTES OR TOBACCO PRODUCTS BY PERSON UNDER 18 PROHIBITED.

A. The Village of Rochester adopts Wis. Stat. s. 254.92, as though fully set forth herein, in strict conformity with the statute. Wis. Stat. s. 254.92 includes restrictions that provide that no person under the age of 18 years of age may falsely represent his or her age for the purpose of receiving any cigarette or tobacco product; no person under the age of 18 years of age may purchase, attempt to purchase or possess any cigarette or tobacco product except in certain limited circumstances; no person may purchase cigarettes or tobacco products on behalf of, or to provide to, any person who is under 18 years of age; and that a law enforcement officer shall seize any cigarette or tobacco product that has been sold to and is in the possession of a person under 18 years of age.

B. Penalties.

1. Any person who is convicted of violating the provisions of Wis. Stat. s. 254.92(2m) (purchase on behalf of, or to provide to, a person under 18 years of age), as adopted herein, shall be subject to the penalties provided therein and set forth in the Village's deposit schedule.

2. Any person who is convicted of violating any of the remainder of the provisions of Wis. Stat. s. 254.92, as adopted herein, shall be subject to forfeitures as set forth in Chapter 50 of this Municipal Code.

7-8. INJURY TO PROPERTY BY DOGS OR CATS.

A. Damage to Property. No person shall permit any dog or cat owned or kept by such person, nor shall any person permit any dog or cat under such person's management and control, to go upon any sidewalk, parkway, or private lands or premises without the permission of the property owner, or break, bruise, tear up, crush or injure, any lawn, flower bed, plant, shrub, tree, or garden in any manner, or to defecate thereon.

B. Animal Waste. No person shall permit any dog or cat owned or kept by such person, nor shall any person permit any dog or cat under such person's management and control to be on any public or private property, not owned or possessed by any such person, unless he or she has a device to scoop up excrement and an appropriate depository to put such excrement in. This shall not apply to visually handicapped persons.

C. Penalties. In addition to the penalties set forth in s. 7-50 below, also see s. 9-1.B. of this Municipal Code.

7-9. STREET OBSTRUCTION.

No person shall place in or upon any public street of the Village of Rochester, within the platted limits of such street, any rubbish, debris or noxious or offensive matter, nor shall any such person place, erect or maintain within the platted limits of any such public street any obstruction whatsoever.

7-10. SOLID WASTE AND RECYCLING.

A. Purpose. The purpose of this section is to regulate the collection, dumping, and disposal of solid waste, sludge and recyclable materials by any person within the Village of Rochester. Because of the possible danger to the health, safety and welfare of the public, and the incumbent need to recycle reusable materials, such collection, dumping or disposal shall only be permitted under the terms and conditions set forth herein. In addition, this section in intended to promote recycling, composting, and resource recovery through the administration of an effective recycling program, as provided in Wis. Stat. s. 287.11 and Wis. Admin. Code ch. NR 544.

B. Statutory Authority. This section is adopted as authorized under Wis. Stat. ss. 61.34 and 287.09(3)(b).

C. Interpretation. In their interpretation and application, the provisions of this section shall be held to be the minimum requirements and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes. Where any terms or requirements of this section may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this section is required by Wisconsin Statutes, or by a standard in Wis. Admin. Code ch. NR 544, and where the section provision is unclear, the provision shall be interpreted in light of the Wisconsin Statutes and the Chapter NR 544 standards in effect on the date of the adoption of this ordinance, or in effect on the date of the most recent text amendment to this ordinance.

D. Definitions. For the purpose of this Section:

"Bi-metal container" means a container for beverages that is made primarily of a combination of steel and aluminum.

"Collector" means the persons or entity specifically authorized by the Village Board to collect waste and recyclable materials and to dispose of the same.

"Container board" means corrugated paperboard used in the manufacture of shipping containers and related products.

"Dumping or disposal" includes, but is not limited to, unloading, throwing away, discarding, emptying, abandoning, discharging, or burying solid waste, recyclables, or sludge into or under any property or lands, whether publicly or privately owned within the Village of Rochester.

"Foam polystyrene packaging" means packaging made primarily from foam polystyrene that satisfies one of the following criteria:

1. Is designed for serving food or beverages.

2. Consists of loose particles intended to fill space and cushion the packaged article in a shipping container.

3. Consists of rigid materials shaped to hold and cushion the packaged article in a shipping container.

"HDPE" means high density polythylene, labeled by the SPI code # 2.

"Heavy object" means household furniture or other large item.

"LDPE" means low density polythylene, labeled by the SPI code # 4.

"Magazines" means magazines and other materials printed on similar paper.

"Major appliance" means a residential or commercial air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, furnace, boiler, dehumidifier, water heater or stove.

"Multiple-family dwelling" means a property containing five or more residential units, including those which are occupied seasonally.

"Newspaper" means a newspaper and other materials printed on newsprint.

"Non-collectible items" are any items in this section that are listed as non-collectible and include, but are not limited to the following:

1. Concrete and construction materials.

2. Stumps, earth and rock.

3. Stones or concrete blocks.

4. Fuel tanks of any type.

5. Thirty gallon and fifty-five gallon drums.

6. Tires, unless specifically included in contract with the Village collector.

7. Yard waste.

"Non-residential facilities and properties" means commercial, retail, industrial, institutional and government facilities and properties. This term does not include multiple family dwellings. A non-residential facility or property is a business producing more than four thirty-gallon bags of solid waste per week.

"Office paper" means high grade printing and writing papers from offices in nonresidential

facilities and properties. Printed white ledger and computer printout are examples of office paper generally accepted as high grade. This term does not include industrial process waste.

“Other resins or multiple resins” means plastic resins labeled by the SPI code # 7.

“Person” includes any individual, corporation, partnership, association, local government unit as defined in Wis. Stat. s. 66.0131(1)(a), state agency or authority, or federal agency.

“PETE” means polythylene terephthalate, labeled by the SPI code # 1.

“Plastic container” means an individual, separate, rigid plastic bottle, can, jar or carton, except for a blister pack, that is originally used to contain a product that is the subject of a retail sale.

“Postconsumer waste” means solid waste other than solid waste generated in the production of goods, hazardous waste, as defined in Wis. Stat. s. 291.01(7), waste from construction and demolition of structures, scrap automobiles, or high-volume industrial waste, as defined in Wis. Stat. s. 289.01(17).

“PP” means polypropylene, labeled by the SPI code # 5.

“PS” means polystyrene, labeled by the SPI code # 6.

“PVC” means polyvinyl chloride, labeled by the SPI code # 3.

“Recyclable materials” includes lead acid batteries; major appliances; waste oil; yard waste; aluminum containers; corrugated paper or other container board; foam polystyrene packaging; glass containers; magazines; newspaper; office paper; rigid plastic containers, including those made of PETE, HDPE, PVC, LDPE, PP, PS and other resins or multiple resins; steel containers; waste tires; and bi-metal containers.

“Residential units” are defined to include single family and two to four family homes, duplexes and apartments.

“Sludge” is sewage treatment residue in any form whatsoever, whether solid, semi-solid or liquid which has been processed or treated in any way, form or manner.

“Small business” means a business producing a maximum of four thirty-gallon bags of solid waste a week. Small businesses are considered as residential units eligible for collection under this section, unless the owner or operator thereof contracts for collection as required for non-residential facilities and properties.

“Solid waste” has the meaning specified in Wis. Stat. s. 289.01(33).

“Solid waste facility” has the meaning specified in Wis. Stat. s. 289.01(35).

“Solid waste treatment” means any method, technique or process which is designed to change the physical, chemical or biological character or composition of solid waste.

“Treatment” includes incineration.

“Waste tire” means a tire that is no longer suitable for its original purpose because of wear, damage or defect.

“Yard waste” means leaves, grass clippings, yard and garden debris and brush, including clean woody vegetative material no greater than six inches in diameter. This term does not include stumps, roots or shrubs with intact root balls.

E. Conformance with Regulations Required. No person may dump or dispose of any solid waste, recyclable or other item set forth in this section in the Village except as set forth herein. No person may spread sludge without a permit from the Wisconsin Department of Natural Resources.

F. Mandatory Collection.

1. The Village Board requires that all residential units in the Village of Rochester shall receive weekly waste and recyclable materials collection by the collector the Village Board selects. Non-residential facilities and properties, multiple family dwellings, and persons doing remodeling and new construction projects shall contract for collection or otherwise arrange for disposal in accordance with this section and state law at their own expense. The Village may, but is not required to, provide collection for condominiums consisting of five or more dwelling units.

2. Small businesses may be considered residential units. A business that meets the definition of a “small business” set forth in this Section may be considered a residential unit for purposes of solid waste and recyclable materials collection.

3. All non-residential facilities and properties that use their own private contractor, not contracted by the Village of Rochester, must provide for solid waste and recyclable collection as set forth in this Section and in conformance with State law at their own expense.

G. Garbage Containers.

1. Garbage Containers. Every garbage container used in the Village shall be metal or metal-lined or of plastic and water-tight with a fly-tight and water-tight metal or plastic cover. Such containers shall be kept securely covered except when depositing materials therein or removing the contents therefrom. Garbage cans must be vermin proof and kept in sanitary condition.

2. No person shall place on any street or sidewalk any receptacle for the deposit of solid waste, ashes, swill, garbage or refuse when such placement will be injurious to public health, will create a public nuisance or will obstruct any sidewalk or street so as to interfere with the use of the same by the public.

3. Requirements for Collection of Solid Waste by Village Collector. Solid waste and heavy objects shall be placed at the curb for collection in the manner described in this section.

a. All containers, inclusive of contents, shall not exceed 70 pounds. Garbage containers shall not have a capacity of greater than 40 gallons regardless of weight or contents. All containers shall be equipped with handles and tight covers.

b. Clear plastic biodegradable bags are allowed if tied securely and not so loaded as to break or spill if lifted.

c. Lumber shall be less than four feet in length, tied in bundles and shall not exceed 70 pounds per bundle.

H. Recyclable Materials.

1. Separation of Recyclable Materials.

a. Occupants of single family and two to four unit residences, multiple-family

dwellings and non-residential facilities and properties shall separate the following materials from postconsumer waste:

(1) Lead acid batteries

(2) Major appliances

(3) Waste oil

(4) Yard waste

(5) Aluminum containers

(6) Bi-metal containers

(7) Corrugated paper or other container board

(8) Foam polystyrene packaging

(9) Glass containers

(10) Magazines

(11) Newspaper

(12) Office paper

(13) Rigid plastic containers made of PETE, HDPE, PVC, LDPE, PP, PS, and other resins or multiple resins

(14) Steel containers

(15) Waste tires

b. Separation Requirements Exempted. The separation requirements of s. H.1.a. do not apply to the following:

(1) Occupants of single family and two to four unit residences, multiple-family dwellings and non-residential facilities and properties that send their postconsumer waste to a processing facility licensed by the Wisconsin Department of Natural Resources that recovers the materials specified in s. H.1.a. from solid waste in as pure a form as is technically feasible.

(2) Solid waste which is burned as a supplement fuel at a facility if less than 30% of the heat input to the facility is derived from the solid waste burned as supplement fuel.

(3) A recyclable material specified in s. H.1.a.(5) through (15) for which a variance has been granted by the Department of Natural Resources under the Wisconsin Statutes or the Wisconsin Administrative Code.

2. Preparation and Care of Separated Recyclable Materials. To the greatest extent practicable, the recyclable materials separated in accordance with this Section shall be clean and kept free of contaminants such as food or product residue, oil or grease, or other non-recyclable materials, including but not limited to household hazardous waste,

medical waste, and agricultural chemical containers. Containers and instructions for preparing recyclable materials shall be provided to residents. Recyclable materials shall be stored in a manner which protects them from wind, rain, and other inclement weather conditions. Recyclable materials shall be prepared for collection and placed in Village approved containers for collection in the manner described below:

a. Aluminum, bi-metal and steel containers shall be rinsed and placed in the recycling container.

b. Glass containers shall be unbroken, rinsed, and placed in the recycling container.

c. Office paper, newspaper, magazines, corrugated paper and other container board shall be placed in the recycling container in accordance with the collector's instructions.

d. Rigid plastic containers shall be rinsed and placed inside the recycling container.

e. Waste auto tires shall be placed at the curbside on the regular recycling day. Waste truck and tractor tires shall be cut in four equal pieces and placed at the curbside on the regular recycling day. No more than one tire per household per week shall be placed for recycling.

f. Foam polystyrene packaging shall be placed pursuant to the collector's instructions.

3. Management of Lead Acid Batteries, Major Appliances, Waste Oil, Yard Waste and Heavy Objects. Occupants of properties for which recycling is collected by the Village collector shall manage lead acid batteries, major appliances, waste oil, yard waste and heavy objects as follows:

a. Lead acid auto batteries will be collected and disposed of by the Village collector and shall be placed at the curbside on the regular collection day pursuant to the instructions of the Village collector.

b. Major Appliances including those with containing refrigerants, such as refrigerators and air conditioners, but not including commercial refrigeration units, shall be placed at the curbside on the regular collection day pursuant to the instructions of the Village collector.

c. Waste oil, antifreeze and oil filters will be collected and disposed of by the Village collector and shall be placed at the curbside on the regular collection day if the Village's contract with the collector includes provisions for the collection of waste oil. These items shall be placed pursuant to the instructions of the Village collector.

(1) In the event that the Village's collector does not collect waste oil, residents and occupants must take waste oil to an approved waste oil depot, such as the Racine County Garage oil depot on County Highway FF, west of the Village.

(2) Individual waste oil depots are not allowed in the Village.

d. Yard Waste will not be collected. Residents and occupants shall either:

(1) Pay a private contractor for removal; or

(2) Compost the yard debris in their personal compost pile, to be located in back of property, not to be near the street, and not to be a nuisance to neighboring properties.

4. Heavy Objects. Residents or entities wishing to have heavy objects and household furniture pickup should put them at curbside on the designated collection day pursuant to the instructions of the Village collector.

5. Disposition of Non-collectible Items. Non-collectible items will not be picked up in either the regular solid waste collection program, the recyclable materials program, or the heavy object collection program. Non-collectible items include, but are not limited to, loose construction or remodeling materials, household hazardous waste, and commercial refrigeration units. Persons or entities may contact the collector for advice on how to dispose of non-collectible items.

I. Responsibilities of Owners or Designated Agents of Multiple-Family Dwellings.

1. Owners or designated agents of multiple-family dwellings shall do all of the following to recycle the materials specified in ss. H.1.a.(5) through (15):

a. Provide adequate, separate containers for the recyclable materials.

b. Notify tenants in writing at the time of renting or leasing the dwelling and at least semi-annually thereafter about the established recycling program.

c. Provide for the collection of the materials separated from the solid waste by the tenants and the delivery of the materials to a recycling facility.

d. Notify tenants of reasons to reduce and recycle solid waste, which materials are collected, how to prepare the materials in order to meet the processing requirements, collection methods or sites, locations and hours of operation, and a contact person or company, including a name, address and telephone number.

2. The requirements specified in s. I.1. do not apply to the owners or designated agents of multiple-family dwellings if the postconsumer waste generated within the dwelling is treated at a processing facility licensed by the Department of Natural Resources that recovers for recycling the materials specified in ss. H.1.a(5) through (15) from solid waste in as pure a form as is technically feasible.

J. Responsibilities of Owners or Designated Agents of Non-Residential Facilities and Properties.

1. Owners or designated agents of non-residential facilities and properties shall do all of the following to recycle the materials specified in ss. H.1.a(5) through (15):

a. Provide adequate, separate containers for the recyclable materials. The owners of these establishments shall be required to sort through items that the general public places into containers intended for garbage, but which should be in recyclable containers.

b. Notify in writing, at least semi-annually, all users, tenants and occupants of the properties about the established recycling program.

c. Provide for the collection of the materials separated from the solid waste by the users, tenants and occupants and the delivery of the materials to a recycling facility.

d. Notify users, tenants and occupants of reasons to reduce and recycle, which materials are collected, how to prepare materials in order to meet the processing requirements, collection methods or sites, locations and hours of operation, and a contact person or company, including a name, address and telephone number.

2. The requirements specified in s. J.1. do not apply to the owners or designated agents of non-residential facilities and properties if the postconsumer waste generated within the facility or property is treated at a processing facility licensed by the Department of Natural Resources that recovers for recycling the materials specified in ss. H.1.a(5) through (15) from solid waste in as pure a form as is technically feasible.

K. Prohibitions on Disposal of Recyclable Materials Separated for Recycling.

No person may dispose of in a solid waste disposal facility or burn in a solid waste treatment facility any of the materials specified in ss. H.1.a(5) through (15) which have been separated for recycling, except waste tires may be burned with energy recovery in a solid waste treatment facility.

L. Pick up of Materials.

1. All containers shall be placed at the curb edge by 6:00 a.m. on scheduled collection day. No containers shall be placed at curb edge prior to 24 hours before collection day, and shall be removed within 24 hours of collection.

2. Containers shall be placed as close to the edge of the street as possible.

3. Containers shall be placed away from mail boxes to allow for mail delivery.

4. The owner or occupant at each residence is responsible for all refuse and recycling until it is picked up by the collector.

M. Collection by Unauthorized Persons. From the time of placement of recyclable materials at the collection point for collection by the Village of Rochester or its authorized agent(s) in accordance with the terms herein, recyclable materials shall be the property of the Village of Rochester or its authorized agent(s). It shall be a violation of this section for any person not authorized by the Village of Rochester to collect or pick up or cause to be collected or picked up any such recyclable materials. Any and each such collection in violation hereof from any recyclable material, at the curb for collection, shall constitute a separate and distinct offense punishable as hereinafter provided.

N. Any person who places solid waste, yard waste, recyclables, heavy objects, or non-collectible items on the property of another or on public property anywhere within the Village of Rochester limits shall be subject to the penalty as set forth in this section.

O. Recordkeeping of Recycling and Refuse Collection. The Village, in accordance with the Wisconsin Administrative Code, shall require the contracted refuse/ recyclable collectors to provide such statements pertaining to tonnage collected as are required by law. Further, such statements as are required by law shall be provided by the Village Clerk to the Wisconsin Department of Natural Resources or other body.

P. Enforcement.

1. For the purpose of ascertaining compliance with the provisions of this section, any authorized officer, employee or representative of the Village of Rochester may inspect recyclable materials separated for recycling, postconsumer waste intended for disposal, recycling collection sites and facilities, collection vehicles, collection areas of multiple-

family dwellings and non-residential facilities and properties, and any records relating to recycling activities, which shall be kept confidential when necessary to protect proprietary information. No person may refuse access to any authorized officer, employee or authorized representative of the Village of Rochester who requests access for purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper, or interfere with such an inspection.

2. Refusal of Service. The collector shall refuse to furnish collection service to any person not complying with, or refusing to comply with this section for the collection of solid waste and the separation of recyclable materials. Incorrectly prepared materials shall be left at the curb. Continued non-compliance may result in penalties as set forth in this section.

3. Any person who violates a provision of this section may be issued a citation by the Village of Rochester to collect forfeitures. Each day a violation continues is a new offense. The issuance of a citation shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this section.

4. Penalties for violating this Section are as set forth in s. 7-50 provided that the maximum penalty for a third or subsequent violation of s. 7-10.K. is $2000, and the maximum penalty for any other violation of this Section is $1,000.

7-11. LITTERING.

A. No person shall cause to be deposited, or shall permit the accumulation of, bottles or glass, cans, nails, wire, tin, iron scrap, paper, stones, dirt spillage, grass, wood chips or wood, tree branches, leaves or any other rubbish or waste material in, along, or upon any street, alley way, bridge, sidewalk, river, river bank, within any park, or upon any public grounds or thoroughfare, or upon the property of another within the Village.

B. No person shall place in or upon the Fox River within the corporate limits of the Village of Rochester, Racine County, Wisconsin, any refuse, rubbish or debris.

C. Each violation of this ordinance shall subject the violator to liability for penalties as set forth in s. 7-50 hereof.[1]

7-12. NOXIOUS WEEDS, NATURAL LAWNS AND GRASS CUTTING[2].

A. Noxious Weeds.

1. The Village Clerk shall annually, on or before May 15, publish as set forth in Wis. Stat. s. 66.0407 a notice that every person is required by law to destroy all noxious weeds on lands in the Village which he/she owns, occupies or controls. A joint notice with other towns or municipalities may be utilized.

2. If the owner or occupant neglects to destroy any weeds as required by such notice, then the Weed Commissioner of the Village shall give five days' written notice, by mail with delivery confirmation, to the owner or occupant of any lands upon which the weeds are growing to the effect that said Weed Commissioner, after the expiration of the five-day period, may proceed to destroy or cause to be destroyed all such weeds growing upon said lands and that the cost thereof will be assessed as a special charge upon the lands upon which such weeds are located under the provisions of Wis. Stat. ss. 66.0517 or 66.0627. If the owner or occupant does not comply with the five-day notice, then the Weed Commissioner may destroy such weeds or cause them to be destroyed as set forth in subsections C.7.a.

[1] Adopted 10-13-2014, Ordinance #2014-5
[2] Adopted 05-16-2016, Ordinance #2016-5

and b.

3. As provided for in Wis. Stat. s. 66.0407, the Village requires that all noxious weeds be destroyed prior to the time in which such plants would mature to the bloom or flower state. The growth of noxious weeds in excess of twelve inches in height from the ground surface shall be prohibited within the Village corporate limits. Noxious weeds shall include any weed, noxious grass or similar plant growth that, if allowed to pollinate, would cause or produce hay fever in human beings or would cause a skin rash through contact with the skin.

4. Definitions.

a. Noxious weeds are defined to include, but shall not be limited to the following:

Cirsium arvense (Canada thistle)
Ambrosia artemisiifolia (common ragweed)
Ambrosia trifida (great ragweed)
Euphorbia esula (leafy spurge)
Convolvulus arvensis (creeping jenny) (field bind weed)
Tragopogon dubius (goat's beard)
Rhus radicans (poison ivy)
Cirsium vulgaris (bull thistle)
Pastinaca sativa (wild parsnip)
Arctium minus (burdock)
Xanthium strumarium (cocklebur)
Amatanthus retroflexus (pigweed)
Chenopodium album (common lambsquarter)
Rumex crispus (curled dock)
Cannabis sativa (hemp)
Plantago lanceolate (English Plantain)

b. Noxious grasses are defined to include, but shall not be limited to, the following:

Agrostis alba (red top)
Sorghum halepense (Johnson)
Setaria (foxtail)
Toxicodendron diversilobum (poison oak)

c. Noxious weeds also include the following plants and other rank growth of vegetation:

Ragweed or Thistles
Smartweed
Any weed, noxious grass or similar plant growth that, if allowed to pollinate, would cause or produce hay fever in human beings or would cause a skin rash through contact with the skin.

B. Natural Lawns.

1. Definitions.

"Lawn" means an area of short, mown grass in a yard or on other property.

"Natural Lawn" includes common species of grass and wildflowers native to North America that are designed and purposely cultivated to exceed eight inches in height from the ground. Specifically excluded in natural lawns are the noxious grasses and weeds identified in subsection A.4. of this Section.

"Natural Lawn Management Plan" means a written plan relating to the management and maintenance of a lawn upon which the planted grass will exceed eight inches in length, a statement of intent and purpose for the lawn, a detailed description of the vegetation types, plants and plant succession involved, and the specific management and maintenance techniques to be employed.

"Neighboring Property Owners" means all those property owners who are located within 300 feet of the proposed natural lawn site.

"Property Owner" includes the legal titleholder and/or the beneficial owner of any such lot according to most current tax records.

2. Natural lawns restricted. Natural lawns on lots of less than two acres are prohibited, and all lawns on those lots must be kept cut as set forth in sections A and C. On lots two acres or more in size, the growth of a natural lawn in excess of eight inches in height from the ground surface is prohibited within the Village corporate limits unless a natural lawn management plan is approved and a permit is issued by the Village as set forth in this section. Natural lawns shall not contain litter or debris and shall not harbor undesirable wildlife.

3. Natural lawn management plan.

a. Property owners of lots that are two acres or more who wish to plant and cultivate a natural lawn must submit their written plan and related information on the form provided by the Village. Natural lawn management plans shall only indicate the planting and cultivating of natural lawns on property legally owned by the property owner. Applicants are strictly prohibited from developing a natural lawn on any Village-owned property, including street rights-of-way. This shall include, at a minimum, property located between the sidewalk and the street, or a strip not less than 10 feet adjacent to the street where there is no sidewalk, whether the area is under public or private ownership. In addition, natural lawns shall not be permitted within 10 feet of the abutting property owner's property, unless waived in writing by the abutting property owner on the side so affected. Such waiver is to be affixed to the natural lawn management plan.

b. Any subsequent property owner who abuts an approved natural lawn may revoke the waiver, thereby requiring the owner of the natural lawn to remove the natural lawn that is located in the ten-foot section abutting the neighboring property owner. Such revocation shall be put in writing and presented to the Village Clerk by the subsequent abutting property owner. Upon receiving the written request to revoke the original waiver, the Village shall contact the owner of the approved natural lawn and direct the owner to remove the natural lawn located in the ten-foot section abutting the neighboring property owner. The Village Board shall revise the approved natural lawn management plan accordingly. The owner of the approved natural lawn shall be required to remove the ten-foot section abutting the neighboring property owner within 20 days of receipt of the written notification from the Village, provided that the notification is received sometime beginning May 1 and ending November 1. Property owners who receive notification from the Village between November 1 and April 30 shall be required to remove the ten-foot section abutting the neighboring property owner no later than May 20 following receipt of the notification.

c. Application process.

(1) Property owners interested in applying for permission to establish a natural lawn must obtain and complete an application form available from the Village Clerk. The completed application shall include a natural lawn management plan. Upon submitting a completed application, a nonrefundable filing fee set by the Village Board and set forth in the fee schedule will be assessed by the Village. Along with the application, the applicant shall submit letters from at least 51% of the owners of property situated wholly or in part within 300 feet of the boundaries of

the property for which the application is made indicating no objection to the applicant's natural lawn.

(2) If the property owner's application is in full compliance with the natural lawn management plan requirements and the requirements of subsection (1), the Village Clerk shall issue permission to install a natural lawn. The Clerk shall deny applications that do not meet the requirements. The initial permit is valid for two years, and must be reapplied for every two years until 75 percent of the intended grasses or plants are established and growing or the Weed Commissioner determines that the natural lawn is well established. Once this standard is met, the permit shall be considered perpetual, unless the permit is revoked pursuant to subsection B.5. of this Section.

(3) Application for appeal. The property owner may appeal the Village Clerk's decision to deny the natural lawn permit request to the Village Board at an open meeting. All applications for appeal shall be submitted within 15 calendar days of the notice of denial of the natural lawn permit. The decision rendered by the Village Board shall be final and binding.

4. Safety precautions for natural grass areas.

a. When, in the opinion of the Fire Chief or Fire Inspector of the Fire Department serving the Village of Rochester, the presence of a natural lawn may constitute a fire or safety hazard due to weather and/or other conditions, the Fire Chief or Fire Inspector may order the cutting of natural lawns to a safe condition. As a condition of receiving approval of the natural lawn permit, the property owner shall be required to cut the natural lawn within three days upon receiving written direction from the Fire Chief or Fire Inspector.

b. Natural lawns shall not be removed through the process of burning, unless stated and approved as one of the management and maintenance techniques in the natural lawn management plan. The Fire Chief or Fire Inspector shall review all requests to burn natural lawns and shall determine if circumstances are correct and all applicable requirements have been fulfilled to ensure public safety. Burning of natural lawns shall be strictly prohibited unless a written permit to burn is issued by the Fire Inspector. The Fire Inspector shall establish a written list of requirements for considering each request to burn natural lawns, thereby ensuring the public safety. In addition, the property owner requesting permission to burn the natural lawn shall produce evidence of property damage and liability insurance identifying the Village as an additional insured. The minimum amount of acceptable insurance shall be $300,000.

5. Revocation of an approved natural lawn permit. The Village Clerk, upon the recommendation of the Weed Commissioner, shall have authority to revoke an approved natural lawn permit if the owner fails to maintain the natural lawn or comply with the provisions set forth in this section. Notice of intent to revoke an approved natural lawn permit shall be appealable to the Village Board. All applications for appeal shall be submitted within 15 calendar days of receipt of the written notice of intent to revoke the approved natural lawn permit. Failure to file an application for appeal within 15 calendar days shall result in the revocation of the natural lawn permit. All written applications for appeal filed within the required 15 calendar days shall be reviewed by the Village Board in an open meeting. The decision rendered by the Village Board shall be final and binding.

6. Public nuisance defined; abatement after notice.

a. The growth of a natural lawn, as defined in this section, shall be considered a public nuisance unless a natural lawn management plan has been filed and approved and a permit is issued by the Village, as set forth in this section. Violators shall be served with a notice of public nuisance by mail, with delivery confirmation, to the last known mailing address of the property owner.

b. If the person so served with a notice of public nuisance violation does not abate the nuisance within 10 days, the enforcement officer may proceed to abate such nuisance, keeping an account of the expense of the abatement, and such expense shall be charged to and paid by such property owner. Notice of the bill for abatement of the public nuisance shall be mailed to the owner of the premises and shall be payable within 10 calendar days from receipt thereof. Within 60 days after such costs and expenses are incurred and remain unpaid, the Village Clerk shall enter those charges onto the tax roll as a special charge pursuant to Wis. Stat. s. 66.0627.

c. The failure of the Village Clerk to record such claim or to mail such notice, or the failure of the owner to receive such notice, shall not affect the right to place the Village expense on the tax roll for unpaid bills for abating the public nuisance, as provided for in this section.

C. Grass Cutting.

1. Purpose. This section is adopted due to the unique nature of the problems associated with lawns, grasses and weeds being allowed to grow to excessive length in the Village of Rochester.

2. Public nuisance declared. The Village Board finds that lawns and non-noxious grasses and weeds on lots or parcels of land that are five acres or less within the Village of Rochester that exceed eight inches in length adversely affect the public health and safety of the public in that they tend to emit pollen and other discomforting bits of plants, constitute a fire hazard and a safety hazard in that debris can be hidden in the grass, interfere with the public convenience and adversely affect property values of other land within the Village. For that reason, any lawn, grass or weed on a lot or parcel of land that is five acre or less, that exceeds eight inches in length, is hereby declared to be a public nuisance, except for property located in a designated floodplain area and/or wetland area, or where the lawn, grass or weed is part of a natural lawn approved pursuant to subsection B, above.

3. Nuisances prohibited. No person shall permit any public nuisance as defined in subsection C.2 above to remain on any premises owned or controlled by the person within the Village.

4. Inspection. The Weed Commissioner or his/her designee shall inspect or cause to be inspected all premises and places within the Village to determine whether any public nuisance as defined in subsection C.2. exists.

5. Abatement of nuisance. If the Weed Commissioner determines with reasonable certainty that any public nuisance as defined in subsection C.2. exists, he/she shall immediately cause written notice to be served in person or mailed to the property owner by mail, with delivery confirmation, to notify the owner that the nuisance must be abated within five days, and if not done, that the Village proposes to have the lot, grass or lawn cut after five days so as to conform to this section and subsection A.

6. Due process hearing. If the property owner believes that the grasses or weeds are not a nuisance, the owner may request a hearing before the Village Board. The request for said hearing must be made in writing to the Village Clerk's office within the five days set forth in the Weed Commissioner's notice. When a hearing is requested by the owner of the property, the hearing by the Village Board shall be held at the next possible regular Village Board meeting, The property in question will not be mowed by the Village until such time as the hearing is held by the Board. At the hearing, the owner may appear in person or by his/her attorney, may present witnesses in his/her own behalf, and may cross-examine witnesses presented by the Village, as well as subpoena witnesses for his/her own case. At the close of the hearing, the Village Board shall make its determination in writing, specifying its findings, facts and conclusions. If the Village Board determines that a public nuisance does exist, the Board shall order the Weed Commissioner to mow the property in question, unless the property has been mowed by the owner, within 48 hours of the Village Board's decision. If the owner does not abate the nuisance within the described 48 hours, the Weed Commissioner shall cause the same nuisance to be abated and the costs assessed as a special charge against the property.

7. Village's abatement of the nuisance. In any case where the owner, occupant or person in charge of the property fails to cut his/her lawn, grass or weeds in conformance with the notice, as set forth above, then and in that event the Village may cut said lawn, grass or weeds as follows:

a. The written notice required in Subsection 6 shall inform said person that in the event of his/her failure to abate the nuisance within the prescribed time, the Village shall abate the same and the cost thereof shall be assessed to the property owner as a special charge.

b. The Village shall cut or cause to be cut all grass and weeds from the subject's property and shall charge the expenses of so doing at a rate as established by resolution by the Village Board. The charges shall be set forth in a statement to the Village Clerk who, in turn, shall mail the same to the owner, occupant or person in charge of the subject premises. If said statement is not paid in full within 30 days thereafter, the Village Clerk shall enter the charges in the tax roll as a special charge against said lot or parcel of land, and the same shall be collected as set forth in Wis. Stat. ss. 66.0517 or 66.0627.

D. Penalties and Fees.

1. In addition to the provisions of each subsection any person who fails to comply with a Village order within the required time period shall be subject to the general penalties found in s. 50-20 of this Code.

2. In addition to any penalties provided in this Section, the Village may issue stop-work orders upon owners of lots where work is unfinished under an existing permit for any violation of section B.

3. Additional notices of violations are not required for any property that has received one notice in the same calendar year.

4. The fee for the mowing or destruction of weeds, cutting or removal of a natural lawn, or the cutting of grass by order of the Village Weed Commissioner shall be established by the Village Board and set forth in the Fee Schedule.

5. The fee for a natural lawn permit fee shall be established by the Village Board and set forth in the fee schedule.

7-13. PUBLIC PARK REGULATIONS.

A. Dogs Not Allowed in Public Parks. No person shall permit any dog owned or kept by such person, nor shall any person permit any dog under such person s management and control, to enter upon the grounds of any public park within the Village of Rochester.

B. Closing Times for Public Parks.

1. Rochester Commons Park in the Village of Rochester shall be closed to public use from dusk to dawn. No person shall use the park, its facilities, nor its off-street parking areas or walkways for any purposes during such closed hours except to access the public library. “Dusk” shall mean that period of time 30 minutes before sunset. “Dawn” shall mean that period of time 30 minutes before sunrise.

2. Individuals or sanctioned groups may apply for a permit exempting them from the above prohibition as stated in subsection 1. hereof for scheduled events which are reasonably expected to commence prior to the closing times stated and terminate after the closing times stated, provided such permit is obtained not less than thirty days prior to the scheduled event and that the permit application indicates the time at which the event shall terminate and the time at which the used area shall be cleared. The prohibition as

contained in subsection 1. hereof shall be effective from that stated closing time in any event where a permit is obtained. Such permit application shall be made to the Village Clerk and the permit shall be granted by the Village Board, in its discretion.

3. The closing hours stated herein shall not be applicable to Pioneer Park in the Village of Rochester. (Note: Case-Eagle Park is owned by Racine County and is subject to Racine County closing hour regulations.)

C. Operating Vehicles in Public Parks.

1. No person shall operate a motor vehicle upon the grounds of any public park within the Village of Rochester unless such vehicle is operated upon the established parking area for such park. Any “off-road” operation of a motor vehicle in a public park is a violation of this section.

2. Any person guilty of a violation of this subsection is subject to the penalties set forth in s. 7-50, and shall also be liable for restitution for the repair of damage caused by such violation.

7-14. FOX RIVER VESSEL REGULATIONS.

A. No boat, launch, vessel or other watercraft propelled in whole or in part by steam, gas, gasoline, petroleum, naptha fluid, electricity, or by other engine power shall be operated on Fox River within the corporate limits of the Village of Rochester, Racine County, Wisconsin:

1. At a rate of speed in excess of five miles per hour;

2. In a careless, negligent or reckless manner so as to endanger the life, property or persons of others; or

3. Between one hour after sunset and one hour before sunrise without a light or lights clearly visible from all directions.

B. Every boat propelled by gasoline or other similar motive power when operated on Fox River within the corporate limits of the Village of Rochester shall be equipped and operated with a muffler, at all time in good working order sufficient to prevent excessive or unusual noise, and with such muffler closed and without the cut-out open, except when engaged in a race conducted or sanctioned by a Wisconsin boat club under a permit from Racine County or the Village of Rochester.

7-15. TRUANCY.

Except as otherwise specifically provided in this section, the statutory provisions in Wis. Stat. chs. 118 and 938 relating to compulsory school attendance, truancy, habitual truancy, the penalties for contributing to truancy and school district truancy plans, are adopted and by reference made a part of this section as though fully set forth herein. Any future amendments, revisions or modifications of the chapters incorporated herein are intended to be made a part of this section. This section is enacted pursuant to Wis. Stat. s. 118.163.

A. Definitions.

“Dropout” means a person who has ceased to attend school, continues to reside in the school district, does not attend a public school, a private school, or an alternative program leading to high school graduation or a high school equivalency diploma as provided in Wis. Stat. ss. 118.15(1)(b) to (d) on a full-time basis, has not graduated from high school, and does not have an acceptable excuse under Wis. Stat. s. 118.15.

"Habitual truant" means a person who is absent from school without an acceptable excuse under Wis. Stat. ss. 118.15 and 118.16(4) (the school's written attendance policy) for part or all of five or more days on which school is held during a school semester.

"Truancy" means any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of such absence by the parent or guardian of the absent pupil, subject to the limits of Wis. Stat. s. 118.15(3)(c), and also means intermittent attendance carried on for the purpose of defeating the intent of Wis. Stat. s. 118.15.

"Truant" means a person who is absent from school without an acceptable excuse under Wis. Stat. ss. 118.15 and 118.16(4) (the school's written attendance policy) for part or all of any day on which school is held during a school semester.

B. Truancy Prohibited. Pursuant to Wis. Stat. s. 118.15, all persons between the ages of six and eighteen shall attend school. No person under the age of eighteen shall be a truant, habitual truant or a dropout.

C. Disposition. Any person cited for being truant, habitual truant or dropout shall appear before the Court with the person's parent or guardian. Upon a finding that a person has violated this section, the Court shall enter a dispositional order that may include any one or more of the following, as appropriate:

1. Truant.

   a. An order that the person attend school.

   b. Forfeitures:

      (1) For a first violation, a forfeiture of not more than $50.00 plus costs.

      (2) For a second or subsequent violation within twelve months of a previous violation, not more than $100.00 plus costs. Forfeitures are subject to Wis. Stat. s. 938.37, and may not exceed a cumulative amount of $500.00 for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardians of the person, or both.

2. Habitual Truant.

   a. An order that the person attend school.

   b A forfeiture of not more than $500.00 plus costs, subject to Wis. Stat. s. 938.37. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardians of the person, or both.

   c. Suspension of the person s operating privilege for not less than 30 days nor more than one year. The Court shall immediately take possession of the suspended license and forward it to the Department of Transportation, along with notice of the reason for and duration of the suspension.

   d. An order that the person remain at home except during religious worship or school programs. Such order may allow the person to leave his or her home if accompanied by a parent or guardian.

e. An order that the person attend an educational program as provided in Wis. Stat. s. 118.163(2)(d).

f. An order that the Department of Workforce Development revoke the person's work permit, as provided in Wis. Stat. s.118.163(2)(e).

g. Any other reasonable conditions consistent with this section, including a curfew, restrictions on associating with other children or adults, and on going to or remaining on specified premises.

h. An order that the person's parent, guardian or legal custodian participate in counseling (at the parent's, guardian's or legal custodian's own expense) or attend school with the person, or both.

3. Dropout. The Court may suspend the operating privilege of a person who is at least sixteen but is less than eighteen years of age and is a dropout. The Court may suspend the person's operating privilege until the person reaches the age of eighteen. The Court shall immediately take possession of the suspended license and forward it to the Department of Transportation, along with notice of the reason for and duration of the suspension.

D. Investigation of Truants and Dropouts.

1. A law enforcement agency may certify to the school district in writing that a student is under investigation for truancy and may obtain the student's attendance record pursuant to Wis. Stat. s. 118.125(2)(cg). The school district clerk who discloses the attendance record to the law enforcement agency shall notify the student's parent or guardian of that disclosure as soon as practicable after the disclosure.

2. The Court may order a school district to provide a list of persons known to be dropouts to the Court. The Court may request that the Department of Transportation assist it to determine which dropouts have operating privileges.

E. Jurisdiction.

1. A person who is under eighteen years of age on the date of disposition is subject to Wis. Stat. s. 938.342.

2. Pursuant to Wis. Stat. s. 938.17(2), the Court has jurisdiction to enter dispositional orders under Wis. Stat. s. 938.342, and to impose sanctions for violation of dispositional orders under Wis. Stat. s. 938.355(6m), regardless of the juvenile's age in proceedings for habitual truancy, and for juveniles aged twelve and over in all other proceedings under this section.

3. Pursuant to Wis. Stat. s. 938.45, adults may be subject to certain orders of the Court.

F. Sanctions. Violation of Conditions of a Dispositional Order. Pursuant to Wis. Stat. s. 938.17(2)(i), the Court may impose any combination of the sanctions authorized under Wis. Stat. s. 938.355(6m) and 938.45 for violation of a dispositional order entered under this section.

G. Contributing to Truancy. Any person 17 years of age or older, who, by any act or by omission, knowingly encourages or contributes to the truancy of another, as defined in subsection A. or as defined in Wis. Stat. s. 118.16(1)(c), shall be in violation of this section, whether or not the truant child is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the child to be truant. This subsection does not apply to a person who has under his control a child who has been sanctioned under

Wis. Stat. s. 49.26(1)(h).

7-16. LOITERING; CURFEW.

A. Applicability.

1. Hours. No child under the age of eighteen years shall loiter, idle or remain upon any street, alley or other public place or in any vacant lot in the Village, whether on foot or in or upon any conveyance being driven or parked thereon, between the hours of 11:00 p.m. and 5:00 a.m. the next day unless the child is accompanied by his or her parent, guardian or other adult person having lawful custody of such child.

2. Exceptions. This section shall not apply to a child, upon satisfactory proof thereof:

a. Performing an errand as directed by his parent, guardian or other person having lawful custody.

b. Who is on his or her own premises.

c. Whose employment makes it necessary to be upon the streets, alleys or public places (including any place of amusement or hotel, motel or rooming house) or any motor vehicle after such hour.

d. Returning home from a supervised school, church or civic function.

e. Who is participating in, going to or returning from:

(1) An emergency involving the protection of a person or property from an imminent threat of serious bodily injury or substantial damage;

(2) An activity conducted by a nonprofit or governmental entity that provides recreation, education, training, or other care under the supervision of one or more adults; or

(3) An activity involving the exercise of the child's rights protected under the First Amendment to the United States Constitution or Article I of the Constitution of the State of Wisconsin, or both, such as freedom of speech or the right of assembly.

3. The exceptions in subsection 2. shall not permit a child to unnecessarily loiter about the streets, alleys or public places (including any place of amusement or hotel, motel or rooming house) or vacant lots or be in a parked motor vehicle on the public streets.

B. Parental Violation. No parent, guardian or other person having legal custody of a child under the age of eighteen years shall permit such child to loiter, idle or remain upon any street, alley or other public place or in a vacant lot in the Village during the hours specified in sub. A.1. unless such child is accompanied by his or her parent, guardian or other adult person having legal custody of such child.

C. Responsibility of Operators of Places of Amusement. No person operating a place of amusement or entertainment within the Village, or any agent, servant or employee of such person, shall permit a child under the age of eighteen years to enter or loiter in such place of amusement or entertainment during the hours specified in sub. A.1. unless such child is accompanied by his or her parent, guardian or other adult person having legal custody of such child.

D. Responsibility of Hotels, Motels and Rooming Houses. No person operating a hotel, motel or

lodging or rooming house within the Village, or any agent, servant or employee of such person, shall permit any child under the age of eighteen years to visit, idle, wander or stroll in any portion of such hotel, motel or lodging or rooming house during the hours specified in sub. A.1. unless such child is accompanied by his or her parent, guardian or other adult person having legal custody of such child.

E. Detaining a Child. A child believed to be violating the provisions of this section shall be reported to the Sheriff's Department for Racine County, Wisconsin, for proper identification. Every law enforcement officer while on duty may detain any child violating subs. A., C. or D. pursuant to the detention provisions of Wis. Stat. s. 938.19, and shall deliver the child to the custody of his or her parent, guardian or person having legal custody of the child, or as otherwise provided in Wis. Stat. s. 938.20.

F. Warning. The first time a child is detained by law enforcement officers as provided in sub. E., the child and his or her parent, guardian or person having legal custody shall be advised as to the provisions of this section and any violation of this section occurring thereafter by this child or any other child under such person's care or custody shall result in penalties being imposed us provided in sub. G.

G. Penalty.

1. Any parent, guardian or person having legal custody of a child described in this section who has been warned in the manner provided in subsection F. and who thereafter violates any of the provisions of this section shall be subject to the penalties set forth in s. 7-50.

2. Any child between the ages of 12 and 18 years who violates this section after being detained and released under subsection E. and who has been warned pursuant to subsection F. shall be subject to penalties as set forth in s. 7-50.

7-17. UNDERAGE ALCOHOL.

The provisions of Wis. Stat. s. 125.07 are hereby adopted and made a part hereof by reference. A violation of any of the provisions of Wis. Stat. 125.07, including, but not limited to the following provisions, shall constitute a violation of this chapter. This section is adopted in strict conformance with Wis. Stat. s. 125.07, and in case of conflict, the provisions of Wis. Stat. s. 125.07 shall control.

A. Definitions. In this section:

"Alcohol Beverage" or "Alcoholic Beverage" means a fermented malt beverage or intoxicating liquor.

"Underage person" means a person who has not attained the legal drinking age as specified under Wisconsin Law and who is not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age, except as otherwise provided under Wis. Stat. s. 125.07.

B. Pursuant to Wis. Stat. s. 125.07(1)(a):

1. No person may procure for, sell, dispense or give away any alcoholic beverage to any underage person.

2. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This subsection shall not apply to alcohol beverages used exclusively as part of a religious service.

3. No adult may intentionally encourage or contribute to a violation of subsection D.

C. Pursuant to Wis. Stat. s. 125.07(3), no underage person may knowingly enter, attempt to enter or be on any premises licensed under section 9-3 of this Municipal Code.

D. Pursuant to Wis. Stat. s. 125.07(4):

1. No underage person may procure or attempt to procure an alcohol beverage from a person or premises licensed under section 9-3 of this Municipal Code.

2. No underage person may possess or consume an alcohol beverage on the premises of a premises licensed under section 9-3 of this Municipal Code.

3. No underage person may falsely represent his or her age for the purpose of receiving an alcohol beverage from a person or premises licensed under section 9-3 of this Municipal Code.

4. No underage person shall knowingly possess or consume an alcohol beverage.

E. The penalty for a violation of this section shall be the same as the penalty set forth in Wis. Stat. s. 125.07 for the corresponding violation, inclusive of the juvenile disposition provisions of Wis. Stat. ch. 938. See also section 9-3 of this Municipal Code.

7-18. SNOWMOBILES.

A. State Snowmobile Laws Adopted. Pursuant to Wis. Stat. s. 350.18(2), the Village adopts the provisions of Wis. Stat. ss. 350.02 to 350.05, 350.07 to 350.107, 350.11, 350.12, 350.13, 350.135, 350.15 to 350.17, 350.19 and 350.99 in strict conformity with said statutes, which are hereby adopted by reference and made part of this Chapter as if fully set forth within. Acts required to be performed or are prohibited by such statutes are required or prohibited by this

Chapter. The definitions set forth in Wis. Stat. s. 350.01 shall be applicable herein.

B. Snowmobile Operation and Routes.

1. Operation. No person may operate a snowmobile in the Village except in strict conformance with the statutory provisions adopted in section A. Subject to the provisions and exceptions set forth in Wis. Stat. s. 350.02, no person may operate a snowmobile on or adjacent to any Village street that is not one of the types of highways listed therein, nor or on any sidewalk, pedestrian way or mall, including but not limited to the sidewalk of the Main Street Bridge.

2. Routes. Snowmobiles may only be operated adjacent to or on highways lying in the Village if the operation is in strict conformance with section A, provided, however, that pursuant to the Village's power to provide for residential access and access to lodging under Wis. Stat. s. 350.18(3), a person may use any village street to get to or from a residence or lodging by the shortest route from a designated highway or corridor.

3. No operation in Village parks or on other Village land. Pursuant to the authority granted in Wis. Stat. s. 350.10, no person shall operate a snowmobile in any Village park or on any other land owned by the Village.

4. See also section 5-14 of this Municipal Code, prohibiting leaving keys in unattended vehicles.

C. Enforcement and Penalties.

1. Any law enforcement officer specified under Wis. Stat. s. 350.17 has authority and jurisdiction to enforce this section.

2. Any person who shall violate any provision of this article shall, upon conviction thereof be subject to the penalties set forth in Wis. Stat. s. 350.11.

7-19. Offenses Against State Law Subject to Forfeiture.

The following statutes defining offenses against the state are adopted by reference as though fully set forth herein to define offenses against the peace and good order of the Village, exclusive of any regulations for which the statutory penalty is a term of imprisonment, and provided the penalty for commission of such offenses hereunder shall be limited to a penalty as set forth in section 7-50 and Chapter 50 of this Municipal Code:

Statute Section	Subject
218.0146	Motor vehicles
218.0147	Purchase or lease of motor vehicle by minor
254.76	Causing fires by tobacco smoking
939.05	Parties to crime
939.22	Words and phrases defined
940.19(1)	Battery
941.10	Negligent handling of burning material
941.12(2) and (3)	Interfering with fire fighting
941.13	False alarms
941.20(1)	Endangering safety by use of dangerous weapon
941.23	Carrying concealed weapon
941.24	Possession of switchblade knife
943.01(1)	Damage to property
943.017(1)	Graffiti

943.11	Entry into locked vehicle
943.125	Entry into locked coin box
943.13	Trespass to land
943.14	Criminal trespass to dwellings
943.145	Criminal trespass to medical facility
943.15	Entry onto a construction site or into a locked building, dwelling or room
943.20	Theft (value under $1,000)
943.21	Fraud on hotel or restaurant keeper, recreational attraction, taxicab operator, or gas station (value under $1,000)
943.22	Use of cheating tokens
943.24(1)	Issue of worthless check (value under $1,000 each or cumulative within 90 days)
943.45	Theft of Telecommunications Services
943.455	Theft of Commercial Mobile Service
943.46	Theft of Video Service
943.47	Theft of Satellite Cable Programming
943.50	Retail theft (value under $1,000)
943.55	Removal of shopping cart
943.61	Theft of library material (value under $1,000)
944.20	Lewd and lascivious behavior
944.23	Making lewd, obscene or indecent drawings
946.40	Refusing to aid officer
946.41	Resisting or obstructing officer
946.42(1) and (2)	Escape (related to traffic violation, ordinance violation, civil arrest or body execution)
946.72(2)	Tampering with public records and notices
947.01	Disorderly conduct
947.011	Disrupting a funeral or memorial service
947.012	Unlawful use of telephone
947.0125	Unlawful use of computerized communication systems
961.01(14)	Definition of marijuana
961.14(4)(t)	Schedule 1 substances list (THC)
961.41(3g)(e)	Possession of THC, 25 grams or less, subject to 961.41(3g)(*intro*.)
961.571	Definitions (drug paraphernalia)
961.572	Determination (drug paraphernalia)
961.573(1) and (2)	Possession of drug paraphernalia
961.574(1) and (2)	Manufacture or delivery of drug paraphernalia
961.575(1) and (2)	Delivery of drug paraphernalia to a minor

7-20. HARASSMENT PROHIBITED.

A. State statute adopted. Wis. Stat. s. 947.013(1m) is adopted and further broadened as set forth herein.

B. Definition. As used in this section, the following term shall have the meaning indicated:

"Course of Conduct" means a pattern of conduct composed of a series of acts (consisting of at least two acts) over a period of time, however short, evidencing a continuity of purpose.

C. Harassment prohibited. No person, with intent to harass or intimidate another person, may:

1. Strike, shove, kick or otherwise subject the person to physical contact or attempt or threaten to do the same; or

2. Engage in a course of conduct or repeatedly commit acts which harass or intimidate the person and which serve no legitimate purpose. Such course of conduct or repeated acts may consist of conduct which is solely verbal, solely physical, or a combination of both.

7-21. [Reserved.]

7-22. DISCHARGING OF FIREARMS.

A. As used in this section, the term "firearm" means any gun, pistol, revolver, rifle, air gun or any other device or implement which impales with force a metal pellet of any kind.

B. No person shall discharge a firearm within the limits of the Village, including residential and agriculturally zoned areas, except in the following specific cases:

1. By a law enforcement officer or a person in the lawful defense of his or her person or property.

2. By any person while on a clearly defined target range, in a supervised shooting gallery, or a legal game preserve.

3. By any resident of the Village while on land upon which he resides or by any person while upon such land with the owner's or resident's express consent. Provided further, that this exception shall apply only to those lands within the Village that are zoned as "agricultural districts", “conservation districts” or “Urban Reserve District” under the Village Planning and Zoning Code, Chapter 35 of this Municipal Code.

C. No person shall so handle a gun, pistol or other firearm as to cause its discharge carelessly or heedlessly, in willful or wanton disregard of the rights or safety of others.

D. It shall be unlawful for any person to discharge a firearm within 200 feet of any residence without the owner's consent.

7-23. RESIDENTIAL PICKETING.

A. Declaration. It is declared that:

1. The protection and preservation of the home is the keystone of democratic government and the public health, welfare and good order of the community require that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility and privacy and, when absent from their homes and dwellings, carry with them the sense of security inherent in the assurance that they may return to the enjoyment of their homes and dwellings.

2. The practice of picketing before or about residences and dwellings causes emotional disturbance and distress to the occupants, obstructs and interferes with free use of public sidewalks and public ways of travel and such practice has as its object the harassing of such occupants.

3. Without resort to such practice, full opportunity exists, and under the terms and provisions of this Code will continue to exist, for the exercise of freedom of speech and other constitutional rights.

4. The provisions enacted by this section are necessary for the public interest to avoid such detrimental results set forth above and are enacted by the Village Board under the provisions of Wis. Stat. s. 61.34(1), which statute gives powers to a village board to enact

these regulations.

B. Picketing Residence or Dwelling Prohibited. No person shall engage in picketing before or about the residence or dwelling of any individual in the Village.

7-24. SKATEBOARDING.

It is unlawful for any person to operate or ride a skateboard in the following places in the Village:

A. On any public property where signs are posted prohibiting such use.

B. On private property (open to the public) were signs are posted prohibiting such use, unless written permission has been given by the owner, lessee or person in charge of the property.

7-50. PENALTIES.

Any person who violates any provision of the chapter or any regulation or rule, or order made hereunder shall be subject to a penalty as provided in Chapter 50 of this Municipal Code, unless a specific penalty is set forth in this Chapter. Where a specific penalty is set forth in this Chapter, it shall not preclude the application of non-conflicting provisions of Chapter 50.

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CHAPTER 8 PUBLIC NUISANCES

8-1 PUBLIC NUISANCES PROHIBITED.

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Village of Rochester, Racine County, Wisconsin.

8-2 RIGHT TO FARM.

It is the intent of this chapter to allow continuation of agricultural uses and practices in the Village in those areas of the Village zoned appropriately. The Village Board finds that changes in agricultural technological practices and scale of operation have, on occasion, tended to create conflicts between agricultural and other activities. The Village Board finds that, to the extent possible consistent with good public policy, the prohibition against public nuisances should not hamper agricultural production or the use of modern technology in lands and areas zoned and primarily used for agricultural purposes.

A. The Village Board confirms the right of a property owner, or his or her lessee or assign, to continue, expand or create an agricultural use if that use is in conformance with Wisconsin Law and Village Ordinances, unless the use is a substantial threat to public health or safety.

B. In any nuisance action against an agricultural use or agricultural practice conducted in agricultural areas of the Village, the relief granted, if any, shall not substantially restrict or regulate such uses or practices unless the court specifically finds that such relief is necessary to protect the public health or safety, under the standards set forth in Wis. Stat. s. 823.08, and such uses or practices affect an appreciable number of persons within the Village.

8-3 PUBLIC NUISANCE DEFINED.

A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

A. Substantially annoy, injure, or endanger the comfort, health, repose or safety of the public.

B. In any way render the public insecure in life or in the use of property.

C. Greatly offend the public morals or decency.

D. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way.

8-4 PUBLIC NUISANCES AFFECTING HEALTH.

The following acts, omissions, places, conditions and things are hereby specifically declared to be public health nuisances, but shall not be construed to exclude other health nuisances coming within the definition of s. 8-3 of this chapter.

A. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.

B. Carcasses of animals, birds, or fowl not buried or otherwise disposed of in a sanitary manner within

24 hours after death.

C. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed.

D. All stagnant water in which mosquitoes, flies or other insects can multiply.

E. Privy vaults and garbage cans which are not fly-tight.

F. All noxious weeds and other rank growth of vegetation.

G. All animals running at large.

H. The escape of smoke, soot, cinders, noxious acids, fumes, gasses, fly ash or industrial dust within the Village limits or within one mile therefrom in such quantities as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property.

I. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or industrial wastes or other substances.

J. Any use of property, substances or things within the Village of Rochester or within two miles thereof, emitting or causing any foul, offensive, noisome, nauseous, noxious, or disagreeable odors, effluvia or stenches repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the Village.

K. All abandoned wells not securely covered or secured from public use.

8-5 PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.

The following acts, omissions, places and conditions and things are hereby declared to be public nuisances affecting peace and safety but such enumeration shall not be construed to exclude other nuisances affecting public peace or safety coming within the provisions of section 8-3 of this chapter:

A. Dumping or storage of rubbish or abandoned, junked, discarded, dismantled or unregistered motor vehicles.

1. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

“Rubbish” includes waste, refuse, such as cans, used lumber, tree stumps and branches, lawn rakings, glass, metals, garbage, ashes, junk, crockery, and part or parts of any automobile or motor vehicle, and similar waste products and debris.

"Abandoned, junked, discarded, dismantled and/or unregistered motor vehicle" includes any vehicle or portion of a vehicle that is incapable of being self-propelled upon the public streets, any vehicle whose owner cannot be identified, and/or any vehicle without current license plates.

2. Storage declared a nuisance. It is declared and found that rubbish, abandoned, junked, discarded, dismantled and/or unregistered motor vehicles upon private property within the Village are detrimental to the public health, welfare and safety. Such rubbish and/or vehicles constitute an attractive nuisance to children, are a peril to their safety, depreciate the value of neighboring properties and constitute a fire hazard. This section has for its purpose the effective termination of such practices.

3. Prohibited acts. No person, either as owner, lessee, occupant or otherwise, shall store or deposit, or cause to permit to be stored or deposited rubbish and/or an abandoned, junked, discarded, dismantled or unregistered motor vehicle in and upon any private property, street, public property, or government property within the village.

4. Exemptions. The following are exempted from the above prohibitions:

   a. Storage in receptacles incidental to the normal use of the property.

   b. Storage of dismantled, inoperable, junked or wrecked vehicles within a structure of a permanent or temporary nature which totally encloses the vehicle(s) from view from all sides and above. A fence is not a structure under this section.

   c. Temporary storage not to exceed 60 days of dismantled, inoperable, junked or wrecked motor vehicles by a sales or repair business located in a properly zoned area.

   d. Facilities for which a conditional use permit has been issued pursuant to Chapter 35.

5. Special abatement procedure.

   a. If an abandoned, junked, discarded, dismantled or unregistered motor vehicle is located upon a public or private property in the Village of Rochester without the property owner's consent, the Village will proceed according to the procedures set forth in s. 5-12 of this Municipal Code, ss. 8-7 and 8-8, and/or Wis. Stat. s. 342.40, as appropriate.

   b. If an abandoned, junked, discarded, dismantled or unregistered motor vehicle is located upon a public or private property in the Village of Rochester with the property owners consent, and remains so for a period of 30 days, notice will be sent by certified mail ordering the removal of the nuisance, and indicating that if the vehicle is not removed or the property brought into compliance within ten days, the Village will proceed as specified in ss. 8-7 and 8-8, and citations will be issued pursuant to Wis. Stat. s. 175.25 and Chapter 50 of this Municipal Code.

   c. Abatement of all other nuisances under this subsection will occur as specified in ss. 8-8 and 8-9.

B. All unauthorized signs, signals, markings or devices which purport to be or may be mistaken as official traffic control devices placed or maintained upon or in view of any public highway or railway crossing.

C. All trees, hedges, billboards, or other obstructions which prevent persons driving vehicles on public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.

D. All limbs of trees which project over a public sidewalk less than ten feet above the surface thereof, or less than ten feet above the roadway of a public street.

E. All use or display of fireworks except as provided by the laws of the State of Wisconsin and this Municipal Code.

F. All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human use. (See also Chapter 11 of this Municipal Code.)

G. All wires over streets, alleys or public grounds which are strung less than 15 feet above the surface of the street or ground.

H. All loud, discordant and unnecessary noises or vibrations of any kind.

I. The keeping or harboring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other noises shall greatly annoy or disturb a neighborhood or any considerable number of persons within the Village.

J. All obstructions of streets, alleys, sidewalks, or crosswalks and all excavations in or under same, except as permitted by this Municipal Code, of which, although made in accordance with the Code, are kept or maintained for an unreasonable length of time after the purpose thereof has been accomplished.

K. All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk.

L. All abandoned refrigerators or iceboxes from which the doors and other covers have not been removed or such portion of the latch mechanism has not been removed to prevent latching or locking of the door.

M. Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.

N. Repeated or continuous violations of the Ordinances of the Village of Rochester or laws of the State of Wisconsin relating to the storage of flammable liquids.

8-6. PUBLIC NUISANCES OFFENDING MORALS AND DECENCY.

The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals and decency, but each enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of s. 8-3 of this chapter.

A. Disorderly houses. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual

intercourse or gambling; any house, dwelling or premises where there are continuous violations of Village ordinances, or there are repeated (more than two in any six-month period) police calls for complaints regarding problems including, but not limited to, noise, fights, violence, disorderly conduct, or neighbor problems, whether or not a citation is issued or an arrest is made. Citations under this section may be given to the residents, tenants, lessees, and/or owners of the premises.

B. All gambling devices and slot machines.

C. All places where intoxicating liquor or fermented malt beverages are sold, processed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by the Ordinances of the Village of Rochester.

D. Any place or premises within the Village where Village ordinances or state laws relating to public health, safety, peace, morals or welfare are openly violated.

E. Any place or premises resorted to for the purposes of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the State of Wisconsin or the ordinances of the Village of Rochester.

8-7. PUBLIC NUISANCES; INFECTED TREES.

A. The Village Board having determined that the health of the trees within the Village of Rochester may be threatened by fatal diseases, infections or infestations hereby declares the following to be public nuisances:

1. Any living or standing tree or part thereof infected or infested with an infectious agent or fungus, or which harbors any bark beetle or wood boring beetle.

2. Any dead tree or part thereof, including logs, branches, stumps, firewood or other material from which an infectious agent or fungus, or bark beetle or wood boring beetle, have not been removed.

B. No person shall permit any public nuisance as defined in subsection A to remain on any premises owned or controlled by him within the Village of Rochester.

C. Assessment of Costs.

1. The entire cost of abating any public nuisance as defined in subsection A. or of spraying any tree or part thereof which is located in or upon any part of public grounds shall be borne by the Village, and if on private grounds by the owner thereof pursuant to sections 8-8 and 8-9.

2. In the event that the Village elects to undertake an area-wide spraying project, the Village Board shall keep strict account of the costs of work done under this section and shall report to the Village Clerk all work done for which assessments are to be made, stating and certifying the description of the land, lots, parts or lots or parcels of land and the amounts chargeable to each.

D. Transporting of Diseased or Infested Trees and Wood Prohibited. No person shall transport within the Village of Rochester any diseased or infested trees, wood or material without first securing the

written permission of the Village Board.

8-8 ABATEMENT OF PUBLIC NUISANCES.

A. Inspection of Premises. Whenever complaint is made in writing to the Village that a public nuisance exists within the Village of Rochester, the Clerk shall promptly notify the appropriate Village official, who shall forthwith inspect or cause to be inspected the premises and shall make a written report of findings to the Village Board. Whenever practicable, the inspecting official shall cause photographs to be made of the premises and shall file the same in the office of the Village Clerk.

B. Emergency abatement.

1. Order of Abatement. If the inspecting official determines that a public nuisance exists within the Village and that there is imminent danger to the public health, safety, peace, morals, decency, or the trees of the Village, the official may issue an order reciting the existence of a public nuisance constituting imminent danger to the public and requiring immediate or quick action be taken as the official deems necessary to abate the nuisance. The order shall be served personally on the owner of the premises, as well as the occupant if different from the owner and applicable to the described nuisance. If the owner is not present in the Village, the order shall be communicated to the owner by telephone, fax, or computerized communication, and the original order shall be served personally or sent by certified mail, return receipt requested, to the owner. Notwithstanding any other provisions of this chapter, the order shall be effective immediately. Any person to whom such order is directed shall comply with the order immediately or within the number of days given in the order. Any costs incurred by the Village for delay of the action are the responsibility of the property owner.

2. Abatement by Village. Whenever the owner or occupant shall refuse or neglect to remove or abate the condition described in the order, the inspecting official shall, in his or her discretion, enter upon the premises and cause the nuisance to be removed or abated and the Village shall recover the expenses incurred thereby from the owner or occupant of the premises or from the person who has caused, permitted or maintained the nuisance.

C. Non-emergency Abatement.

1. Order to Abate Nuisance. If the inspecting official determines that a public nuisance exists on private premises but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, morals or decency, the inspector shall issue an order reciting the existence of a public nuisance and requiring the owner or occupant of the premises to remove or abate the condition described in the order within the time period specified therein. The order shall be served personally on the owner of the premises, as well as the occupant if different from the owner and applicable to the described nuisance, or, at the option of the inspecting official, the notice may be mailed to the last known address of the person, to be served by certified mail with return receipt. If the owner or the occupant cannot be served in person or by certified mail, the order may be served by posting it on the main entrance of the premises and by publishing it as a Class 3 notice under Wis. Stat. ch. 985. The time limit specified in the order runs from the date of service or publication, and shall be not less than 30 days.

2. Abatement by Village. If the owner or occupant fails or refuses to comply within the time

period prescribed, the inspecting official may enter upon the premises and cause the nuisance to be removed or abated and the Village shall recover the expenses incurred thereby from the owner or occupant of the premises or from the person who has caused or permitted the nuisance.

D. Remedy from Order. Any person affected by such order shall, within 30 days of service or publication of the order, apply to the Circuit Court for an order restraining the Village and the inspecting official from entering on the premises and abating or removing the nuisance, or be forever barred, provided, however, that if the order is an emergency order, the person affected shall apply to the Circuit Court for such order immediately. The court shall determine the reasonableness of the order for abatement of the nuisance.

E. Other methods not excluded. Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the Village or its officials in accordance with the laws of the State of Wisconsin.

F. Court order. Except when necessary under Subsection B, an official hereunder shall not use force to obtain access to private property to abate a public nuisance but shall request permission to enter upon private property if such premises are occupied and, if such permission is denied, shall apply to any court having jurisdiction for an order assisting the abatement of the public nuisance.

8-9. COST OF ABATEMENT.

In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Village shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if an order to abate the nuisance has been given to the owner, and the cost remains unpaid, such cost shall be assessed against the real estate as a special charge.

8-10. INTERFERENCE WITH VILLAGE BOARD PROHIBITED.

No person shall prevent, delay or interfere with the Village Board or any Village officer, employee or representative while they are engaged in the performance of duties imposed by this Chapter.

8-50. PENALTIES.

Any person who shall violate any provision of this chapter or any regulation or rule, or order made hereunder shall be subject to a penalty as provided in Chapter 50 of this Municipal Code in addition to the penalties set forth in this Chapter.

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CHAPTER 9 REGULATIONS, LICENSES AND PERMITS

9-1. ANIMALS.

A. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

"Animal" includes any warm blooded creature, except a human being, a reptile or an amphibian.

"Own" or "Owner" includes any person who owns, harbors or keeps an animal. See Wis. Stat. s. 174.001.

"Harbor" means to afford an animal lodging, to shelter it or to give it refuge.

"Keep" means to exercise some manner of care, custody or control over an animal.

"Foster" means to temporarily keep an animal that is not available for adoption, sale or trade in a residence for a period no longer than 30 days on behalf of an animal control facility, animal shelter, animal breeder, animal dealer or rescue group regardless of the licensing status of the facility, shelter, breeder, dealer or group, without compensation. Fostering includes care provided by a "Home Custody Provider" as defined in Wis. Admin. Code s. ATCP 16.01(9). Fostering does not include temporarily caring for an animal owned by another person while that person is unable to care for it due to absence, illness, vacation, or similar circumstances.

"Board" means to keep or harbor an animal belonging to another person or entity, or an animal that is available for adoption, sale or trade, with or without compensation. Boarding does not include fostering.

"Temporary Keeping" is the temporary caring for an animal owned by a friend or relative while that person is unable to care for it due to deployment, absence, illness, vacation, or similar circumstances.

"At Large" means an animal off the premises of the owner that is not physically leashed to a person that is able to exert control over the animal.

"Carcass" means the dead body, or any part of the dead body, of a livestock animal or other domestic animal.

"Cruel" means causing unnecessary or excessive pain or suffering or unjustifiable injury or death, and includes neglect which results in the same.

"Dog" includes any canine, including a hybrid dog, regardless of age or sex.

"Hybrid Dog" means a dog bred with the intent of having wolf, coyote or other wildlife mixed into the bloodline.

"Cat" includes any feline, including a hybrid cat, regardless of age or sex.

"Hybrid Cat" means a cat bred with the intent of having lynx, puma or other wildlife mixed into the bloodline.

"Neutered" means an animal rendered sterile by surgical means.

"Livestock" means any horse, bovine, sheep, pig, elk, or other deer raised in captivity, llama, alpaca, domestic rabbit, farm-raised deer, emu, ostrich, or domestic fowl, including game fowl raised in captivity.

"Domestic Animal" includes livestock, dogs and cats, along with animals typically kept as pets, such as birds and guinea pigs, but does not include rodents unless kept as pets.

B. Animals at Large; Injury to Property by Any Animal; Impoundment.

1. No owner shall permit any animal to go at large in the Village of Rochester. Any animal at large or untagged is subject to impoundment, and the owner shall be liable for all costs relating to the impoundment. A dog is considered untagged if a valid license and rabies tag is not attached to a collar. A cat is considered untagged if a valid rabies tag is not attached to collar. Any dog or cat that is found untagged is subject to impoundment, and the owner shall be liable for all costs relating to the impoundment.

2. It shall be unlawful for any person owning an animal to permit such animal to injure or attack another animal.

3. No person other than the owner shall open any gate or door to enable any animal to leave its premises for the purpose and result of setting an animal at large.

4. It shall be unlawful to permit any animal within the village to graze or feed, or to go upon any such area not designated as or improved for street purposes. Horses may be ridden through the Village of Rochester during daylight hours only and must be held to a walk.

5. Damage to property. No animal owner shall allow the same to go upon any sidewalk, parkway, or private lands or premises without the permission of the property owner, or break, bruise, tear up, crush or injure, any lawn, flower bed, plant, shrub, tree, or garden in any manner, or to defecate thereon.

6. Animal Waste. No animal owner shall allow the same to be on any public or private property, not owned or possessed by any such person, unless he has a device to scoop up excrement and an appropriate depository to put such excrement in. This shall not apply to visually handicapped or otherwise disabled persons who are unable to conform to this provision.

7. Impoundment. Should any animal be allowed to go at large in violation of this section, a Law Enforcement Officer or the Village Humane Officer shall take up and impound such animal with the Village Humane Officer and shall serve upon the owner, if known, or shall post upon the exterior of the Village Hall and in two other public places, a notice of the taking and impounding of said animal. The owner or person entitled to the possession of the animal at any time within seven days after such notice is received or posted may have the animal restored to him or her, upon proving his or her right thereto and paying all lawful charges incurred, including those for maintaining the animal during the period of impoundment at rates established by the Village Board.

C. Providing Proper Shelter, Food and Water.

1. Shelter. No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper accessible shelter as set forth in Wis. Stat. s. 951.14 and this section. In the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in Racine County.

a. The shelter shall be a moisture proof structure of suitable size to accommodate and allow retention of body heat from inclement weather. The shelter shall be made of durable material and, except for livestock shelter, shall have a solid floor raised at least two inches from the ground. The entrance to the shelter shall be covered by a flexible, wind proof material. The shelter shall be provided with a sufficient quantity of suitable bedding to provide insulation and protection against cold and dampness. The shelter must be placed where there is sufficient shade by nature or an artificial means of shade shall be provided to protect any animal from direct sunlight.

b. The shelter and confining areas shall be maintained in good repair to protect the animal from injury, and provide sufficient space to allow the animal adequate freedom of movement. The shelter shall be kept cleaned, reasonably dry without standing water or mud, and free of accumulations of feces and/or trash.

2. Food. No person owning or responsible for caring for any animal shall fail to provide food. Food shall be wholesome, palatable and of sufficient quality and nutritive value for the animal's health, and shall be free of contamination. Food receptacles shall be accessible, durable and kept clean.

3. Water. No person owning or responsible for caring for any animal shall fail to provide potable fresh water at all times, and if not available at all times, shall be provided daily and in sufficient quantity for the health of the animal. Water receptacles shall be accessible, durable and kept clean.

D. Cruelty or Mistreatment of Animals.

1. No person shall neglect or mistreat or abuse any animal, or by any act, omission or neglect cause or inflict any unnecessary or unjustifiable pain, suffering, injury or death to any animal, whether belonging to such person or to another, except that reasonable force may be employed to drive away vicious or trespassing animals.

2. No person shall carry or transport in any vehicle or over any streets, alleys, sidewalks or public ground in the Village any animal or bird so tied in place as to inflict undue stress or harm.

3. No person shall lead any animal upon a highway from a motor vehicle, or from a trailer, semi-trailer or other wheeled conveyance drawn by a motor vehicle in violation of Wis. Stat, s. 951.04.

E. Abandonment Prohibited; Humane Officer’s Acceptance of Animals.

1. Abandonment. No person owning, in charge of, or having custody of any animal shall abandon it. If a person owns an unwanted animal, that person is responsible for the humane disposal of the animal or finding a new owner for the animal.

2. Stray and Abandoned Animals. The Humane Officer shall accept stray and abandoned animals found in the Village. If the owner is found, the owner shall be charged a daily boarding fee plus the cost of care and custody, in an amount approved by the Village Board and set forth in the Fee Schedule. The Humane Officer shall attempt to place the animal with a new owner if the owner is not found and the animal is suitable for adoption, and if unsuitable for adoption or unable to be placed within ten days, the Humane Officer may euthanize the animal. The cost of euthanization shall be charged to the owner if the owner is known.

F. Disposition of Carcasses. No person who owns or controls a carcass, or who owns or controls the land on which a carcass is located, may leave the carcass exposed to access by dogs or wild animals for a longer period than 24 hours in the months of April to November or 48 hours during the months of December to March if the person knows or reasonably should know that the carcass is exposed. No person shall transport or dispose of a carcass in violation of Wis. Stat. s. 95.50.

G. Dogs or Other Domestic Animals Causing Damage or Injury.

1. Owners liability for damage or injury. Pursuant to Wis. Stat. s. 174.02, and subject to Wis. Stat. s. 895.045 (contributory negligence) and except as provided in Wis. Stat. s. 895.57(4) (unauthorized release of animals), the owner of a dog or other domestic animal is liable for the full amount of damages caused by the dog or other domestic animal injuring or causing injury to a person, domestic animal or property. If the owner was notified or knew that the dog or other domestic animal previously injured or caused injury to a person, domestic animal or property, the owner shall be liable for two times the full amount of the damages caused by the dog or other domestic animal injuring or causing injury to a person, domestic animal or property.

2. Penalties imposed on owner for dog or other domestic animal causing damage or injury. The owner of a dog or other domestic animal shall be subject to forfeiture as provided in Chapter 50 of this Municipal Code, but in no case less than $50.00 nor more than $400.00 if the dog or other domestic animal injures or causes injury to a person, domestic animal, property, deer, game birds, or the nests or eggs of game birds. If the owner was notified or knew that the dog or other domestic animal previously injured or caused injury to a person, domestic animal, property, deer, game birds, or the nests or eggs of game birds, the owner shall be subject to forfeiture as provided in Chapter 50 of this Municipal Code, but in no case less than $200.00 nor more than $400.00 if the dog or other domestic animal injures or causes injury to a person, domestic animal, property, deer, game birds, or the nests or eggs of game birds. These penalties shall be in addition to any other liability imposed on the owner.

3. Court order to euthanize a dog or other domestic animal. If a dog or other domestic animal causes serious injury to a person or other domestic animal on two separate occasions off of the owner's property without reasonable cause, and the owner was notified or knew prior to the second injury that the dog or domestic animal caused the first injury, the Village may commence a civil action to obtain a judgment from a court ordering a humane officer to euthanize the dog or other domestic animal.

H. Authority to Seize Dogs or Other Animals.

1. Pursuant to Wis. Stat. s. 173.13, the Village may direct a Law Enforcement Officer or the Village Humane Officer to take custody of any animal if the Law Enforcement Officer or Humane Officer has reasonable cause to believe that the animal:

a. Is abandoned or a stray;

b. Is not tagged and/or licensed (if required);

c. Is not confined when subject to quarantine, regardless of whether the order is for quarantine at an isolation facility or on the premises of the owner as set forth in Wis. Stat. s. 95.21;

d. Has caused damage to persons or property;

e. Is a participant in an animal fight intentionally instigated by any person;

f. Has been mistreated; or

g. Is delivered by a veterinarian pursuant to Wis. Stat. s. 173.13(2).

2. Pursuant to Wis. Stat. s. 173.21, the animal may be held in custody even after a claim by the owner if there are reasonable grounds to believe that the animal poses a significant threat to public health, safety, or welfare, in which case the Village shall petition the Circuit Court for an order to euthanize the animal pursuant to Wis. Stat. s. 173.23(3);

3. The Village may direct the humane officer to euthanize the animal without court order if there are reasonable grounds to believe that the animal poses an imminent threat to public health or safety, or the health or safety of itself or its custodian, pursuant to Wis. Stat. s. 173.23(4).

4. The owner of the animal shall be liable for all costs relating to impoundment, custody and care of the animal under this section.

I. Nuisance Animals; Abatement Orders.

1. Nuisance Animals. No person shall own an animal that barks, whines, howls, or makes other sounds common to its species in excess, attacks other animals or persons, damages private or public property, repeatedly interferes with passersby or passing vehicles, or is at large or unrestrained, as such activity may be evidence of neglect or mistreatment of the animal in violation of this chapter, or may cause or have the potential to cause injury to the animal.

2. Abatement. Upon notification of a violation of subsection 1., and in addition to all other provisions of this section, the Village may direct a Law Enforcement Officer or its Humane Officer to investigate, and if a violation is occurring, the Humane Officer shall issue and serve an order of abatement pursuant to Wis. Stat. s. 173.11, which shall contain the name and address of a person to whom directed, the ordinance being violated, a prohibition of further violations, a description of measures necessary to correct the violation, which may include an order to dispose of the animal, and a description of the hearing and appeal procedures in subsection 3.

3. Appeal. Any person named in an abatement order may, within the ten day period following service of the order, request an informal hearing before the Village Board. The hearing shall be held within ten days after the request is made, unless the requester agrees to a later date. A written decision by the Village Board shall be issued within ten days of the hearing, and that decision shall affirm the order or withdraw the order. A person adversely affected by the Board's decision may seek judicial review by commencing an action in circuit court within 30 days after the decision is issued.

J. Rabies Control; Dog, Cat and Ferret Rabies Vaccinations Required; Quarantine. See s. 25-4 of this Municipal Code.

K. Dog Licensing. Wis. Stat. s. 174.07, relating to Dog Licensing, is hereby adopted and supplemented, as set forth herein.

1. Dogs to be licensed.

a. Every person owning or keeping a dog within the Village of Rochester shall apply for a license for each dog over the age of five months, and shall provide proof of current rabies vaccination at the time of application. Licenses must be applied for no later than January 31st of any year or as soon as the dog attains the age

of five months, or within 30 days of acquiring ownership of a licensable dog, at the office of the Village Treasurer.

b. A person who is temporarily keeping a dog is not required to license the dog in the Village if the dog is licensed in the municipality where it usually resides.

c. A person who is fostering a dog is not required to license the dog if the dog is kept in the Village for no longer than 30 days, provided that the dog has a certificate of veterinary inspection.

d. A person who is granted a Kennel License pursuant to subsection L.2. shall provide Rabies Certificates and apply for Kennel Tags annually. The Kennel Owner is responsible for ensuring that dogs kept or harbored at the kennel have current rabies certificates and for affixing kennel tags to the collars of all dogs age five months or older.

2. Fees. The fees for licenses shall be determined by the Village Board and set forth in the Fee Schedule, and shall provide for a lesser license fee for altered dogs and for a late fee for licenses applied for after January 31st, or on or before the age of five months, or within 30 days of acquiring a licensable dog,

L. Limitation on Dogs and Cats; Kennel Licenses.

1. Except as set forth in subsection 3, the maximum number of adult cats and/or dogs five months of age or older allowed per residential dwelling unit or other premises in the Village is limited to four, but no more than three of those animals may be dogs over five months of age. Anyone wishing to keep more than the allowed number of dogs or cats must obtain a kennel license pursuant to subsection 2.

a. The limitation on the number of dogs set forth herein applies to dogs that are owned, fostered and/or boarded. It does not apply to the temporary keeping of dogs, provided that such dogs are temporarily kept for no longer than two weeks. In the event of the temporary keeping of dogs or cats for persons who are deployed, a Special Exception Permit may be applied for and granted by the Village Board.

b. A dog or cat breeder who engages in the sale of 25 or more dogs and/or cats per year, regardless of the age of the animal, that the person has bred and raised, unless all of the dogs and/or cats are from no more than three litters, must obtain a Kennel License. Such an operation is considered a commercial business.

c. Any person who sells, distributes, or trades, or offers for sale, distribution or trade, 25 or more dogs or cats in a year that the person has not bred and raised, regardless of the age of the animal, must obtain a Kennel License. Such an operation is considered a commercial business.

2. Kennel License. No person shall keep, own, or operate a kennel within the corporate limits of the Village of Rochester without first obtaining a kennel license to do so from the Village Board. "Kennel" means any residential dwelling unit or other premises wherein or whereon four or more dogs or cats are kept for any purpose as set forth in subsection 1, except as set forth in subsection 3.

a. No kennel license shall be issued for any land that is less than three acres in area unless such kennel exists and is licensed on the date of the adoption of this Chapter.

b. Kennel licenses are required for any premises that is regulated by the State of Wisconsin pursuant to Wis. Stat. s. 173.41.

c. Application. Any person desiring a license herein shall make application in writing to the Village Board, which application shall be signed by the applicant and shall set forth the name and residence of the applicant, a correct and accurate description of the premises for which the license is requested, and a statement of the purposes in detail and a description of the facilities in detail for which the license is being requested, including the number of animals desired to be kept on said premises.

d. Inspection, Determination and Fee. Upon receipt of the application and the Application and Inspection fee, the Village Board or other designated Village officials shall inspect the premises. Thereafter, the Village Board may issue or deny such license taking into consideration the particular premises, the applicant, the effect upon the adjoining and nearby property owners, and the interest of public health safety and welfare. Such license may be issued subject to the minimum standards set forth in subsection e. The Application and Inspection fee shall be in an amount set by the Village Board and set forth in the Fee Schedule, and is not refundable in the event that the license is not granted. If the Kennel License is granted, the applicant shall also pay the annual Kennel Tag fee in the amount set by the Village Board and set forth in the Fee Schedule, which shall include a fee for up to and including twelve animals and provide for an additional amount for each additional animal.

e. Minimum Standards.

(1) Any person holding a Kennel License for dogs is subject to the standards set forth in Wis. Admin. Code ss. ATCP 16.20, Dog care, general; 16.22, Dogs kept indoors; and 16.24, Dogs kept outdoors, provided, however, that fencing shall be made of chain link and shall be installed in a manner that prevents escape.

(2) Any person holding a Kennel License for cats is subject to the standards for dogs set forth in Wis. Admin. Code ss. ATCP 16.20, Dog care, general; 16.22, Dogs kept indoors; and 16.24, Dogs kept outdoors, provided, however, that cages for temporary kenneling for cats (one week or less) shall provide no less than 4.2 square feet of area per cat, and cages for kenneling of cats for more than one week shall provide no less than 24 square feet of area per animal.

f. Term of License; Review; Issuance; Transferability.

(1) Term. Any license issued hereunder shall be for a term of two years and shall be subject to renewal upon application to the Village Board and payment of the required license fee.

(2) Review. Upon application for a new or renewal permit, The Humane Officer will inspect the premises and report his or her recommendations to the Public Works Committee, which shall provide a review and recommendation to the Village Board. The Village Clerk shall provide notice of the application and meeting to the abutting property owners at least ten days before the Public Works Committee meeting.

(3) Issuance. Upon receipt of the Public Works Committee's recommendation, the Village Board shall vote to approve the Kennel

License, deny the Kennel License, or request additional information from the applicant which shall be provided at the next regularly scheduled meeting of the Village Board. Additionally, the Village Board may place certain conditions of its approval of the application which reasonably impact the health, safety and welfare of the Village of Rochester. In reviewing the application and when placing conditions on any such approval, where applicable, the Village Board shall consider the following factors:

(a) Whether the proposed use will be in harmony and compatible with the character of the surrounding area.

(b) Whether the proposed use will result in an over-intensive use of the building or land.

(c) Whether the proposed use will cause significant air, water or noise pollution.

(d) Whether the proposed use is adequately landscaped, buffered and/or screened.

(e) Whether the proposed use will be otherwise detrimental to the health, safety, or welfare of the neighboring land owners or the Village of Rochester.

(4) Transferability. The license shall be effective only to the person to whom the same is issued and upon the premises described in the application. No transfer is allowed.

3. Exception. No maximum number of cats pursuant to subsection 1 shall be imposed, nor shall a kennel license be required for the keeping of more than the maximum number of cats pursuant to subsection 3, for agriculturally zoned farm premises of at least three acres where cats are kept for the purpose of rodent control. While the number of cats is not limited on said premises, the cats present on the premises shall be cared for and adequate food, shelter and water shall be provided.

M. Vicious animals.

1. With the exception of animals under the control of law enforcement, no person shall own, keep or harbor a vicious animal. Evidence that an animal has, without provocation, bitten or inflicted injury on a person or domestic animal two or more times during the subject animal's life, or did bite or inflict injury once, causing wounds or injuries creating death or a potential danger to the health or life of the victim, shall constitute a prima facie showing that the animal is vicious. Any animal trained or used for fighting against another animal shall be presumed to be vicious under this section.

2. Disposition of nuisance or vicious animals.

a. Upon verified notification of a violation of this section, the Village Board will make a determination as to whether the animal is vicious.

b. In making its determination, the Village Board shall consider the circumstances, and may determine that an animal is not vicious if:

(1) Death, injury or damage is sustained by a person who, at the time such was sustained, was committing trespass upon premises occupied by the

owner of the animal, or was teasing, tormenting, abusing or assaulting the animal, or was committing or attempting to commit a crime or violating or attempting to violate a statute or ordinance which protects person or property.

(2) Death, injury or damage was sustained by a domestic animal which was teasing, tormenting, abusing or assaulting the animal, provided, however, that this section shall not apply if the animal is trained or used for fighting.

(3) The animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.

c. No animal may be declared vicious for acts committed by the animal while being utilized by a law enforcement officer for law enforcement purposes.

d. Upon the Village Board's determination, the Village Clerk shall serve written notice and order, hand delivered or sent by U.S. Postal Service Certified Mail, return receipt required, giving the owner no more than ten days from receipt of the notice and order, to dispose of the animal and show proof of the relocation of the animal and the place of its relocation or a certificate of euthanization. If the owner does not dispose of such animal it may be impounded and euthanized.

e. If the owner wishes to appeal the order of the Board, such appeal shall be in writing and filed with the Village Clerk no more than ten days after receipt of the notice and order, or within the time designated on the order. Upon receipt of a written appeal, the Village Board shall conduct a hearing on the matter. The Board shall thereafter render a written decision that the animal is dangerous and must be euthanized or is not dangerous and shall remain with the owner.

3. The owner of any animal which is impounded and/or euthanized shall be held responsible for payment of any expenses incurred by animal control or the impoundment facility. Failure to pay such fee within 15 days after impoundment or destruction of such animal shall constitute a violation of this chapter.

N. Keeping Animals Other than Typical Pets; Prohibited Animals.

1. Animals Other than Typical Pets. Any person wishing to raise and/or maintain any animal or fowl, other than a dog, cat, or captive-bred species of caged bird, rodent, turtle, fish, non-poisonous, non-constricting snake, or livestock kept in conformance with this section, must obtain a Special Exception Permit issued by the Village Board as set forth in subsection Q.

2. Prohibited Animals.

a. Except as otherwise provided in this chapter, no person shall keep, maintain, or have in his possession or under his control within the Village any livestock or poultry, or any polecat, skunk, raccoon, fox, game or game birds, nor shall any person keep a hybrid cat or hybrid dog.

b. No person shall keep, maintain, or have in his possession or under his control within the Village any nuisance animal as set forth in subsection I, or any vicious animal as set forth in subsection M, as determined by the Village Board, or as determined by, and/or ordered removed from, any court, municipality, town, county or state.

c. No person shall keep, maintain, or have within his possession or under his control within the Village any poisonous reptile or any other dangerous or carnivorous wild animal or reptile, any vicious or dangerous domesticated animal, or any other animal or reptile of wild, vicious or dangerous propensities, including but not limited to:

(1) All poisonous animals and reptiles including rear-fang snakes

(2) Apes: Chimpanzees (Pan); gibbons (Hylobates); gorillas (Gorilla) orangutans (Pongo); ans siamangs (Symphalangus)

(3) Baboons (Papoi, Mandrillus)

(4) Bears (Ursidae)

(5) Cheetahs (Acinonyx jubatus)

(6) Crocodilians (Crocodilia) 30 inches in length or more

(7) Constrictor Snakes, four feet in length or more

(8) Coyotes (Canis latrans)

(9) Elephants (Elephas and Loxodonta)

(10) Game cocks and other fighting birds

(11) Hippopotami (Hippopotamidea)

(12) Hyenas (Hyaenidae)

(13) Jaguars (Panthera onca)

(14) Leopards (Panthera pardus)

(15) Lions (Panthera leo)

(16) Lynxes (Lynx)

(17) Monkeys, old world (Cercopithecidae)

(18) Pumas (Felis concolor); also known as cougars, mountain lions and panthers

(19) Ocelots (Felis pardalis)

(20) Rhinoceroses (Rhinocero tidae)

(21) Snow leopards (Panthera uncia)

(22) Tigers (Panthera tigris)

(23) Wolves - red wolf (Canis Lupus), gray timber (Canis Nigar), or hybrid dog part wolf

(24) Poisonous insects

(25) Wild animals as defined in Wis. Stat. s. 169.01(37)

(26) Exotic birds.

3. Exceptions.

a. The provisions of this subsection shall not apply to pet shops, zoological gardens, circuses, professional animal acts, game farms and wild life exhibits if Special Exception Permits are granted pursuant to subsection Q and:

(1) Their location conforms to the provisions of the zoning ordinance of the Village, and all appropriate zoning and building permits are issued;

(2) All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate objectionable odors;

(3) Animals are maintained in quarters so constructed as to prevent their escape; and

(4) No person lives within three hundred feet of the quarters in which the animals are kept.

b. The provisions of this subsection shall not apply to the keeping of livestock and poultry on agriculturally zoned farm premises of at least five acres.

O. Proximity to Dwellings of Others. No person having possession of or in control of any animal or fowl (other than dogs and cats) shall allow the same to be kept closer than 300 feet to any dwelling house other than that of such person.

1. Nonconforming Use. The lawful nonconforming use of a parcel of real estate existing at the time of the adoption of this Chapter may be continued, although the use does not conform with the provisions of this section; however:

a. Only that portion of the land in actual use may be so continued and the nonconforming use may not be extended to additional lands; and

b. The nonconforming use must be in compliance with any terms and conditions of the zoning affecting the property.

c. Discontinuance of nonconforming use. If a nonconforming use is discontinued or terminated for a period of twelve months, any future use of the structure or land shall conform to the provisions of this section.

d. Current File. A current file of all nonconforming uses and structures shall be maintained by the Village Clerk to the extent it is reasonably practical to do so listing the following: property location, use of the structure or land and date the use became nonconforming.

2. Exceptions. Any person wishing an exception to this section shall apply for a Special Exception Permit pursuant to subsection Q of this section.

P. Restriction on Number of Livestock and Other Non-Domestic Animals.

1. Except as provided in subsection 2, no person shall place, allow or consent to the placement on his or her property any livestock or other non-domestic animals on a parcel of land less than five acres in area.

2. Exceptions. The restriction set forth in subsection 1 shall not apply to:

a. Agriculturally zoned parcels of real estate which are equal to or greater than five acres.

b. A property owner who has obtained a Special Exception Permit pursuant to subsection Q of this section.

c. Parcels of real estate which are contiguous to other parcels owned by the same individual or members of the owner's immediate family, such as parents, children or siblings, which in aggregate are equal to or greater than five acres in area.

d. Legal Nonconforming Use. The lawful nonconforming use of a parcel of real estate existing at the time of the adoption of this Code may be continued, although the use does not conform with the provisions of this section; however:

(1) Only that portion of the land in actual use may be so continued and the nonconforming use may not be extended to additional lands; and

(2) The nonconforming use must be in compliance with any terms and conditions of a zoning ordinance affecting the property.

(3) Discontinuance of nonconforming use. If a nonconforming use is discontinued or terminated for a period of twelve months, any future use of the structure or land shall conform to the provisions of this section.

(4) Current File. A current file of all nonconforming uses and structures shall be maintained by the Village Clerk to the extent it is reasonably practical to do so listing the following: property location, use of the structure or land and date the use became nonconforming.

Q. Special Exception Permit. Notwithstanding any provision contained in this chapter to the contrary, in the event that a person wishes to raise and/or maintain any animal or fowl as otherwise contrary to subsection N of this section, or a property owner seeks to place, allow or consent to the placement of livestock or other non-domestic animals within 300 feet of a dwelling unit as otherwise contrary to subsection O of this section, or place such animals on property containing less than five acres contrary to subsection P of this section, said person or property owner shall apply for a Special Exception Permit, which shall require the approval of the Village Board. Special Exception Permits may be granted by the Village Board for the presence of more than the number of dogs or cats allowed in a residence set forth in subsection L only under the following circumstances: for the combination of households when the occupants already own animals (for the life of the animals); for the temporary keeping of dogs and/or cats during a deployment (for the term of the deployment); and for the addition of a service dog to a household.

1. Application. Not less than twenty days prior to the next regularly scheduled meeting of the Public Works Committee, the applicant shall pay a fee in an amount set by the Village Board and set forth on the fee schedule, and shall file with the Village Clerk an application setting forth the following:

a. The parcel of real estate that is the subject of the request.

b. The specific type or types and number of animals which the applicant proposes to place on the subject property.

c. A statement addressing the factors which the Village Board will consider for approval as set forth in subsection 2.

d. A site plan of the affected parcel of real estate which shows the following:

(1) The area where the animals will be penned, including the distance that any such pen will be set back from adjacent property owners.

(2) Manure storage areas. Additionally as an attachment to said site plan, the applicant shall include a written plan for how the applicant will provide for the regular removing, spreading or other disposal of manure so that it does not become unsightly or emit odor beyond the property boundary or become a public nuisance.

(3) Adequate drainage facilities located on the property or to be implemented by the property owner so as to protect surrounding properties from surface water discharge containing contaminants including but not limited to sediment or organic waste.

2. Determination. Upon receipt of the application the Humane Officer shall inspect the premises, and report his or her findings to the Public Works Committee, which shall then make a recommendation to the Village Board. The Village Clerk shall send notice of the application and Public Works Committee meeting to the abutting neighbors at least ten days before the Public Works Committee meeting. Upon receipt of the Public Works Committee's recommendation, the Village Board shall vote to approve the Permit, deny the Permit, or request additional information from the applicant which shall be provided at the next regularly scheduled meeting of the Village Board. Additionally, the Village Board may place certain conditions on its approval of the application which reasonably impact the health, safety and welfare of the Village of Rochester. In reviewing the application and when placing conditions on any such approval, where applicable, the Village Board shall consider the following factors:

a. Whether the proposed use will be in harmony and compatible with the character of the surrounding area.

b. Whether the proposed use will result in an over-intensive use of the building or land.

c. Whether the proposed use will cause significant air, water or noise pollution.

d. Whether the proposed use is adequately landscaped, buffered and/or screened.

e. Whether the proposed use will be otherwise detrimental to the health, safety, or welfare of the neighboring land owners or the Village of Rochester.

3. Term of Permit. Any permit issued hereunder for a special exception to the requirements of subsection N shall be for one year, or a shorter term if specified by the Village Board. The term of a special exception to the requirements of subsection O or P shall be two years, and the permit shall be subject to renewal upon application to the Village Board and payment of the required license fee. The license shall be effective only to the person to whom the same is issued and upon the premises described in the application. No transfer is allowed.

R. Suspension, Revocation, and Refusal to Renew Licenses or Permits.

1. A license or permit issued under this Section may be suspended or revoked by the Village Board at any time after the issuance of the same, and the Village Board may refuse to renew a license or permit, upon giving to such applicant, or any person in possession of the premises, 15 days' notice of such suspension, revocation, or refusal to renew by personal service or by certified mail addressed to the license or permit holder

2. The Village Board's action shall be for cause. "Cause" as used herein shall be defined as the license or permit holder's failure to comply with any condition placed on said license or permit, failure to maintain the premises in a manner consistent with the license or permit, or conviction of a violation of this section or any ordinance, statute or regulation related to the keeping or treatment of animals, public or animal health, public nuisance, or other related provision.

3. A license or permit holder whose license or permit has been suspended, revoked or not renewed may appeal said decision to the Village Board by filing written notice of the appeal with the Village Clerk within 15 days of receipt of the notice of the suspension, cancellation or revocation. The Village Board shall a hearing on the appeal as soon as possible after receipt of the notice of appeal, and proceedings on the suspension, cancellation or revocation shall be suspended until the hearing is held and the Board issues its decision. The Village Board shall issue its determination in writing within 15 days of the hearing and shall serve that determination personally or by certified mail. A person adversely affected by the Board's decision may seek judicial review by commencing an action in circuit court within 30 days after the decision is issued.

4. If a permit is suspended, revoked or not renewed, the license or permit holder shall have fifteen days from the date of receipt of the letter or determination by the Village Board to comply with the provisions therein.

S. Penalties. In addition to any penalty specifically set forth in this section, any person who violates any provision of this section or any regulation or rule, or order made hereunder shall be subject to a penalty as provided in Chapter 50 of this Municipal Code. Nothing in this section shall preclude the Village from maintaining any appropriate action to prevent or remove a violation of any provision of this Chapter by injunction or other equitable relief.

9-2. NON-INTOXICATING AND SODA WATER BEVERAGES.

A. License Required. No person shall operate, conduct or maintain within the Village of Rochester any business of selling non-intoxicating beverages as defined in Wis. Stat. s. 66.0433(1) or soda water beverages as defined in Wis. Stat. s. 66.0433(2), whether at retail or wholesale, without first procuring a license to do so as hereinafter provided. Licenses shall be issued by the Village Clerk under the authority of the Village Board.

B. Application. Applications for licenses shall be filed with the Village Clerk for presentment to the Village Board at any regular or special meeting thereof. All applications shall specify the type of beverages to be sold (either non-intoxicating or soda water or both) and whether consumption shall be off or on the premises, and shall be accompanied by a license fee as determined by the Village Board and set forth on the Fee Schedule. In the event the license is denied the fee shall be returned upon demand. The premises to be licensed shall be described in the application.

C. Expiration. All licenses issued pursuant to this section shall expire on the 30th day of June next succeeding the date of issue.

D. Relocation. In case of relocation of the place of business from the premises designated in the license to another location in the Village within the license period, the licensee shall give notice of such change of location and the license shall be amended accordingly without payment of any additional fee. No such license, however, shall be transferable from one person to another.

E. No Non-intoxicating Beverage License shall be granted to any person in violation of Wis. Stat. s. 66.0433(1)(b).

9-3. INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES.

A. State Statutes Adopted. The provisions of Chapter 125 of the Wisconsin Statutes relating to the sale, procurement, consumption and handling of fermented malt beverages and intoxicating liquors and the licensing of parties involved therein, together with all amendments, revisions, and other changes made to said statutes are hereby adopted and made a part of this section by reference, exclusive of any provision thereof relating to the penalty to be imposed or the punishment for violation of said statutes.

B. Licenses.

1. When Required. No person, except as provided in subsection A, shall distribute, vend, sell, offer or keep for sale at retail or wholesale, deal or traffic in, or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage, or cause the same to be done, without having procured a license or permit as provided herein, nor without complying with all the provisions of this section, and all applicable state statutes, ordinances and regulations of the State of Wisconsin and the Village of Rochester.

2. Separate License Required for Each Place of Sale. Except as provided under Wis. Stat. ss. 125.27 (2) (a) and 125.51 (5) (c) 1., each person shall have a separate license covering each location or premises, except a licensed public warehouse, from which deliveries and sales of alcohol beverages are made or at which alcohol beverages are stored. No license shall be issued to any person for the purpose of possessing, selling, or offering for sale any intoxicating liquor or fermented malt beverages in any dwelling, house, flat or residential apartment.

3. There shall be the following classes and denominations of licenses which shall be issued by the Clerk upon approval of the Village Board (except as set forth herein), after payment of the fee for the license as determined by the Village Board and set forth in the Fee Schedule. As used in this section, a “Class B Combination License” includes a Retail “Class B” Intoxicating Liquor License and a Retail Class “B” Fermented Malt Beverage License, and a “Class A Combination License” includes a Retail “Class A” Intoxicating Liquor License and a Retail Class “A” Fermented Malt Beverage License. A “Combination” license is not a separate license.

a. Retail “Class B” Intoxicating Liquor pursuant to Wis. Stat. s. 125.51(3).

(1) Minimum Fee for Reserve "Class B" Licenses. Any person seeking the initial issuance of a reserve "Class B" license will not only pay the annual "Class B" license fee, but an initial issuance fee as provided in Wis. Stat. 125.51(3) and (4). The holder of a reserve "Class B" license shall, upon renewal, pay only the fee established for a regular "Class B" license.

b. Retail Class “B” Fermented Malt Beverage pursuant to Wis. Stat. s. 125.26(2).

c. Retail “Class A” Intoxicating Liquor pursuant to Wis. Stat. s. 125.51(2).

d. Retail Class “A” Fermented Malt Beverage pursuant to Wis. Stat. s. 125.25.

e. “Class C” Wine License pursuant to Wis. Stat. s. 125.51(3m).

f. Operator's License pursuant to Wis. Stat. s. 125.17.

g. Provisional Operator’s License pursuant to Wis. Stat. s. 125.17(5).

h. Temporary Class “B” Fermented Malt Beverage Licenses pursuant to Wis. Stat. s. 125.26(6).

i. Temporary “Class B” Wine Licenses pursuant to Wis. Stat. s. 125.51(10).

j. Provisional Retail Licenses pursuant to Wis. Stat. s. 125.185.

4. License Applications. Applications for licenses to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on the form prescribed by law, shall be sworn to by applicant, and shall be filed with the Village Clerk not less than 15 days prior to the granting of such license. Such application shall be accompanied by the cost of publication required in Wis. Stat. s. 125.04(3)(g)6. No license shall be issued until the license fee is paid. No other licenses shall be granted for the sale or trafficking of fermented malt beverages or intoxicating liquors except those specified in subsection 3.

5. Operator's Licenses.

a. An Operator's license pursuant to Wis. Stat. s. 125.17 may be issued by the Village Board to persons who meet the requirements of Wis. Stat. ss. 125.04 and 125.17. A written application shall be filed with the Village Clerk on a form provided therefore, together with consent to perform a background check, and if a new applicant, a copy of the applicant’s beverage training certificate. Upon approval of the application by a majority vote of the Village Board and payment of the license fee, the Clerk shall issue to the applicant a license to expire on June 30 next following.

b. Provisional Operator's license. The provisions of Wis. Stat. ss. 125.17(5) and (6) apply. The Village Clerk may issue provisional operator's licenses as follows:

(1) A provisional operator's license may only be issued to a person who has completed an application for an operator's license and paid the required fees.

(2) The Village Clerk shall issue a provisional operator's license to a person who, at the time the person applies for an operator's license with the Village, files a certified copy of a valid operator's license issued by another municipality, or who shows proof that the person is enrolled in the required responsible beverage server training course, or is qualified under Wis. Stat. s. 125.17(6)(a), and who otherwise meets the requirements of this section.

(3) The Village Clerk shall perform the standard background check on the applicant prior to issuance of a provisional operator's license.

(4) The Village Clerk may not issue a provisional operator's license to a person who has been denied an operator's license by the Village.

(5) A provisional operator's license expires 60 days after its issuance or when an operator's license is issued to the applicant, whichever is sooner. If the provisional operator's license was issued to a person upon proof that the person was licensed by another municipality, the provisional operator's license shall expire 60 days after its issuance, or when an operator's license is issued by the Village, or upon expiration of the other municipality's license, whichever is sooner.

(6) The Village Clerk may revoke the license if the Clerk discovers that the holder of the provisional license made a false statement on the application, the license issued by the other municipality is not valid, or upon denial of the person's application for an operator's license.

6. Provisional Retail Licenses. The provisions of Wis. Stat. s 125.185 apply. A provisional retail license may be issued by the Village Clerk to a person who has applied for a Class "A," Class "B," "Class A," "Class B," or "Class C" license under the following conditions:

a. The provisional license authorizes only the activities that the type of retail license applied for authorizes.

b. The provisional license expires 60 days after its issuance or when the retail license applied for is issued to the holder, whichever is sooner. The Village Clerk may revoke the license if the Clerk discovers that the applicant made a false statement on the application.

c. The Village Clerk may not issue a retail "Class B" license if the Village's quota under Wis. Stat. s. 125.51(4) prohibits the Village from issuing a "Class B" license.

d. No person may hold more than one provisional retail license for each type of license applied for per year.

e. The Village Clerk may only issue the provisional retail license if the background check is completed and the applicant qualifies to receive the retail license applied for.

C. Specified License Restrictions. In addition to the requirements imposed by the provisions of the Wisconsin Statutes adopted by reference in subsection A of this section, the following restrictions shall apply to the issuance of all licenses or permits in the Village of Rochester pursuant to this section:

1. Requirements for Licenses. No license shall be granted to any person not meeting the qualifications set forth in Wis. Stat. ch. 125.

2. A Retail Class B Combination license shall be issued only for that portion of a premises located on the street level except in the case of a hotel or restaurant. A license may be granted to a person (such as a partnership) not specifically addressed under state law if said person otherwise meets the requirements of Wis. Stat. s. 125.04.

3. The Village Board may refuse to grant a license under this section to any person pursuant to subsection D.

4. Effect of Revocation of License. No license shall be issued for any premises or person if a license covering such premises or person has been revoked within 12 months prior to application pursuant to Wis. Stat. s. 125.12.

5. Inspection of Premises. The Village Board may, at any and all reasonable times as it may deem necessary and proper cause any premises licensed under this section to be inspected by the Health Officer, Fire Inspector, and/or Building Inspector, to determine whether the applicant, licensee and the premises licensed or sought to be licensed complies with the regulations, ordinances, and laws applicable thereto. These officials, or any one of them, shall furnish to the Village Board, in writing, the information derived from such inspection within ten days from the inspection thereof. No license or permit provided for in this section shall be issued without the approval of a majority of the Village Board and no license shall be renewed if any inspection as herein provided indicates or reveals any violation of any Village Ordinance or State Law.

6. Health and Sanitation. No license shall be issued for any premises which does not conform to the sanitary, safety and health requirements of the State of Wisconsin and to all ordinances and regulations adopted by the Village Board.

7. Tax Delinquencies. No license shall be granted for any person or operation of any premises for which taxes or assessments or other financial claims of the Village of Rochester are delinquent.

8. Location of Premises. No Retail Class B Combination License or Retail “Class A” License shall be issued for any premises less than 300 feet from an established public or parochial school, hospital or church. Such distance shall be measured via the shortest route along the highway or street from the closest point of the boundary of such school, church or hospital to the closest entrance of or to such premises.

9. Entry upon Premises. Every applicant applying for and procuring a license thereby consents to the entry on the licensed premises of law enforcement, or other duly authorized representatives of the Village, including the Health Officer, Building Inspector, Deputies, Village Clerk, Village Treasurer, Village President, and Village Trustees at all reasonable times for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of Village Ordinances and State Laws, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offense. For the purpose of this paragraph, the terms "premises" and "licensed premises" shall include all living rooms directly or indirectly connected with such premises which are not in another story.

10. Hours of Operation.

    a. No premises licensed for the sale of intoxicating liquor at retail shall, during the days or hours they are required to close, or during the hours in which the sale of liquor is prohibited, obstruct, by the use of curtains, blinds, screens, or any other manner, a full and complete view of the interior from the outside. During the hours in which the sale of intoxicating liquors is permitted the premises shall be properly and adequately lighted.

    b. No premises for which a license has been issued under this section for the sale or trafficking of fermented malt beverages or intoxicating liquors shall remain open for the sale of such beverages, and no person shall sell such beverages and liquors in violation of Wis. Stat. ss. 125.32(3) and 125.68 (4).

11. Credit. No Retail Class A, B or C licensee shall sell or offer to sell any intoxicating liquor or fermented malt beverages to any person on credit, excepting by use of credit cards, credit extended by a hotel or a resident guest or by grocers or druggists or restaurateurs who maintain a credit system in connection with other purchases as well. It shall be unlawful for such licensee to sell such beverages or liquors to any person on a passbook

or store order, or to receive from any person any goods, wares, merchandise, or other articles in exchange for intoxicating liquor or fermented malt beverages.

12. Orderly Houses. Each licensed premises shall at all times be conducted in an orderly manner, and no disorderly, riotous or indecent conduct shall be allowed at any time on any licensed premises.

13. Slot Machines. No slot machines shall be kept upon the licensed premises at any time.

14. Grease Interceptors. No license shall be issued or renewed for any premises which does not comply with the Wisconsin Plumbing Code. Compliance requires that all plumbing installations for commercial and industrial occupancies where grease, fats, oils or similar waste products of cooking or food are introduced into the building's drain system shall be equipped with grease interceptors.

    a. All drains and drain piping carrying oil, grease or fats shall be directed through one or more grease interceptors.

    b. All grease interceptors and tanks shall be cleaned and emptied on a regular basis in order to prevent grease from entering the public sewer system.

    c. Applicants for new licenses or renewal of existing licenses shall submit copies of all receipts received from a grease removal or disposal firm that removed grease from the required interceptors in or on said premises. Such receipts shall cover the past 12 month period and specify the following information:

        (1) Dates of grease removal.

        (2) Quantity of grease removed in pounds and/or gallons.

        (3) Location of interior and exterior grease interceptors and tanks.

        (4) Cost of grease removal and disposal.

    d. Prior to license approval, the facility will be inspected by the Village's Building Inspector to insure compliance with existing Wisconsin Plumbing Code.

D. Granting, Denying, Revoking, Suspending and Refusing to Renew Licenses.

1. Granting of Licenses. Opportunity shall be given by the Village Board to any person to be heard for or against the granting of any license.

2. Denial of a License. The Village Board may refuse to grant a license as set forth in Wis. Stat. s. 125.12(3m), and if a license is refused, a written notice thereof, including the reasons for the decision, shall be given to the applicant. Rational reasons for denial of a license authorizing the sale of liquor or fermented malt beverages include, but are not limited to: failure to meet statutory and ordinance qualifications; the falsification of an application; adverse impact on traffic; adverse impact on the neighborhood; insufficient parking; proximity to other licensed establishments or residences; or availability of and ability of law enforcement services to serve the establishment balanced against the needs of the community. Rational reasons for denial of an operator's license or approval of an agent shall include, but shall not be limited to, the failure to meet statutory and ordinance qualifications, or the falsification of an application.

3. Approval. Upon the approval of the application by the Village Board, the Village Clerk shall, upon the filing by the applicant of a receipt from the Village Treasurer showing

payment for the license, issue the license which shows the serial number, describes specifically the premises licensed, the date of issuance, the fee paid, and the name of the licensee and premises for which issued.

4. Term. All licenses shall remain in force until the 30th day of June next following the granting thereof, unless a shorter term is specified, and unless sooner revoked in the manner set forth in subsection 6. Licenses issued for less than one year shall be issued pursuant to Wis. Stat. ss. 125.26(4) and (5) and 125.51 (9), as applicable to the type of license.

5. Transfer. No licenses shall be transferable either as to licensee or location, except as provided in Wis. Stat. s. 125.04(12), and where a transfer is allowed, a transfer fee in an amount determined by the Village Board and set forth in the Fee Schedule shall be paid.

6. Revocation and suspension of licenses. Proceedings for revocations and suspensions of licenses shall be instituted pursuant to Wis. Stat. s. 125.12 when a sworn complaint against the licensee is filed with the Village Clerk by a resident of the Village. If the complaint is based on the accrual of demerit points as set forth herein, the complaint shall specify the violations constituting the demerit point accrual. If the complaint is based upon violations outside of the accrual of demerit points, it shall be so stated and the procedures set forth in Wis. Stat. s. 125.12 shall be followed. When a penalty is imposed, the Clerk shall report the same as set forth in Wis. Stat. s. 125.13.

   a. Pursuant to the authority granted in Wis. Stat. s. 125.10, the Village Board, upon learning of a violation of state law, federal law or Village ordinance which occurred on the licensed premises by the licensee, agent, employee, or co-owner, shall order a review of the license and, depending on the seriousness of the violation, may suspend or revoke the license. If the violation of state law falls under Wis. Stat. chs. 125 or 139, or other Wisconsin Statute, the Wisconsin Administrative Code, or Village ordinance, the violation will fall into the demerit point schedule.

   b. Violations are assigned demerit points dependent on the severity of the violation. When a licensee obtains 100 or more demerit points for violations of Wis. Stat. chs. 125 and/or 139, or violations of state laws, the Wisconsin Administrative Code or any other local ordinance, which occur on the licensed premises by a licensee, agent, employee, or co-owner within the same license year, proceedings for revocation or suspension shall be commenced.

      (1) If 100 demerit points are obtained, the Village Board shall hold a hearing. The hearing shall be conducted in the same manner as found in Wis. Stat. s. 125.12(2)(b)1 to 5, with the exception of the penalties, which shall be imposed by the Village Board as set forth herein.

      (2) If the Village Board finds the violations to be true, the Village Board shall suspend the license for not less than three days nor more than five days.

      (3) If the licensee obtains a combined total of 160 demerit points within the same license year, the Village Board shall hold a hearing. The hearing process shall remain the same as the above. The penalties, if the Village Board finds the violation to be true, shall be a suspension of not less than five days nor more than 10 days.

      (4) If the licensee obtains a combined total of 200 demerit points within the same license year, the Village Board shall hold a hearing as set forth

above. The penalty, if the Village Board finds the violation to be true, shall be revocation of the license.

(5) If the licensee does not appear at the hearing, the Village Board shall find the violations to be true and shall recommend the prescribed penalty which would be derived from the combined point total.

(6) If the license is revoked, s. 9-3.C.4. shall be applied after a hearing is held and the allegations found true.

(7) Suspension by the Village Board may run concurrent with any court-imposed suspension if the Village Board so desires.

c. The following is a list of violations and the respective demerit points:

Violation of state or federal law which occurs on the licensed premises:	100
Failing to permit a liquor license inspection of the premises:	100
Violation of local ordinance which occurs on the licensed premises:	50
Underage person being served alcohol on licensed premises:	40
Underage person on licensed premises:	40
Permitting unauthorized person to sell alcohol on licensed premises:	30
Unlicensed person selling alcohol:	30
Serving an intoxicated person alcohol on premises:	30
After-hours violation (serving or hours:	25
Keeping a disorderly or riotous house:	25
All other violations of Wis. Stat. ch. 125:	20
Violations of Wisconsin Administrative Code:	20

d. A licensee will be considered in violation if the licensee, agent, employee, or co-owner was arrested or cited for said violation. A dismissal of a criminal charge or civil forfeiture case which is subject to demerit points shall not, as a matter of procedure, nullify said charge for the purpose of a review before the Village Board due to the differing burdens of proof and procedural requirements.

e. Demerit points shall also be assessed on warnings issued. The amount of points for the warning will be one-half of the above-scheduled points.

f. The Village Board may issue an order to the licensee along with the imposed suspension to prohibit such activities which are directly related to the licensed premises which may cause violations of ordinances or state statutes off premises.

g. The licensee will be notified of the impending suspension or revocation hearing by a written summons from the Village Clerk pursuant to Wis. Stat. s. 125.12(2)(ar). The summons shall have a date and time when and where the Village Board will hold the hearing.

h. Upon completion of this process, if the suspended or revoked licensee wishes to appeal the decision of the Village Board, the licensee may do so by following the procedures outlined in Wis. Stat. s. 125.12(2)(d).

7. Refusal to renew license. The Village may refuse to renew a license for the reasons set forth in Wis. Stat. s. 125.12(2)(ag) and this section, and shall follow the procedures for notice and hearing in such case as set forth in Wis. Stat. s. 125.12(3).

E. Posting of Licenses. Every license for the sale of intoxicating liquors and fermented malt beverages shall be placed in a suitable document frame, so that the whole of such license may be seen therein, and shall be posted and at all times displayed in a conspicuous place in the room where such business is carried on, so that all persons visiting such place may readily see the same. It shall be unlawful for any person to post any likeness of any Village license upon any premises, or to deface or destroy any license granted pursuant to this section, or to remove the same without the consent of the licensee. Whenever a license or permit is lost or destroyed without fault on the part of the holder or his agents, a duplicate in lieu thereof under the original application shall be issued by the Village Clerk on satisfying him- or herself as to the facts of a loss and upon payment of a fee in an amount determined by the Village Board and set forth in the Fee Schedule.

F. Temporary Permission Void. Except as set forth in this Section, no official, board or committee shall have any authority to give permission, whether temporary or otherwise, to any person to do anything for which a license under this section is required unless such license has actually been granted. Unauthorized permission shall be of no effect and shall not constitute a defense in an action brought for the violation of this section or any part thereof.

G. Sale to Minor or Intoxicated Person. Every keeper of any place for the sale of any beverage required to be licensed who shall sell, vend or in any manner deal or traffic in, or for the purpose of evading any law of this state or the Village, give away beverages in any quantity whatsoever to or for a minor, or to an intoxicated person in violation of Wis. Stat. ss. 125.07(1) or (2), and any person who shall do so shall be punished by a fine in the amount specified in Wis. Stat. s. 125.07 together with the cost of prosecution.

H. Presence of Minors in Places of Sale Prohibited. Every keeper of any place of any nature or character whatsoever for the sale of any intoxicating liquor or fermented malt beverage, who shall either directly or indirectly suffer or permit any person under the legal drinking age in violation of Wis. Stat. ss. 125.07(3) or (4), unaccompanied by his or her parent or guardian, or suffer or permit any person to whom the sale of any such liquors has been forbidden in the manner provided by law, shall, for every such offense, be liable for a penalty as provided in Wis. Stat. s. 125.07 together with the costs of prosecution. Any person so remaining as aforesaid, shall also be liable for a penalty as provided in Wis. Stat. s. 125.07 in addition to the cost of prosecution. Any person to whom the sale of any such liquors has been forbidden in the manner provided by law who shall enter any place of any nature or character whatsoever for the sale of such liquors shall be deemed in violation hereof, and subject to the penalties set forth.

I. Penalties for Violation. Penalties imposed under this section shall not exceed the maximum allowed by Chapter 125 of the Wisconsin Statutes.

9-4. CIGARETTES AND TOBACCO PRODUCTS.

A. License Required. It shall be unlawful for any person, in any manner, directly or indirectly, upon any pretense or by any device, to manufacture, sell, exchange, barter, dispose of or give away, or keep for sale any cigarettes, tobacco products, cigarette paper or cigarette wrapper, or any paper made or prepared for the purpose of being filled with tobacco, to any person not holding a license hereunder or a permit issued pursuant to Wis. Stat. ss. 139.30 to 139.41 or 139.79, without first obtaining a license therefor as set forth in this section.

B. Issuance and Term. Licenses for the manufacture, sale, exchange, barter, disposition of or giving away or keeping for sale of cigarettes, tobacco products, cigarette papers or cigarette wrappers or any paper made or prepared for the purpose of being filled with tobacco for smoking shall be issued by the Village Clerk under the authority of the Village Board. Every such license shall be issued on the first day of July in each year (or after July 1 when applied for) and shall continue in force from the date of issuance until the succeeding thirtieth day of June, unless sooner revoked for violation of this section as set forth in this section.

C. Application. Every person desiring a license under this section shall file with the Village Clerk an application therefore stating the name of the person and specifically describe the premises for which such license is desired. Every license shall be signed by the Village Clerk and shall specifically describe the premises where the applicant is authorized to conduct such business. Said license shall not be transferable from one person to another nor from one premises to another.

D. Fee. The fee for said license shall be in an amount determined by the Village Board and set forth in the Fee Schedule, and the license shall not be delivered by the Clerk until the applicant pays the license fee to the Treasurer.

E. Records. Licensees shall keep written records of purchases and receipts of cigarettes and tobacco products as set forth in Wis. Stat. s. 134.65.

F. Violations. Any person convicted of violating any provision of this section shall be subject to a forfeiture and/or license termination as provided under Wis. Stat. s. 134.65 and section 9-50 of this Municipal Code. See also section 7-6 of this Municipal Code (adopting Wis. Stat. s. 134.66). The Village may refuse to renew a license if a Licensee is convicted of five or more violations of this section and/or section 7-6 within a license year, and shall follow the procedures for notice and hearing in such case as set forth in Wis. Stat. s. 227.51.

9-5. PEDDLERS.

A. License Required. No person shall engage in or follow the business or occupation of a hawker or peddler within the corporate limits of the Village without first having obtained a license for that purpose as hereinafter provided.

B. Definitions. When used in this section, the following terms shall have the meanings set forth:

"Peddler" means any person, whether a resident or not, who goes from house to house, from place to place, or from street to street, or any combination thereof, conveying or transporting goods, wares, or merchandise or offering or exposing the same for sale, or making sales and delivering articles to purchasers.

"Canvasser" means any person, whether a resident or not, who goes from house to house, place to place, street to street, or any combination thereof, soliciting or taking or attempting to take orders for the sale of goods, wares, or merchandise, including but not limited to magazines, books, periodicals, or personal property of any nature whatsoever, for future delivery, or for personal services to be performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject or such order or whether or not he or she is collecting advanced payments for such orders. This definition includes any person who, for himself, or for another person, hires, leases, uses or occupies any building, motor vehicle, trailer, structure, tent, railroad box car, boat, hotel room, lodging house, apartment, shop or other place within the Village for the primary purpose of exhibiting samples and taking order for future delivery.

“Transient Merchant” and/or “Itinerant Merchant" means any person, whether as owner, agent, consignee, or employee, whether a resident or not, who engages in a temporary business of selling and delivering goods, wares and merchandise and who, in the furtherance of such purposes, hires, leases, uses, or occupies any building, structure, motor vehicle, trailer, tent, railroad box car, boat, public room in a hotel, lodging house, apartment, shop, or any street, alley or other place within the Village for the exhibition and sale of such goods, wares and merchandise, either privately or at a public auction, provided that such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this section merely

by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant, or auctioneer.

C. Exemptions.

1. The terms of this section shall not be held to apply to the acts of persons selling personal property at wholesale to dealers in such articles; newspaper sellers or delivery persons or newspapers or other item protected by the first amendment; the acts of merchants or their employees in delivering goods in their regular course of business; farmers or truck gardeners who vend, sell, or dispose of, or offer to sell, vend, or dispose of the products of the farm or garden occupied or cultivated by him; or vendors of milk, bakery goods, or groceries distributing products on established routes.

2. Nothing conveyed in this section shall be held to prohibit any sale required by statute or by order of any court; or to prevent any person conducting a bona fide auction sale pursuant to law.

3. Any organization, society, association, or corporation designed to solicit or have solicited in its name, money, donations of money or property, or financial assistance of any kind or desiring to sell or distribute any item of literature or merchandise for which a fee is charged or solicited from persons other than persons of such organization upon the streets, in an office, or business building, by house to house canvass, or in public places for a charitable, religious, veterans or associated purpose, shall be exempt from the provisions of this section, provided there is filed a sworn application in writing on a form to be furnished by the Village Clerk, which shall give the following information:

   a. Name and purpose of the cause for which solicitation or canvassing will occur.

   b. Name and address of the officers and directors of the organization.

   c. Period during which solicitation is to be carried on.

4. Any veteran who holds a special state license issued pursuant to Wisconsin law shall be exempt from the securing of a license as provided herein, but shall be required to comply with the rules and regulations herein provided and shall be subject to the penalties for violation of the applicable portions of this section.

D. Application.

1. An application accompanied by a fee in an amount set by the Village Board and set forth in the Fee Schedule to cover the costs of the investigation of facts stated therein, shall be filed with the Village Clerk upon forms furnished by the Village Clerk and sworn to by the applicant setting forth the following information:

   a. Name and physical description of the applicant.

   b. Complete and permanent home and local address of the applicant and in the case of transient and/or itinerant merchant, the local address from which the proposed sale will be made.

   c. A complete description of the nature of the business and the goods to be sold.

   d. If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship.

e. The length of time for which the right to do business is desired.

f. The source of supply of the goods or property proposed to be sold, or orders taken for the sale thereof, where such goods or products are located at the time said application is filed and the method of delivery.

g. A statement as to whether or not the applicant has ever been convicted of any crime, misdemeanor, or violation of any municipal ordinance related to the applicant's business activities to be undertaken in the Village, other than traffic violations, the nature of the offense and the punishment or forfeiture penalty assessed therefore.

h. The last cities, villages, or towns, not to exceed three, where applicant carried on business immediately preceding date of application and the address from which such business was conducted in those municipalities.

2. Applicants shall present to the Clerk for examination:

a. A driver's license or some other proof of identity as may be reasonably required.

b. A state certificate of examination and approval from the Sealer of Weights and Measures where applicant's business requires use of weighing and measuring devices approved by state authorities.

c. A current state certificate and/or Health Department certificate, as applicable, where applicant's business involves the handling of food, goods or clothing and is required to be certified under state law, valid at least through the end of the period that the applicant will do business in the Village.

d. A current seller's permit issued by the Wisconsin Department of Revenue, if applicable.

e. Information reasonably necessary to investigate other licensing required by the state for the type of direct sales activities intended by the applicant.

3. Reapplication. No licensee whose license has been revoked shall make further application until the period of at least six months has elapsed since the last previous revocation.

E. Issuance of License.

1. Upon proper completion of the foregoing application, the Village Clerk, upon applicant's payment of the prescribed license fee and submission of the documentation required, shall refer the application to the Village's law enforcement officer, who may make and complete an investigation of the statements made in such application.

2. The Clerk shall issue the permit if the application is in good order and the background investigation is clear. The Clerk shall refuse to issue the permit if it is determined, pursuant to the investigation above, that:

a. The application contains any material omission or materially inaccurate statement;

b. Complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding three, in which the applicant conducted similar business;

c. The applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or

d. The applicant failed to comply with any applicable provision of s. D.2, above.

3. If the Clerk issues the license, the license shall contain the signature of the licensing officers, and shall show the name and address of the licensee, the kinds of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and the other identifying description of any vehicle used in such licensed business. The Village Clerk shall keep a record of all licenses issued.

F. Fees.

1. In addition to the application fee, every person granted a license pursuant to this section shall pay a daily, weekly, monthly or annual fee in an amount set by the Village Board and set forth on the Fee Schedule.

2. The annual fees herein provided shall be assessed on a calendar year basis and, on or after July 1, the amount of such fee for an annual license shall be one-half the amount set forth in subsection 1 for the remainder of the year.

3. None of the license fees required in this section shall be so applied so as to occasion an undue burden upon interstate commerce. In any case where a license fee is believed by a licensee or applicant for license to place undue burden upon such commerce, he may apply to the Village Board for an adjustment of the fee so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. Such application may be made before, at, or within six months after payment of the prescribed license fees. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume of business and such other information as the Village Board may deem necessary in order to determine the extent, if any, of undue burden on such business or commerce. The Village Board shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which it shall determine whether the fees fixed by this section are unfair, unreasonable, or discriminatory as to applicant's business and shall fix as the license fee for the applicant, an amount that is fair, reasonable and nondiscriminatory, or if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. In fixing the fee to be charged, the Village Board shall have the power to use any method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fees as herein prescribed.

G. Rules and Regulations.

1. License Not to be Used by Another. No license issued under this section shall at any time be used by any person other than the one to whom it is issued.

2. Exhibition of License. Licensees are required to exhibit their certificate of license at the request of any citizen.

3. Quitting Private Premises. No peddler, canvasser, or transient and/or itinerant merchant shall refuse or fail to leave any private premises in the Village upon being requested to do so by the owner, occupant, or person in charge thereof.

4. Hours. No licensee may canvas, solicit, sell, peddle, or otherwise act pursuant to a license issued hereunder between the hours of 8:00 p.m. and 9:00 a.m.

5. Loud Noises and Amplification Devices. No licensee, nor any person on his behalf, shall shout, cry out, blow a horn, ring a bell, or use any sound amplifying device upon any street, alley, park, or other public place of the Village or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the street, avenue, alley, park, or other public place for the purpose of attracting attention to any goods, wares, or merchandise which such licensee proposes to sell.

6. Use of Street. No licensee shall have any exclusive right to any location in the public streets or rights of way, nor shall any licensee be permitted a stationary location thereon, nor shall any licensee be permitted to operate in a congested area where such operation might impede or inconvenience public use of such streets. For the purpose of this section, the judgment of a law enforcement officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced.

7. Posted Property. No licensee shall call at any dwelling or other place where a sign is displayed bearing the words “No Peddlers” or “No Solicitors” or words of similar meaning.

8. Duty of Law Enforcement. It shall be the duty of the law enforcement officers engaged by the Village to require any person seen peddling, soliciting, or canvassing and who is not known by such officers to be duly licensed to produce his or her license, and the officers shall enforce the provisions of this section against any person found to be violating the same.

H. Expiration of License. All annual licenses issued under the provisions of this section shall expire at midnight, the 31st day of December in the year when issued. Other than annual licenses shall expire at midnight on the date specified in the license.

I. Suspension and Revocation.

1. Licenses issued under the provisions of this Chapter may be suspended by the Village Board for a period not to exceed ten days upon obtaining reasonable information that a license has violated any provision of this section, and the same may be revoked by the Village Board after notice of hearing, for any of the following causes:

   a. Fraud, misrepresentation, or incorrect statement contained in the application for license.

   b. Fraud, misrepresentation, or incorrect statement made in the course of carrying on his or her business under the license.

   c. Any violation of this section.

   d. Conviction within the previous five years of a violation of a felony, misdemeanor or ordinance directly related to the person’s fitness to engage in direct selling. Wis. Stat. ss. 111.31-111.395, Wisconsin’s Fair Employment Law, shall apply.

   e. Conducting business under the license in an unlawful manner, or in such a manner as to constitute an offense, or a menace to the health, safety or general welfare of the public.

2. Notice of the hearing for revocation of a license shall be given by the Village Clerk in writing, setting forth specifically the grounds of the complaint and the time and place of hearing. Such notice shall be mailed postage prepaid, to the licensee at his last known address at least five days prior to the date set for hearing, or shall be delivered by a law enforcement officer in the same manner as a summons at least three days prior to the date set for hearing.

J. Violations and Penalties. Any person who violates any provision of this section shall, upon conviction thereof, be subject to the penalties set forth in Chapter 50 and in addition thereto, shall forfeit any license held under this section and shall not be entitled to another such license for a period of six months thereafter.

9-6. PUBLIC DANCES AND PUBLIC DANCE HALLS.

A. Definitions.

"Public dance" as used in this section shall mean and include any dance or ball to which the public generally may gain admission with or without the payment of a fee, whether such dance or ball constitutes all or part of the program or entertainment.

"Public dance hall" as used in this section shall mean and include any room, place or space in which a public dance may be held, or any ball room or academy in which classes in dancing are held or instruction in dancing given for hire.

B. Dance Hall License Required.

1. It shall be unlawful to hold any public dance or classes in dancing or to give instruction in dancing for hire in any public dance hall within the limits of the Village of Rochester until the public dance hall in which the same may be given or held shall first have been duly licensed for such purposes. It shall also be unlawful for any person to permit any room or building owned or controlled by him, to be used for the purpose of a public dance hall unless the same shall be licensed as herein provided. Satisfactory performance under a probationary license is required prior to application for and approval of a regular license.

2. A Dance Hall License is required for the premises in which any public dance is held whether or not a charge is made for admission, whether or not admission is by means of a ticket or token, whether or not a dance is advertised; and whether or not dancing is incidental to another business conducted in the premises, where live and/or mechanical music is furnished as music for such dancing.

C. Application.

1. Any person desiring to obtain a license required under this section shall file a written application with the Village Clerk. The application shall contain the name, residence and age of the applicant if an individual, the names, residences and ages of the partners if a partnership, and the names of the principal officers, their residences and ages, if the applicant is an association or corporation. It shall also contain the name or names and addresses of one or more persons whom a partnership, corporation or association designates as the agent for purposes of accepting responsibility for conformance with the terms of the license. The application shall further state the following:

a. Length of time the applicant and agent have resided in the Village of Rochester, their places of previous employment, whether any applicant or agent has been convicted of violating any law or ordinance regulating the conduct of public dance halls or public dances and, if so, when and in what court.

b. The premises where the public dance or public dance hall is to be conducted or located, giving the street and number of all entrances, the location of the room or rooms to be occupied and the total amount of floor space to be used for dancing purposes.

c. Whether the applicant and/or agent have, either alone or with someone else, previously engaged as owner or employee in conducting a public dance or public dance hall, when, and where and for how long.

d. The name and address of the person owning the premises for which a license is sought.

e. Whether a hotel, rooming house or lodging house is connected to any part of the premises for which a license is sought.

f. Such other information as the Village Board may deem necessary.

2. The Village Board shall investigate or cause an investigation to be made to determine whether the public dance or public dance hall sought to be licensed complies with the regulations, ordinances and laws applicable thereto, and to determine whether the applicant qualifies for the license and whether the agent named therein qualifies for the such a position.

D. Village Board Determination.

1. No license or permit shall be issued unless and until it shall be found that all of the persons named in the application as applicants and agent have not been convicted, within the previous five years, of a violation of a felony, misdemeanor or ordinance directly related to the person's fitness to engage in the operation of a dance hall (Wis. Stat. ss. 111.31-111.395, Wisconsin's Fair Employment Law, shall apply), that the proposed public dance hall complies with and conforms to all ordinances, health and fire regulations applicable thereto, and that it is a safe and proper place for the purposes for which it shall be used. The applicant for a license or permit shall show by affidavit or otherwise that the applicant and the agent are capable of maintaining good order at all public dances. No license shall be granted unless these requirements are proven to the satisfaction of the Village Board. No license shall be granted any dance hall unless adequate modern toilet facilities are provided with the building and an adequate supply of drinking water is available. The room shall be properly lighted and ventilated and all parts of the premises shall be safe and sanitary.

2. A license or permit shall be refused by the Village Board to any applicant or agent who has been convicted within five years of the date of application of a second offense against any of the provisions of this section or an ordinance of similar purpose in this or any other community, or who has been convicted within five years of a felony or misdemeanor directly related to the person's fitness to operate a dance hall. Wis. Stat. ss. 111.31-111.395, Wisconsin's Fair Employment Law, shall apply.

3. No license shall be issued for any dance hall located within such distance of a building used wholly or partly for residence purposes as will cause improper disturbance to the residents thereof.

4. No license shall be refused except for a specific reason and for the protection of the public safety, health, morals or general welfare, including but not limited to unreasonable noise, crowd disturbances and parking problems.

5. No applicant to whom a license has been refused may make further application until a period of at least six months has elapsed since the last previous rejection, unless the applicant can show that the reason for the denial no longer exists.

6. No license shall be granted to a person under 21 years of age.

7. No license shall be granted or renewed without an inspection or re-inspection of the premises.

E. Issuance.

1. Probationary License.

a. In the event that the Village Board determines to issue a license, the first license issued shall be probationary, shall be effective for a period of six months, and shall be subject to revocation as provided in this section.

b. A probationary license shall include a written agreement of the applicant to comply with terms and conditions set forth by the Village Board. Conditions may only be imposed where findings of fact based upon evidence presented have been made and which address the safety, health and welfare of the general population, including, but not limited to, the potential for noise, crowd disturbances and parking problems.

c. The Village Clerk shall be responsible for drafting and issuing all probationary licenses. All such licenses shall specify the name of the holder of the license and the dates for which it is applicable as well as any conditions that may be imposed by the Village Board. All such licenses shall be posted at the licensed premises in plain view.

2. Regular License.

a. First Regular License.

(1) After an applicant has held a probationary license for period of six months, and upon proper application, the applicant shall be eligible for a regular license. Application for the first regular license following a probationary license shall be made no more than 60 days, and no less than 30 days, prior to the expiration of the probationary license.

(2) When an application for the first regular license is received, the Village Clerk shall refer the application to the Village law enforcement officer to report on whether any complaints have been received concerning the license during the term of the license. The Clerk shall include the information received from law enforcement in the application presented to the Village Board.

(3) The Village Board may approve, approve with conditions, or deny the application for the first regular license. If the application is denied, the Board shall specify the findings in support of the denial in writing.

b. Renewals of Regular Licenses.

(1) Applications for renewals of regular licenses shall be made no later than May 15th of each year.

(2) When an application for renewal of a regular license is received, the Village Clerk shall refer the application to the Village law enforcement officer to report on whether any complaints have been received concerning the license during the term of the license. The Clerk shall include the information received from law enforcement in the application presented to the Village Board.

(3) The Village Board may approve, approve subject to conditions, or deny the application for the renewal license. If the license is denied, the Board shall specify the reasons therefor and shall follow the procedures for notice and hearing in such case as set forth in Wis. Stat. s. 227.51.

3. Upon Village Board approval of a license and the payment to the Village of the license fee hereinafter provided, the Village Clerk is authorized to issue to the applicant a license as set forth in this section. All licenses shall be numbered in the order in which they are issued and shall state clearly the location of the public dance hall, the dates of issuance and expiration of the license, the fee paid and the name of the licensee.

F. Special Exemption Permit. Notwithstanding the requirement for a Dance Hall License pursuant to this section, upon request and application of any party not licensed hereunder, the Village Board may issue a Special Exemption Permit allowing the applicant to afford his patrons and guests the music of one or more musicians and/or music with dancing privileges which would otherwise require the issuance of a license. The Special Exemption Permit shall be valid only within a specified 24-hour period. Any request for such a permit shall be in writing, shall specify the reason for the requested exemption, shall be filed with the Village Clerk at least 30 days prior to the date for which the permit is needed, and shall be accompanied by an application fee set forth by the Village Fee Schedule. No party may be granted more than two such permits within any calendar year.

G. Fees. The fees for Dance Hall Licenses and Special Exemption Permits required by this section shall be in an amount determined by the Village Board and set forth in the Fee Schedule, and a license shall not be delivered by the Clerk until the applicant pays the license fee to the Treasurer.

H. Transfer of License. No license or permit shall be transferred as to location of license or name of licensee. In the event that a new agent is to be named, the applicant shall apply for an amendment of the license to reflect the new agent's name. The license shall be amended to reflect the new agent, who must be approved by the Village Board.

I. License to be Posted; Replacement License.

1. Posting. Every person licensed in accordance with the provisions of this section shall immediately post such license and keep the same posted while in force in a conspicuous place in the premises specified in the application for such license. It shall be unlawful for any person to post such license or to be permitted to post it upon premises other than the licensed premises, or to knowingly deface or destroy any such license.

2. Loss. Whenever a license is lost or destroyed without fault on the part of the licensee or the agent or employee of the licensee, a duplicate license in lieu thereof under the original application may be issued by the Village Board at its discretion.

J. Sanitary and Lighting Requirements. All public dance halls and facilities appurtenant thereto shall be kept at all times in a clean, healthful and sanitary condition, and all stairways and other passages and all rooms connected with a public dance hall shall be kept open and well lighted during the public use. Proper ventilation must be maintained at all times.

K. Power to Close. The Village Board shall have the power to cause the place, hall or room where any public dance is held or given to be vacated whenever any rules or regulation or any provision of any law or ordinance with regard to public dance halls or public dances is being violated or whenever any disorder or conduct of a violent character shall take place.

L. Hours. All public dance halls shall be closed on each day at or before the hour of 2:00 a.m. provided however, that upon the application of the person or organization holding a particular public dance, the Village Board may grant a permit to continue such dance beyond that time where the circumstances justify such permission. Such application shall be made at least five days before the date on which the dance is to be held. No public dance shall be held between the hours of 12:30 a.m. and 8:00 a.m. except as otherwise provided by this subsection. All dancing and music shall cease at 12:30 a.m.

M. Adult Oriented Entertainment Businesses. Any adult oriented entertainment business applying for a Dance Hall License shall be compliant with all provisions of Chapter 35 of this Municipal Code.

N. Supervision. The members of the Village Board shall have access at all times to any public dance halls and public dances, and may investigate all complaints and may supervise such public dance halls and public dances.

O. Regulations. Every licensee, personally and through his agents or employees shall comply with the following regulations:

1. Good order shall be maintained at all times. Without limitation due to enumeration, a lack of "good order" for purposes of this section shall be deemed to include persistent loud noises to the annoyance or detriment of the surrounding property owners and patrons, using profane language or fighting or disorderly conduct as defined in Village ordinances and/or state statutes.

2. The license holder, agent and employees shall comply with all state statutes and regulations and all village ordinances including building code ordinances and zoning ordinances.

3. The licensee, agent and employees shall obey all reasonable orders or directions of any law enforcement officer.

P. Suspension and Revocation of License.

1. The violation of any provision of this section or the failure of the licensee to comply with the conditions set forth in any license pertaining to noise, parking, orderly premises, or any other condition shall be grounds for the Village Board to suspend or revoke the issued license. In the event such license is revoked, the fee paid for such license shall be forfeited and not returned to the holder.

2. Notwithstanding any other grounds for revocation of a license, conviction for the violation of any provision of Wisconsin laws relative to intoxicating liquor and/or fermented malt beverage licenses, local zoning or building or sanitary codes or disorderly conduct ordinances or laws shall be sufficient for the Board to suspend or revoke such license. In the event such license is revoked, the fee paid for such license shall be forfeited and not returned to the holder.

3. Revocation Proceedings. A recorded hearing shall be held for the purpose of revoking a license under this section. This hearing shall be preceded by written notice to the holder of such license at least ten days prior to said hearing. All hearings for revocation shall be heard before the Village Board, and shall afford the holder of such license an opportunity to present evidence on his or her behalf, to cross-examine witnesses sworn under oath

by the Village President, and all such other due process rights to which the licensee may be entitled. The Board, prior to revoking any such license, shall make specific findings of fact to support revocation of the license. In lieu of revoking said license, the license may be suspended, and/or conditions may be imposed by the Village Board to address specific nuisances, dangers or hazards.

4. No licensee whose license has been revoked shall be entitled to reapply for a new probationary license unless at least one year has elapsed from the date of such revocation.

9-7. CARRIAGE SERVICES

A. License Required. No person shall transport passengers in a horse-drawn carriage in the Village of Rochester without first obtaining a Carriage License.

B. Application. Application for a carriage license shall be made in writing to the Village Clerk, stating the full name of the applicant, his or her address and date of birth, the name under which the applicant is doing business and the location of the business. The applicant shall specify the seating capacity of the carriage and identify the proposed hours of operation, and shall include with the application the route upon which he or she intends to operate, the route upon which he or she intends to travel to reach and leave that route, and the location where the horse and carriage will stand while waiting for fares. When applying for a license, the applicant shall consent to a background investigation.

C. Term of License; Fee. Licenses granted hereunder shall expire on June 30 of each year. The fee to be paid upon application for the license shall be determined by the Village Board and set forth in Fee Schedule for each year or any fractional part thereof for each carriage operated by the same licensee.

D. Approval of License.

1. The Village Clerk shall perform a background investigation of the applicant and the business. The application and the results of the investigation shall be presented to the Village Board for its review of the application and its decision as to the grant of the license. If the Village Board approves the license, the Clerk shall issue said license upon the applicant's fulfillment of section E.

2. If the Village Board refuses to approve the license, it shall state the reasons on the record, and no part of the application fee shall be refunded.

E. Insurance.

1. No license shall be issued until the applicant deposits with the Village Clerk a policy of liability insurance covering all carriages, horses and drivers to be included under the license. Said insurance policy shall be issued by an insurance company authorized and licensed to do business in this State. Coverage shall be provided in the minimum amounts of $500,000 for bodily injury or death to any one person, $1,000,000 for injuries or death in any one accident or occurrence caused by the operation of the horse-drawn carriage or by the driver, the horse(s) or the carriage(s) separately or in any combination, and $100,000 for property damage arising out of any accident or occurrence caused by the operation of the horse-drawn carriage or by the driver, the horse(s) or the carriage(s) separately or in any combination.

2. Each insurance policy shall provide that the same shall not be canceled before the expiration of its term except upon 30 days written notice to the Village Clerk of the Village of Rochester. The policy shall be approved by the Village Attorney.

3. The cancellation or other termination of any insurance policy issued in compliance with this section shall automatically revoke and terminate all licenses issued for the carriages covered under said insurance policy unless another policy shall have been filed, approved and effective prior to the time of said cancellation or termination.

F. Revocation. The Village Board may revoke a license issued hereunder for more than three violations of the Rules of Operation listed in section G., for operation of the licensed carriage in a manner which is harmful to the safety, health or welfare of the community, or for any violation of the provisions of s. 9-1 of this Chapter.

G. Rules of Operation.

1. Established Routes. Licensees must adhere to the routes specified in the license application. New or temporary routes must be applied for and approved by the Village Board and filed with the Clerk before a licensee may use the new or temporary route. Any deviation from the established route without said approval shall be a violation of this subsection.

2. Driving Time Limit; Weather Factors. No driver shall be allowed to drive a horse drawn carriage for more than a period of ten hours in any 24-hour day. No carriage shall be operated while the temperature exceeds 80 degrees Fahrenheit.

3. Sanitation Requirements. Licensees shall comply with the following sanitation requirements:

   a. All horses shall be equipped with adequate devices to prevent manure from falling upon the streets of the Village. No driver shall allow manure or urine to remain on any street, alley, gutter, sidewalk, lawn, field, or any public or private property, and the driver of the animal shall immediately remove the same by the most effective means possible.

   b. All animal waste shall be promptly transported to sites legally empowered to accept such waste for treatment and disposal.

4. Safety Requirements. The seating capacity of the carriage shall be specified in the carriage license. No driver shall permit more passengers than can be seated on the seats of the carriage, except children less than five years of age may be carried by an adult. No driver shall permit any passenger to sit alongside the driver while the driver is engaged in the operation of the horse and carriage.

5. Feeding and Care of the Horses. Licensees shall ensure adequate rest periods, feeding schedules, health and related animal performance and well-being for each horse under the licensee's ownership, care or control. This responsibility shall include carriage load limits, hours of operation and daily hours of animal usage, except that no animal shall be required to work more than ten hours per day. No animal shall be left unattended.

6. Certificate of Soundness Required. For each horse that will be pulling a carriage, licensees shall provide a certificate of soundness issued by a veterinarian licensed in this state, finding such animal to be free of infectious disease, in good health and fit for hack and carriage service under this section. Each horse shall be re-inspected at intervals of no more than six months. No horse shall be used to draw a carriage unless such a certificate of soundness, dated within the preceding six-month period, is on file with the Village Clerk.

H. Penalty. Any person who violates any provision of this Section or who shall transport passengers in a horse-drawn carriage within the Village of Rochester without first obtaining a license as required herein shall, upon conviction thereof, be subject to the penalties set forth in s. 9-50. Each day of continued violation of the provisions of this Section shall be considered a separate offense.

9-8. SALE AND DISCHARGE OF FIREWORKS RESTRICTED[1]

A. State Laws Adopted. The statutory provisions of Wis. Stat. s. 167.10, as may be amended from time to time, regulating the sale and use of fireworks, except in so far as this ordinance is more restrictive as to use, are hereby adopted by reference and made part of this Section as though fully set forth herein. This Section is adopted pursuant to Wis. Stat. s. 167.10(5).

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

1. "Novelty Fireworks" means the following types of fireworks:

   - A cap containing not more than 1/4 grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
   - A toy snake which contains no mercury.
   - A sparkler on a wire or wood stick not exceeding 36 inches in length that is designed to produce audible or visible effects or to produce audible and visible effects.
   - A device designed to spray out paper confetti or streamers and which contains less than 1/4 grain of explosive mixture.
   - A fuseless device that is designed to produce audible or visible effects or audible and visible effects, and that contains less than ¼ grain of explosive mixture.
   - A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects, or audible and visible effects.
   - A cylindrical fountain that consists of one or more tubes and that is classified by the Federal Department of Transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
   - A cone fountain that is classified by the Federal Department of Transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

2. "Novelty Fireworks, Commercial" means the sale and storage of novelty fireworks for commercial purposes, for which a temporary use permit is required under s. 35-21.G.10.

3. "Statutory Fireworks" means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, inclusive of pyrotechnics, but not including any of the following:

   - Fuel or a lubricant.
   - A firearm cartridge or shotgun shell.
   - A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
   - A match, cigarette lighter, stove, furnace, candle, lantern or space heater.
   - A model rocket engine.
   - Tobacco and a tobacco product.
   - Anything defined herein as "novelty fireworks."

[1] Ordinance #2016-4 Adopted May 9, 2016

C. Sale and Storage of Fireworks.

1. The sale and storage of statutory fireworks is prohibited within the Village of Rochester unless such sale or storage is part of a permanent use of land duly authorized under Chapter 35, Planning and Zoning.

2. The sale and storage of novelty fireworks for commercial purposes is prohibited within the Village without a Temporary Use Permit under s. 35-21.G.10. unless such sale or storage is part of a permanent use of land duly authorized under Chapter 35, Planning and Zoning..

D. Use of Statutory Fireworks.

1. Use prohibited without a permit. The use of statutory fireworks is prohibited in the Village of Rochester unless the fireworks are used pursuant to a user permit issued by the Village of Rochester, according to the provisions of Wis. Stat. s. 167.10(3) and all of the requirements and limitations of this Section 9-8.

2. User permit. A user permit application for the discharge of statutory fireworks may be made by any owner or resident of real property in the Village of Rochester, for intended discharge on such applicant's property in the Village. Such application may be made pursuant to Wis. Stat. s. 167.10(3)(c), and shall be subject to all applicable terms of this Section 9-8. Such use is restricted to the following dates: July 3, 4 or 5 each year, subject to the following. If the 4th of July falls on a Monday or Tuesday, the Saturday before will be allowed. If the 4th of July falls on a Wednesday or Thursday, the Saturday after will be allowed. The application must specify the name and address of the requested permit holder, the date on and after which fireworks may be purchased, the general kind and approximate quantity of fireworks which may be purchased, the date and location of the proposed use, and the name, address and telephone number for the individual responsible for the discharge of fireworks. All permit applications under this subsection must be filed between May 1 and June 30.

3. Restrictions and limitations. In addition to all other requirements of this Section 9-8 and applicable State laws, any use of statutory fireworks shall be subject to the following requirements:

a. Wind velocity. Wind velocity at the time of use shall not be more than 15 miles per hour as recorded or forecast by the National Weather Service Forecast Office, Milwaukee/Sullivan, Wisconsin.

b. Wind direction. Wind direction at the time of use shall be away from buildings or other combustible materials and structures and shall not carry fireworks onto any adjoining buildings or cause annoyance or danger to other persons or property.

c. The storage, use or display of permitted statutory fireworks shall conform to the standards set forth in NFPA 1, Chapter 65, Explosives, Fireworks and Model Rocketry, as may be amended from time to time. Every display shall be handled by a competent adult operator. After the permit is issued, possession, and use of fireworks shall be lawful for that purpose only. No permit granted hereunder is transferable.

d. Storage and handling of statutory fireworks.

(1) No person may store or handle statutory fireworks on any premises unless the premises are equipped with fire extinguishers.

(2) No person may smoke where statutory fireworks are stored or handled.

(3) A person who stores or handles statutory fireworks shall immediately notify the Fire Chief or Fire Inspector of the location, description and quantity of the fireworks.

(4) No person may store statutory fireworks closer than the separation distances required in NFPA 1 Chapter 65 to a dwelling.

(5) No person may store statutory fireworks closer than the separation distances required in NFPA 1 Chapter 65 to public assemblages or places where gasoline or volatile liquid is sold in quantities exceeding one gallon.

(6) No person may use statutory fireworks for which a permit was not issued while attending a fireworks display for which a permit has been issued under this section.

e. Parental liability. A parent, foster, or family-operated group home parent or legal guardian of a minor who consents to the use of any fireworks by the minor who is under the age of 18 years of age is liable for damages caused by the minor's use of the fireworks, and in addition shall be subject to the penalty provided in this Municipal Code.

f. Fire prevention. Sufficient firefighting implements and personnel shall be available at the scene to control any fire that may be caused by the statutory fireworks.

g. Hours. Statutory fireworks may only be used between 4:00 P.M. and 10:30 P.M

h. Responsibility on Permitted Property. For property that is subject to a statutory fireworks permit, only the individuals designated on the permit application may discharge fireworks. Such individual is responsible in case of a violation, jointly and severally with the permit holder and property owner, and any or all of these parties may be cited for the violation. Any damage or personal injury as a result of the ignition of fireworks shall be the responsibility of the permit holder.

i. Responsibility on non-permitted property. For property that is not permitted for the discharge of statutory fireworks, if fireworks are discharged the actual person that caused the illegal discharge is responsible for the violation if such person is identified to the Village's satisfaction. If the Village cannot determine to its satisfaction the actual person that caused the illegal discharge, the owner or occupant of the property where the discharge occurred will be presumed to have caused the discharge, or to have aided or abetted the discharge, and shall be held responsible for the illegal discharge and may be cited for the violation. Such presumption may be rebutted only by credible evidence to show that the owner or occupant of the property had no knowledge of the fireworks being on the property at any time prior to the discharge, and that the owner or occupant of the property fully cooperated with the Village in trying to identify the actual person who caused the illegal discharge.

j. No sale. No person in the possession of statutory fireworks pursuant to this section may resell those fireworks in the Village of Rochester.

k. Permit availability. The permit issued for the use of fireworks must be made available upon request of a law enforcement officer

4. Fee. A fee for statutory fireworks permits shall be established by the Village Board and placed on the Fee Schedule, and must be submitted at the time of application and shall be non-refundable.

5. Acceptance of risk. All fireworks discharge permits issued in the Village are issued subject to the possibility that discharge may be prohibited, even if the permit is issued, due to the restrictions and limitations of this Section. All applicants accept this risk and shall be solely responsible for all consequences of the same, by their submittal of the application.

6. Statutory fireworks may be possessed and used by the Village without a permit, but Village fire and law enforcement officials must be notified of the proposed use of fireworks at least two days in advance.

E. Possession of statutory fireworks.

1. Statutory fireworks may be possessed while transporting the fireworks to a city, town, village or county where the possession of the fireworks is authorized by permit or ordinance, but the person doing the transporting may not remain in the Village for more than 12 hours.

2. Statutory fireworks may be sold or possessed by persons delivering the fireworks to a person granted a permit under this Section.

F. Use of Novelty Fireworks. Individuals may possess and use novelty fireworks on private property with the permission of the owner or person in charge thereof. Novelty fireworks may be used in Village rights-of-way, but not in the paved portion of streets. Novelty fireworks may not be used in Village parks or in or on other Village property.

G. Temporary ban on all fireworks. The Village President, upon recommendation of the Fire Chief because of extreme dryness or drought, may in the President's discretion declare a temporary ban on fireworks, whether statutory or novelty. No fireworks of any kind may be discharged during a declared ban. Any permit which would otherwise allow discharge on a date during such ban is automatically revoked, subject to the following. Such permittee may apply for a new discharge date after the ban is lifted without incurring a new fee. If any of the possible discharge dates of Section 9-8.D.2. are during the ban, the Village Board shall have the authority, but not the obligation, to establish additional discharge dates which would apply only to those permittees who were not able to discharge fireworks on their permitted dates due to the ban.

H. Seizure and destruction of fireworks; Revocation of permit.

1. In addition to, and not to the prejudice or exclusion of such other penalties and remedies as may apply, any fireworks stored, handled, sold, possessed or used by a person who violates the terms of this Section may be seized and held as evidence of the violation. In the event a person is convicted of violating this section all fireworks seized shall be destroyed pursuant to the provisions of Wis. Stat. s. 167.10(8)(b), provided that, if storage after seizure but prior to resolution of the charges is deemed too dangerous, the seized fireworks may be destroyed pursuant to statute. Fireworks seized as evidence of a violation for which no conviction results shall be returned to the owner if they have not been destroyed pursuant to statute.

2. Any permit issued to the person under this Section shall be revoked upon conviction for a violation of this Section.

I. Application for and issuance of permit.

1. Application. The application for a permit hereunder for statutory fireworks be submitted to the Village Clerk and shall include the date of the display, and shall specify the name and address of the permit holder, the kind and quantity of fireworks that will be displayed, and the date and location of the display. The owner or person in authority of the site of the display shall consent in writing to the use of the site.

2. Review and issuance. The application shall be reviewed by the Village Clerk, who may seek the advice of the Fire Chief. The Clerk, under the authority of the Village President, shall issue the permit only if the requirements of this Section are met.

   (a) No permits shall be issued to minors.

   (b) No permit shall be issued unless the applicant acknowledges in writing that he or she understands and accepts that he or she is fully liable for all bodily injury and property damage that may result from the issuance of the permit, and the applicant indemnifies the Village for the same.

   (c) No permit shall be issued for the storage of statutory fireworks, except as that storage may be necessary in preparation for a display permitted hereunder, and then only for the period set forth in this Section.

   (d) No permit shall be issued for the indoor display or use of statutory fireworks.

3. In accordance with state statute, the Village Clerk shall provide copies of the permits issued to the municipal fire and law enforcement officials at least 2 days before the date of authorized use.

J. Penalties. See Wis. Stat. s. 167.10(9)(b), which provides that a penalty for violation of an ordinance adopted pursuant to Wis. Stat. s. 167.10(5) may not exceed $1,000. The penalties for violation of this Section shall be set forth in the Village Deposit Schedule and shall not exceed $1000 per violation.

9-50 PENALTIES.

In addition to any penalty specifically set forth in this chapter, any person who violates any provision of this chapter or any regulation or rule, or order made hereunder shall be subject to a penalty as provided in Chapter 50 of this Municipal Code. Nothing in this section shall preclude the Village from maintaining any appropriate action to prevent or remove a violation of any provision of this Chapter by injunction or other equitable relief.

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CHAPTER 10 PUBLIC AND PRIVATE SEWER SYSTEMS

ARTICLE 1 PUBLIC SEWAGE SYSTEM

10-1. Definitions.

As used in this Article, the following terms shall have the meanings indicated.

“Ammonia Nitrogen” or “(NH3-N)” means one of the oxidation states of nitrogen, in which nitrogen is combined with hydrogen in molecular form as NH3 or in ionized form as NH4+. Quantitative determination of Ammonia Nitrogen shall be made in accordance with procedures set forth in Standard Methods.

“Approving Authority” means the Western Racine County Sewerage District No. 1 (WRCSD) or its duly authorized deputy, agent, or representative.

“Biochemical Oxygen Demand” or “(BOD)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter in five (5) days at 20 degrees Centigrade, expressed as milligrams per liter. Quantitative determination of BOD shall be made in accordance with procedures set forth in Standard Methods.

“Building Drain” means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

“Building Sewer” means the extension from the building drain to the public sewer or other place of disposal, also called house connection or lateral. The entirety of the building sewer from the building drain to, and including, its connection to the public sewer is the responsibility of the Owner, who shall remain responsible for its maintenance and repair.

“Chlorine Requirement” means the amount of chlorine, in milligrams per liter, which must be added to wastewater to produce a specified residual chlorine content in accordance with procedures set forth in Standard Methods.

“Combined Sewer” means any sewer intended to serve as a sanitary sewer and a storm sewer.

“Commercial User” means any user whose premises are used primarily for the conduct of a profit-oriented enterprise in the fields of construction, wholesale or retail trade, finance, insurance, real estate or services, and who discharges primarily normal domestic sewage. This definition shall also include multi-family residences having three or more units served by a single meter.

“Composite Sample (24 hours)” shall be the combination of individual samples taken at intervals of not more than one hour.

“Compatible Pollutant” means biochemical oxygen demand, suspended solids, pH, or fecal coliform bacteria, plus additional pollutants identified in the WPDES Permit for the publicly owned treatment works receiving the pollutants if such works were designed to treat such additional pollutants, and in part does remove such pollutants to a substantial degree.

“Easement” means an acquired legal right for the specific use by the Village and/or WRCSD of land owned by others.

"Fixed Charge" means the charge for the cost of debt retirement associated with the construction, erection, modification, or rehabilitation of the wastewater treatment works.

"Floatable Oil" is oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. Wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.

"Flow Proportional Sample" means a sample taken that is proportional to the volume of flow during the sampling period.

"Garbage" means the residue from the preparation, cooking, and dispensing of food, and from the handling, storage, and sale of food products and produce.

"Ground Garbage" means the residue from the preparation, cooking, and dispensing of food that has been shredded to such degree that all particles will be carried freely in suspension under the flow conditions normally prevailing in public sewers with no particle greater than one-half inch in any dimension.

"Incompatible Pollutant" means any pollutant which is not a compatible pollutant.

"Industrial User" means any user whose premises are used primarily for the conduct of a profit-oriented enterprise in the fields of manufacturing, transportation, communications or utilities, mining, agriculture, forestry, or fishing.

"Industrial Waste" means any trade or process waste as distinct from segregated domestic wastes or wastes from sanitary convenience.

"Institutional User" means any user whose premises are used primarily for the conduct of activities of a social, charitable, or educational character.

"Intercepting Sewer" means a sewer whose primary purpose is to convey wastewater from a collection system or systems to a wastewater treatment plant. Size of the sewer is not a factor.

"Natural Outlet" means any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface water or groundwaters.

"Normal Domestic Wastewater" means sanitary wastewater resulting from normal domestic activities, in which BOD 5, SS, and P concentrations do not exceed normal concentrations of:

A. A five day, 20 degree C. BOD of not more than 290 mg/l.

B. A suspended solids content of not more than 345 mg/l.

C. A phosphorus concentration of not more than 10 mg/l.

"Operation and Maintenance" or "O&M" includes all costs associated with the operation and maintenance of the wastewater collection system, as well as the costs associated with periodic equipment replacement necessary for maintaining the capacity and performance of the collection system.

"Person" means any and all persons including any individual, firm, company, municipal corporation, private corporation, association, society, institution, enterprise, governmental agency, or other entity.

"pH" means the logarithm (base 10) of the reciprocal of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen ion concentration of 10-7.

"Phosphorus" or "P" means the total phosphorus in wastewater, which may be present in any of three principal forms: orthophosphates, polyphosphates, and/or organic phosphates. Quantitative determination of total phosphorus shall be made in accordance with procedures set forth in "Standard Methods".

"Pretreatment" means an arrangement of devices and structures for the preliminary treatment or processing of wastewater required to render such wastes acceptable for admission to the public sewers.

"Public Authority" means any user whose premises are used for the conduct of the legislative, judicial, administrative, or regulatory activities of federal, state, local, or international units of government; government-owned educational facilities; government-owned health facilities; or government-owned recreational facilities. This does not include government-owned or operated business establishments.

"Public Sewer" means any sewer provided by or subject to the jurisdiction of the Western Racine County Sewerage District No. 1. It shall also include sewers within or outside the District boundaries that serve one or more persons and ultimately discharge into the District sanitary sewer system, even though those sewers may not have been constructed with District or municipal funds.

"Replacement" means expenditures for processing and installing equipment, accessories, and appurtenances necessary during the useful life of the collection system to maintain its designed capacity and performance. Replacement funds will be contained in a separate designated account established for such purposes.

"Residential User" means any user whose premises are used primarily as a domicile for one or more persons and discharges only domestic wastes, but not including dwellings classified as Commercial Users.

"Sanitary Sewer" means a sewer that carries sanitary and industrial water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with minor quantities of ground, storm and surface water that are not admitted intentionally.

"Sanitary Wastewater" means a combination of water-carried wastes from residences, business buildings, institutions and industrial plants (other than industrial wastes from such plants), together with such ground, surface and storm waters as may be present.

"Segregated Domestic Wastes" means wastes from nonresidential sources resulting from normal domestic activities. These activities are distinguished from industrial, trade and/or process discharge wastes.

"Sewage" means the spent water of a community. The preferred term is "Wastewater."

"Sewage System" means the composite network of underground conduits carrying wastewater and appurtenances incidental thereto (i.e., manholes, lift stations, service laterals, etc.).

"Sewer" means a pipe or conduit that carries wastewater or drainage water.

"Sewer Service Charge" means a charge levied on users of the wastewater collection and treatment

facilities for capital-related expenses and services unique to that user.

“Sewer Use Charge” means the charge levied on users of a sewer system and treatment works for the user’s proportional share of the cost of operation and maintenance (including replacement) of such system and works.

“Shall” is mandatory; “May” is permissible.

“Slug” means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds, for any period of duration longer than 15 minutes, more than five times the average 24 hour concentration of flows during normal operation and shall adversely affect the system and/or performance of the wastewater treatment works.

“Standard Methods” means the examination and analytical procedures set forth in the most recent edition of “Standard Methods for the Examination of Water and Wastewater” published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation.

“Storm Drain” (sometimes termed “storm sewer”) means a drain or sewer for conveying storm water, groundwater, subsurface water, or unpolluted water from any source.

“Storm Water Runoff” means that portion of the rainfall that is drained into the sewers.

“Suspended Solids” or “SS” means solids that either float on the surface of, or are in suspension in water, wastewater, or other liquid, and that are removable by laboratory filtering as prescribed in Standard Methods and are referred to as nonfilterable residue.

“Treatment Charge” means a charge for the treatment of wastewater.

“Unmetered User” means a user who is not connected to a municipal water system and thereby does not have his private water supply metered.

“Unpolluted Water” means water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

“User Charge System” means that system which generates operation, maintenance, replacement, project, debt service and retirement, and treatment revenues equitably for providing each user class with services.

“User Classes” means categories of users having similar flows and water characteristics; that is, levels of biochemical oxygen demand, suspended solids, phosphorus, ammonia nitrogen, etc. For the purposes of this Article, there shall be four user classes: residential, commercial, industrial, and public authority.

“Volume Charge” means a sewer use charge based upon the volume of wastewater to be transported.

“Wastewater” means the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and storm water that may be present.

"Wastewater Facilities" means the treatment works defined herein exclusive of interceptor sewers, and wastewater collection systems.

"Wastewater Treatment Works" means an arrangement of devices and structures for the storage, treatment, recycling, and reclamation of wastewater, liquid industrial wastes, and sludge. These systems include interceptor sewers, outfall sewers, wastewater collection systems, individual systems, pumping, power and other equipment and their appurtenances; any works that are an integral part of the treatment process or are used for ultimate disposal of residues from such treatment; or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal or industrial wastes.

"Watercourse" means a natural or artificial channel for the passage of water either continuously or intermittently.

"WPDES Permit" means the permit issued under the Wisconsin Pollutant Discharge Elimination System, Wisconsin Statutes and Administrative Code.

"WRCSD" See Approving Authority

10-2. PURPOSE.

To provide for adequate collection and disposal of sanitary sewage from within the Village of Rochester, the Village Board of the Village of Rochester deems it necessary and proper to provide for the construction and operation of a public sewerage system as hereinafter set forth.

10-3. ADOPTION OF CODES.

A. Wisconsin State Plumbing Code. The provisions of the Plumbing Code, chs. SPS 325 and 381-87 of the Wisconsin Administrative Code of the State of Wisconsin and other applicable provisions of the Wisconsin Administrative Code, and all amendments thereof and additions thereto in effect from time to time are incorporated hereby by reference thereto with the same force and effect as though set forth herein; provided, however, that if there shall be any conflict between the provisions of these sections or other ordinances of the Village and said Code at any specified time, that provision shall govern which requires the maximum of compliance or is the more restrictive. The provisions thereof and of this chapter shall govern all plumbing as therein defined and no plumbing shall be installed except in accordance with said Code and this chapter.

B. Western Racine County Sewerage District Ordinances and Regulations. The provisions of the ordinances and regulations of Western Racine County Sewerage District, a metropolitan sewerage district in Racine County, and any amendments thereto, shall apply to and govern installations made pursuant to a contract between the Village and the Western Racine County Sewerage District, with the same force and effect as though fully set forth herein.

10-4. CONFLICT.

If there is any conflict among or between the Village ordinances, the Plumbing Code of the State of Wisconsin and the ordinances and regulations of the Western Racine County Sewerage District, the provision which is most restrictive shall govern.

10-5. COMPULSORY CONNECTION AND CHARGES.

A. Compulsory Connection.

1. The Owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, including milk houses, situated within the Village of Rochester and abutting on any street, alley, right-of-way or public utility easement in which there is now located or may in the future be located a public sanitary sewer within 300 feet of the premises, is hereby required at the Owner•s expense to install suitable toilet facilities therein, and connect such facilities directly to the proper public sewer in accordance with the provisions of this Article within six months after the date of official notice from the Village and/or Approving Authority to do so.

2. If any person fails to comply after the expiration of the time provided by the notice set forth in subsection 1., the Village may impose a penalty equal to 150 percent of the minimum quarterly User Fee found in the user charge system for each quarter until such time as the connection is made by the Owner. After a period of 12 months from the date of official notice, the Village may cause connection to be made. In the latter case, the expense thereof and the Connection Fee shall be assessed as a special charge or special tax against the property. The Owner may, within 30 days after the completion of the work, file a written option with the Village stating that he or she cannot pay the amount in one sum and ask that it be levied in not to exceed five equal annual installments, and the amount shall be so collected with interest at the rate of ten percent per year from the completion of the work, the unpaid balance to be a tax lien. The applicable sewer fees and charges contained in the user charge system shall take effect as of the day a connection to the sewer is made. No portable or temporary sanitary facilities shall be allowed within the Village without approval of the Village and/or the Approving Authority.

3. When extension of the public sanitary sewer is reasonable, the Village may require such extension to serve new development.

B. When No Sewer is Available. In the event that no sanitary sewer main is available for connection within the distance set forth in subsection A, the owner shall proceed pursuant to Article II of this chapter. No private waste disposal system or parts thereof shall be located, installed, moved, reconstructed, extended, enlarged, converted, substantially altered, or the use thereof changed, without full compliance with Article 2. A zoning permit for a principal structure or an addition thereto may not be issued until evidence of such compliance is provided to the Zoning Administrator.

10-6. BUILDING SEWERS AND CONNECTIONS.

A. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Village as set forth in s. 10-14.

B. No connections shall be made to any of the sewers of the Village from any building, premises, excavation place or property of any kind whatsoever by any drain, tap, or sewer intended or designed to, or capable of, discharging any matter, whether fluid or solid, into the sewers of the Village unless a permit has first been issued therefor by the Village as set forth in s. 10-14.

10-7. REPORT OF EXISTING UNSANITARY CONDITIONS.1

Whenever it shall be reported that the plumbing in a dwelling is unsanitary, the Health Officer shall proceed pursuant to s. 25-2 of this Municipal Code. Whenever it is reported to the Plumbing Inspector or Public Works Manager that the plumbing in any building other than a dwelling is contrary to the ordinances of the Village of Rochester or is a menace to health or when, upon complaint made to the Health Officer by any person that the plumbing in any building other than a dwelling is defective as aforesaid, then the Health Officer shall direct the Plumbing Inspector to investigate the cause for complaint in said building and the Plumbing Inspector shall make such orders as are necessary to put the building in proper sanitary condition and fix a time for having the same done. Any person refusing to comply therewith shall be deemed guilty of a violation of this chapter and each day's continuance thereof shall constitute a separate offense. See also ss. 10-17 and 10-50.

10-8. SEWERAGE USER CHARGE SYSTEM.

A. It is hereby determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the Village of Rochester to levy and collect charges and fees, including but not limited to user, service, connection and/or other fees and charges, upon all the lands, lots, and premises served by having connections with the Village of Rochester or the Western Racine County Sewerage District sewerage system and additions and served by having connections available with the sanitary sewerage system and additions.

B. The proceeds of the charges and fees imposed in this Article shall be used and shall be set aside in separate funds and used solely for sanitary sewer system purposes, including operations and maintenance, equipment replacement, projects, and debt service.

C. The annual contribution to the replacement fund shall be determined as follows: Each item of mechanical equipment owned by the Village, and used in the operation of the Sanitary Sewerage System, shall be valued at cost less depreciation to date, and that result divided by the number of remaining years of useful life, and a calculation for inflation. The total of such calculations for each such piece of mechanical equipment shall be the total annual contribution to the replacement fund. The replacement fund shall be segregated and used solely for the purpose of replacement of mechanical equipment by the Village.

D. Total revenues generated hereunder, whether by service, user, connection or other charges or fees, shall equal or exceed the total amount needed by the Village for operations, replacement, maintenance, treatment, and for any other charges which the Village incurs in the annual operation of the Sanitary Sewerage System.

E. The funds set forth in this chapter may be loaned to the Village for other purposes, provided that any such loan shall be repaid by the Village at an interest rate equal to or in excess of the interest rate that would be earned by the funds in the event that the loan did not occur.

10-9. CHARGES AND FEES; METERING.

A. In General.

1. Levy and Assessment.

1 Amended 10-13-2014, Ordinance #2014-5

a. There is hereby levied and assessed upon each lot, parcel of land or premises having any sewer connection with the Village of Rochester or Western Racine County Sewerage District (WRCSD) Sanitary Sewerage System within the Village of Rochester or for which sewer connection is available within the Village of Rochester and/or said WRCSD sanitary sewerage system and additions thereto, sewerage charges and/or fees, as set forth herein.

b. The amount of said charge or fee shall be an amount determined by the Village Board and set forth in the Fee Schedule, per quarter, or as set forth elsewhere in this Article, which shall be billed on or before the 30th day of March, June, September and December of each year.

2. In addition to the fee imposed, a further charge of twelve percent shall be added thereto in case of failure to make payment on or before the 20th day of the month following the issuance of a quarterly bill. Said fee shall be payable as directed by the Village Board and shall be collected by the Treasurer of the Village of Rochester.

3. Each charge or fee levied pursuant to this Article is hereby made a lien upon the lot, land or premises serviced by sewerage connections with the sanitary sewerage system of the Village of Rochester and/or the WRCSD within the Village of Rochester and additions thereto pursuant to law.

4. The Village of Rochester shall, at six month intervals, review its schedule of contributions by users of the waste water system and make the necessary alignments to its revenue collection system as deemed necessary to recover actual costs of operation, maintenance, projects, treatment, debt service and retirement, and other costs.

5. All users will be notified annually of the portion of user charges attributable to waste water treatment services.

6. Users discharging toxic pollutants shall pay for any increased costs of operation and maintenance, including any repair or replacement of the Sewage System or Wastewater Treatment Works, or fines or other costs attributable to the discharge of the toxic pollutants.

B. User Fees.

1. Users of the sewerage system within the Village of Rochester and additions thereto shall be assessed upon the basis of the following allocated Charge Unit, which is based on the accepted estimated volume of sewage generated by a single family residential dwelling:

Type of User	Charge Units
Single family dwelling	1
House trailer	1
Multiple family dwelling	1 per each living unit
Store	1 to 4
Tavern	2
Bowling alley	1/each 4 alleys
Hotel or Motel	1/each 4 rooms
Lunch room	1 to 2
Restaurant	1 to 2

Restaurant and Bar	4 to 6
Garage	1 to 2
Filling station	1 to 2
School	2 min./1 each 25 pupils
Church	1 to 2
Hall	1 to 2
Office building	1 for each office suite
Post office	1 to 2
Telephone company	1 to 2
Barber shop	1
Beauty parlor	1
Warehouse	1
Club house	2 or more
Refreshment stand	1 to 2
Shops (print, welding, shoemaker)	1 or more
Bakery	1
Funeral Home	1 or 2
Greenhouse	1
Bank	1 to 2
Feed Mill	1

2. When a combination of the uses set forth in subsection 1. exists on any premises within the Village of Rochester and additions thereto, the Public Works Manager shall, after consideration of the facts in each such case, determine and set the Charge Unit for such premises. In the event that the owner wishes to appeal the Charge Unit set by the Public Works Manager, the owner may make an appeal to the Village Board. The Board will consider the facts in the case, and shall uphold or revise the decision of the Public Works Manager.

3. The determination of the allocated units herein fixed shall be subject to amendment or change from time to time by amending this ordinance with respect to such user charge allocation.

4. Where the number of charge units specified in subsection 1. are variable or where the user is not identified herein, the Public Works Manager shall determine the amount of such charge unit or charge units as shall reflect the volume of sewage as will emanate from such user in comparison with the usual volume emanating from a single family dwelling, using accepted methodology, and shall determine and set the Charge Unit for such premises. In the event that the owner wishes to appeal the Charge Unit set by the Public Works Manager, the owner may make an appeal to the Village Board. The Board will consider the facts in the case, and shall uphold or revise the decision of the Public Works Manager. In the event that the owner of the premises elects to instead install a water meter to accurately measure the sewer usage, the provisions of subsection C. shall apply.

C. Service Fee; Metering.

1. Metering of Water for Certain Properties. An owner of a commercial use, industrial use, or institutional use property, or a property used for a combination of any of these with a

residential use (but not a solely residential property), may request, as an alternative to an assignment of a calculated charge unit, the installation of a water meter for the discharger's private well in order to measure the volume of water consumption for the property. When installed, the volume of flow used for computing the User Fee shall be based upon the metered water consumption of the user as shown in the records of meter readings obtained by the Village.

2. Metering of Water for High Strength or Toxic Waste Dischargers.

   a. The Village and Approving Authority may require the discharger of High Strength or Toxic Waste Dischargers to install a water meter for the discharger's private well. When installed, the volume of flow used for computing the User Fee shall be based upon the metered water consumption of the user as shown in the records of meter readings obtained by the Village, except as provided in subsection 3.

   b. In the event that an establishment discharging industrial waste into the public sewers produces evidence satisfactory to the Village that more than 20 percent of the total annual volume of water used for all purposes does not reach the public sewer, then the determination of the water consumption to be used in computing the waste volume discharged into the public sewer may be made a matter of agreement between the Approving Authority and the person. Satisfactory evidence shall be evidence obtained by approved metering.

3. Metering of Waste. Devices for measuring the volume of waste discharged may be required by the Approving Authority or Village if this volume cannot otherwise be determined. When installed, the volume of flow used for computing the User Fee shall be based upon the metered waste discharge of the user as shown in the records of meter readings obtained by the Village.

4. Owner to Install and Maintain Meter. All metering devices for determining the volume of water and/or waste shall be installed, owned, and maintained by the discharger. A maintenance schedule must be accepted by the Approving Authority and Village. The discharger shall grant access to the premises so that the Village can read the meter quarterly, or upon reasonable request. The discharger shall provide maintenance records upon request, and, in the event that a meter error or malfunction is discovered, shall perform required maintenance on the meter with the time allowed by the Village. Following approval and installation, such meters may not be removed without the consent of the Approving Authority and the Village of Rochester.

5. Service Fee. A Service Fee, in an amount determined by the Village Board and set forth in the Fee Schedule, shall be charged to the discharger quarterly, in addition to the monthly User Fee, to accommodate the Village's costs to monitor and read the meter and its additional administrative costs.

D. Connection Charge. A unit connection charge in an amount determined by the Village Board and set forth in the Fee Schedule shall be paid in full for each lot, parcel of land or premises for each new connection before a permit is issued for, or connection is made to, the sanitary sewerage system within the Village of Rochester or additions thereto, unless such a connection charge was previously paid by special assessment or otherwise. When paid, said connection charge shall be credited to the Sewer Utility Operation and Maintenance Fund. All connection charges shall be in

accordance with the approved User Charge System and shall be in addition to the building sewer construction costs, sewer user charges, sewer service charges, and any other charges resulting from the connection to the public sewer.

10-10. WASTE SAMPLING.

Industrial wastes discharged into the public sewers shall be subject to periodic inspection and a determination of character and concentration of said wastes. The sampling may be accomplished either manually or by the use of mechanical equipment acceptable to the Approving Authority. The use of flow proportional composite sampling is preferred.

10-11. FREE SERVICE.

No user shall receive free service or pay a sewer use charge less than the user's proportional share of operation, maintenance and replacement costs.

10-12. USE OF PUBLIC SEWERS.

A. Sanitary Sewers. No person shall discharge or cause to be discharged any unpolluted waters as storm water, groundwater, roof runoff, subsurface drainage, or cooling water to any sanitary sewer, except storm water runoff from limited areas, which storm water may be polluted at times, may be discharged to the sanitary sewer by permission of the Approving Authority.

B. Storm Sewers. Storm water other than that exempted under subsection A and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers or to a natural outlet approved by the Approving Authority and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the Approving Authority and the Village, to a storm sewer or natural outlet.

C Prohibitions. Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described water or waters to any public sewer.

1. Any gasoline, benzene, naphtha, fuel oil, other flammable or explosive liquid, solid, or gas.

2. Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any waste treatment process or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

3. Any waters or wastes having a pH lower than 5.5 or higher than 9.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.

4. Solid or viscous substances in quantities, or of such size, capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, or paper dishes, cups, milk containers, etc, either whole or ground by garbage grinders.

D. Limitations. The following described substances, materials, waters, or waste shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The Approving Authority may set limitations lower than the limitations established in the regulations below if in their opinion such more severe limitations are necessary to meet the above objectives. In forming an opinion as to the acceptability, the Approving Authority will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewater discharged to the sanitary sewer which shall not be violated without approval of the Approving Authority are as follows:

1. Wastewater having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).

2. Wastewater containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils, or product of mineral oil origin.

3. Any water or waste which may contain more than 100 mg/l of fat, oil, or grease.

4. Any garbage that has not been properly shredded. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.

5. Any waters or wastes containing iron, chromium, copper, zinc, mercury, and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the Approving Authority for such materials.

6. Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Approving Authority.

7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Approving Authority in compliance with applicable state or federal regulations.

8. Quantities of flow, concentrations, or both which constitute a “slug” as defined in this chapter.

9. Water or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

10. Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.

11. Materials which exert or cause:

    a. Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment plant.

    b. Unusual volume of flow or concentration of wastes constituting “slugs” as defined in this chapter.

    c. Unusual concentrations of inert suspended solids (such as, but not limited to, fuller’s earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium sulfate).

    d. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

12. No wastewater, regardless of character, shall be discharged to the sewage system in such a manner as to interfere with the designed operation of the collection system or treatment facilities, or to cause the treatment works to exceed the limits presented by the WPDES Permit.

E. Special Arrangements. No statement contained in this Article shall be construed as prohibiting any special agreement between the Village and Approving Authority and any person whereby an industrial waste of unusual strength or character may be admitted to the sewage disposal works, either before or after pretreatment, provided that there is no impairment of the function of the sewage disposal works by reason of the admission of such wastes, and no extra costs are incurred by the Village or Approving Authority without recompense by the person provided that all rates and provisions set forth in this Article are recognized and adhered to.

F. New Connections. New connections to the sewage system shall not be permitted if there is insufficient capacity in the treatment works to adequately transport the additional wastewater anticipated to be received from such connections.

G. Control of High Strength - Toxic Wastes Directed to Public Sewers.

1. Submission of Basic Data. Establishments desiring to make a new connection to the public sewer for the discharge of industrial wastes or to add to or change the type of industrial waste being discharged to a public sewer shall prepare and file with the Approving Authority a report that shall include pertinent data relating to the quantity and characteristics of the wastes, including actual and/or predicted data relating to the quantity and characteristics of the waste to be discharged. Such information shall be provided as per ch. NR 101 of the Wisconsin Administrative Code.

2. High Strength - Toxic Discharges. If any waters or wastes are discharged, or proposed to be discharged to the public sewers, which waters or wastes contain substances or possess the characteristics enumerated in s. 10-12D and which in the judgment of the Approving Authority may have deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life, health, or constitute a public nuisance, the Approving Authority may:

    a. Reject the wastes;

b. Require pretreatment to an acceptable limit for discharge to the public sewers;

c. Require control over the quantities and rates of discharge; and/or

d. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of this Article.

3. The toxic pollutants subject to prohibition or regulation under this Article shall include, but need not be limited to, the list of toxic pollutants or combination of pollutants established by Section 307(a) of the Clean Water Act of 1977 and subsequent amendments. Effluent standards or prohibitions for discharge to the sanitary sewer shall also conform to the requirements of Section 307(a) and associated regulations.

4. Pretreatment standards for those pollutants which are determined not to be susceptible to treatment by the treatment works or which would interfere with the operation of such works shall conform to the requirements and associated regulations of Section 307(b) of the Clean Water Act of 1977 and subsequent amendments. The primary source for such regulations shall be 40 CFR 403, General Pretreatment Regulations for existing and New Sources of Pollution.

H. Control Manholes.

1. Each user discharging industrial wastes into a public sewer may be required by the Approving Authority to construct and maintain one or more control manholes or access points to facilitate observation, measurement and sampling of its wastes, including domestic sewage.

2. Control manholes or access facilities shall be located and built in a manner acceptable to the Approving Authority. If measuring devices are to be permanently installed they shall be of a type acceptable to the Approving Authority.

3. Control manholes, access facilities, and related equipment shall be installed by the establishment discharging the waste, at its expense, and shall be maintained by it so as to be in safe condition, accessible, and in proper operating condition at all times. Plans for installation of the control manholes or access facilities and related equipment shall be approved by the Approving Authority prior to the beginning of construction.

I. Waste Sampling.

1. Industrial wastes discharged into the public sewers shall be subject to periodic inspection and a determination of character and concentration of said wastes. The determination shall be made by the industry as often as may be deemed necessary by the Approving Authority.

2. Sampling shall be conducted in such a manner as to be representative of the composition of the wastes. The sampling may be accomplished either manually or by the use of mechanical equipment acceptable to the Approving Authority.

3. Installation, operation, and maintenance of the sampling facilities shall be the responsibility of the establishment discharging the waste and shall be subject to the

approval of the Approving Authority. Access to sampling locations shall be granted to the Approving Authority or its duly authorized representative at all times. Every care shall be exercised in the collection of samples to ensure their preservation in a state comparable to that at the time the sample was taken.

J. Analyses.

1. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Article shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association. Sampling methods, location times, durations, and frequencies are to be determined on an individual basis subject to approval by the Approving Authority.

2. Determination of the character and concentration of the industrial wastes shall be made by the establishment discharging them, or its agent, as designated and required by the Approving Authority. The Approving Authority may also make its own analyses on the wastes and these determinations shall be binding as a basis for charges. If the measurements, tests and analyses disclose that the results or quantities exceed the limits set forth in this Article, the reasonable cost of making such measurements, tests and analyses shall be borne by the discharger of the wastes.

K. Pretreatment. Where required, in the opinion of the Approving Authority, to modify or eliminate wastes that are harmful to the structures, processes or operation of the wastewater treatment works, the person shall provide at its expense such preliminary treatment of processing facilities as may be determined required to render his wastes acceptable for admission to the public sewers.

L. Submission of Information. Plans, specifications, any other pertinent information relating to proposed flow equalizations, pretreatment or processing facilities shall be submitted for review of the Approving Authority prior to the start of construction if the effluent from such facilities is to be discharged into the public sewers.

M. Grease and/or Sand Interceptors. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Approving Authority, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in s. 10-12.D.3., or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Approving Authority, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the Owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates, and means of disposal which are subject to review by the Approving Authority. Any removal and hauling of the collected materials not performed by the Owner's personnel must be performed by currently licensed waste disposal firms.

N. Mercury Minimization Requirements.

1. Dental Offices.

a. This section applies to any dental office that places or removes amalgam. If work in a dental office is limited to work that does not involve placing or removing

amalgam, such as orthodontics, periodontics, oral and maxillo-facial surgery, endodontics or prosthodontics, then this section does not apply.

b. Dental offices in existence on the date of enactment of this section are subject to the deadlines for compliance with this section set forth in subsections d. through h. below, as established by the Village and the Western Racine County Sewerage District No. 1 (WRCSD).

c. All dental offices shall implement best management practices for amalgam as established by the Wisconsin Dental Association, including the installation and use of amalgam separators.

d. Within the shortest reasonable time, but not later than December 31, 2009, every vacuum system where amalgam is placed or removed shall include an amalgam separator that meets the criteria of the International Standards Organization (ISO 11143). Dental offices shall install, operate and maintain the amalgam separator according to instructions provided by the manufacturer. The amalgam separator shall have a design and capacity appropriate for the size and type of vacuum system.

e. On or before March 31, 2009 each dental office shall submit a schedule for the installation of the amalgam separator required by subsection d. above.

f. On or before July 31, 2009 each dental office shall submit a report to the Village that certifies the implementation of the management practices required by subsection c. above and identifies the contractors used to remove amalgam waste within the last 12 months. A copy of this report will be forwarded to WRCSD.

g. On or before December 31, 2009 each dental office shall submit a report providing the following information:

(1) If installation of the amalgam separator is complete, then the report shall identify the installation date, the manufacturer and the model name.

(2) If installation of the amalgam separator is incomplete, then the report shall briefly explain the delay, provide an installation schedule and identify the manufacturer and the model name of the amalgam separator that will be installed.

h. If a dental office has provided a report according to subsection 1.g(2) above, then the dental office shall notify the Village of the completion of the installation within five days after completion. A copy of this report will be forwarded to WRCSD.

i. The Village shall provide forms for reporting the information required by subsections e., f., g., and h. above.

j. From the contractor(s) used to remove amalgam waste, dental offices shall obtain records for each shipment showing: the volume or mass of amalgam waste shipped, the name and address of the destination, and the name and address of the contractor. Dental offices shall make these records available to

the Village and WRCSD personnel for inspection and copying upon request.

k. Annually on or before January 31, each dental office shall submit a report to the Village that lists the volume or mass of amalgam waste shipped, the name and address of the destination and the name and address of the contractor(s) used to remove amalgam waste within the previous calendar year. The report shall also set forth all maintenance performed on the amalgam separator within the previous calendar year, including inspections, cleaning, repairs and other maintenance. The Village shall provide forms for reporting the information required by this subsection 11. A copy of this report will be forwarded to WRCSD.

l. Dental offices shall permit the Village and WRCSD to inspect vacuum system, amalgam separator and amalgam waste storage areas if requested. Inspections shall occur during the normal operating schedule of the dental office according to appointments made in advance, as long as this advance notice does not impede enforcement of this section.

m. If a dental office is implementing the management practices required by subsection c. above and is operating and maintaining the amalgam separator required by subsection d. above, then with regard to mercury it will not be subject to the regulatory procedures and requirements as set forth elsewhere in Article, however, if the dental office fails to meet such standards, the provisions of this Article, including ss. 10-10, 10-17 and 10-50, shall apply.

2. Other Facilities.

a. This section applies to all other facilities having the potential to discharge mercury or mercury-containing material to the Village•s and WRCSD•s sanitary sewer system. Facilities to which this section applies include:

(1) Medical facilities, including all hospitals, clinics and veterinary facilities that have laboratories.

(2) School facilities, including all public and private schools with science laboratories, including middle schools, high schools, technical schools, colleges and universities, but not elementary schools.

(3) Industrial facilities, including all industrial plants that historically or consistently discharge mercury into the wastewater treatment plant and industrial plants with the potential for mercury in their wastewater.

b. The Village shall identify and notify the facilities to be regulated under this section 2. within 30 days after the effective date of this section. All facilities identified after the effective date of this section shall be notified individually by the Village that they are subject to regulation under this subsection 2.

c. All facilities regulated under this subsection 2. shall implement best management practices as established by the Wisconsin Department of Natural Resources (DNR) and the WRCSD. On or before July 31, 2009 each facility regulated under this section shall submit a report to the Village that identifies the management practices already implemented and lists the anticipated dates for implementing

the other management practices listed on the report. New facilities identified under subsection b. above shall submit this report within three months of notification. A copy of this report will be forwarded to WRCSD.

d. By December 31, 2009, all facilities regulated under this subsection 2 shall submit a report to the Village that certifies the implementation of the management practices described in subsection c. above. New facilities indentified under subsection b. above shall implement best management practices and submit a certification report within six months of submittal of the report required under subsection c. above. A copy of this report will be forwarded to WRCSD.

e. The Village shall provide forms for reporting the information required by subsections c. and d. above.

f. If a facility is implementing the management practices required by subsections c. and d. above, then with regard to mercury it will not be subject to the regulatory procedures and requirements as set forth elsewhere in this Article, however, if the facility fails to meet such standards, the provisions of this Article, including ss. 10-10, 10-17 and 10-50, shall apply.

10-13. RIGHT OF ENTRY, SAFETY, AND IDENTIFICATION.

A. Right of Entry. The collection system operator or other duly authorized employee of the Village or Approving Authority bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation and testing, in accordance with the provisions of this Article and state laws. The operator, or other duly authorized employee of the Village or Approving Authority shall have no authority to inquire into any process beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for wastewater treatment.

B. Safety. While performing the necessary work on private premises referred to in subsection A, the duly authorized Village or Approving Authority employees shall observe all safety rules applicable to the premises established by the Owner or occupant and the Village or Approving Authority shall indemnify the Owner against loss or damage to its property by Village or Approving Authority employees and against liability claims and demands for personal injury or property damage asserted against the Owner and growing out of gauging and sampling operations of the Village or Approving Authority employees; except as such may be caused by negligence or failure of the Owner to maintain safe conditions.

C. Identification, Right to Enter Easements. The operator and other duly authorized employees of the Village or Approving Authority bearing proper credentials and identification shall be permitted to enter all private properties through which the Village holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within said easement, all subject to the terms, if any, of the agreement.

10-14. SEWER CONSTRUCTION (BUILDING SEWERS).

A. Work To Be Authorized.

1. No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer, building sewer or appurtenance thereof without first obtaining written permits from the Village.

2. Work performed on the public sewer or building sewer shall require a Sewer Construction Permit. The fee for this permit shall be in an amount determined by the Village Board and set forth in the Fee Schedule. The connection of the building sewer to the building drain shall require a Connection Permit, the fee for which shall be in an amount determined by the Village Board and set forth in the Fee Schedule. All fees shall be paid prior to the issuance of the permit(s).

3. No contractor, plumber, pipe fitter or other person shall be permitted to do work on any public sewer or building sewer without first receiving all licenses and permits as are required under the Village of Rochester Municipal Code affecting contractor licenses, plumber licenses or other construction related licenses, as well as any and all licenses as may from time to time be required by the Western Racine County Sewerage District. The permittee shall notify the Village at least 48 hours prior to commencing work or beginning excavation.

4. No permit shall be issued to connect any lot, excavation or open basement with the public sanitary sewer. No authority shall be granted to connect the sewer lateral from a building with the sanitary sewer main until such building is completely enclosed by roof, the outside wall back-filled to established grade, and all sanitary sewer lines within buildings that will be covered by basement floors have been inspected and approved by the Plumbing Inspector after the permanent floor is constructed in the basement. In buildings without basements, the authority shall be granted after the footing and sub-floor have been constructed.

B. Cost of Sewer Construction and Maintenance. [2]

1. All costs and expenses incident to the installation, connection and maintenance of the building sewer, inclusive of the connection itself, shall be borne by the Owner, who may request that the work be performed by the Village or who may employ an independent contractor to do the work. In the latter case, the Owner shall indemnify the Sewerage District and the Village from any loss or damage that may directly or indirectly be occasioned by the installation, modification, connection, maintenance or repair of the building sewer. Except as herein provided, all charges accruing to the Owner under this subsection 10-14.B.1. may be treated as special charges in accordance with the provisions of the Wisconsin Statutes.

2. Notwithstanding any other provision of this Code, when the portion of a building sewer that lies in the public right-of-way is required by the Village to be constructed or replaced during a Village road project, and when the sewer connection flows directly into a Western Racine County Sewerage District main, and the Village performs the construction or replacement of the building sewer, the Village may, but is not required to, share the cost of the installation or replacement of the portion of the building sewer that lies in the public right-of-way with the Owner. The method and amount of said cost sharing shall be determined by the Village Board. All charges accruing to the Owner under this subsection 10-14.B.2. may be treated as special assessments in accordance

2 Amended by Ordinance #2016-2 Adopted 2.22.16

with the provisions of the Wisconsin Statutes.

C. Use of Old Building Sewers. Old building sewers may be used in connection with new buildings only when they are found on examination and test by the Village to meet all requirements for this Article.

D. Materials and Methods of Construction. The size, slope, alignment, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the Wisconsin Administrative Code, the State Department of Natural Resources, the municipal building and plumbing codes, and other applicable rules and regulations of the Sewerage District. All building sewers shall be constructed of Sch 40 PVC. In the absence of code provisions or an amplification thereof, the procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9, as may be amended from time to time shall apply.

E. Building Sewer Grade. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement flow. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

F. Storm and Groundwater Drains. No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which is connected directly or indirectly to a public sanitary sewer. All existing downspouts or groundwater drains, etc., connected directly or indirectly to a public sanitary sewer must be disconnected no later than 30 days from the date of an official written notice by the Approving Authority or Village. In the event that the violation is not corrected in the time frame stated, or a second violation is discovered, the person shall, upon conviction thereof, forfeit $500.00, together with the costs of prosecution. In the event a person is convicted of a third or subsequent violation, the person shall forfeit $1,000.00, together with the costs of prosecution. In addition, the Village may take all reasonably necessary steps to resolve the violation, and may charge the cost thereof to the property owner as a special charge. In the event that the charges are not paid, the costs will become a lien against the property and collected as a special charge as provided by statute. Exceptions to the above shall be made only by the Approving Authority or Village in writing.

G. Conformance to Plumbing Code.

1. The connection of the building sewer into the public sewer shall conform to the requirements of the municipal building and plumbing code and other applicable rules and regulations of WRCSD or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9, as may be amended, when not otherwise specified. All such connections shall be made gas tight and watertight. Any deviation from the pre-described procedures and materials must be approved by the Approving Authority or Village before installation.

2. All connections to existing sewer mains shall be made with a saddle “T” or “Y” fitting set upon a carefully cut opening centered in the upper quadrant of the main sewer pipe with solvent-welded joints.

H. Inspection of Connection. The applicant for the building sewer permit shall notify the Village when the building sewer is ready for inspection and connection to the public sewer. The connection

shall be made under the supervision of the Village. The permit fee shall include the cost of one inspection by the Village. The Owner shall pay the costs of any additional inspections that may be required for quality assurance.

I. Barricades and Restoration. All excavations for the building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Village.

J. Sewer Main Extensions. In addition to all other pertinent sections of this Article, any person requesting an extension of the public sanitary sewer main shall be responsible for all of the following duties:

1. All costs and expenses incident to the installation of a sewer main extension, including engineering and any fees associated with the connection or hookup to the sewer, shall be borne by the person requesting the extension. This person shall secure and furnish proof of an escrow account for the estimated amount of the total sewer costs, the amount to be determined by WRCSD and the Village of Rochester. The account shall be so arranged and a special agreement executed between the person, the bank, and the Village of Rochester to allow the latter to withdraw monthly amounts from the account sufficient to cover monthly payments to subcontractors under contract with the Village of Rochester for the sewer installation. The amounts of monthly withdrawals, as determined by the Village of Rochester, shall be billed to the person requesting the extension and shall be due within ten days of the date of billing.

2. Design of any proposed sewer extension shall be performed by an engineering consultant selected by the Village or Approving Authority. The resulting construction plans and specification shall be reviewed and approved by the Approving Authority and the Village of Rochester prior to submission to the Wisconsin Department of Natural Resources. All plans shall conform to the standards of the WDNR, and such additional requirements and standards that the Approving Authority may establish, and shall be prepared by a professional engineer registered to practice in the State of Wisconsin. Construction inspection and contract administration shall be performed by the District's engineer.

3. The person requesting the sewer extension shall assist in securing all required utility easements, the location and width of which shall be determined by the Village of Rochester. The Village of Rochester will furnish blank easement forms to the person who will be responsible for the proper legal description of the easement parcel and for the proper execution of the easement by the grantor. All completed easements shall be submitted to the Village of Rochester, designated as the grantee for its review, and shall be recorded at the Racine County Register of Deeds office by the Village.

4. The person requesting the sewer extension shall also execute any other special agreements deemed necessary by the Approving Authority and the Village of Rochester.

5. In the event that the person requesting the sewer extension wishes to construct the improvements and dedicate the completed improvements to the Village, the Village shall execute a written agreement with the person which shall set forth the terms and conditions related to the extension.

10-15. SEPTIC TANK AND HOLDING TANK DISPOSAL.

No septic tank or holding tank wastes shall be discharged to the collection system operated by Western Racine County Sewerage District No. 1 except as may be specifically authorized by the District.

10-16. DAMAGE OR TAMPERING WITH SEWAGE FACILITIES.

A. Willful, Negligent or Malicious Damage. No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewage facilities. Any persons violating this provision shall be subject to immediate arrest.

B. Liability to Discharger for Losses. Any person who intentionally, negligently or accidentally violates any provision of this Article shall become liable to the Village of Rochester, or any downstream user, for any expense, loss or damage occasioned by such reason of such violation which the Village of Rochester or any downstream user may suffer as a result thereof. This section shall be applicable whether or not a written notice of the violation was given as provided in ss. 10-17 or 10-50 and without consideration for any penalties which may be imposed for a violation of the Chapter.

10-17. NOTICE OF VIOLATION.

Any person found to be violating any provision of this Article may be served by the Village of Rochester with a written notice stating the nature of the violation and providing a reasonable time for the satisfactory correction thereof, except in cases of emergency. The offender shall, within the period of time stated in such notice, permanently cease all violations. In case of emergency, the Village may take all reasonably necessary steps to resolve the violation, and may charge the cost thereof to the property owner as a special charge. In the event that the charges are not paid, the costs will become a lien against the property and collected as a special charge as provided by statute.

10-18. APPEALS.

A. Appeal Procedure. Any user, permit applicant, or permit holder affected by any decision, action, or determination, including cease and desist orders, made by the Approving Authority, Village of Rochester, or Approving Authority through the Village of Rochester, interpreting or implementing the provisions of this Article or in any permit issued herein, may file with the Village of Rochester a written request for reconsideration within ten days setting forth in detail the facts supporting the user's request for reconsideration. The Approving Authority shall be given notice of such written request and shall appear at the time of reconsideration.

B. The WRCSD Commission or the Village, whichever is applicable, shall render a decision on the request for reconsideration to the user, permit applicant or permit holder in writing within 15 days of receipt of the request.

ARTICLE 2 PRIVATE SEWAGE DISPOSAL

10-30. APPLICABILITY.

The requirements of this Article shall apply to all areas of the Village not served by a public sewer as set forth in s. 10-5.A.

10-31. SANITARY PERMIT REQUIRED.

A. No person may locate, install, move, reconstruct, extend, enlarge, convert, substantially alter, or change the use of a private waste disposal system or parts thereof or a non-plumbing sanitation system without first obtaining a Sanitary Permit from Racine County in conformance with ch. 19 of the Racine County Code of Ordinances. A zoning permit for a principal structure or an addition thereto may not be issued until evidence of such compliance is provided to the Zoning Administrator.

B. Where the property to be served by a private sewage disposal system is in the vicinity of a Village public sewer main, Racine County will require that the applicant for a sanitary permit provide a letter from the Village stating that the applicant is exempt from connection to the Village sewer main.

10-32. HOLDING TANKS.

A. Holding Tanks Prohibited. Holding tanks are prohibited in the Village. Any person who is denied the use of a holding tank as a result of this section may appeal the application of this section based upon the unique situation of the applicant. The appeal shall be in writing to the Village Board and shall set forth all reasons for the requested holding tank. The Village Board may grant variances to this prohibition where the enforcement of the prohibition will result in severe and unnecessary hardship and where the Village Board believes it is not contrary to the public interest. The Village Clerk shall inform the Racine Code Administration Office of any such variance. Subsection B shall apply to any such variance.

B. Agreement Required. As a precondition to the installation of a holding tank, the landowner shall enter into an agreement with the Village relative to the installation, maintenance and emptying of said holding tank. Such agreement shall conform to the regulations of Racine County. The owner shall cause the agreement to be recorded with the office of the Register of Deeds for Racine County, and the agreement shall constitute an agreement running with the land and binding upon the owner, his heirs, successors, personal representatives and assigns. In such agreement, the owner shall agree to:

1. Install, maintain and empty the holding tank in accordance with the applicable laws, rules, regulations and ordinances governing such installation and any requirements set forth by Racine County.

2. Be fully responsible and liable for the proper operation and maintenance of the holding tank and for the disposal of the contents of the holding tank in accord with all applicable laws, rules, regulations and ordinances governing the same.

3. Obey all lawful orders with respect to the holding tank which are issued by the Village and its officials, as well as all other agencies and officers with jurisdiction as to such holding tank.

4. Install warning devices, both visual and audible, to indicate when the holding tank is full or in need of pumping.

5. Have the contents from the holding tank removed, hauled and disposed of by a hauler licensed by the State in accord with all State and local laws, ordinances, rules and regulations.

6. File receipts and a pumping report as required by Racine County evidencing the date and volume of contents which were removed from the holding tank.

7. If the owner does not cause the holding tank to be properly maintained in response to orders from the Department of Safety and Professional Services, Racine County, or the Village, and if it becomes necessary to prevent or abate a human health hazard, the Village may provide for the maintenance of the holding tank, including the pumping, transportation and disposal of the holding tank contents. In such case, the Village will charge the owner for the work done and, if not paid, the Village will place the charges on the tax roll as a special charge for current services rendered and the charge will be a lien against the property.

8. Allow the Village Building Inspector and Village Board members, or any authorized person of the Village to inspect the holding tank and the premises at all reasonable times.

9. Have a lien asserted against the property served by the holding tank for any obligations or damages accruing to the Village under the agreement and if unpaid by the landowner to have any such obligations or damages placed upon the Village tax roll as a special assessment for the abatement of a human health hazard.

10. Notify any future owner of the property that it is served by a holding tank and that the agreement is binding on future owners.

11. Be bound to comply with changes in the law regarding holding tanks: be bound to connect to municipal sanitary sewer at the owner's expense if it is reasonably available pursuant to Article 1; and be bound to install a soil absorption system if it becomes feasible.

C. Unless required by the applicable law, rules and regulations, no agreement shall be entered into with respect to a holding tank to serve more than one property.

D. Agreements Saved and Continued. Any Holding Tank Agreement entered into by and between a person and the Town of Rochester prior to the Town•s consolidation with the Village of Rochester under Chapter XXIV, Holding Tanks, of the Town of Rochester Code of Ordinances, shall be continued in full force and effect by the Village of Rochester as the successor in interest to the Agreement.

10-33. SUBDIVISIONS NOT SERVED BY PUBLIC SEWER.

Prior to application to the County for approval of any site in a proposed subdivision which will not be served by public sewer, the Owner shall request from the Village a letter exempting the proposed subdivision from connection to the public sanitary sewer. Prior to issuance of said letter, the Village will determine whether extension of the public sewer to serve said proposed subdivision is reasonable, and if

it is not reasonable, the Village will issue said letter to the owner. If extension of the public sewer is reasonable, the Village shall make such extension a condition of approval of the proposed subdivision.

10-34. REQUIREMENTS FOR LOTS TO BE SERVED BY PRIVATE SEWER.

A. Widths and area of all lots not served by a public sanitary sewer system or other sewage disposal system approved by that agency having jurisdiction over the approval or disapproval of such system shall be sufficient to permit the use of a private on-site wastewater treatment system (POWTS) designed in accordance with applicable state and county sanitary regulations but in no case shall be less than one hundred fifty (150) feet in width and forty thousand (40,000) square feet in area unless a different lot width and area has been approved by the Village through the land division or conditional use process.

B. When there is a reasonable likelihood that unsewered lots will be sewered within ten years and that the required frontage thereafter will be 75 feet, the Village or subdivider may cause dotted lines to be drawn across the center of the lots applicable on plat and zoning maps so as to notify prospective purchasers of that possibility.

ARTICLE 3 VIOLATIONS AND PENALTIES

10-50. Violations and Penalties.

A. Written Notice of Violation; Emergency. Any person found to be violating any provision of this Chapter may, but is not required to be, served by the Village of Rochester with a written notice of violation as set forth in s. 10-17. In the event of emergency, notice is not required.

B. Accidental Discharge.

1. Any person found to be responsible for accidentally allowing a deleterious discharge into the sewer system which causes damage to the treatment facility and/or receiving body of water, shall, in addition to forfeitures, pay the amount to cover damage, both values to be established by the Approving Authority or Village.

2. Any person found to be responsible for accidentally allowing a deleterious discharge onto structures, land or water, shall, in addition to a forfeiture, pay the amount to cover damage, in an amount to be established by the Village or the person who suffered the damage.

C. Continued Violations. Any person who shall continue any violation beyond the time limit provided in a notice when notice is given shall, upon conviction be subject to the penalties set forth in Chapter 50 of this Municipal Code. Each day in which any violation is continued beyond the aforesaid notice time limit shall be deemed a separate offense.

D. Liability to the District and/or Village for Losses. Any person violating any provision of this chapter shall become liable to the Western Racine County Sewerage District No. 1 and/or the Village for any expense, loss, or damage occasioned by reason of such violation which the District or Village may suffer as a result thereof whether or not notice is provided.

E. Any person violating Article 2 of this chapter shall be subject to penalties as set forth in ch. 19 of the Racine County Code of Ordinances or ch. 50 of this Municipal Code, as appropriate.

F. Unless otherwise specifically provided in this chapter, whether notice of violation is provided or not, any person violating this chapter shall be subject to penalties as set forth in Chapter 50 of this Municipal Code.

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CHAPTER 11 BUILDING, PLUMBING, ELECTRICAL AND MECHANICAL CODE

ARTICLE 1 GENERAL PROVISIONS

11-1. BUILDING, PLUMBING, ELECTRICAL AND MECHANICAL REGULATIONS.

The provisions of this chapter shall apply to all building, plumbing, electrical and HVAC activities in the Village of Rochester, and shall be known as the “Building, Plumbing, Electrical and Mechanical Code” of the Village of Rochester. This chapter may also be referred to collectively as the “Building Code.” Every person who is under the jurisdiction of this chapter and who furnishes or performs building, plumbing, electrical or HVAC services, or who owns, sells, leases or lets for hire, uses, designs, installs, repairs, operates, maintains or grants possession of any equipment, materials, or apparatus relating to said services in the Village shall comply with the provisions of this chapter.

11-2. AUTHORITY.

These Regulations are adopted under the statutory authority granted pursuant to Wis. Stat. chs. 101 and 145, including, but not limited to, Wis. Stat. ss. 101.65, 101.76, 101.86, 101.975 and 145.04.

11-3. PURPOSE.

A. The purpose of these Regulations is to promote the health, safety, and general welfare of our community, to protect property values and provide for orderly, appropriate development and growth of the community.

B. These Regulations prescribe reasonable minimum standards, rather than specifications for building and mechanical installations and equipment generally. The provisions and requirements set forth in these Regulations are intended to require safe and stable construction, installation and maintenance of the various mechanical systems; and compliance with these standards, provisions and requirements is intended to result in buildings, structures, and mechanical installations reasonably free from hazards.

C. Specifications are not complete when they merely require compliance with these Regulations, because the adequacy, suitability, operating efficiency, convenience, finish, appearance and value of buildings, structures and mechanical installations may vary greatly without departure from these Regulations.

11-4. DEFINITIONS.

As used in these Regulations, the following terms have the meaning prescribed herein: (Any item not defined herein shall follow the Wisconsin Administrative Code definitions.)

“Building” means any structure erected or constructed of wood, metal, stone, plastic or other materials which is intended to be used by human beings for occupancy, vehicle storage, other storage, commerce, education, cultural activities or other purpose. The term does not include children's play structures.

“Building Inspector” means the individual(s) or firm appointed by the Village to exercise all of the powers and duties of a building and HVAC inspector under Wisconsin law and Village Ordinances.

“Construction” means any part or portion of the activity of installing, locating, siting, erecting or raising a building.

"Contractor" means any person, firm or entity which undertakes any activity related to the construction of a building other than the mere provision of supplies, materials.

"Demolition" means the activity of completely or partially destroying a previously erected or constructed building.

"Electrical" means the trade which relates to the design, installation, maintenance and repair of the mechanical equipment, wiring, fixtures and connections that tie a structure to the power grid of an electric generating utility and distributes the electricity through a structure to end uses, including any work which may be performed by a master electrician licensed by the State of Wisconsin or a person under the supervision of such an electrician.

"Electrical Inspector" means the individual(s) or firm appointed by the Village to exercise all of the powers and duties of an electrical inspector under Wisconsin law and Village Ordinances.

"Fixture" means a plumbing device including, without limitation, the following: sinks, bathtubs, wash basins, water closets, shower stalls, urinals, laundry tubs, water heaters of any type, range boilers, floor drains, catch basins, bubblers, sumps, bar connections, soda fountains, ice boxes, machine waste connections, acid tanks, ejectors and all plumbing fixtures and water-connected appliances, together with all changes or alterations where inspections are necessary; and house drain, sewer, water and fire protection installations, when no plumbing fixtures are installed.

"HVAC" is an acronym which stands for Heating, Ventilating and Air Conditioning; the trade which installs mechanical equipment, systems and accessory ducting and gratings for the purpose of warming, purifying, cooling and exchanging air in a building.

"Occupancy" means the act of utilizing a building for human habitation, use, or occupancy. Any use of a building for any activity which is customarily or routinely associated with utilization of a building as a residence, detached residential accessory structure, or commercial use shall constitute occupancy.

"Owner" means the individual, firm or entity which has record title to the real estate on which construction or demolition is taking place.

"Plumbing" means the trade which relates to the design, installation and maintenance or repair of pipes, drains, sinks, basins, hot water heating systems, natural gas pipes, grease traps, floor drains, and all other work for which the individual performing the work may either be a master plumber licensed by the State of Wisconsin or work under the supervision of such a plumber. Plumbing includes, but is not limited to:

A. The construction, connection or installation of any drain or waste piping system from the outside or proposed outside foundation walls of any building to the mains or other sewerage system terminal within bounds of or beneath an area subject to easement for highway purposes, including private domestic sewage treatment and disposal systems, and the alteration of any such systems, drains or waste piping; and

B. The water service piping from the outside or proposed outside foundation walls of any building to the water utility service terminal; and

C. The water pressure systems other than municipal systems as provided in Wis. Stat. ch. 281; and

D. A plumbing and drainage system so designed and vent piping so installed as to keep the air within the system in free circulation and movement; to prevent with a margin of safety unequal air pressures of such force as might blow, siphon or affect trap seals or retard the discharge from plumbing fixtures or permit sewer air to escape into the building; to prohibit cross-connection, contamination or pollution of the potable water supply and distribution systems; and to provide an adequate supply of water to properly serve, cleanse and operate all fixtures, equipment, appurtenances and appliances served by the plumbing system.

E. Plumbing does not include minor repairs to faucets or the removal of stoppages in solid or waste pipes.

“Plumbing Inspector” means the individual(s) or firm appointed by the Village to exercise all of the powers and duties of a plumbing inspector under Wisconsin law and Village Ordinances.

“Repairs” for purposes of maintenance or replacement in any existing building or structure which do not involve structural portions of the building or structure or which do not affect room arrangement, light and ventilation, access to or efficiency of any exit stairways or exits, fire protection or exterior aesthetic appearance and which do not increase a given occupancy and use, shall be deemed minor repairs.

“Stop Work Order” means a directive issued with respect to a construction project by an inspector which compels the owner and any contractor or builder of a building to cease any further work or activity on the construction project until the inspector has authorized the resumption of the construction project.

11-5. SCOPE.

These Regulations apply to all one and two family dwellings, commercial buildings and structures (including but not limited to multiple family dwellings and business, office, industrial, manufacturing, and institutional buildings and structures), swimming pools, decks, residential accessory buildings and storage buildings. Notwithstanding this section, these Regulations shall not apply to children's play structures.

11-6. PERMIT REQUIRED.

A. No owner or contractor may commence construction of any building, mechanical, electrical or plumbing system prior to obtaining a valid permit from the Building Inspector, Plumbing Inspector, and/or Electrical Inspector. Application for a permit shall be made to the appropriate Inspector upon forms which the Inspector shall provide.

B. The construction which shall require a permit includes, but is not limited to:

1. New buildings including detached structures (decks) and detached accessory buildings.

2. Additions that increase the physical dimensions of a building including decks.

3. Alterations to the building structure (cost shall include market labor value), or alterations to the building's heating, electrical or plumbing systems.

4. Replacement of major building equipment including furnaces and central air conditioners, water heaters and any other major piece of equipment shall require a permit except as noted in C.2. below.

5. Any electrical wiring for new construction or remodeling.

6. Any HVAC for new construction or remodeling.

7. Any plumbing for new construction or remodeling.

8. Any new or re-wired electrical service, including services for storage buildings.

9. Re-siding, re-roofing, major repairs, and window enlargement. Structural load-bearing calculations may be requested by the building inspector for re-roofing a building if the proposed re-roofing would constitute a third or more layer of roofing.

10. Foundation repairs and damp proofing.

    a. Repairs to foundations and damp proofing require a permit from the Building Inspection Department. Application for permit shall include a statement of the existing defects, and an analysis of the cause of those existing defects to ensure that all conditions responsible for foundation defects are corrected.

    b. Plans and/or specifications must be submitted for approval prior to issuance of a permit.

    c. Except as otherwise permitted by the Building Inspector, foundation repair shall be performed in accordance with the most current edition of Best Management Standards for Foundation Repair.

C. Exceptions.

1. The following activities shall not require a permit:

    a. Finishing of interior surfaces, installation of cabinetry, and repairs which are deemed minor by the Building Inspector.

    b. Normal repairs of HVAC, plumbing and electrical equipment or systems such as replacing switches, dimmers and fixtures unless further or additional HVAC, electrical, or plumbing work is deemed necessary or required under the provisions of this chapter.

2. No person manufacturing or requiring electrical apparatus and equipment, and employing a State electrical contractor's certification, shall be required to have an electrical permit for his or its testing equipment.

3. No electrical permit shall be required for private or public utilities engaged in the distribution and sale of heat, light, electricity and power.

11-7. ADOPTION OF CODES.

A. Chapters 101 and 145 of the Wisconsin Statutes, along with the following chapters of the Wisconsin Administrative Code, as well as all subsequent revisions, are adopted by the Village and shall be enforced by the Building Inspector, Plumbing Inspector and/or Electrical Inspector.

Ch. SPS 305 Licenses, Certifications and Registrations

Ch. SPS 316	Electrical
Chs. SPS 320-325	Uniform Dwelling
Ch. SPS 326	Manufactured Home Communities
Ch. SPS 328	Smoke Detectors and Carbon Monoxide Detectors
Ch. SPS 360	Erosion Control, Sediment Control and Storm Water
Chs. SPS 361-366	Commercial Building Code
Chs. SPS 375-379	Buildings Constructed Prior to 1914
Chs. SPS 381-387	Plumbing
Ch. PSC 114	Wisconsin State Electrical Code, Volume 1

B. These Regulations are available on line at http://www.legis.state.wi.us/rsb/code/codtoc.html, as may be amended. Further, certain International Codes are adopted pursuant to the Wisconsin Administrative Code sections adopted herein, including but not limited to the IBC, International Building Code; the IECC, International Energy Conservation Code; the IMC, International Mechanical Code; the International Fuel Gas Code; and the IEBC, International Existing Building Code, and are subject to the modifications specified in the Wisconsin Administrative Code. Copies of said International Codes may be obtained as set forth in Wis. Admin. Code s. SPS 361.05.

C. The provisions of these statutes and codes shall govern design and construction of all buildings within the Village, along with the additional provisions set forth in this chapter of this Municipal Code. In all instances where there appears to be a conflict between applicable provisions of the adopted codes with respect to any instance of design or construction of any building within the Village, the more restrictive provisions shall apply unless to do so would violate the municipal authority to adopt said codes.

11-8. EXISTING BUILDINGS AND STRUCTURES.

Unless otherwise specifically stated in these Regulations an existing building or structure, and every element, system or component of an existing building or structure shall be maintained to conform with the building and fire code requirements that applied when the building, structure, element, system or component was constructed, and shall comply with these Regulations wherever applicable.

11-9. CERTIFIED MUNICIPALITY STATUS.

The Village is authorized to perform Commercial Inspections as described in Wis. Admin. Code s. SPS 361.60(2)(d). The Village is not authorized to perform commercial plan review, and plans for commercial buildings required to be reviewed under state law and administrative code shall be reviewed by the State of Wisconsin Department of Safety and Professional Services prior to or in conjunction with application for permits hereunder.

11-10. INSPECTORS.

A. Appointment and Term. A Building Inspector, a Plumbing Inspector and an Electrical Inspector shall be selected and appointed by the Village Board to indefinite terms, the length of time determined by contract. A single person or a firm may be appointed to fill more than one position. The Inspector, with the approval of the Village Board, may appoint a Deputy Inspector to act in the event of his absence or inability to perform his duties, but such appointment shall not carry with it any increase in compensation.

B. Certification. Each Inspector shall be certified for inspection purposes by the Department of Safety and Professional Services in the required categories specified under Wis. Admin. Code ch. SPS 305.

C. Compensation. Each Inspector shall receive compensation for inspections, additional inspections and meetings as determined by the Village Board and which shall be set forth by contract with the Inspector.

D. Duties. The Inspectors shall enforce all provisions of these Regulations, and all other State and Village provisions relating to construction, installation, alteration, repair and maintenance of buildings, structures, mechanical, electrical and plumbing systems within the Village, shall make such inspections, perform such tests and issue such orders as may be necessary for such enforcement, and shall have other such responsibilities as established by the Plan Commission and the Village Board.

1. The Building Inspector shall have the specific duties set forth in Wis. Admin. Code ss. SPS 320.10 and 361.41.

2. The Electrical Inspector shall have the specific duties set forth in Wis. Admin. Code ss. SPS 316.940 and 320.10, and, where applicable, Wis. Admin. Code ch. PSC 114. In addition, if electrical service is ordered discontinued to any building by the Fire Chief, the Fire Chief shall notify the Electrical Inspector so the latter may inspect the premises and authorize reconnection of service. The Village Police and Fire Departments shall permit the Electrical Inspector or his authorized representative inside fire and police lines.

3. The Plumbing Inspector shall have the duties and authority set forth as those of the plumbing “supervisor” in Wis. Stat. s. 145.05 and Wis. Admin. Code ss. SPS 320.10 and 382.21, and shall keep a record of all sewer connections and make drawings showing the location of the same and the position of all house drains, connections, junctions and other data necessary.

E. Powers. Each Inspector or an authorized certified agent of the Inspector may, at all reasonable hours, upon presentation of proper credentials, enter upon any public or private premises for inspection purposes. The Inspector may require the production of the permit for any building, plumbing, electrical or HVAC work. No person shall interfere with or refuse to permit access to any such premises to an Inspector or his/her agent while in the performance of his/her duties. In the event that an Inspector is refused access to any such premises, then the Inspector is authorized to apply for a special inspection warrant pursuant to Wis. Stat. s. 66.0119.

F. Inspections. In order to permit inspection of a project at all necessary phases without causing delay for the owner, the owner and/or contractor shall request all of the following inspections in conformity with the appropriate time frame defined in the Wisconsin Administrative Code:

1. Footing and foundation inspection.

2. Rough inspections of:

   a. General construction / carpentry, including framing.

   b. Electrical, including service.

   c. Plumbing.

   d. Heating, ventilating and air conditioning.

   e. Basement drain tiles / floor.

3. Insulation.

4. Final Inspection of carpentry, HVAC, electrical and plumbing

5. Erosion Control.

6. A recertification of footings and foundation may be required at the discretion of the Building Inspector.

G. Failure to request any inspection will be the responsibility of the contractor and/or property owner. No construction shall be deemed approved by default or lack of inspection by the appropriate Inspector, except as provided by the Wisconsin Administrative Code.

H. The expense of uncovering or exposing any work which must be inspected, where such work was required by the failure of the owner to request any inspection, will be the responsibility of the contractor and/or property owner.

I. Records. The appropriate Inspector shall perform all administrative tasks required by the State under all codes adopted in this chapter. In addition, each Inspector shall keep a record of all applications for permits and shall number each permit in the order of its issuance. Each Inspector shall file monthly and annual reports as required by the Village Board, and such other reports as may be required by the Wisconsin Statutes or Administrative Code.

J. The officials and staff of the Village of Rochester shall assist the Inspectors in the enforcement of these Regulations as necessary.

11-11. SUBMISSION OF PLANS.

A. Except as set forth in s. 11-9, the owner or contractor shall, with respect to any proposed construction or demolition, submit three sets of building, HVAC, plumbing and/or electrical plans to the appropriate Inspector for any work which expands the size of a building, any new building, or as required by the Inspector. If a new building or building addition is proposed, then a plot plan drawn to scale showing such proposed work and existing buildings and property lines shall be submitted. An Inspector may require the owner or contractor to submit plans for any construction or demolition project when the Inspector determines that it is necessary to review such plans to assure that the proposed project will comply with all applicable codes.

B. At the option of the Building Inspector, the requirement for submission of certain plans, data, specifications or a survey with an application for permit to execute minor alterations or repairs to any building, structure or equipment may be waived by the Inspector, provided the proposed construction is sufficiently described in the application for the permit.

C. The Plans required under s. 11-12 shall also be submitted.

11-12. ISSUANCE OF PERMIT.

A. The appropriate Inspector shall issue the requested permit if the owner or contractor demonstrates that all state, county and local submission requirements are satisfied. If a permit card is issued, it shall be posted at the job site in a location visible from the street.

B. Expiration.

1. New Residential and Commercial Structures. A permit for a new Residential or a new Commercial principal structure or an addition to such a structure shall expire 24 months after issuance if the dwelling exterior has not been completed or the exterior shell of the commercial building has not been enclosed. In the event that a Permit expires, a new application must be submitted and a new permit obtained, with fees therefore charged based upon the current fee schedule. Failure to apply for a new permit within 30 days of the date of permit lapse shall result in penalties pursuant to s. 11-50.

2. Alterations to Residential and Commercial Structures.

a. A permit for interior alteration of a Residential principal structure shall expire 12 months after issuance. In the event that a Permit expires, a new application must be submitted and a new permit obtained, with fees therefore charged based upon the current fee schedule. Failure to apply for a new permit within 30 days of the date of permit lapse shall result in penalties pursuant to s. 11-50.

b. Pursuant to Wis. Admin. Code s. SPS 361.36 and the provisions therein for the expiration of state-approved plans, a permit for interior renovation or HVAC construction of a Commercial principal structure that does not include any associated building construction shall expire 12 months after issuance if the work is not completed in that year, and a permit for a fire protection system in a Commercial principal structure that does not include any associated building construction shall expire two years after issuance. In the event that a Permit expires, a new application must be submitted and a new permit obtained, with fees therefore charged based upon the current fee schedule. Failure to apply for a new permit within 30 days of the date of permit lapse shall result in penalties pursuant to s. 11-50.

3. Accessory Structures. A permit for construction or renovation of any Accessory Structure shall expire 12 months after issuance if the structure exterior has not been completed or the exterior shell of a building has not been enclosed. In the event that a Permit expires, a new application must be submitted and a new permit obtained, with fees therefore charged based upon the current fee schedule. Failure to apply for a new permit within 30 days of the date of permit lapse shall result in penalties pursuant to s. 11-50.

C. By accepting a permit, the applicant, owner or contractor grants the Inspector the right of access to the real estate on which the permitted construction or demolition will occur.

D. Permits are issued conditionally on the condition that the owner and/or contractor(s) shall conform to the requirements of all applicable codes, zoning ordinances and setback requirements in constructing the building.

E. No permit shall be issued to any person who is in violation of these Regulations until such violation has been corrected, nor to any person who owes the Village any permit fees.

F. No permit shall be issued to any person against whom an order issued by an Inspector is pending.

G. It shall be the responsibility of the installer or contractor to determine if a permit is required and to obtain the same prior to commencing work.

H. Contractor Certification.

1. Except for an owner of a dwelling who resides or will reside in the dwelling, no person may obtain a Building Permit unless the person annually obtains a Certificate of Financial Responsibility from the Wisconsin Department of Safety and Professional Services in compliance with Wis. Stat. s. 101.654.

2. Except for an owner of a single-family building owned and occupied by him as his or her home or farm building, or as otherwise excepted under Wis. Stat. s. 145.06, no person may obtain a Plumbing Permit unless the person is licensed or registered pursuant to Wis. Stat. ch. 145.

3. Except for an owner of a single-family building owned and occupied by him as his or her home, or unless otherwise exempted by law, no person may obtain an Electrical Permit unless that person is licensed pursuant to Wis. Stat. s. 101.82.

I. Construction site requirements.

1. Refuse Containers.

a. For new construction, the permittee shall be responsible for the provision at the construction site of a rear load refuse bin (dumpster), and, where appropriate, a recycling container, of sufficient size to adequately contain the waste and recyclable material generated at the site, or, if approved by the Building Inspector, shall provide an adequate method of on-site recycling at such site.

b. For improvement, remodeling, reconstruction, addition, or partition, of an existing structure, the permittee shall be responsible for the placement on the site of a rear load refuse bin (dumpster), and, where appropriate, a recycling container, of a sufficient size to handle the refuse and recyclable material generated, if, in the determination of the Building Inspector, a dumpster and/or recycling container are required based upon the nature and extent of the work to be accomplished.

2. Restroom Facilities.

   a. For new construction, portable restroom facilities shall be provided by the permittee.

   b. For improvement, remodeling, reconstruction, addition, or partition, of an existing structure, the Building Inspector may order that portable restroom facilities be provided by the permittee based upon the nature and extent of the work to be accomplished and the availability of restroom facilities in the immediate vicinity of the project.

3. Drain Tile. The permittee shall notify the Village of Rochester immediately any time a drain tile is damaged or cut during excavation. Drain tile shall be repaired or rerouted at the expense of the owner of the property. Repairs shall be done in accordance with the instructions of the Building Inspector or Department of Public Works representative.

11-13. OCCUPANCY BOND.

A deposit in an amount determined by the Village Board and set forth in the Fee Schedule is required for all new construction projects where the total cost, including labor, materials and supplies, will equal or exceed $50,000. The deposit shall be refunded after the project is completed and the Inspectors have found that the building complies with all applicable codes. The deposit shall be forfeited if occupancy occurs before final inspection and the issuance of an occupancy permit, or extends after a temporary occupancy permit expires. It shall also be forfeited if the exterior is not finished within two years of the date the permit is issued.

11-14. OCCUPANCY PERMIT.

A. If the Building Inspector, after all required inspections are completed, performs a final inspection and finds that a building has been constructed in accordance with the applicable codes, then the Inspector shall issue an occupancy permit. If the building fails to comply with the code in minor respects which do not threaten the safety, health or welfare of the building's occupants, the Building Inspector may issue a temporary occupancy permit for 30 days or a specified term. No person may have occupancy of a building until an occupancy permit is issued. In lieu of a Temporary Permit, the Building Inspector may set forth the requirements for completion of the work and accept a financial surety, payable to the Village, to ensure that the work is completed within a specified time frame, and may issue an Occupancy Permit. A fee for an Occupancy Permit, in an amount established by the Village Board, shall be paid prior to the issuance of the Occupancy Permit pursuant to this subsection.

B. All of the following restrictions must be complied with before an occupancy permit is issued:

   1. All debris on road surface must be properly disposed of during construction.

   2. All pavement or road surfaces which are damaged during construction must be repaired at property owner expense.

   3. Where street lights are not available, owners must install a decorative photo cell operated light, either next to the curb and gutter in Fox Knoll Subdivision, or not more than 20 feet nor less than ten feet from the lot line in Weber Estates, or as required by the Village in

other areas. This light must be 100 minimum to 150 maximum wattage, incandescent light or equivalent.

4. All exteriors must be completed within two years of issuance of a building permit.

11-15. FEES.

A. At the time of issuance of a permit applied for under these Regulations, the applicant shall pay fees as established periodically by the Village and set forth in the Fee Schedule. Said fee schedule shall include fees for plan review as set forth therein.

B. In instances where a building permit covers primarily the construction of church buildings to be used for congregational gatherings, or for schools for the education of individuals in grades pre-school through the twelfth grade, the fee shall be calculated pursuant to the "Commercial" category and then shall be reduced to two thirds of the calculated amount in such instance.

C. Where additional inspections are necessary due to condemned work resulting from faulty construction or repairs, or where additional inspections are necessary because of the failure to make corrections in work found faulty or defective, a reinspection fee, in the amount set forth in the Fee Schedule, shall be paid.

D. There shall be added to the fee schedule as from time to time adopted and revised by the Village Board of the Village of Rochester a provision allowing for the compensation of the Building Inspector, Plumbing Inspector, and Electrical Inspector of the Village of Rochester, a fee for each inspection which is accomplished by any such inspector at the direction of the Village of Rochester, inclusive of any follow-up involved in that same inspection process, the said direction to be provided by the Village Board, the Village Plan Commission, the Village Health Officer, the Village President, or the Village Attorney.

E. In the event any work shall be commenced, for which a permit is required, prior to obtaining such permit from an Inspector, the same shall constitute a violation of these Regulations, double fees shall be charged, and the violator shall be subjected to the penalties as set forth in s. 11.50 and Ch. 50 of this Municipal Code, and further, every day of the continuance of the circumstance hereinabove described shall constitute a separate violation of these Regulations.

F. Permit fees shall become the property of the Village and shall not be refundable.

11-16. DISCLAIMER AND NON-LIABILITY FOR DAMAGES.

A. Village Not Liable. These Regulations shall not be construed to relieve or lessen the responsibility or liability of any person supplying building, HVAC, electrical or plumbing services or materials, or selling, renting, leasing, owning, distributing, connecting, disconnecting or maintaining any building, HVAC, electrical or plumbing equipment for damages to persons or property caused by any defect therein or therefrom; nor shall the Village be held as assuming any such responsibility or liability by reason of the issuance or revocation of any license, permit or certificate or by reason of the approval or disapproval of any such equipment, plans or applications, information or schedules in these Regulations; nor shall the Village be held liable for any damages resulting from enforcement of these Regulations.

B. Village Officials Not Liable. Where action has been taken by any Inspector or his duly authorized representative, or by any member of the Plan Commission or Village Board, or by any other

Village official or duly authorized representative, to enforce these Regulations, such action or act shall be considered as done in the name of and on behalf of the Village; and any such person so acting for the Village shall not be judged as liable for any damage that may accrue to persons or property as the result of any such act committed in the discharge of his duties.

C. These Regulations shall not be construed as an assumption of liability by the Village or any Inspector for damages because of injuries sustained or property destroyed by any defect in any dwelling or equipment.

ARTICLE 2 ADDITIONAL BUILDING CODE PROVISIONS

11-20. SCOPE OF UNIFORM DWELLING CODE EXPANDED.

For the purposes of this chapter, the standards contained in the Wisconsin Uniform Dwelling Code shall be expanded to apply as the standards for construction of the following:

A. Additions, alterations and major equipment replacements for one and two family dwellings built prior to the enactment of current Uniform Dwelling Code.

B. Detached accessory buildings greater than 200 sq. ft. serving one and two family dwellings.

1. Frost Protection for Footings and Foundations.

2. Grade-beam slabs are required for structures with a continuous floating slab of reinforced concrete. The slab shall not be less than four inches in thickness. Reinforcement shall be a minimum of six by six inch, number ten wire mesh or by using 1.5 pounds of fiber mesh per cubic yard of concrete with varying fiber mesh lengths. The slab shall be provided with a thickened edge all around, eight inches wide and eight inches below the top of the slab.

3. Structures not constructed with a floating slab shall have footings and foundations placed below frost penetration level, but in no case less than 48 inches below grade or as otherwise provided in Wis. Admin. Code ch. SPS 321.

C. Detached accessory buildings less than 200 square feet in size. Concrete slabs, frost-free footings, and the like are not required, but if they are installed they shall follow B. above and/or Wis. Admin. Code ch. SPS 321. Wood bearing beams, walls or members in contact with the ground shall be pressure treated or decay resistant type wood per Wis. Admin. Code s. SPS 321.10.

D. Bath or toilet rooms shall be not less than fourteen square feet in area with a minimum width of three feet and shall have at least 100 cubic feet of air space for each water closet and urinal, in addition to the space required for other fixtures in the toilet room. To conform with conditions in older existing buildings, this requirement is subject to variance upon application to and approval by the Board of Appeals.

E. Construction sites. The property owners and the prime contractors in charge of any construction site shall maintain the construction site in such a manner that litter will be prevented from being carried from the premises by the elements. All litter from construction activities or any related activities shall be picked up at the end of each work day and placed in containers which will prevent litter from being carried away from the premises by the elements.

1. For major construction projects, i.e.: roof replacement, siding replacement, major modification as determined by the building inspector and including, but not limited to, razing or new construction there shall be a dumpster, the size to be determined by building inspector, on site in which to place all debris and litter.

2. Noise from Remodeling, Repair, Construction, Excavation or Demolition. It is unlawful and shall be considered a nuisance for any person to engage in the construction, including excavation and demolition, alteration, remodeling or repair of any building or structure; the construction of any roadway or other public improvements; or the operation or startup of any pile driver, power shovel, backhoe, bulldozer, pneumatic hammer, derrick, steam or electric hoist, or other construction machinery, the noise of which can be heard beyond the property lines, or the vibration of which can be felt beyond the property lines, other than between the hours of seven a.m. and seven p.m., Monday through Friday, or between the hours of eight a.m. and five p.m. on Saturdays without the approval of the Village board. No such work is permitted on Sundays and the following national holidays: Christmas, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day.

   a. This subsection does not preclude individual homeowners from doing work on buildings and structures located on the property on which they reside during daylight hours.

   b. In the case of urgent necessity in the interest of public health and safety, the chairperson of the Village Public Works Committee or Village President can give written approval for such work. Such approval may be granted for a period not to exceed three days or less while the emergency continues and which may be renewed for periods of three days or less while the emergency continues. If the chairperson of the Public Works Committee or Village President should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building, or the excavation of streets and highways within the hours of six p.m. and seven a.m., and if he shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within the hours of seven p.m. and seven a.m., upon application being made at the time the permit for the work is awarded or during the progress of the work.

11-21. ARCHITECTURAL CONTROL.

No building permit required by the Village Building Code adopted by reference in this chapter shall be issued unless it has been approved by the Plan Commission pursuant to the Architectural Control provisions of this Section and ch. 35, Planning and Zoning, unless the work to be performed under the building permit is exempted from review under this section or that chapter, or does not change the exterior facade or character of the structure.

A. Compliance. For the purpose of promoting compatible development, aesthetics, stability of property values, and to prevent impairment or depreciation of property values in the Village of Rochester, no structure shall hereafter be erected, moved, reconstructed, extended, enlarged, or have its exterior altered or changed in such a manner as to violate the principles set forth in subsection B. of this Section.

B. Principles. To implement and define criteria for the purposes set forth in subsection A, the following principles are established:

1. The design or exterior appearance of a building or sign which is of such unorthodox or abnormal character in relation to its surroundings as to be unsightly or offensive to generally accepted taste and community standards is not permitted.

2. The design or exterior appearance of a building or sign which is so identical with those adjoining as to create excessive monotony or drabness is not permitted.

3. Any exposed facade or roof of a building or a sign that is not constructed or faced with a finished material that is aesthetically compatible with the other facades, roofs or signs and presents an attractive appearance to the public and to surrounding properties is not permitted.

4. No building or sign shall be permitted to be sited on a property in a manner which would unnecessarily destroy or substantially damage the natural beauty of the area, particularly insofar as it would adversely affect values incident to ownership of land in that area; or which would unnecessarily have an adverse effect on the beauty and general enjoyment of existing structures on adjoining properties.

C. Administration. The Building Inspector shall require that each building permit application in any district be accompanied by plans showing the exterior elevations, including roofs, of all existing and proposed structures on the property; a description of the proposed materials to be used; and proposed floor elevations of all structures.

1. The Building Inspector shall review permit applications for minor exterior alterations, siding permits, roofing permits, and permits for decks and accessory structures less than 200 square feet in size pursuant to the standards set forth in Section 35-22 of Chapter 35 and subsection B. of this Section. If, in the Building Inspector's judgment and experience the standards have been met, he may issue the permit according to the requirements of this Code. If, in the Building Inspector's judgment and experience the standards have not been met or are in question, or he has a concern regarding the application of the standards, he may, in his discretion, refer the application to the Plan Commission pursuant to subsection C.2 of this Section.

2. The Building Inspector shall transmit all building permit applications not exempted in subsection C.1. and their accompanying plans to the Village Plan Commission for the Plan Commission's review and determination, with the exception that structures reviewed by the Historic Preservation Committee pursuant to Chapter 38, or reviewed previously via site plan or developer's agreement; and permits that do not affect the exterior structure may be excluded.

3. See also Section 35-22.

D. Review and Findings. The Plan Commission shall review the referred plans at a subsequent meeting; but not more than 45 days after the original application for a building permit. The Plan Commission shall not approve any building plans unless it finds after viewing the application that the structure, as planned, will not violate the principles set forth in Section 35-22 of Chapter 35 and subsection B. of this Section. If an application is rejected, the Commission shall set forth the reasons for the rejection in writing.

E. Appeals. Any person or persons aggrieved by any decisions of the Plan Commission related to architectural control may appeal the decision to the Zoning Board of Appeals. Such appeal shall be filed with the Village Clerk within 30 days after the filing of the decision with the Building Inspector.

11-22. FIRE BREAK IDENTIFICATION REQUIREMENTS.

A. Location of Fire Walls to Be Shown on Plans. In every instance in which this chapter requires the provision for installation of fire walls or fire breaks, the location of each such fire wall or fire break shall be clearly shown on the architectural plans for the proposed construction.

B. Fire Walls to Be Identified. In conformance with Wis. Admin. Code s. SPS 362.0706, Fire Wall Identification and pursuant thereto, the Village of Rochester shall require owners to identify the location of a fire wall at the exterior wall of a building with a sign as provided therein and in subsection C, below.

C. Sign Requirements.

1. General. The sign shall consist of three circles arranged vertically on the exterior wall marking the location of the fire division wall or occupancy separation wall and centered on the fire division wall or occupancy separation wall. The circles may be affixed directly to the surface of the building or may be placed on a background material which is affixed to the building.

2. Size of Circle. Each circle shall be the same size. The diameter of the circle shall be at least one and one half inches, but no greater than two inches.

3. Spacing. The circles shall be spaced equal distance apart. The maximum distance measured from the top of the uppermost circle to the bottom of the lowermost circle shall be twelve inches.

4. Color. The color of the circle shall be limited to the colors red, amber (orange-yellow) or white (clear) and shall be reflective. The color of the circle shall contrast with the color of the background.

5. Location. The top of the sign shall be located on the face of the exterior wall of the building and located no more than twelve inches below the eave, roof edge, fascia or parapet.

11-23. ANTENNA FACILITIES.

No antenna facility, including a “dish” antenna 40 inches or more in diameter, an antenna 40 inches or more in diameter or diagonal measurement, an antenna that extends higher than 12 feet above the roofline, or any mast that extends higher than 12 feet above the roofline, shall be erected or placed on any property within the Village until a permit shall have first been obtained from the Village Board, provided, however, that if the provisions of sections 35-150 or 35-151 of this Code apply to the type of antenna facility that is the subject of the application conflict with the provisions of this section, the provisions of this section do not apply and the Inspector shall work in cooperation with the Zoning Administrator for permit issuance within the time limits and other restrictions set forth therein.

A. Application. Application for an antenna facility permit shall be made in writing to the Village Clerk who shall in turn submit it to the Plan Commission. With such application, there shall be submitted a fee in an amount set by the Village Board and a complete set of plans and specifications, including a plot plan showing the location of the proposed antenna facility with respect to adjoining alleys, lot lines and buildings. If such application shall be approved by the Plan Commission, it shall then be submitted to the Village Board at its next regular meeting for final approval. The Plan Commission shall act on all such applications within a period of 45 days.

B. Location of Antenna Facilities. In order to protect public safety and the safety of the adjoining residences, any such antenna facility approved for placement within the Village may only be located in the rear yard of a residential lot and at such a distance from the adjoining lots as to prevent encroachment on the adjoining lots in case of collapse. It shall also be placed as close to the residence as is reasonably possible. Placement in other districts shall be approved by the Plan Commission. When determining the location of any antenna facility, distance from power lines and any other safety factors shall be considered, and shall be a basis for rejection of a permit or a requirement that the antenna facility be located in a specific location.

C. Connection to Electrical Lines. All electrical lines, cables and conduits running to or from any such antenna facility shall be buried. If an antenna facility is to be used by two or more residential property owners, all interconnecting electrical connections, cables and conduits shall also be buried. The location of all such underground lines, cables and conduits shall be shown on the application for permit.

D. Wind Pressure. Each antenna facility shall be securely anchored to withstand a maximum wind pressure anticipated, taking into consideration the size, shape and weight of all of its components.

E. Temporary Placement. An antenna facility may be placed in a yard on a trial basis for a period not exceeding ten days.

F. See also s. 35-150, Tower Facilities, of this Municipal Code.

11-24. SWIMMING POOLS.

A. Definition. “Swimming pool” shall mean any depression in the ground, either temporary or permanent or a container of water, either temporary or permanent and either above or below the ground, in which water of 32 or more inches in depth at any point is contained, or which has a diameter of ten feet or more. Spas, hot tubs, in ground, aboveground and public pools are included in this definition.

B. Permits.

1. Permits Required.

a. The construction of a swimming pool, as defined herein, except as set forth in subsection b., requires permits which include evaluation under the Building Code, the Electrical Code, the Plumbing Code and the Zoning Code. One application for a “Pool Permit” as set forth herein, shall be accepted for review under the Building Code, the Plumbing Code and the Zoning Code. A separate application for evaluation under the Electrical Code, as set forth in s. 11-44, is required. A separate Deck and/or Fence Permit is required, even when the deck

and/or fence is constructed at the same time as the swimming pool.

b. Those swimming pools classified as public swimming pools and requiring state permits pursuant to Wis. Admin. Code chs. SPS 390, Design and Construction of Public Swimming Pools and Water Attractions, and DHS 172, Safety, Maintenance and Operation of Public Swimming Pools and Water Attractions, shall not be required to obtain the pool permit required herein.

2. Application. An applicant for a Pool Permit shall provide the following information, along with the Permit Fees set forth in the Fee Schedule, as follows:

a. Survey or accurate drawing of the property, in duplicate, showing property dimensions, including square footage, all existing structures, proposed swimming pool location, including distances to all existing structures, filter and wastewater disposal locations, fencing if required, proposed decking, and overhead or underground electrical wiring.

b. Type of pool installation, aboveground or in ground, including dimensions and volume in gallons.

c. Pool height above highest point of grade if aboveground installation.

d. Fences. This fencing requirement is applicable to all private swimming pools, including those constructed before enactment of this Municipal Code.

(1) Every private swimming pool shall be completely surrounded by a fence or wall not less than 42 inches in height, be of sufficient strength to prevent accidental access, and shall be constructed so as to not have openings, holes or gaps larger than 42 inches in any one dimension, which would allow ease of access by unauthorized persons, except for door or gates. A dwelling house or accessory building may be used as part of such enclosure. All gates or doors be equipped with an inside self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use, except that the door of any dwelling which forms a part of the enclosure need not be so equipped.

(2) A temporary fence (such as a snow fence or similar fence) may be used while a pool is under construction. A permanent fence must be constructed within 30 days after water is in the pool.

(3) Aboveground pools with self-provided fencing to prevent unguarded entry will be allowed without separate additional fencing provided the self-provided fence is of minimum required height and design as heretofore specified. All access from grade to above ground pools having ladders, stairs, or ramps shall not have less than equal safeguard protection than that provided the pool proper.

(4) The requirement of a fence may be waived by the Building Inspector if the pool is an aboveground pool and if the deck of said pool is at least four feet above grade and the Building Inspector determines from an on-site inspection that, except for ladders or other access devices, the

outside pool wall or decking is at least four feet above grade and provides no direct access to the pool.

e. Type and support of decking, if proposed.

f. Overall size and locations of the above in regard to existing buildings and lot lines for property survey reference.

g. Any change in finished grades near the pool.

h. Two copies of a brochure which shows the type and style of the pool to be installed.

i. Prior to making the application for a pool permit, the applicant shall check subdivision or homeowner's association regulations regarding swimming pools and shall include those regulations with the application. The Village shall not enforce, and shall not be responsible for the enforcement of, said subdivision or homeowner's association regulations, but when it is made aware of them, may include them in its consideration of the application.

3. Issuance. An applicant shall be issued a pool permit if the submitted plans are in conformance with the applicable sections of this Municipal Code. For storable pools, the pool permit shall be valid for subsequent years if the pool is re-erected in the same location and uses the same power source listed in the application. If a storable pool is erected in a different location or uses a different power source in any subsequent year, a new permit shall be applied for.

4. Inspections. The Inspectors shall perform inspections of pool construction as required by state statute, administrative code, and this Code.

11-25. UNSAFE BUILDINGS.

Whenever the Building Inspector determines that any building or structure is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation, occupancy or use, the Inspector shall recommend to the Village Board an order be sent to the owner to raze and remove all or part thereof, or to repair the same if such structure can be made safe and sanitary by reasonable repairs. Upon consideration of the Inspector's recommendation, the Village Board may direct the Inspector to issue a raze order or a raze or repair order. Such orders and proceedings shall be as provided in Wis. Stat. s. 66.0413. See also s. 20-1 of this Municipal Code.

11-26. RAZING AND DEMOLITION.

A. Demolition Permit Required. No person may cause the demolition of any structure or part of a structure greater than 400 square feet in area without having first applied for and obtained a demolition permit from the Building Inspector. No person may undertake any steps to demolish the structure prior to receiving a permit.

B. Application. An application for a permit to demolish all or part of a building shall include the following information:

1. The name and address of the owner of the building on the date of the application and, if

different, on the date of the demolition;

2. The name, address and telephone number of the contractor(s) performing the demolition work;

3. The date upon which demolition is to commence;

4. The date by which demolition shall be complete;

5. A list of all hazardous waste and hazardous and toxic substances (as defined by Wis. Admin. Code ch. NR 706, as amended from time to time) contained in the building, a statement as to whether the building contains asbestos (as defined by Wis. Admin. Code chs. NR 445 and 447), and a detailed description of the method to be used in removing, transporting and disposing of any hazardous waste, hazardous and toxic substances, and asbestos;

6. A detailed description of how and where the waste materials resulting from the demolition will be transported and disposed of (including the description of the route to be used by trucks in hauling the waste);

7. A description of the method of demolition to be used;

8. A description in detail of all methods to be used to prevent water runoff and soil erosion from the site to neighboring properties and to prevent releasing unreasonable amounts of dust from the site; and

9 Along with the application for permit for demolition, the applicant shall present releases from all utilities serving the property, stating that their respective service connections and appurtenant equipment such as meters and regulators have been removed or sealed and plugged in a safe manner.

C. Demolition. The demolition shall be conducted in a manner that is safe and that does not adversely affect the environment.

D. Clearing and Leveling the Site.

1. The site of any demolition shall be properly cleared of debris, rubbish and pavement and shall be properly graded and leveled to conform with the adjoining grade of the neighboring property; and when so graded and leveled, the site shall be seeded, sodded or treated in some other manner acceptable to the Building Inspector so as to prevent blowing dust, dirt, or sand. Excavations remaining after demolition shall be filled, graded and leveled off, not later than 30 consecutive days after demolition is completed, and shall be protected from entry until filled.

2. Excavations from demolished buildings or structures shall not be filled with any materials subject to deterioration. The Building Inspector, upon notification by the permit holder, the owner or his agent, in writing and upon forms provided by the Building Inspector for that purpose, shall, within 72 hours, inspect each excavation, or part thereof, before the excavation is filled.

3. It shall be unlawful to fill any such excavation without inspection and approval of the

Building Inspector. Voids in filled excavations shall not be permitted. In the event of the unavailability of the Building Inspector to conduct an inspection within the 72 hours after written notice; the permit holder, owner or his agent may retain the services of a certified, qualified municipal inspection service to obtain an opinion that approves filling of the excavation. Said opinion shall be deemed a sufficient approval by the Village provided that a written copy of the opinion is delivered to the Clerk at least 48 hours before filling of the excavation commences.

E. Removal and Disposal. Removal, transportation and disposal of all hazardous waste, hazardous and toxic substances, and asbestos shall be conducted in compliance with all applicable state, federal and local statutes, ordinances and regulations. The permit holder shall give the Building Inspector 72 hours' written notice prior to any removal, transportation or disposal of hazardous waste, hazardous and toxic substances, and asbestos.

11-27. MOVING BUILDINGS.

A. General. No person shall move any building or structure upon any of the public rights-of-way of the Village without first obtaining a permit therefore from the Building Inspector and upon the payment of required fee. Every such permit issued by the Building Inspector for the moving of a building shall designate the route to be taken, the conditions to be complied with and shall limit the time during which said moving operations shall be continued. This section does not apply to manufactured homes per the Federal Fair Housing Act.

B. Moving Damaged Buildings. No building shall be repaired, altered or moved within or into the Village that has deteriorated or has been damaged by any cause (including such moving and separation from its foundation and service connections in case of moved buildings) 50 percent or more of its equalized value. No permit shall be granted to repair, alter or move such building within or into the Village. Furthermore, if the equalized assessed value of the building is not within 10% of the surrounding buildings within 1,000 feet of the parcel where the building is proposed to be moved to, no permit shall be granted unless the building is improved so that its equalized value is within 10% of the lowest equalized value of any of the surrounding buildings.

C. Continuous Movement. The movement of buildings shall be a continuous operation during all the hours of the day, and day by day and at night until such movement is fully completed. All of such operations shall be performed with the least possible obstruction to thoroughfares. No building shall be allowed to remain overnight upon any street crossing or intersection, or so near thereto as to prevent easy access to a public facility. Lighted lanterns shall be kept in conspicuous places at each end of the building during the night.

D. Street Repair and Inspection. Every person receiving a permit to move a building shall, prior to moving the building, accompany the Building Inspector and the Chairperson of the Public Works Committee on an inspection of the route the building will travel within the Village limits. The applicant shall, within one day after said building reaches its destination, report the fact to the Building Inspector who shall thereupon, in the company of the Chairperson of the Public Works Committee, inspect the streets and highways over which said building has been moved and ascertain the condition. If the movement of said building has caused any damage to any street or highway, the person to whom the permit was issued shall forthwith place them in good repair as they were before the permit was granted. On the failure of the said permittee to do so within ten days thereafter to the satisfaction of the Village Board, the Village Board shall repair the damage done to such streets and hold the person obtaining such permit and the sureties on his bond responsible for payment of same.

E. Conformance with Code. No permit shall be issued to move a building within or into the Village and to establish it upon a location within the said Village until the Building Inspector has made an investigation of such building at the location from which it is to be moved and is satisfied from such investigation that said building is in a sound and stable condition and of such construction that it will meet the requirements of this Building Code in all respects. A complete plan of all further repairs, improvements and remodeling, with reference to such building, shall be submitted to the Building Inspector, and he shall make a finding of fact to the effect that all such repairs, improvements and remodeling are in conformity with the requirements of this Building Code and that when same are completed, the building, as such, will so comply with said Building Code. In the event a building is to be moved from the Village to some point outside of the boundaries thereof, the provisions, with respect to the furnishing of plans and specifications for proposed alterations to such building, may be disregarded.

F. Cash Deposit.

1. Before a permit is issued to move any building over any public way in this Village, the party applying for said permit shall post a performance bond in the form of a cash deposit with the Village in a sum to be fixed by the Village. Said performance bond shall be held for indemnification of the Village for any costs or expenses incurred by it in connection with any claims for damages to any persons or property, and the payment of any judgment, together with the costs or expenses incurred by the Village in connection therewith, arising out of the movement of the building for which the permit is issued. The bond shall be released if, after the building is moved, the Building Inspector and Chairperson of the Public Works Committee have found that the permit was complied with and no damages were caused by the move.

2. The release of the bond required by subsection 1. shall be further conditioned upon the permittee erecting adequate barriers and within 48 hours, filling in any excavation or adopting and employing such other means, devices or methods approved by the Building Inspector and reasonably adopted or calculated to prevent the occurrences set forth herein. The Building Inspector may waive the time lines in this paragraph if the Building Inspector, after investigation, determines that the excavation exposed by the removal of a building from its foundation is not so close to a public thoroughfare as to constitute a hazard to persons, particularly children under 12 years of age.

G. Insurance. The Building Inspector shall require, in addition to said bond above indicated, public liability insurance covering injury to one person in the sum of not less than $500,000.00 and for one accident, aggregate not less than $1,000,000.00, together with property damage insurance in a sum not less than $500,000.00, or such other coverage as deemed necessary.

H. Village Board Approval Required.

1. Before any permit to relocate a building may be issued, the Village Board shall examine the application for the permit and approve the application by a majority vote.

2. The application shall include exterior elevations of the building at its proposed new location; accurate photographs of all sides and views of the same; in case it is proposed to alter the exterior of said building, plans and specifications of such proposed alterations, and a site plan showing the location of the building on the final resting site.

3. The Village Board shall not grant a permit unless the Board has taken a view of the building proposed to be moved and of the site at which it is to be located at a public meeting.

4. The Village Board may not grant a permit for relocation of a building unless it finds that the exterior appearances and design of the building to be moved or moved and altered, will be consistent with the exterior appearance and design of the buildings already constructed or in the course of construction in the immediate neighborhood, or with the character of the applicable district established by the zoning ordinances of the Village. No permit shall be granted if the relocation will cause a substantial depreciation of the property values of the neighborhood to which the building is proposed to be relocated.

5. In case the applicant proposed to alter the exterior of said building after moving the same, he shall submit, with his application papers, complete plans and specifications for the proposed alterations. Before a permit shall be issued for a building to be moved and altered, the applicant shall deposit a cash deposit or performance bond of not less than $5,000 with the Village to secure the timely completion of all proposed exterior alterations to said building as set forth in the plans and specifications. This cash deposit or performance bond shall be in addition to any other bond or surety which may be required by other applicable ordinances of the Village. The cash deposit shall be refunded after the exterior alterations are completed and the Building Inspector has found the building exterior complies with the approved plans and within the time frame set by the Village Board. The deposit shall be forfeited if the exterior of the building does not comply with the approved plans or if the time frame for completing the work is not adhered to.

6. No occupancy permit shall be issued for said building until the exterior alterations proposed to be made have been completed.

7. Whenever an application for relocation of a building is made to the Building Inspector, he shall place the consideration of the application on the agenda of the next regularly scheduled Village Board meeting. The Building Inspector shall inform the Village whether or not the application complies, in all respects, with all other ordinances of the Village. The Village may, if it desires, hold a public hearing on the permit.

ARTICLE 3 ADDITIONAL PLUMBING CODE PROVISIONS

11-30. EXISTING UNSANITARY INSTALLATIONS.

See ss. 10-7 and 25-2 of this Municipal Code.[1]

11-31. CONNECTIONS TO THE PUBLIC SEWERAGE SYSTEM.

A. Connection Fee. No connection to the public sewerage system may be made unless the connection fees as established by the Village Board have been paid.

B. Licensed Plumber to Do Work. Except as provided in Wis. Stat. s. 145.06, no person except a plumber licensed therefor shall be permitted to tap or make connections with the general sewerage system or any part thereof.

[1] Amended 10-13-2014, Ordinance #2014-5

C. Location of Drain Junctions. Such information as the Plumbing Inspector, the Public Works Committee or the Village Engineer may have with regard to the location of sewer junctions or slants shall be furnished to plumbers, the Village assuming no risk as to the accuracy of the same. If the junction is not found using the measurements furnished by the Village Engineer or Plumbing Inspector, connection shall be made as provided in Wis. Admin. Code ch. SPS 382.

D. Existing Drains or Sewers. Whenever it is necessary to disturb a drain or sewer in actual use, the same shall not be obstructed or disconnected without the permission of the Plumbing Inspector; and no person shall make any new connection with, or extension to, any old drain without the permission of the Plumbing Inspector.

E. Connecting During Freezing Weather. No opening in the street for making connection with a main sewer shall be permitted when the ground is frozen, except when the Plumbing Inspector judges such connection necessary. If such permission is granted, the work shall be done as directed in the permit therefor.

F. Sewer Connections. No work shall be done to connect any building to any public sewer utility until such building is completely enclosed by roof, the outside walls backfilled to rough grade, all sanitary sewer lines within buildings to be connected that will be covered by basement floors having been inspected and approved by the Building Inspector of the Village and a functional sump and sump pump having been installed in the basement, if required. In buildings without basements the permit shall be issued after the footing and subfloor have been constructed. No permit shall be issued for the connection with the public sewer of any basement floor drain in any building located within the 100 year flood plain as established and determined under the Village flood plain ordinance. Buildings within the 100 year flood plain shall not have public sewer service for any floor located below the exterior finished grade.

11-33. PLUMBING REQUIRING STREET EXCAVATIONS.

See s. 6-6 and ch. 10 of this Municipal Code.

11-34. DAMAGING PLUMBING PROHIBITED.

No person shall intentionally, willfully or maliciously damage or obstruct any sewer, house drain, catch basin or any plumbing fixture or apparatus, pipe or other part of any plumbing in actual use, or any sewer or gas pipe, or any part or apparatus connected therewith, laid or constructed in a street, alley or other public place or under any sidewalk of the Village.

11-35. SWIMMING POOLS.

A. Definition. In this section, “Swimming Pool” shall have the meaning set forth in s.11-24.A. of this Chapter.

B. Permit Required. See s. 11-24B of this chapter.

ARTICLE 4 ADDITIONAL ELECTRICAL CODE PROVISIONS

11-40. EXISTING UNSAFE CONDITIONS.

The Electrical Inspector shall make periodic inspections of all electrical wires and appliances installed within the Village, except in occupied dwellings. When such wires or appliances are found to be in a dangerous or unsafe condition, he shall notify the person owning, using, operating or installing the same to place them in a safe condition. Any person failing or refusing to complete the necessary repairs or changes within fifteen days after receipt of such notice shall be subject to penalties pursuant to s. 11-50 for each day that elapses after the expiration of such period; and the Electrical Inspector may order the discontinuance of electrical service to such defective wires or appliances until they have been repaired, removed or changed as directed by the Electrical Inspector, subject to the limitations of this chapter.

11-41. STATE CERTIFICATION OF ELECTRICIANS REQUIRED.

Wis. Stat. ss. 101.82, 101.87 and 101.88 and Wis. Admin. Code ch. SPS 305, relating to the State certification of electricians, are adopted and by reference made a part of this chapter with the same force and effect as though set forth in full.

11-42. TEMPORARY SERVICE.

An application for a permit for temporary service shall specify a period of time for which such wiring is to remain in service. Service shall be cut off at the end of such period and shall not again be connected without written permission from the Electrical Inspector. For buildings in which conduit wiring is required, special permits for temporary service may be granted by the Electrical Inspector for the installation of open work and exposed wiring, lights, power for building operations, display, decorative lighting, etc., for use for a limited period, subject to discontinuance and complete removal at the expiration and subject to condemnation and revocation within such period.

11-43. EMERGENCY SERVICE.

A. Report. For emergency service or work, the person doing such work or causing such work to be done shall report the same to the Electrical Inspector immediately after beginning work on forms furnished by the Electrical Inspector for such purpose; and such work shall be done in accordance with the provisions of this chapter.

B. Inspection Fee. Any fee for inspection of such emergency service shall be determined in each individual case by the Village Board.

11-44. SWIMMING POOLS.

A. Definition. In this section, “Swimming Pool” shall have the meaning set forth in s. 11-24.A. of this Chapter.

B. Permit Required. The electrical work, wiring and connections for swimming pools as defined herein shall require an Electrical Permit in conformance with this chapter.

11-45. COMPLAINTS.

Complaints on improper or defective electrical equipment shall be investigated and action shall be taken.

Where complaints disclose inadequacy of electrical equipment, the Electrical Inspector shall notify the owner of the premises to that effect and in writing inform such owner as to the changes, repairs, modifications or additions necessary for compliance with this chapter. Upon failure of the owner to comply with the order of the Electrical Inspector within ten days after receiving such notice, the latter may enter upon the premises with such assistance as may be necessary, causing the existing conditions to be corrected; and the cost thereof shall be charged against the property and shall be a lien thereon and shall be assessed and collected as a special charge pursuant to statute.

ARTICLE 5 ADMINISTRATIVE PROVISIONS

11-48. VARIANCES.

The Zoning Board of Appeals shall hear requests for variances from the provisions of this chapter to the extent that Board has authority to hear and grant variances, as set forth in ch. 35, Planning and Zoning, of this Municipal Code. The Board of Appeals shall approve, conditionally approve, or deny a requested variance. The Board of Appeals may grant a variance from a code requirement only if the variance is permitted by state law and if the performance of the proposed variance is equal to or greater than the Code requires.

11-49. APPEALS.

Any person aggrieved by an order of an Inspector may, within 20 days thereafter, appeal from such order to the Zoning Board of Appeals pursuant to ch. 35, Planning and Zoning, of this Municipal Code and not through the provisions of Wis. Stat. ch. 68. Appeals of decisions of the Board of Appeals may be made to the Circuit Court, pursuant to Chapter 35. Appeals of final determinations may be reviewed as set forth in Wis. Admin. Code s. SPS 320.21. The ruling of the Inspector shall be enforced until reversed or modified by the Board of Appeals.

11-50. VIOLATIONS AND PENALTIES.

A. Prohibition. No person may construct, remodel, demolish or repair any building, structure or mechanical system in a manner which violates any provision or provisions of these Regulations.

B. Stop Work Order. Any Inspector may issue a stop work order for a project to prevent further non-complying work. No person may continue a construction project after a stop work order has been issued. The person who receives such a stop work order may contest the validity of the same by requesting a hearing before the Zoning Board of Appeals, as set forth in s. 11-49. The Zoning Board of Appeals shall affirm the stop work order unless the appellant shows that the Inspector erred in determining that the construction project violated a provision or provisions of these Regulations or the State Codes.

C. Every person who violates these Regulations or any regulation, rule, or order made hereunder shall, upon conviction, be subject to penalties as set forth in ch. 50.

D. Violations discovered by an Inspector shall be corrected within 30 days, or more if allowed by the Inspector, after written notice is given. Violations involving life safety issues shall be corrected in a reasonable time frame established by the Inspector.

E. Compliance with the requirements of these Regulations is necessary to promote the safety, health and well-being of the community and the owners, occupants and frequenters of buildings.

Therefore, violation of these Regulations shall constitute a public nuisance which may, in addition to prosecution and/or the issuance of a stop work order, be enjoined in a civil action.

F. The Village Law Enforcement Agency, Inspectors, Health Officer and/or Clerk, or their authorized representatives, shall inquire into violations of these Regulations and shall report the same to the appropriate official for investigation and prosecution.

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CHAPTER 12 STORMWATER UTILITY

12-1. PURPOSE AND NECESSITY.

The purpose of and necessity for this chapter are as follows:

A. The management of storm water and other surface water discharges to bodies of water within the Village of Rochester and adjacent to the municipality is a matter that affects the public health, safety and welfare of the Village of Rochester, its citizens and businesses and others in the surrounding area.

B. Failure to effectively manage storm water affects the operations of the Village of Rochester Sanitary Sewer Utility by, among other things, increasing the likelihood of infiltration and inflow into the sanitary sewer system.

C. Surface water runoff may cause erosion of lands, threaten residences and businesses with water damage, and create environmental damage to the rivers, streams and other bodies of water within and adjacent to the municipality.

D. A system for the collection and disposal of stormwater provides services to all properties within the Village of Rochester and surrounding areas, including those properties not currently served by the systems.

E. The cost of operating and maintaining the Village of Rochester's stormwater management system and financing necessary repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to the services received from the system.

F. The provisions herein are required by and consistent with the Federal Clean Water Act (33 U.S.C. ss. 1251 et seq.) and Wisconsin Statutes, both as amended from time to time and the regulations set out thereunder.

12-2. AUTHORITY.

This Chapter is adopted pursuant to the authority granted in Wis. Stat. ss. 61.34, 66.0821, and other applicable provisions of Wis. Stat. chapters 61 and 66 in order to protect the health, safety and welfare of the public.

12-3. ESTABLISHMENT OF STORMWATER UTILITY.

A. In order to protect the health, safety, and welfare of the public, the Village Board of the Village of Rochester, Racine County, Wisconsin establishes the Village of Rochester Stormwater Utility and shall set the charges for stormwater management services from time to time.

B. The Public Works Manager shall be in charge of the day-to-day operation of the Stormwater Utility, subject to the supervision of the Village Board.

12-4. POWERS AND DUTIES.

The Village, acting through the Stormwater Utility, shall have the following powers and duties:

A. Powers. The Village may acquire, construct, lease, own, operate, maintain, improve, modify, extend, expand, replace, clean, dredge, repair, conduct and manage programs, finance, borrow monies, assess and/or levy charges for such facilities, operations, and activities, as are deemed by the Village Board to be proper and reasonably necessary for a system of storm and surface water management and to obtain compliance with applicable local, state and federal storm water management requirements with which the Village of Rochester must comply.

B. Facilities. Facilities may include, without limitation due to enumeration, surface and underground drainage facilities, inlets, manholes, catch basins, sewers, channels, watercourses, retaining walls, ponds, detention and retention basins, infiltration facilities, streets, roads, ditches and such other facilities as will support a storm water management system.

C. Charges. The Village may establish such charges as are necessary to finance planning, design, construction, maintenance, and operation of the facilities and to conduct necessary storm water programs and activities in accordance with the procedures set forth in this Chapter.

D. Budgeting Process. The Village shall prepare an annual budget which is to include all operation and maintenance costs, debt service, and other costs related to the operation of the Stormwater Utility. The costs shall be spread over the charge classifications as determined by the Village Board.

E. Excess Revenues. The Village will retain any excess of revenues over expenditures in a year in a segregated Stormwater Enterprise Fund which shall be used exclusively for purposes consistent with this chapter.

12-5. DEFINITIONS.

Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary. The word “shall” is mandatory and the word “may” is permissive.

“Village Board” means the Village Board of the Village of Rochester, Racine County, Wisconsin or designee.

“Condominium” means property subject to a condominium declaration established under Wis. Stat. ch. 703.

“Development Density” means the percentage of the parcel covered by impervious surface compared to the overall parcel size.

“Duplex” means a residential space containing two dwelling units.

“Dwelling Unit” means one or more rooms that are arranged, designed, or used as living quarters for occupancy by a single-family unit or as classified by the Village of Rochester's Zoning Code. Individual bathrooms and complete kitchen facilities, permanently installed, shall always be included for each dwelling unit.

“Equivalent Runoff Unit” or “ERU” means the basic unit by which the Stormwater Utility charge is calculated; it is based upon the average amount of impervious area on a single-family residential parcel as determined from a representative sample of fully developed single-family parcels within the municipality. An ERU is established as 4,000 square feet.

“Farmstead Home Site” means that portion of any agricultural property which contains one or more dwelling units, regardless of whether the dwelling units are on a separate lot or parcel.

“Impervious Area” or “Impervious Surface” means a horizontal surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rainwater or the runoff from snow melt. It includes, but is not limited to, semi-impervious surfaces such as compacted clay or gravel, as well as streets, roofs, roof extensions, patios, decks, porches, sidewalks, loading docks, parking lots, driveways and other similar surfaces.

"Lot" means a parcel of land having a width and depth sufficient for one principal building and its accessory building together with open spaces required by the Village of Rochester's Zoning Code and abutting a public street or access easement.

"Multi-family Residential" means a residential space consisting of three or more dwelling units.

"Non-Residential Property" means any developed lot or parcel not exclusively residential property as defined herein, including, but not limited to, transient rentals (such as hotels and motels), mobile home parks, commercial, industrial, institutional, governmental property, and parking lots.

"Person" means each and every property owner, including, but not limited to, natural persons, partnerships, corporations, limited liability companies, limited liability partnerships, joint ventures, and all other legal entities of any kind or nature.

"Public Works Manager" means the duly appointed Village Public Works Manager or designee.

"Residential Property" means any lot, parcel, or farmstead home site developed exclusively for residential purposes including, but not limited to, single family homes, manufactured homes, duplex units, multi-family apartment and condominium units, but not including transient rentals (such as hotels and motels).

"Single Family Home" means any residential property consisting of a single dwelling unit.

"Stormwater Management Program" means activities required to control storm water runoff to protect the health, safety, and welfare of the public, and to comply with state and federal regulations. It includes construction and maintenance of physical infrastructure as well development, implementation and management of policies, procedures and programs necessary for regulatory compliance. It includes but is not limited to street sweeping, erosion control, storm water basin improvements and maintenance, culvert and storm sewer maintenance, storm water testing, storm water management planning and related public education.

"Stormwater System" means the system of streets, curbs, gutters, berms, swales, detention and retention ponds or basins, infiltration basins, pipes, outfalls, inlets, and other components of infrastructure owned and/or maintained by the municipality for the purpose of managing, gathering, transmitting, treating or conveying stormwater. This term includes tributaries, creeks, rivers, and streams.

"Stormwater Utility" means the utility established under this chapter for the purpose of managing storm water and imposing charges for the recovery of costs connected with such storm water management.

"Stormwater Management Charge" means the charge imposed under this chapter for the rendering of services to the properties in the Village by the Stormwater Utility.

"Undeveloped Property" means property that has not been altered from its natural state by the addition of any improvements such as a building, structure, impervious surface, change of grade or landscaping; agricultural use of property; or property that has been graded for residential or commercial development but does not contain buildings, structures, or other improvements. For new construction, a property shall be considered developed upon issuance of a building occupancy permit.

"Village" means the Village of Rochester, Racine County, Wisconsin.

12-6. PROPERTY CLASSIFICATIONS.

A. For purposes of imposing the Stormwater Utility charges, all lots and parcels within the Village of Rochester are classified into the following property classes:

1. Single-Family Residential

2. Duplex Residential

3. Multi-family Residential

4. Non-Residential

5. Agricultural / Park / Undeveloped (APU)

B. The Village Engineer shall prepare a list of lots and parcels within the Village and assign such appropriate classification to each lot or parcel. The billing amount shall be updated by the Village Clerk based on any additions to the impervious area as approved through the building permit process.

C. The Village Board may make such other classifications in accordance with this chapter as will be likely to provide reasonable and fair distribution of the costs of the Stormwater Utility.

12-7. STORM WATER MANAGEMENT CHARGES.

A. By this Chapter, the Village of Rochester is establishing the basis for the rates that will be used to calculate and impose a charge upon each lot or parcel within the Village of Rochester for services and facilities provided by the Village Board consistent with this chapter.

B. The actual charges to be imposed and any future changes in those charges for each property classification shall be made by resolution and set forth in the Fee Schedule adopted by the Village Board. All rates established pursuant to this chapter shall be fair and reasonable. The Fee Schedule and the classification of each property shall be maintained and on file in the office of the Village Clerk.

C. Charges shall be imposed to recover all or a portion of the costs incurred by the Village of Rochester for stormwater management. Such charges may include, but are not limited to, the following components:

1. Equivalent Runoff Unit (ERU) Charge. The ERU charge shall be assessed for each developed property in the Village of Rochester based upon the amount of impervious area as reasonably determined by the Village Engineer. The Village Engineer shall be responsible for determining the impervious area based on the best available information, including, but not limited to, data supplied by the Municipal Assessor, aerial photography, satellite imagery, the property owner, tenant, or developer. The formula for the ERU charge shall reflect that of a typical single-family unit.

   a. The charge imposed for a single-family residential structure shall be the rate for one ERU.

   b. The charge imposed for duplex residential properties shall be the rate of one-half (0.5) ERU for each individual dwelling unit existing on the property.

   c. Multi-family residential property will be charged multiples of the ERU based on the impervious area, adjusted for development density by the percentage of impervious area. The factor shall be rounded to the nearest 0.1. The minimum charge for any multi-family parcel shall be equal to the rate for one ERU.

   d. Other units of property (Non-Residential Commercial, Industrial and Tax Exempt) will be charged multiples of the ERU based on the impervious area, adjusted for development density by the percentage of impervious area. The factor shall be rounded to the nearest 0.1. The minimum charges for any Non-Residential parcel shall be equal to the rate for one ERU.

e. Farmstead home sites shall be classified as single-family residential parcels, and charged 1 ERU.

f. APU parcels greater than or equal to 5 acres in size that are not dedicated conservation areas shall be charged 1 ERU. Multiple contiguous parcels under common ownership shall be considered a single APU parcel and charged 1 ERU. APU parcels smaller than 5 acres will not be charged.

2. Special Assessment. A Special Assessment may be imposed on property that is in a specific area benefited by a particular stormwater management facility pursuant to Wis. Stat. s. 66.0703. The special assessment will be developed to reflect the benefits/services in a particular area that may not be appropriate to spread to property throughout the Village of Rochester.

D. Stormwater management charges set forth in section C.1 shall be allocated to the property served and are authorized to be levied and imposed on said property as a special charge pursuant to Wis. Stat. s. 66.0627. The charges shall be included on the property tax bill for the property and shall be collected as set forth in said statute. The Village may, at its option, use any other method of billing authorized by law.

12-8. CREDITS AND ADJUSTMENTS.

Credits and adjustments may be available to individual Non-Residential property owners. It shall be the burden of the Non-Residential property owner to request such a credit and/or adjustment and to demonstrate to a reasonable degree of certainty with evidence that a fee credit and/or adjustment is warranted. All applications for credits and adjustments shall be reviewed by the Public Works Manager.

A. Credits.

1. Eligibility. A property owner may be eligible for a credit, in the form of a reduced ERU multiplier, for a property where all of the following conditions apply subject to the discretion, authority and approval of the Village Board.

a. The Village's cost of providing service or making service available to the property has been reduced.

b. The property conforms to all applicable codes and standards of the Village in effect at the time of parcel development.

c. The property has been assigned a Non-Residential or multi-family residential user classification. Single and Two-family residential properties are not eligible for credits.

2. Maximum Credit. The maximum aggregate credit for any individual property is 50% of its ERU charge, regardless of how many credits the property may otherwise be qualified to receive. No credit will be granted if the parcel's development density is less than 50%.

3. Credit Types. The following credits may be available for a property that meets all eligibility requirements:

a. Zero Discharge Credit. Credits shall be considered for properties that discharge storm water directly into a water body not maintained in any way by the Village or the Racine County Farm Drainage Board, or directly into a water body downstream of where it is maintained by the Village, or is otherwise contained entirely upon the property.

b. Peak Discharge Credit. Credits shall be considered for owners who maintain private storm water management facilities such as retention or detention basins that exceed state and local discharge rate requirements applicable to the site or construct oversized drainage facilities which provide a measurable benefit the Village.

c. Water Quality Credit. Credits shall be considered for owners who maintain private storm water management facilities that improve the quality of runoff from the property to a degree that exceeds state and local water quality requirements applicable to the site.

B. Adjustments. An owner may be eligible to have the number of ERUs assigned to the owner's property adjusted under the following conditions:

1. Non-Residential Property. The owner of a Non-Residential property who believes the number of ERUs allocated to such property to be incorrect may submit an adjustment request to the Village Clerk. The allocated ERUs may be adjusted if the owner can provide information showing that the impervious area measurement is incorrect.

2. Undeveloped Property. The owner of any property that can show the property to be in an undeveloped natural state with no built impervious area may request that the property status be changed to exempt if the land is protected by plat restrictions or conservation easements in accordance with the Uniform Conservation Easement Act, Wis. Stat. s 700.40.

3. No adjustment shall be considered for any natural features, such as but not limited to, wetlands, lakes and floodplains, or water impoundments of any kind in existence prior to passage of this chapter.

12-9. EXEMPTIONS.

Public rights-of-way and railroad rights-of-way are considered part of the Village's storm water conveyance system and are therefore exempt from the Stormwater Management charge. However, municipal, railroad and other public facilities, including buildings, parking lots, storage yards, or other developed land are not exempt from the Stormwater Management charge.

12-10. NEW CONSTRUCTION.

A. Except for single-family structures, a property owner shall be responsible for submitting a Stormwater Utility service application at the time a building permit application is submitted or a site plan review is conducted, whichever occurs sooner. The application shall be made on a form prescribed by the Village and provided with each application for a building permit or application for site plan review. No building permit shall be issued until such application is submitted and approved by the Public Works Manager or his designee.

B. The property owner shall be responsible for submitting record drawings and/or site inspections to prove improvements have been constructed per the approved plan. Any deficiencies may result in the Village completing the site improvements at the property owner's expense and/or revocation of Stormwater Management credits.

C. The property owner shall be liable for all storm water charges attributable to such property from the date of commencement of construction.

12-11. METHOD OF APPEAL.

The Village elects not to be subject to the administrative review provisions contained in Wis. Stat. ch. 68, except as set forth below, and establishes the following as a complete and final review procedure. Appeals shall be limited to the property classification determination, a determination of ERUs, or ERU credits made for the calculation of total impervious area for Non-Residential properties. The property owner shall submit supporting documentation for the appeal as required by the Utility. There shall be no right of appeal as to the underlying findings and necessity of this chapter or the single-family unit charge as applied to any single-family, duplex, residential - multi-family, or residential condominium properties.

A. The Stormwater Management charge may be appealed as follows:

1. A written appeal shall be filed with the Village Clerk prior to the Stormwater Management charge due date; or

2. Within 30 days of payment, a written challenge to the Stormwater Management charge must be filed with the Village Clerk on behalf of the property owner, specifying all bases for the challenge and the amount of the Stormwater Management charge the property owner asserts is inappropriate. Failure to file a challenge within 30 days of payment waives all right to later challenge the charge.

3. The disputed charge shall be held in abeyance until the Public Works Manager has made a determination pursuant to this section.

B. The Public Works Manager, with the assistance of the Village Engineer, will determine whether the Stormwater Management charge is fair and reasonable, or whether a refund or amendment is due the property owner. The Public Works Manager will inform the property owner in writing of the decision. The Public Works Manager may, at his or her discretion, require access to the property to assist in the determination.

C. The property owner has 30 days from the decision of the Public Works Manager to file a written appeal to the Village Board, which shall be filed with the Village Clerk.

D. In the event of an appeal, the Village Board shall hold a hearing as provided in Wis. Stat. ss. 68.11(2) and 68.11(3). The Village Board shall hold such hearing within 30 days of the appeal request, and shall notify the appellant of the hearing date no less than 10 days' notice in advance of the hearing. Within 20 days of the hearing and the filing of briefs, if any, the Village Board shall mail or deliver to the appellant its written final determination, setting forth, in detail, the reasons for its decision.

E. If the Village Board, upon the recommendation of the Public Works Manager, determines that a refund is due the property owner, the charges will be refunded by the Village Clerk within 60 days of the determination.

F. Public Service Commission Complaint. Notwithstanding the above procedures, any user may file a complaint to the Public Service Commission claiming that rates, rules and practices herein are unreasonable or unjustly discriminatory, pursuant to Wis. Stat. s. 66.0821(5).

12-12. BUDGET EXCESS REVENUES/RESERVES.

The Stormwater Utility revenues shall be accounted for in a separate storm water special revenue fund and upon the completion of a detailed accounting of all assets in a separate storm water enterprises fund maintained by the Village. The utility shall prepare an annual budget, which is to include all administration, management, operation, maintenance, debt service, capital improvement, and other costs related to the operation of the Stormwater Utility. The budget is subject to approval by the Village Board. The costs shall be spread over the rate classifications as determined by the Village Board. Any excess of

revenues over expenditures in a year will be retained in a segregated Stormwater Enterprise Fund which shall be used exclusively for purposes consistent with this chapter for subsequent years' needs.

12-13. SEVERABILITY.

If any provision of this chapter is found to be illegal, the remaining provisions shall remain in effect. In the event any section, subsection, clause, phrase, or portion of this chapter is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remainder of this chapter. It is the legislative intent of the Village Board that this chapter would have been adopted if such illegal provision had not been included or any illegal application had not been made.

12-14. AMENDMENTS.

No amendment to this chapter may be made until a public hearing with a Class I notice is held before the Village Board. Amendments to the Fee Schedule may be made without public hearing, provided, however, that each landowner in the Village shall be notified of fee increases.

12-50. VIOLATIONS AND PENALTIES.

A. No unauthorized person may damage, tamper with, or otherwise interfere with any structure, appurtenance, equipment, installation, sewer, conduit or other facility which is part of the Stormwater Utility system; and no person may violate any provision of this chapter.

B. Any person who is guilty of a violation shall be:

1. Liable to the Village and any other user who suffers expense, loss or damage related to the violation; and

2. Subject to a penalty as provided in Chapter 50 of this Municipal Code.

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CHAPTER 17 FINANCE AND TAXATION

17-1. PREPARATION OF TAX ROLL AND TAX BILLS; COLLECTION OF TAXES.

The Clerk, in cooperation with the Village Treasurer, shall prepare the tax roll in accordance with Wis. Stat. s. 70.65, and, in cooperation with the County Treasurer and Village Treasurer, shall prepare and mail real and personal property tax bills and collect taxes in conformance with Wis. Stat. ch. 74.

17-2. FISCAL YEAR.

The calendar year shall be the fiscal year.

17-3. BUDGET.

The Village will formulate a budget annually pursuant to Wis. Stat. s. 65.90 and as follows:

A. Departmental Estimates. Annually, when requested by the Finance Committee, each officer, department and committee shall file with the Treasurer an itemized statement of disbursements made to carry out the powers and duties of such officer, department or committee during the preceding fiscal year; a detailed statement of the receipts and disbursements on account of any special fund under the supervision of such officer, department or committee during such year and of the conditions and management of such fund; and detailed estimates of the same matters for the current and ensuing fiscal years. Such statements, which shall be designated as "Departmental Estimates," shall be presented in the form prescribed by the Treasurer, such form to be as nearly uniform as possible for the main division of all departments.

B. Proposed Budget.

1. Each year, the Treasurer, at the direction of the Finance Committee, shall prepare a proposed budget, and the Finance Committee shall submit to the Board said proposed budget presenting a financial plan for conducting the affairs of the Village for the ensuing fiscal year.

2. Information Required. The budget shall include the following information:

a. The expense of conducting each department and activity of the Village for the ensuing fiscal year, and corresponding items for the current year and last preceding fiscal year, with reasons for any increase or decrease recommended as compared with appropriations for the current year.

b. An itemization of all anticipated income of the Village from sources other than general property taxes and bonds issued, with a statement comparing the amounts received by the Village from each of the same or similar sources for the last preceding and current fiscal year.

c. An itemization of the amount of money to be raised from general property taxes which, with income from other sources, will be necessary to meet the proposed expenditures.

d. Such other information as may be required by the Board and by state law.

3. Copies required. The Village shall provide a reasonable number of copies of the budget for distribution to citizens.

C. Hearing. The Board shall hold a public hearing on the budget as required by law.

D. Action by Board. Following the public hearing, the proposed budget may be changed or amended and shall take the same course in the Board as ordinances.

17-4. CHANGES IN BUDGET.

The amount of the tax to be levied or certified and the amounts of the various appropriations, and the purposes thereof, shall not be changed after approval of the budget except by a two-thirds vote of the entire membership of the Village Board. Notice of such change shall be given by publication within 10 days thereafter in the official Village newspaper. See Wis. Stat. s. 65.90.

17-5. VILLAGE FUNDS TO BE SPENT IN ACCORDANCE WITH APPROPRIATIONS.

No money shall be drawn from the treasury of the Village, nor shall any obligation for the expenditure of money be incurred, except in pursuance of the annual appropriation in the adopted budget or when changed as authorized by s. 17-4 of this chapter. At the close of each fiscal year, any unencumbered balance of an appropriation shall be subject to reappropriation; but appropriations may be made by the Board, to be paid out of the income of the current year, in furtherance of improvements or other objects or works which will not be completed within such year, and any such appropriation shall continue in force until the purpose for which it was made has been accomplished or abandoned.

17-6. CLAIMS PROCEDURE.

A. Village Board to audit accounts. Except as provided in subsection C, no account or demand against the Village shall be paid until it has been audited and approved pursuant to the provisions of Wis. Stat. s. 61.51(1).

B. Claims to be verified. All accounts, demands or claims against the Village shall be verified by the claimant or the proper official.

C. Payment of regular wages, salaries and certain recurring charges.

1. Payment of regular wages, salaries and meeting pay shall be paid by payroll, verified by the proper Village official, and filed in time for payment on the regular pay day, and such payments made under this provision are valid.

2. Certain recurring charges, such as utility and insurance bills, may be allowed by the proper official and paid by the Treasurer prior to audit by the Village Board, but shall be submitted to the Village Board for audit after payment.

D. Wis. Stat. s. 893.80 shall apply.

17-7. LETTING OF PUBLIC CONSTRUCTION CONTRACTS.

Wisconsin Statute s. 62.15 shall apply to Village contracts. The authority vested in the Board of Public Works by Wis. Stat. s. 62.15 shall be exercised by the Village Board or as delegated by the Village Board.

17-8. DUPLICATE TREASURER'S BOND.

A. Eliminated. The Village elects not to give the bond on the Treasurer provided for by Wis. Stat. s. 70.67(1).

B. Village liable for default of Treasurer. Pursuant to Wis. Stat. s. 70.67(2), the Village shall pay, if the Treasurer fails to do so, all state and county taxes required by law to be paid by such Treasurer to the County Treasurer.

17-9. TEMPORARY INVESTMENT OF VILLAGE FUNDS.

The Treasurer may invest any Village funds not immediately needed upon the advice of the Finance Committee and direction of the Board pursuant to Wis. Stat. s. 66.0603(1m).

17-10. SPECIAL ASSESSMENT PROCEDURES.

Whenever the Village Board determines that any public work or municipal work or improvement is to be financed in whole or in part by special assessments, the Board shall determine the method of special assessment to be used, as set forth herein.

A. The Board may determine to follow the special assessment procedures set forth in the Subchapter VII of Chapter 26 of the Wisconsin Statutes; or

B. The Board may determine to follow the Special Assessment by Local Ordinance procedure set forth in s. 17-11.

C. Any special assessment levied under this chapter shall be a lien against the property assessed from the date of the final resolution of the Village Board determining the amount of such levy.

17-11. SPECIAL ASSESSMENT BY LOCAL ORDINANCE.

A. Authority. This section is enacted pursuant to Wis. Stat. s. 66.0701, which specifies that the Village may enact an ordinance which provides that the cost of installing or constructing any public work or improvement shall be charged in whole or in part to the property benefited, and make an assessment against the property benefited in the manner that the Village Board determines.

B. Levy of Assessments.

1. Special assessments for the installation or construction of any public work or municipal work or improvement may be levied and collected pursuant to Wisconsin Statutes or pursuant to this section.

2. Except as provided in Wis. Stat. s. 66.0721, the Village may, by resolution, levy and collect special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any public work or improvement; and may provide for the payment of all or any part of the cost of the work or improvement out of the proceeds of the special assessments, as an exercise of the Village's police power. A "public work," as used herein, includes the construction or installation of an improvement that the Village requires a property owner or developer to perform as a condition of approval of a development or pursuant to a developer's agreement, which will be dedicated to the public, and which benefits property not owned by the developer or property owner. The assessment shall be calculated on a reasonable basis as determined by the Village Board.

3. The cost of any work or improvement to be paid in whole or in part by special assessment on property under this section may include the direct and indirect cost, the cost of any architectural or engineering services, and any other item of direct or indirect cost that may reasonably be attributed to the proposed work or improvement. The amount to be assessed against all property for the proposed work or improvement shall be apportioned among the individual parcels in the manner designated by the Village Board.

4. A parcel of land against which a special assessment has been levied for the sanitary sewer or water main laid in one of the streets that the parcel abuts is entitled to a

deduction or exemption that the Board determines to be reasonable and just under the circumstances of each case, when a special assessment is levied for the sanitary sewer or water main laid in the other street that the corner lot abuts. The Board may allow a similar deduction or exemption from special assessments levied for any other public improvement.

C. Procedure. Before the exercise of any powers conferred by this section, the Village Board shall declare by preliminary resolution its intention to exercise the powers for a stated municipal purpose. The resolution shall describe generally the contemplated purpose, the limits of the proposed assessment district, the number of installments in which the special assessments may be paid, whether the assessment may be deferred under the terms and conditions set forth by the Village Board, and direct the proper municipal officer or employee to make or review and approve a report on the proposal. The resolution may limit the proportion of the cost to be assessed.

1. The report shall consist of:

   a. Preliminary or final plans and specifications.

   b. An estimate of the entire cost of the proposed work or improvement.

   c. A statement that the property against which the assessments are proposed is benefited.

   d. A schedule of the proposed assessments.

2. A copy of the report, when completed, shall be filed with the Village Clerk for public inspection.

3. Upon the completion and filing of the report, the Village Clerk shall prepare a notice stating the nature of the proposed work or improvement, the general boundary lines of the proposed assessment district, including, in the discretion of the Village Board, a small map, the place and time at which the report may be inspected, and the place and time at which all interested persons, or their agents or attorneys, may appear before the Village Board and be heard concerning the matters contained in the preliminary resolution and the report. The notice shall be published as a Class 1 notice, under Wis. Stat. ch. 985, and a copy of the notice shall be mailed, at least 10 days before the hearing, to every interested person whose post-office address is known, or can be ascertained with reasonable diligence. The hearing shall commence not less than ten nor more than 40 days after publication.

4. The notice and hearing requirements under Subsection C.3 do not apply if they are waived, in writing, by all the owners of property affected by the special assessment.

5. After the hearing upon any proposed work or improvement, the Village Board may approve, disapprove or modify the report, or it may re-refer the report to the designated officer or employee with directions to change the plans and specifications or to accomplish a fair and equitable assessment.

6. When the Village Board is satisfied with the report, it shall adopt a resolution directing that the special assessment be levied in accordance with the report as finally approved and shall specify the terms of the assessment within the final resolution. In no case may the special assessment levied exceed the amount which the Village is contractually obligated to pay to the developer who incurred the expense.

7. The Village Clerk shall publish the final resolution as a Class 1 notice, under Ch. 985, in the assessment district and a copy of the resolution shall be mailed to every interested

person whose post-office address is known, or can be ascertained with reasonable diligence.

8. When the final resolution is published, all awards, compensations and assessments arising from the resolution are then authorized and made, subject to the right of appeal under Wis. Stat. s. 66.0703(12), using the procedures set forth therein.

D. Amendment of Assessment.

1. If the actual cost of any project, upon completion or after the receipt of bids, is found to vary materially from the estimates, if any assessment is void or invalid, or if the Village Board decides to reconsider and reopen any assessment, it may, after giving notice as provided herein and after a public hearing, amend, cancel or confirm the prior assessment. A notice of the resolution amending, canceling or confirming the prior assessment shall be given by the Clerk as provided in Subsection C.3.

2. If the cost of the project is less than the special assessments levied, the Village Board, without notice or hearing, shall reduce each special assessment proportionately.

E. Every special assessment levied under this section is a lien on the property against which it is levied on behalf of the Village. The Village Board shall provide for the collection of the assessments, may provide refunds of costs to developers or property owners, may establish penalties for payment after the due date, and may provide that all assessments or installments that are not paid by the date specified shall be extended upon the tax roll as a delinquent tax against the property and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes apply to the special assessment, except as otherwise provided by statute. The Village Board may withhold approval of any development of an assessed property for failure to pay a special assessment.

F. If a special assessment levied under this section is held invalid because this section is found to be unconstitutional, the Village Board may reassess the special assessment under any applicable law and/or may withhold approval of any development of a benefited property in equity, as the failure to contribute to the cost of improvements constitutes unjust enrichment.

17-12. FEES AND COSTS.

A. Permit Fees. All persons and entities performing work which by this Code requires the issuance of a permit shall pay a permit application fee for such permit to the Village Clerk to defray the cost of administration, investigation, advertising and processing of permits. The fee for permit applications shall be nonrefundable, unless specifically set forth in the applicable section of the Code, and shall be set by the Village Board from time to time. No permit shall be issued if the applicant is in arrears for any amount due and owing to the Village.

B. License Fees. All persons and entities performing work for which this Code requires the issuance of a license shall pay a license application fee for such license to the Village Clerk to defray the cost of administration, investigation, advertising and processing of licenses. The fee for license applications shall be nonrefundable, unless specifically set forth in the applicable section of the Code, and shall be set by the Village Board from time to time. No license shall be issued if the applicant is in arrears for any amount due and owing to the Village.

C. Review/Other Costs and Fees.

1. Any person or applicant presenting a proposal, petition or project, whether or not a permit or license is required, will be charged costs and fees equivalent to the cost to the Village for reviews and/or other work performed by the consulting Village Engineer, Village Attorney, Zoning Administrator, and any other consultants engaged by the Village.

2. Such persons or applicants shall be required to pay fees equivalent to the cost to the Village for any work associated with the drafting of agreements or other documents associated with any project, proposal, petition, permit, license, review or approval required, including but not limited to engineering, design and/or inspection fees for public improvements that are associated with the review.

3. The Village may require a person or applicant to sign an agreement for payment, and to make a deposit toward such costs and fees. The deposit shall be in an amount reasonably estimated by the Village Clerk to cover the anticipated costs and fees, however, the person or applicant shall be liable for the full amount of the Village's costs and fees regardless of the amount of the deposit, unless otherwise prohibited by law. If the deposited amount falls below the amount reasonably estimated to complete the work, the Clerk may require an additional deposit. Any portion of the deposit that is not used by the Village for costs and fees shall be returned to the applicant.

4. No approvals shall be granted if the applicant is in arrears for any amount due and owing to the Village.

D. Special Charge for Village Professionals Contract Fees.

1. Whenever the offices of the Village Attorney, Village Engineer or any other of the Village's contract professional staff are contacted for current services regarding a specific person's property, development or other special matter concerning the Village of Rochester by:

   a. The Village President, Village Trustee, Village Clerk, Village Treasurer, or their agent(s); or

   b. A property owner or any person or entity or a respective representative, if said contact results in a charge to the Village for that professional's time and services and said service is not a service provided to the Village as a whole, then the Village Treasurer shall be authorized to charge said person or entity for the current service provided and/or pursuant to the provision of Wis. Stat. s. 66.0627 to impose a special charge for that current service to the benefited property owner for the fees incurred by the Village.

2. This section shall be enforced on the basis of the policy as established by the Village upon a recommendation of the Finance Committee, by resolution enacted by the Village Board and revised from time to time.

3. The Village Treasurer is authorized to invoice each person or entity for special charges, allowing a period of time not more than 30 days to pay for provided current services. The invoice shall include an itemized statement of the professional service fees provided. If unpaid, ongoing reviews may be halted until payment is made.

4. The Village Treasurer shall give each property owner invoiced for current services notice that a hearing may be requested before the Finance Committee regarding the charges against the property. If a hearing is timely requested in writing within 20 calendar days of the mailing of the invoice for current services, the matter shall be heard in accordance with this section 17-12 on the issue of the cost of professional fees incurred to benefit a specific land owner.

5. If any amount remains unpaid after the 30 day allowed for payment where no hearing has been timely requested, the Village Treasurer shall automatically charge that delinquent amount, plus any applicable penalty and/or interest against the current or next tax roll as

a delinquent tax against the property pursuant to Wis. Stat. s. 66.0627. In the event the invoice rendered to a property owner or the time allowing for payment precludes placement on the current year's tax roll, any such delinquent charge shall be extended to the following year's tax roll.

6. Upon receipt of a timely request for a hearing on the invoice for special charges, the Finance Committee shall hold a hearing regarding the request at its next regular meeting or, at its discretion, at a special meeting. Such hearing shall be preceded by posted public notice and written notice to the property owner.

7. When a timely hearing has been requested, no current charges for special services shall be placed on the tax roll until a hearing has been held and a decision has been rendered and reduced to writing. A copy shall be sent via first class mail, postage prepaid, to the property owner. Only that part of the charges for special services approved by the Finance Committee may be placed on the tax roll after the property owner has been given 30 days to pay from the date of the Finance Committee decision.

8. The Village, in addition to or instead of the above, may follow any other legal means to collect the amounts due. No approvals may be granted if the applicant is in arrears in any amount owed to the Village.

E. Fee schedules and fees shall be approved and periodically updated by the Village Board by Resolution.

F. The Village may, in its discretion, proceed under any or all of the provisions of this Section. The Village may waive any of the provisions of this Section for good cause shown.

G. Administrative Fees and Costs.

1. Miscellaneous Services. Any person presenting a request to the Village that requires services over and above those customarily provided to Village residents, whether or not a permit or license is required, will be charged costs and fees equivalent to the cost to the Village for reviews and/or other work performed by Village staff, if those services are approved by the Village Clerk.

2. Special Assessment Letters. The Village Treasurer or his or her designee may prepare a Special Assessment Letter to be used to provide information requested for transfers of real property such as the amount of outstanding special assessments, deferred assessments, changes in assessments, amount of taxes, outstanding sewer and/or water bills, current sewer and/or water bills, contemplated improvements, outstanding citations for building code violations, and similar information. Any such information sought shall be provided to the person requesting it on the form that person provides. Requests for Special Assessment Letters shall be made to the Village Treasurer a minimum of ten business days in advance. There shall be a fee as designated in the Village Fee Schedule for the research required for, and completion of, the Letter.

H. Interest. The Village charges for certain of its services and passes charges it incurs for services it obtains from its engineer, attorneys and others to the beneficiary thereof in certain circumstances, but the invoices for those charges are not always paid on a timely basis. When not paid on time, additional administrative costs are incurred. It is in the best interest of the Village to charge interest for bills that are at least 30 days in arrears. Interest at the rate determined by the Village Board and set forth in the Fee Schedule shall be charged on invoices at least 30 days in arrears, unless otherwise prevented by law, or another interest rate has been set by law or ordinance.

17-50. VIOLATIONS AND PENALTIES.

Any person who shall violate any provision of this chapter or any regulation, rule or order made hereunder shall be subject to a penalty as provided in Chapter 50 of this Municipal Code.

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CHAPTER 20 HOUSING CODE

20-1. UNSAFE AND UNSANITARY BUILDINGS.

Whenever the Building Inspector finds any building or part thereof within the Village to be in his or her judgment so old, dilapidated or so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation, occupancy, or use, and so that it would be unreasonable to repair the same, the Building Inspector shall order the owner to raze and remove such building or part thereof, or if it can be made safe by repairs, to repair and make safe and sanitary or to raze and remove at the owner's option. Such order and proceedings shall be as provided in Wis. Stat. s. 66.0413.

20-2. APPLICABILITY OF STANDARDS.

A. The provisions of this Chapter apply to all structures in the Village containing one or more rental dwelling units and to all dwelling units that are either rented for human habitation or permitted by the owner thereof to be occupied for human habitation by the owner or a person other than the owner.

B. This Chapter establishes minimum standards for the human habitation or occupancy of premises in the Village, and does not replace or modify the standards otherwise established for the construction, replacement, or repair of buildings contained in Chapter 11, the Building Code, except such as are in conflict with the provisions of this Chapter.

20-3. DEFINITIONS.

The following definitions shall apply to the interpretation and enforcement of this Chapter.

“Owner” means any person or entity who alone, or jointly, or severally with others, owns or has charge, care or control of any dwelling unit within the Village as owner, lessee, employee or agent of the owner, or as trustee or guardian of the estate or person of the title holder and all such other persons are bound to comply with the provisions of this Chapter to the same extent as the owner.

“Building Inspector” means the official of the Village appointed and designated as the Building Inspector, Plumbing Inspector and/or Electrical Inspector, as applicable.

“Health Officer” means the official of the Village appointed and designated as the Health Officer.

“Habitable Room” means every room in any building in which persons sleep, eat or carry on their usual domestic or social vocations or avocations, but does not include private laundries, bathrooms, toilet rooms, pantries, storerooms, corridors, rooms for mechanical equipment for service in the building or other similar spaces not used by persons frequently or during extended periods.

“Rented Premises” means all premises which are actually rented under verbal or written lease to one or more tenants, and also to the use of premises by one or more persons other than the owner or owners thereof, who may be permitted by such owner to occupy such premises rent free or without consideration being paid to the owner or owners for such use.

“Approved” means approved by or in accordance with regulations under this Chapter, enforced and interpreted by the Building Inspector or others as indicated elsewhere in this Chapter.

“Bedroom” means a habitable room within the dwelling unit that is used or intended to be used primarily for the purpose of sleeping.

“Dwelling Unit” means a suite of habitable rooms, occupied by or intended to be occupied by not more than one family as a residence and forming a single habitable unit with cooking, living, sanitary and sleeping facilities.

"Basement" means a story having part but not more than one-half of its floor to clear ceiling height below the average finished ground grade adjoining the building walls. When a basement is used for storage garages for use of occupants of the building or facilities common for the operation of the rest of the building other-than facilities for dwelling or lodging, it shall not be counted as a story.

"Cellar" means a story having more than one-half of the floor to clear ceiling height below the average finished ground grade at the building walls. A cellar is not included in computing the number of stories for the purpose of height measurement.

"Family" means the body of persons who live together in one dwelling unit as a single housekeeping entity.

20-4. MINIMUM STANDARDS FOR LIGHTING, VENTILATION AND HEATING.

No person shall occupy as owner or occupant, or let to another for occupancy, any dwelling or dwelling unit for the purpose of living therein which does not .comply with the following requirements:

A. Every habitable room, kitchen, bathroom and toilet room shall have a window or windows with a total glass area equal to at least eight per cent of its floor area unless in the opinion of the Building Inspector the structure of the building precludes the use of windows, in which case other means of lighting and ventilation approved by the Building Inspector may be used. Such windows shall open onto a street, alley, yard, court or easement open to the sky. Such window or windows shall be so constructed that at least one-half may be fully opened and so that the sash can be opened and securely closed. Approved mechanical ventilation may be substituted.

B. Every public hall and public stairway of every dwelling containing four or more dwelling units shall be adequately lighted by means of properly located electric light fixtures at all times, provided that such electrical lighting may be omitted from sunrise to sunset where there are windows or skylights opening directly to the outside and where the total window or skylight area is at least 1/10 of the combined horizontal area of such hall and stairway and if such windows or skylights provide adequate natural light to all parts of each such public pathway. Every public hall and stairway in dwellings containing two or three dwelling units shall be supplied with convenient light switches controlling an adequate lighting system which may be turned on when needed, instead of full-time lighting. Adequate bulbs shall be provided in every public hall and on every public stairway so that a minimum of two foot-candles of light is delivered to all parts in the public hall or stairway.

C. Every kitchen and habitable room within every dwelling and/or dwelling unit shall contain at least two separate wall type electric convenience outlets or one such convenient outlet and one supplied ceiling or wall type electric light fixture. Every toilet room, bathroom, furnace room, laundry room and public hall shall contain at least one supplied ceiling type or wall type electric light fixture. Every outlet and fixture shall be installed and maintained in good working condition and shall be connected with the source of electric power in conformance with Ch. 11 of this Municipal Code These may be serviced by approved wiring.

D. Each dwelling unit shall have supplied heating facilities and such facilities shall be properly installed, be maintained in reasonably good working condition and be capable of adequately heating all habitable rooms, bathrooms and toilet rooms contained therein where intended for use by the occupants thereof, to a temperature of at least 68 degrees F., at a distance of three feet above floor level when the outdoor temperature is at ten degrees below zero degrees F. Every supplied central heating system shall comply with the following requirements:

1. The central heating unit shall be in reasonably good operating condition.

2. Every heat duct, steam pipe and hot water pipe shall be free of leaks and shall function so that an adequate amount of heat is delivered where intended.

20-5. RESPONSIBILITY OF OWNERS RELATED TO THE MAINTENANCE OF DWELLINGS AND DWELLING UNITS.

No person shall occupy as owner-occupant or let to or offer to let to another for occupancy any dwelling unit or portion thereof for the purpose of living therein which does not comply with the following requirements:

A. Every foundation, exterior wall and roof shall be reasonably weather-tight and rodent-proof and shall be kept in a good state of maintenance and repair.

B. Every interior partition wall, floor and ceiling shall be capable of affording privacy, kept in a reasonably good state of repair and maintained so as to permit them to be kept in a clean and sanitary condition.

C. All rain water shall be so drained and conveyed from every roof so as not to cause dampness in the walls, ceiling or floors of any habitable room, bathroom or toilet room.

D. Every window, exterior door and basement hatchway shall be reasonably weather-tight and rodent-proof and shall be kept in reasonably good working condition and a reasonably good state of maintenance and repair.

E. All exterior surfaces shall be protected from the elements and against decay and deterioration by paint or by other approved protective coating applied in workmanlike fashion.

F. Every inside and outside stairway, every porch and every appurtenance thereto shall be so constructed as to be reasonably safe to use and capable of supporting such a load as normal use may cause to be placed thereon and shall be kept in sound condition and reasonably good state of maintenance and repair.

G. Every supplied plumbing fixture and water and waste pipe shall be properly installed and maintained in good, sanitary working condition.

H. Every chimney and every supplied smoke pipe shall be adequately supported, reasonably clean and maintained in a reasonably good state of repair.

I. Every toilet room floor surface and bathroom floor surface shall be maintained so as to be reasonably impervious to water and so as to permit such floors to be kept in a clean and sanitary condition.

J. Every supplied facility, piece of equipment or utility which is required under this Code shall be so constructed or installed that it shall function properly and shall be maintained in reasonably good working condition.

K. No owner or operator shall cause any service facility, equipment or utility which is required to be supplied under the provisions of this Chapter to be removed from, shut off from or disconnected from any occupied dwelling or dwelling unit let or occupied by him except for such temporary interruptions as may be necessary while actual repairs, replacement or alterations are in the process of being made.

L. Every owner of a building containing one or more dwelling units shall be responsible for the extermination of rodents or pests on the premises. Wherever infestation exists in any of the dwellings or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.

M. Every owner of a dwelling containing two or more dwelling units shall be responsible for maintaining in a reasonably clean, sanitary condition all communal, shared or public areas of dwellings or premises thereof which are used or shared by the occupants of two or more dwelling units.

N. No owner shall occupy, rent to any other person for occupancy or allow any other person to occupy any vacant dwelling unit unless it is reasonably clean, sanitary and complies with all provisions of this Chapter and all rules and regulations adopted pursuant thereto.

20-6. MINIMUM SPACE USE AND LOCATION REQUIREMENTS.

No person shall occupy or let to another for occupancy any dwelling or dwelling unit for the purpose of living therein which does not comply with the following requirements:

A. No dwelling or dwelling unit containing two or more sleeping rooms shall have such room arrangement that access to a bathroom or toilet room intended for use by occupants of more than one sleeping room can be had only by going through another sleeping room; nor shall such room arrangements exist that access to a sleeping room can be had only by going through another sleeping room or bathroom or a toilet room.

B. In every dwelling unit at least one room occupied for sleeping purposes by one or more occupants shall contain at least 100 square feet of floor space.

C. Every occupant of every dwelling unit shall have unrestricted access to a toilet and to a kitchen sink or lavatory basin located within the dwelling unit.

D. No basement or cellar space shall be used as a habitable room or dwelling unit unless:

1. The floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness.

2. The total window area in each room is equal to at least the minimum window area sizes as required in s. 20-4.A.

3. The total of openable window area in each room is equal to at least the minimum as required under s. 20-4.A., except where there is supplied some other device affording adequate ventilation and approved by the Building Inspector.[1]

20-7. RESPONSIBILITY OF OWNERS RELATING TO THE MAINTENANCE OF NON-DWELLING STRUCTURES, FENCES AND PREMISES.

No owner shall permit any non-dwelling structure or fence to exist on any premises or maintain any premises which does not comply with the following requirements:

A. All exterior surfaces of non-dwelling structures shall be properly protected from the elements and against decay and decomposition by paint or other approved protective coating applied in a workmanlike manner.

B. Every fence shall be kept in a good state of maintenance and repair or shall be removed.

C. Every lot shall be graded and maintained so that all water is diverted away from buildings and drained from the lot and so as to prevent standing water and soil saturation detrimental to structures and lot use; provided however that the water shall not be drained onto adjacent lots except as consented to by the owners thereof or as part of an approved grading plan.

[1] Amended 10-13-2014, Ordinance #2014-5

D. All open spaces or areas containing a dwelling unit for which an occupancy permit has been issued shall be put into a lawn (except for such areas set aside for trees, shrubbery and gardens) within two years after an occupancy permit has been issued.

E. Every premises and/or lawn thereon shall be maintained in a presentable and reasonably well kept condition.

F. No persons shall store firewood in the front yard, or side yard area that adjoins a public street.

20-8. INSPECTION BY BUILDING INSPECTOR.

The Building Inspector or his or her designated representative is authorized to, and upon receipt of a written complaint shall, make exterior inspections to determine whether the buildings, structures and premises located within the Village conform to the requirements of this Chapter. For the purpose of making exterior inspections, the Building Inspector is authorized to enter, examine and survey at a reasonable time the exterior portions of all buildings, structures or premises. Every owner or occupant shall give the Building Inspector free access to any said premises. The Building Inspector or his or her delegated representative, having probable cause to believe a violation of this Chapter exists, shall have the authority to enter any of such premises after written notice has been given to the owner, occupant or his or her agent. If, after such notice is given, access is denied to the Building Inspector, the Inspector may apply to the Circuit Court for a special inspection warrant.

20-9. ADMINISTRATIVE PROVISIONS.

A. The Building Inspector is hereby made responsible for the enforcement of this Chapter. All inspections, enforcement, orders or matters relating to violations of this Chapter shall be under his or her direction and supervision.

B. The Building Inspector shall be supplied with official identification and upon request shall exhibit such identification when entering any premises subject to this Chapter. The Inspector shall conduct himself or herself to avoid intentional embarrassment or inconvenience to occupants, and in a safe manner.

20-10. NOTICE.

Whenever the Building Inspector determines that there are reasonable grounds to believe that there has been a violation of any provision of this Chapter, notice of such alleged violation shall be given to the person or persons responsible therefore, which shall:

A. Be in writing;

B. Indicate the nature of the violation(s);

C. Indicate the time for the correction of the violation in accordance with subsection E hereof.

D. Be served upon the owner or his agent, or the occupant or operator, as the case may require. Such notice shall be deemed to be properly served upon such owner, or his or her agent, or occupant, or operator, if a copy thereof is:

1. Served upon him or her personally, or

2. Sent by registered or certified mail to his or her last known address, or

3. Posted in a conspicuous place in or about the building or structure affected by notice.

E. State a reasonable amount of time, not to exceed 30 days, to correct or abate the violation;

F. Advise the person served of the right to request a hearing before the Village Board and that the notice shall become an order of the Building Inspector five days after service unless such a hearing is requested.

20-11. PLACARD ON BUILDING.

A. The Building Inspector shall cause to be placed upon a building, structure or premises a placard that states the determination of the Building Inspector as to the building, structure, or premises being unfit for use or occupancy whenever all of the following occur:

1. Any building, structure or premises does not substantially comply with the requirements of this Chapter; and

2. The Building Inspector has given notice of the violations involved as provided for in Section 20-10; and

3. The owner, occupant or operator has failed to correct the violations set forth in said notice;

4. The Building Inspector has further determined that the building, structure, or premises are so damaged, decayed, dilapidated, unsafe, or vermin-infested that it creates a serious hazard to the health or safety of the occupants or of the public, and is therefore unfit for use or occupancy.

B. The form of the placard placed under the provisions of this Section shall be determined by the Building Inspector but shall also substantially state the specific violations of this Chapter.

C. No person shall deface or remove the placard from any building, structure or premises that has been placed by the Building Inspector until removal of such placard is authorized by the Building Inspector.

D. Any building, structure or premises that has been determined by the Building Inspector as being so damaged, decayed, dilapidated, unsafe or vermin-infested that it creates a serious hazard to the health and safety of the occupants, and said building, structure or premises has been placarded by the Building Inspector, shall be vacated within such reasonable time as is determined and ordered by the Building Inspector.

E. No building, structure, or premises that has been determined by the Building Inspector as unfit for use or occupancy and placarded as provided herein shall again be used or occupied until written approval is secured from, and such placard is removed by, the Building Inspector. The Building Inspector shall grant such approval and remove such placard in the event that the violations have been corrected and the Building Inspector determines that the building, structure or premises are now fit for use or occupancy.

20-12. NONCOMPLIANCE - REMEDY OF DEFECTS.

A. The owner, occupant or operator of any building, structure or premises shall have the time as specified in the notice under Section 20-10 to remedy the violations specified in such notice.

B. In the event the Building Inspector determines in his or her discretion that the owner, occupant or operator is within said time making a good faith effort to correct the violations, the Inspector may extend the time for compliance.

C. If the owner, occupant or operator of building, structure or premises fails or refuses, after notice and order of the Building Inspector, to remedy the violations specified in such notice, then the Building Inspector may

cause such work to be done and certify the cost thereof to the Village Clerk, who shall extend such cost against the property as a special charge upon the tax roll of the Village.

20-13. TRANSFER OF OWNERSHIP OF NONCOMPLYING BUILDING.

It shall be unlawful for the owner of any building, structure or premises who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of the noncomplying building to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish to the Building Inspector a signed and notarized statement from the grantee, transferee, mortgagee, or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

20-50. PENALTY.

Any person who violates any provision of this Chapter or any regulation, rule or order made hereunder shall be subject to a penalty as provided in Chapter 50 of this Municipal Code. Each violation and each day a violation continues or occurs constitutes a separate offense. This section shall not preclude the Village from maintaining any appropriate action to prevent or remove a violation of this Chapter.

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CHAPTER 21 MANUFACTURED HOME COMMUNITIES AND MANUFACTURED HOMES.

21-1. DEFINITIONS.

For the purpose of this Chapter, the words below shall have the meanings indicated.

"Licensee" means any person licensed to operate and maintain a manufactured home community under this Chapter.

"Licensing authority" means the Village of Rochester, Racine County, Wisconsin, wherein a manufactured home community is located.

"Community" means manufactured home community.

"Person" means any natural individual or any entity.

"Manufactured Home" is defined in Wis. Stat. s. 101.91(2) as a structure that is designed to be used as a dwelling with or without a permanent foundation and that is certified by the federal department of housing and urban development as complying with the standards established under 42 USC 5401 to 5425, and includes any additions, attachments, annexes, foundations and appurtenances. "Manufactured home" includes mobile homes as defined in this chapter, but does not include any self-propelled recreational vehicles.

"Mobile Home" is defined in Wis. Stat. s. 101.91(10) as a vehicle manufactured or assembled before June 15, 1976, designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid non-collapsible construction, which has an overall length in excess of 45 feet. "Mobile home" includes the mobile home structure, its plumbing, heating, air conditioning and electrical systems, and all other equipment carrying a manufacturer's warranty, and also includes any additions, attachments, annexes, foundations and appurtenances.

"Unit" means a manufactured home unit.

"Manufactured Home Community" is defined in Wis. Stat. s. 101.91(5m) and means any plot or plots of ground upon which three or more units, occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodation. "Manufactured home community" does not include a farm where the occupants of the manufactured homes are the father, mother, daughter, brother or sister of the farm owner or operator or where the occupants of the manufactured homes work on the farm.

"Recreational Vehicle" means a vehicle that is designed to be towed upon a highway by a motor vehicle that is equipped and used, or intended to be used, primarily for temporary or recreational human habitation, that has walls of rigid construction, and that does not exceed 45 feet in length.

"Site" means a plot of ground within a manufactured home community designed for the accommodation of one manufactured home unit.

21-2. LOCATION OF MANUFACTURED HOMES OUTSIDE OF MANUFACTURED HOME COMMUNITIES.

No manufactured home shall be kept and used for dwelling purposes within the Village outside of a manufactured home community except as set forth in section 35-100.D.2. of this Municipal Code. The owner of a manufactured home that is not subject to real property taxes as set forth in Wis. Stat. s. 70.043(1) shall pay the monthly Village permit fee adopted in this Chapter directly to the Village Treasurer as set forth in s. 21-4.

21-3. LICENSE REQUIRED; REVOCATION AND SUSPENSION.

A. It shall be unlawful for any person to maintain or operate a manufactured home community in the Village unless the person obtains a manufactured home community license from the Village.

B. Any license granted under the provisions of this Chapter shall be subject to revocation or suspension for cause by the Village Board upon complaint filed with the Village Clerk signed by any law enforcement officer, health officer or building inspector after a public hearing upon the complaint, provided that the holder of the license shall be given 10 days' notice in writing of the hearing, and shall be entitled to appear and be heard as to why the license should not be revoked or suspended. Any holder of a license which is revoked or suspended by the Village Board may, within 20 days of the date of the revocation or suspension, appeal therefrom to the Racine County Circuit Court by filing a written notice of appeal with the Village Clerk, together with a bond executed to the Village in the sum of $500.00 with two sureties or a bonding company approved by the Clerk, conditioned for the faithful prosecution of such appeal and the payment of costs adjudged against the license holder.

21-4. LICENSE AND MONTHLY MANUFACTURED HOME FEE.

A. Each licensee shall pay an annual fee to the Village Clerk in advance for each calendar year or fraction thereof in an amount set by the Village Board and reflected in the Fee Schedule for each 50 sites or fraction thereof within each manufactured home community within the Village limits, except where the community is in more than one municipality, the fee shall be proportionate to the number of sites located in the Village relative to the entire number of sites in the manufactured home community.

B. Each transferee of a manufactured home community license shall pay a fee in an amount set by the Village Board and reflected in the Fee Schedule in advance to the Village Clerk for the transfer of any license.

C. In addition to the license fee provided in subsections A and B, the Village shall collect a monthly Village permit fee from the owner of each manufactured home in the Village, computed in the manner provided in Wis. Stat. s. 66.0435(3).

1. The fee shall be applicable to manufactured homes moving into the Village any time during the year. The licensed operator, or, if not in a manufactured home community, the manufactured homeowner, shall furnish information to the Village Clerk and the Village Assessor on manufactured homes added to the Village within five days after their arrival, on forms prescribed by the State of Wisconsin Department of Revenue. As soon as the Village Assessor receives the notice of an addition of a home to the Village, the Assessor

shall determine its fair market value, and notify the Village Clerk of the determination. The Village Clerk shall equalize the fair market value established by the Village Assessor and shall apply the tax rate for that year, divide the annual Village permit fee thus determined by 12, and notify the manufactured homeowner and, if applicable, the licensed operator of the monthly fee to be collected from the manufactured homeowner. Liability for payment of the fee shall begin on the first day of the next succeeding month, and shall remain on the manufactured home only for such months as the manufactured home remains in the Village of Rochester.

2. A new fee rate and a new valuation shall be established each January and shall continue for that calendar year. The valuation established shall be subject to review as are other values established under Wis. Stat. ch. 70. If the Board of Review reduces a valuation on which previous monthly payments have been made, the Village shall refund past excess fee payments.

3. The monthly Village permit fee for manufactured homeowners within a manufactured home community shall be paid by the manufactured homeowner to the licensee (the manufactured home community operator) on or before the 10th of the month following the month for which such Village permit fee is due.

4. The licensed operator is liable for the monthly Village permit fee for any manufactured home occupying a site therein, as well as the owner and occupant of the manufactured home, provided, however, that the licensee is not liable until the Village has failed, in an action under Wis. Stat. ch. 799, to collect the fee from the owner and occupant.

5. The monthly Village permit fee shall be collected by the licensee (manufactured home community operator) from each manufactured homeowner in the licensee's manufactured home community and shall remit said fees to the Village Treasurer no later than the 20th day of the month in which they are collected.

6. The monthly Village permit fee for a manufactured home located outside of a licensed manufactured home community shall be paid by the owner of the manufactured home, the occupant thereof, or the owner of land on which it stands, in the manner provided for manufactured homes located in a manufactured home community, and the owner of such unit or land shall be required to comply with the reporting requirements of subsection C.1., above, provided that the fee shall be paid directly to the Village Treasurer on or before the 10th day of the month following the month for which such Village permit fee is due.

7. No fee may be imposed on a financial institution that relates to a vacant unit that has been repossessed by the financial institution, as set forth in Wis. Stat. s. 66.0435(3)(c)9.

8. The owner of a unit may apply for the principal dwelling credit set forth in Wis. Stat. s. 79.10(9) pursuant to Wis. Stat. s. 66.0435(3)(c)8.

9. Recreational mobile homes and recreational vehicles, as defined in Wis. Stat. s. 340.01(48r), along with steps and a platform not exceeding 50 square feet that lead to a recreational mobile home, are exempt from the fee set forth herein; provided, however, that any other addition, attachment, patio or deck is not exempt.

10. Failure to timely pay the fee hereunder shall be treated in all respects like a default in payment of personal property tax and shall be subject to all procedures and penalties applicable thereto under Wis. Stat. chs. 70 and 74.

11. The licensed operator that collects the monthly fees is entitled to deduct, for administrative purposes, two percent of the monthly fees collected.

12. The Village may retain ten percent of the monthly fees collected in each month to cover the cost of administration, and shall distribute the balance of the fees pursuant to the requirements of Wis. Stat. s. 66.0435(8).

21-5. APPLICATION FOR LICENSE.

A. The original application for a manufactured home community license shall be filed with the Village Clerk.

B. Applications shall be in writing, signed by the applicant, and shall contain the following:

1. The name and address of the applicant.

2. The location and legal description of the proposed manufactured home community.

3. The complete plan of the proposed community.

21-6. PLANS, SPECIFICATIONS AND APPLICATIONS, AND APPLICATION FEE.

A. The original application for a manufactured home community shall include plans and specifications that are in compliance with all applicable regulations, ordinances and laws of the State of Wisconsin, County of Racine (for Sanitary Permits) and the Village of Rochester. The application shall be accompanied by a fee set forth for the Conditional Use permit application.

B. The application submitted in compliance with this Chapter, Chapter 35, and other applicable provisions shall proceed pursuant to the Plan Commission and Village Board review and public hearing provisions set forth in Chapter 35.

C. Within 90 days after the public hearing, the Village Board shall make a determination as to whether the operation of the proposed use described in the application will be detrimental to the health, safety and welfare of the public of the Village of Rochester, as to whether the intent and purpose of Chapter 35, the Planning and Zoning Code, and other applicable chapters, is met by the development, and as to whether the manufactured home community development would cause the school costs in the applicable school district to increase above the state average, and if adequate and proper sewage disposal can be provided. Such determination shall be made on the basis of the information contained in the application together with the information presented at the public hearing and any other information assembled by the Plan Commission and Village Board. Upon such determination, the Village Board shall either grant or deny the application.

21-7. RENEWAL OF LICENSE.

Upon application by any licensee and after approval by the Village Board, and upon payment of the annual license fee, the Village Clerk shall issue a certificate renewing the license for another year unless sooner revoked. The application for renewal shall be in writing and signed by the applicant on forms furnished by the Village.

21-8. LIMITATIONS, RESTRICTIONS AND REGULATIONS.

A. Not more than one Village license for a manufactured home community within each graded school district serving the Village may be issued, and no manufactured home community shall contain sites for more than 50 manufactured homes, except that the Village Board may permit additional manufactured home communities, or additional sites within a community, upon the following conditions:

1. If the additional communities or sites will not cause the applicable school costs to increase above the state average, and if adequate and proper sewage disposal can be provided.

2. If the manufactured home community has been in operation for at least one year prior to the request for additional sites.

3. If the manufactured home community complies with the requirements of this and any other applicable law, ordinance or regulation.

B. Each manufactured home community is required to follow the regulations set forth in Wis. Admin. Code ch. SPS 326, except in the event that any ordinance or part of an ordinance or regulation or part of regulation is in conflict with the provisions of Wis. Admin. Code ch. SPS 326, the stricter provision shall prevail. The community operator shall obtain a permit from the Department of Safety and Professional Services prior to or contemporaneous to being licensed under this Chapter. The licensee shall obtain all permits required by this Municipal Code, inclusive of the Conditional Use Permit set forth in Section 35-100.

C. Refuse and Recyling. The licensee shall ensure that the owners of units abide by the Refuse and Recycling provisions of this Municipal Code.

D. Lighting. All entrances, exits, lanes and driveways between rows of manufactured homes used or occupied in any manufactured home community shall be lighted by electric lighting approved by the Village Board.

E. Fire Extinguishers. Adequate firefighting equipment shall be provided, including water and chemical-type fire extinguishers, and there shall be no less than one fire extinguisher for every four manufactured home sites in the manufactured home community. The Water Supply for Fire Protection Provisions of Chapter 30 shall apply, and the Village may require a dry hydrant be constructed.

21-9. SITE, PARKING, DRIVEWAY AND SIDEWALK REQUIREMENTS. See s. 35-100.D.2.

21-10. REGISTRY.

Each manufactured home community shall maintain a register for the registration of all occupants, which register shall contain information as follows:

A. Name and address of each occupant.

B. Manufactured home license number and manufacturer's name.

C. Automobile license number and name and make of automobile.

D. Number of site to which assigned.

E. Last place of location.

F. Date of arrival.

G. Date of departure.

21-50. PENALTY.

Any person who violates any provision of this Chapter or any regulation, rule or order made hereunder shall be subject to the provisions of Chapter 50. In addition:

A. Any person violating any provisions of Section 21-4 of this Chapter relating to reporting the addition of manufactured homes shall, upon conviction thereof, forfeit not more than $100.00 together with costs of prosecution, and each failure to report shall be regarded as a separate offense.

B. Any person violating any provisions of this Chapter other than those specified in Section 21-4 relating to reporting the addition of manufactured homes shall, upon conviction thereof, forfeit not less than $200.00 and not more than $500.00 together with costs of prosecution. Every day of noncompliance shall be deemed a separate and distinct offense.

C. Nothing set forth herein shall effect the application for or the granting of a restraining order or injunction prohibiting the location of a manufactured home within the Village of Rochester or requiring the removal of a manufactured home from any location within the Village.

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CHAPTER 30 LAND DIVISION

ARTICLE 1 GENERAL PROVISIONS.

30-1. AUTHORITY.

These regulations are adopted under the authority granted by Wis. Stat. s. 236.45.

30-2. PURPOSE.

The purpose of this chapter is to regulate and control the division of land within the limits of the Village of Rochester, Racine County, Wisconsin in order to promote the public health, safety, and the general welfare of the Village.

30-3. INTENT.

It is the general intent of this chapter to regulate the division of land to further the orderly layout and use of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage and other public requirements; to provide for proper ingress and egress; and to promote proper monumenting of land subdivided and conveyancing by accurate legal description. This will be done in such a way as to preserve natural resource areas, farmland, and other large areas of open land, while permitting residential development at appropriate densities for the urban and rural characteristics of the Village, in an open space setting, located and designed to reduce the perceived intensity of development and provide privacy for dwellings. Generally this will be achieved through an appropriate combination of traditional and conservation subdivisions and carefully planned minor divisions. Specific objectives are as follows:

A. Guide growth and development consistent with the November 2009 “A Multi-Jurisdictional; Comprehensive Plan for Racine County: 2035” as amended from time to time (the “Village Comprehensive Plan”).

B. Use ecological planning principles in the design, construction and long term management of all new developments.

C. Guide analysis of development parcels so as to locate and coordinate appropriate areas for development and conservation.

D. Preserve rural character and maintain scenic views where appropriate.

E. Protect environmental corridors.

F. Preserve productive agricultural lands.

G. Provide permanently protected open space for residents of developments.

H. Provide a diversity of lot size, housing choices and building densities.

I. Provide buffer between residential development and non-residential uses.

J. Ensure sound standards for development are met: enforce flood plain requirements; build only on proper soils; provide friendly street layouts, block configurations and open spaces; provide user friendly motorized and non-motorized traffic patterns; provide adequate utilities and effective storm water management.

K. Ensure fiscal stability of the community by minimizing the cost of public facilities and services.

L. Balance private property rights against the need to protect and preserve public health, safety and welfare.

M. Provide basis for clear and accurate boundary line records.

N. Provide for administration and enforcement of this Chapter and penalties for violations

30-4. ABROGATION AND GREATER RESTRICTIONS.

It is not intended by this Chapter to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, agreements, rules, regulations, or permits previously adopted or issued pursuant to laws. Where the revisions, conditions and restrictions of this Chapter are more restrictive than the, conditions and restrictions contained in the Village's adopted Comprehensive Plan, the provisions, conditions and restrictions contained in this Chapter shall govern. Pursuant to Wis. Stat. s. 66.1001(3), local subdivision ordinances enacted or amended after the date of adoption of the Comprehensive Plan shall be consistent with the Village's Comprehensive Plan.

30-5. INTERPRETATION.

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Village and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

30-6. SEVERABILITY.

If any section, provision, or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.

30-7. TITLE.

This Chapter may be referred to as the "Land Division Code, Village of Rochester, Racine County, Wisconsin" or the "Land Division Code."

30-8. JURISDICTION.

Jurisdiction of these regulations shall include all incorporated lands within the Village of Rochester, Racine County, Wisconsin.

A. The provisions of this Chapter, as it applies to divisions of tracts of land, shall not apply to:

1. Transfers of interests in land by will or pursuant to court order;

2. Lease for a term not to exceed ten years, mortgages, or easements; and

3. Sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes required by these regulations, the zoning ordinances, or other applicable laws or ordinances.

B. The provisions of this Chapter, as it applies to all divisions of tracts of land, shall not apply to:

1. Cemetery plats made under Wis. Stat. s. 157.07; and

2. Assessor's plats made under Wis. Stat. s. 70.27, but such assessors' plats shall comply with Wis. Stat. ss. 236.15(1)(a) to (g) and 236.20(1) and (2)(a) to (e).

30-9. COMPLIANCE.

No person shall divide any land located within the jurisdictional limits of these regulations which results in a condominium, planned development, conservation subdivision, conventional subdivision, certified survey map or replat as defined herein, and no such condominium, planned development, conservation subdivision, certified survey map, or replat shall be entitled to recording; and no street shall be laid out or improvements made to land without compliance with all requirements of this Chapter and the following:

A. Chapters 236 and 703 of the Wisconsin Statutes;

B. Rules of the Wisconsin Department of Safety and Professional Services, contained in Wis. Admin. Code ch. SPS 383 and related chapters of the Wisconsin Administrative Code for land division not served by public sewer;

C. Rules of the Wisconsin Department of Transportation relating to safety of access and preservation of the public interest and investment in the highway system if the land owned or controlled by the subdivider abuts on a state trunk highway or connecting street;

D. Rules of the Wisconsin Department of Natural Resources, Division of Environmental Protection setting water quality standards preventing and abating pollution, and regulating development within floodplain, wetland, shoreland-wetland and shoreland areas; and

E. All other applicable state, local and county ordinances and regulations.

30-10. APPLICABILITY TO CONVENTIONAL AND CONSERVATION SUBDIVISIONS AND MINOR DIVISIONS.

A. Conventional and conservation subdivision standards apply to all divisions in the non-sewer district where the division of a parent parcel of 20 or more net buildable acres creates five or more parcels including the parent remnant.

B. Conventional and conservation subdivision standards apply to all subdivisions in the sewer district where the division of a parent parcel of 20 or more net buildable acres creates five or more parcels including the parent remnant.

C. Condominium Plats: Conventional and conservation subdivision standards apply to all condominium plats prepared under Chapter 703 of the Wisconsin Statutes. A condominium plat that does not include a land division is exempt from review under this Chapter, and must meet the regulations of the Planning and Zoning Code, i.e., if the condominium is one five unit building, it is treated as a multifamily development under the Planning and Zoning Code, and if it is five single-family units, or five duplexes, without a land division, it is treated accordingly, with the appropriate lot sizes per family, etc. If the owners/developers want to reduce yard sizes, setbacks, etc. under the Planning and Zoning Code, a PUD must be requested under the Planning and Zoning Code. If a land division is requested, this Chapter is applicable only to the land division and not the condominium plat itself.

D. Minor Divisions standards apply to all minor divisions in the sewer and non-sewer districts.

30-11. DEDICATION OF LANDS.

Whenever a tract of land to be divided within the jurisdiction of this Chapter encompasses all or any part of a public street, drainage way, or other public way which has been designated on a duly adopted Village or regional comprehensive plan or comprehensive plan component, said public way shall be made a part of the plat and dedicated by the subdivider in the locations and dimensions indicated on said plan or component and as set forth in this Chapter.

30-12. IMPROVEMENTS.

Before final approval of any final plat located within the jurisdiction limits of this Chapter, the subdivider shall install street, utility and other public improvements as hereinafter provided. If such improvements are not installed as required at the time that the final plat is submitted for approval, the subdivider shall, before the recording of the plat, enter into a contract with the Village agreeing to install the required improvements and shall file with said contract a bond or letter of credit meeting the approval of the Village Attorney in an amount equal to 120 percent of the estimated cost of the improvements -- said estimate to be made by the Village Plan Commission after review and recommendation by the Village Engineer -- as a guarantee that such improvements will be completed by the subdivider or the subdivider's contractors or subcontractors not later than two years from the date of recording of the plat and as a further guarantee that all obligations to subcontractors for work on the development are satisfied. In addition:

A. Contracts and contract specifications for the construction of street and utility improvements on dedicated street rights-of-way, as well as the contractors and subcontractors providing such work shall be subject to the approval of the Village Engineer;

B. Governmental units to which these bond and contract provisions apply may file, in lieu of said contract and bond, a letter from officers authorized to act on their behalf agreeing to comply with the provisions of this section;

C. Survey monuments: Before final approval of any plat within the Village, the subdivider shall install survey monuments (hereinafter sometimes referred to as "monuments) placed in accordance with the requirements of Wis. Stat. s. 236.15 and as may be required by the Village Engineer.

30-13. VARIANCES.

Where, in the judgment of the Village Board, it would be inappropriate to apply literally the provisions of this Chapter because exceptional or undue hardship would result, the Village Board, after review and recommendation by the Village Plan Commission, may waive or modify any requirement to the extent deemed just and proper.

A. No variance to the provisions of this Chapter shall be granted unless the Village Board finds by the greater weight of the evidence that all the following facts and conditions exist and so indicates in the minutes of its proceedings:

1. Exceptional circumstances: That there are exceptional, extraordinary, or unusual circumstances or conditions where a literal enforcement of the requirements of this Chapter would result in severe hardship. (Such hardships should not apply generally to other properties or be of such a recurrent nature as to suggest that the Land Division Chapter should be changed).

2. Preservation of property rights: That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same vicinity.

3. Absence of detriment: That the variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this Chapter or the public interest.

B. The Village Board may waive the placing of monuments, required under Wis. Stat. ss. 236.15(1)(b), (1)(c), and (1)(d), for a reasonable time on the condition that the subdivider executes or provides sufficient surety to insure the placing of such monuments within the required time limits established by the Village.

30-14. LAND SUITABILITY.

A. Environmentally sensitive land shall not be developed except as set forth in this section. Areas identified as environmentally sensitive include, but are not limited to the following:

1. All areas mapped as floodplain by the Federal Emergency Management Agency, Wisconsin Department of Natural Resources, or other public or private entity, and unmapped flood prone areas subject to inundation by the 100-year storm event.

2. All wetlands, including ephemeral ponds, as defined in Wis. Admin. Code s. NR 103.02(5), including a 75-foot buffer from the edge of the wetlands.

3. All areas within the areas zoned as shoreland pursuant to Chapter 36, i.e., within the applicable distance from the high water mark of navigable streams and lake, as identified by the Wisconsin Department of Natural Resources Water Management Specialists.

4. Regional natural areas and critical species habitat.

5. Areas known to provide habitat for rare, threatened or endangered species.

6. Burial sites and Indian mounds.

7. Any drainage way where water runs during spring runoff or during a 100-year rainfall event. A 25-foot buffer from the edge of the drainage way shall be included.

8. All areas restricted by Wisconsin Administrative Code for private on-site wastewater treatment systems including high groundwater (within 6 feet of undisturbed surface), or bedrock within 6 feet of the natural undisturbed surface, filled lands, and lands drained by farm drainage tiles or ditch systems which would otherwise be wetlands.

B. Areas determined to be environmentally sensitive may be included as Common Space in a conservation subdivision.

C. The Village Board, in applying the provisions of this section, shall in writing recite the particular facts upon which it bases its conclusion that the land is unsuitable for residential use and afford the subdivider an opportunity to present evidence in rebuttal to such finding of unsuitability if they so desire. Thereafter, the Village Board may affirm, modify, or withdraw its determination of unsuitability.

30-15. EXTRATERRITORIAL PLAT APPROVAL JURISDICTION.

Pursuant to Wis. Stat. s. 236.45(3):

A. The subdivision ordinances adopted by the Village shall regulate the division or subdivision of land within the extraterritorial plat approval jurisdiction of the Village as well as land within the corporate limits of the Village when the Village has the right to approve or object to plats within that area under Wis. Stat. s. 236.10(1)(b)2. and (2).

B. Notwithstanding subsection A. and Wis. Stat. ss. 236.45(1) and (2), the Village may not deny approval of a plat or certified survey map under this section or Wis. Stat. ss. 236.10 or 236.13 on the basis of the proposed use of land within the extraterritorial plat approval jurisdiction of the Village, unless the denial is based on a plan or regulations, or amendments thereto, adopted by the Village Board under Wis. Stat. s. 62.23(7a)(c).

30-16. FEES.

Fees and Costs. The fees and costs for review of Plats, CSMs and other reviews required by this Chapter shall be in amounts determined by the Village Board and set forth in the Fee Schedule. Reviews shall not occur or approvals granted until the applicant pays all applicable fees and costs to the Treasurer.

ARTICLE 2. SUBDIVISION PROCEDURE.

30-21. PRE-APPLICATION CONFERENCE.

It is recommended that, prior to filing a subdivision conceptual plan, the subdivider consult with the Village Zoning Administrator, and the Plan Commission, in order to obtain their advice and assistance. This consultation is neither formal nor mandatory, but is intended to inform the subdivider of the purpose and objectives of these regulations, the comprehensive land use plan, comprehensive plan components, , duly adopted plan for implementation devices of the Village, conventional subdivision requirements, conservation subdivision procedures and process as shown in Appendix A, and to otherwise assist the subdivider in planning the development. In doing so, both the subdivider and the Village Plan Commission may reach mutual conclusions regarding the general program and objectives of the proposed development and its possible adverse effects on the neighborhood and community. The subdivider will gain a better understanding of the subsequently required procedures.

30-22. CONCEPTUAL PLAN.

A. Prior to the filing of an application for the approval of a preliminary plat, the subdivider shall submit ten copies of a conceptual plan of the proposed land division prepared in accordance with this chapter to the Zoning Administrator for review and comment by the Village Plan Commission and Village staff and consultants. Submission must be received at least 20 days prior to the next Plan Commission meeting in order to be added to the agenda. To facilitate the discussion, it is recommended that all members of the Commission visit the site with the developer as part of a Plan Commission meeting.

B. The conceptual plan is intended to provide an early opportunity to review policy issues relating to the development and its possible adverse effects on the adjacent neighborhood and community. Assuming neighboring properties are likely to be developed in the future, the Plan Commission may recommend to the Village Board that a neighborhood plan be prepared prior to accepting the conceptual plan. The Village would be responsible for preparing such a plan. The plan would include, but not necessarily be limited to identifying locations of the following:

1. Streets and highway access points;

2. Environmentally sensitive areas which cannot be developed as defined in Section 30-14, Land Suitability;

3. Environmental corridors;

4. Residential development areas; and

5. Business and commercial development areas.

C. The Village Plan Commission may recommend and the Village Board may require:

1. That the developer submit a conservation subdivision development plan as an alternative to a conventional subdivision; and

2. For development within, or within 200 feet of, a primary or secondary environmental corridor, that a qualified ecological service provider provide a habitat assessment and a plan to minimize adverse effects on vegetation and wildlife within the corridor. When the affected corridor land is owned by another party(s), the assessment and plan will be waived if the other owner(s) do not grant permission. At the discretion of the Plan Commission, similar information may be required for isolated natural resources. These corridors and resources are identified in “A Multi-Jurisdictional; Comprehensive Plan for Racine County: 2035” on Map VI-1, as may be amended from time to time.

30-23. PUBLIC NOTIFICATION.

Notice of any public hearing which the Plan Commission or Village Board is required to hold under the terms of this Chapter shall specify the date, time and place of said hearing and shall state the matter to be considered at said hearing. Notice shall be provided as required by applicable state statutes. The following notifications shall be required in addition to the notice required by statute:

A. Written Notice. At least 14 days prior to initial review of a land division conceptual plan or CSM by the Plan Commission, the Village Clerk shall send a written notice to the property owner and to the property owners abutting the subject property, including abutting owners on the opposite side of the street, advising of the date of the meeting when the proposal will first be considered.

B. Signs. At least 14 days prior to initial review of a land division conceptual plan or CSM by the Plan Commission, the applicant shall post one or more signs, clearly visible from each adjoining road, advising of pending review. The signs shall remain in place until the day after the Village Board meeting at which the land division is finally approved or denied by the Village Board. The signs shall be provided by the Village and shall be returned by the applicant no later than two days after final determination. Improper posting may result in the Plan Commission delaying consideration until a later meeting.

30-24. PRELIMINARY PLAT REVIEW AND APPROVAL.[1]

After submitting a conceptual plan and before submitting a final subdivision plat for approval, the subdivider shall prepare a preliminary plat with supporting date and a letter of application. The preliminary plat and supporting data shall be prepared in accordance with this chapter and Wisconsin law. The subdivider shall file an electronic copy of the plat and one hard copy capable of legible reproduction with supporting data and application with the Village Clerk, together with all necessary fees, at least 30 days prior to the meeting of the Village Plan Commission at which first consideration is desired. The Clerk may require additional copies. The subdivider shall also file an electronic copy or a hard copy of the plat with the Wisconsin Department of Administration in conformance with Wis. Stat. s. 236.12.

A. The Village Clerk shall forward the Preliminary Plat (which may be an electronic copy or reduced copy) and letter of application within two normal working days to each of the following:

1. Village Trustees;

2. Village Plan Commission Members;

3. Zoning Administrator and Village Engineer;

4. Contracted Fire Company.

5. School Board with jurisdiction (for review and comment).

B. After review and input from the objecting agencies as set forth in Wis. Stat. s. 236.12, Village Engineer and Fire Chief, the Zoning Administrator and Village Plan Commission will review the Preliminary Plat and supporting data and suggest changes needed to comply with this chapter and all ordinances, rules, regulations, comprehensive plans and comprehensive plan components, and conventional and conservation subdivision procedures. Efforts will be made to resolve any differences and a recommendation made to the Village Board to approve or reject the plat.

C. The Village Board shall, within 90 days of the date of filing of a Preliminary Plat and supporting data with the Village Clerk, approve, approve conditionally, or reject such plat. One copy of the

[1] Amended 12-8-2014, Ordinance #2014-6

plat shall thereupon be returned to the subdivider with the date and action endorsed thereon; and if approved conditionally or rejected, a letter setting forth the conditions of approval or the reasons for rejection shall accompany the plat. One copy of each of the plat and letter shall be placed in the Village's permanent file.

D. Failure of the Village Board to act within 90 days shall constitute an approval of the Preliminary Plat as filed.

E. If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval. If the final plat is not submitted within 36 months after the last required approval of the preliminary plat, any approving authority may refuse to approve the final plat or may extend the time for submission of the final plat. The final plat may, if permitted by the approving authority, constitute only that portion of the approved preliminary plat that the subdivider proposes to record at that time. See Wis. Stat. s. 236.11(1)(b).

F. See also s. 30-25C.

30-25. FINAL PLAT REVIEW AND APPROVAL.[2]

A. The subdivider shall prepare a Final Plat, letter of application and shall file an electronic copy of the Plat and a hard copy of the Plat capable of reproduction and hard and electronic copies of the application with the Village Clerk, along with all applicable fees in accordance with this chapter and Wis. Stat. ch. 236, at least 45 days prior to the meeting of the Village Board at which action is desired. The Village Clerk may require additional copies. The subdivider shall also file the Plat with the Department of Administration as set forth in Wis. Stat. s. 236.12.

B. The Village Clerk shall forward the Final Plat (which may be an electronic copy or reduced copy), and letter of application within two normal working days to each of the following:

1. Village Trustees;

2. Village Plan Commission Members;

3. Zoning Administrator and Village Engineer;

4. Contracted Fire Company;

5. School Board with jurisdiction (for review and comment).

C. The Village Plan Commission and Village Engineer shall examine the Final Plat as to its conformance with the approved Preliminary Plat, any condition of approval of the Preliminary Plat, this chapter and all ordinances, rules, regulations, comprehensive plan components and conservation subdivision procedures which may affect it. The Village Plan Commission shall recommend approval or rejection of the Plat to the Village Board.

1. Pursuant to Wis. Stat. s. 236.11(1)(c), the Village Engineer shall provide the Village with his or her conclusions as to whether the final plat conforms substantially to the preliminary plat and with his or her recommendation on approval of the final plat. The conclusions and recommendation shall be made a part of the record of the proceeding at which the final plat is being considered and are not required to be submitted in writing.

2. Basis for Approval. Pursuant to Wis. Stat. s. 236.13:

[2] Amended 12-8-2014, Ordinance #2014-6

a. The basis for approval of a preliminary or final plat shall be conditioned on compliance with the following:

(1) The provisions of Wis. Stat. ch. 236;

(2) Any Village or applicable county ordinance that is in effect when the subdivider submits a preliminary plat, or a final plat if no preliminary plat is submitted;

(3) The rules of the Department of Safety and Professional Services relating to lot size and lot elevation necessary for proper sanitary conditions in a subdivision not served by a public sewer, where provision for public sewer service has not been made;

(4) The rules of the department of transportation relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways.

b. As a further condition of approval, the Village shall require that the subdivider make and install any public improvements reasonably necessary or that the subdivider execute a bond or letter of credit to ensure that he or she will make those improvements within a reasonable time as set forth in Article 10. The subdivider may construct the project in such phases as the Village Board approves, which approval may not be unreasonably withheld. If the subdivider's project will be constructed in phases, the amount of any bond or letter of credit required by the Village Board shall be limited to the phase of the project that is currently being constructed. The Village Board may not require that the subdivider provide any security for improvements sooner than is reasonably necessary before the commencement of the installation of the improvements.

c. The Village shall require as a condition for accepting the dedication of public streets, alleys or other ways, or for permitting private streets, alleys or other public ways to be placed on the official map, that the following facilities shall have been previously provided without cost to the Village, but which are constructed according to Village specifications and under Village inspection: sewerage (where required under Chapter 10), storm water management and/or treatment facilities, grading and improvement of streets, alleys, sidewalks and other public ways, street lighting, and other facilities as may designated by the Village Board, or that a specified portion of such costs shall be paid in advance as provided in Wis. Stat. s. 66.0709.

d. The Village shall require as a condition of approval that the subdivider be responsible for the cost of any necessary alterations of any existing utilities which, by virtue of the platting or certified survey map, fall within the public right-of-way.

e. As a further condition of approval, the Village may require the dedication of easements by the subdivider for the purpose of assuring the unobstructed flow of solar or wind energy across adjacent lots in the subdivision.

f. Additional bases of approval shall be as further set forth in Wis. Stat. s. 236.13.

D. The Village Plan Commission shall, within 30 days of the date of filing of the Final Plat with the Village Clerk, recommend approval or rejection of the Plat and shall transmit the Final Plat and application along with its recommendation with the Village Board.

E. The Village Board shall, within 60 days of the date of filing the Final Plat and application with the Village Clerk, approve or reject such Plat unless the time is extended by agreement with the subdivider. If the Plat is rejected, the reason shall be stated in the minutes of the meeting and a written statement of the reasons forwarded to the subdivider.

F. Failure of the Village Board to take action on the Plat within 60 days, the time having not been extended and no unsatisfied objections having been filed, the Plat shall be deemed approved. Upon demand, the Clerk shall affix a certificate on the face of the plat to that effect.

G. When the Village determines to approve the plat, the Clerk shall give at least 10 days' prior written notice to the clerk of any municipality whose boundaries are within 1,000 feet of any portion of the proposed plat, but failure to give such notice shall not invalidate the plat.

H. The subdivider shall prepare the final plat for approval and attached any required certifications as set forth in Wis. Stat. s. 236.11. After the Final Plat has been approved by the Village Board and required improvements either installed or a contract insuring their installation filed, the appropriate surety approved, and the certificate of the Department of Administration affixed, the Village Clerk shall cause the certificate inscribed upon the Plat attesting to such approval to be duly executed and the Plat returned to the subdivider for recording with the County Register of Deeds. The Register of Deeds shall not record the Plat unless it is offered within 12 months of the last approval by the Village Board and 36 months of its first approval.

I The subdivider shall file ten copies of the approved Final Plat as recorded with the Village Clerk for distribution to the Village Engineer, Building Inspector, Assessor and other affected departments for their files.

J. If permitted by the Village Board, the approved Preliminary Plat may be final platted in phases, with each phase encompassing only that portion of the approved Preliminary Plat which the subdivider proposes to record at one time; however, it is required that each such phase be final platted and be designated "a phase" or addition to the approved Preliminary Plat.

30-26. REPLATS.

When it is proposed to replat a recorded subdivision, or part thereof, so as to change the boundaries of a recorded subdivision, or part thereof, the subdivider or person wishing to replat shall vacate or alter the recorded plat as provided in Wis. Stat. ch. 236 Subchapter VIII, except as may be provided by other applicable provisions of the statutes.

ARTICLE 3 SUBDIVISION CONCEPTUAL PLAN

30-31. GENERAL.

A conceptual plan shall be required for all subdivision developments. Mapping for the initial application can be done in any 8 1/2- x 11-inch or larger format as long as individual map components can be distinguished and the relationship between map components can be determined.

30-32. SUBDIVISION CONCEPTUAL MAP REQUIREMENTS.

The following information shall be required for all subdivisions.

A. General Location Map: The subdivider shall submit a map showing the general outlines of existing buildings, land use, and natural features such as water bodies, wooded areas, wetland, primary and secondary environmental corridors, isolated natural areas, agricultural land, roads, property boundaries within 500 feet of the tract and location of the proposed buildings. This information may be presented on an aerial photograph at a scale of no less than 1 inch equals 400 feet.

B. Inventory of existing resources: Inventory and mapping of existing resources including the following mapped at a scale of no less than one inch equals 200 feet:

1. Topographic contours at two-foot intervals

2. U.S. Department of Agriculture, Natural Resource Conservation Service soil type location and identification of soil type characteristics such as agricultural capability, depth to bedrock and water table, and suitability for wastewater disposal systems.

3. Hydrologic characteristics, including surface water bodies, flood plains, groundwater recharge and discharge areas, wetlands, ephemeral ponds, natural swales, drainage way and steep slopes.

4. Land cover on the site, according to general cover type (pasture, woodland, etc.). The inventory shall include comments on the health and condition of vegetation.

5. Known current and past land use, all buildings and structures on the land, cultivated areas, brownfields, waste sites and history of waste disposal practices, paved areas and all encumbrances such as easements or covenants.

6. Known critical habitat for threatened, endangered, or protected species as identified by the Wisconsin DNR or the U.S. Fish and Wildlife Service.

7. Views of the site, including views onto the site from surrounding roads, public areas and elevated areas, including photographs with a map indicating where they were taken.

8. Known unique geological resources, such as rock outcrops and glacial features.

9. Cultural resources: brief description of historic character of buildings and structures, historically important landscapes and archeological features. This includes a review of existing inventories, including those the State Historical Society of Wisconsin maintains for historic buildings, archaeological sites, and burial sites.

30-33. SUBDIVISION DEVELOPMENT YIELD ANALYSIS.

The subdivider shall submit a table showing the maximum number of dwelling units permitted according to adopted Land Division Chapter density formulas and Village zoning requirements, and will compare

this total with the number being proposed. The maximum number of parcels which can be created, including the parent remnant, is called the development yield and shall equal:

A. Conservation subdivision in non-sewer district: Development yield equals: Gross contiguous acres minus new and existing street right-of-ways; divide this number by 3 and round to the nearest whole number.

B. Conservation subdivision in sewer district:

1. Development yield must be consistent with densities specified in Map 7 in Appendix D of the November 2009 “A Multi-Jurisdictional; Comprehensive Plan for Racine County: 2035” as amended from time to time, and the Rochester 40 or 60 percent open space requirement for conservation subdivisions.

2. The Plan Commission may consider and after consideration of the Plan Commission recommendation, the Village Board may approve modifying the development yield on a conservation subdivision in the sewer district based on a PUD or conditional use, or when an environmental corridor would be part of the development.

C. Conventional subdivision in non-sewer district: Development yield equals: Gross contiguous acres minus new and existing street right-of-ways; divide this number by 3 and round to the nearest whole number.

D. Conventional subdivision in sewer district:

1. Development yield must be consistent with densities specified in Map 7 in Appendix D of the November 2009 “A Multi-Jurisdictional; Comprehensive Plan for Racine County: 2035” as amended from time to time and the Rochester 20 percent open space requirement for conventional subdivisions.

2. The Plan Commission may consider, and after consideration of the Plan Commission recommendation, the Village Board may approve modifying the development yield on a conventional subdivision in the sewer district based on a PUD, or when an environmental corridor would be part of the development.

30-34. SITE ANALYSIS AND CONCEPTUAL PLAN.

A. Using the mapping and inventory of existing resources (s. 30-32) the development yield analysis (s. 30-33), and standards specified in Article 8, Required Land Improvements, the subdivider shall submit a conceptual plan for a conventional or conservation subdivision including at least the following information at a scale of no less than 1 inch equals 200 feet:

1. Boundaries of areas to be developed and proposed street and lot layout

2. Number of housing units proposed and distribution of lot sizes

3. Proposed methods for and location of water supply, storm water management (e.g., best management practices), and sewerage treatment

4. List preserved and disturbed natural features and prominent views

5. Preliminary development envelopes showing areas for lawn, pavement, buildings and grading

B. For a conservation subdivision, the Conservation Subdivision Requirements in Article 7 and the design principles in Appendix B Conservation Subdivision Design Process shall also be used in developing the conceptual plan and the following additional information included in the plan:

1. Open space areas which are to remain undeveloped and proposed trail location

2. Proposed methods for ownership and management of common open space

ARTICLE 4 PRELIMINARY PLAT

30-41. GENERAL.

A preliminary plat shall be required for all subdivisions and shall be based upon a survey by a professional land surveyor at a map scale of not more than 100 feet to the inch and shall show correctly on its face the following information:[3]

A. Title or name under which the proposed subdivision is to be recorded. Such title shall not be the same or similar to a previously approved and recorded plat, unless it is an addition to a previously recorded plat and is so stated on the plat;

B. The location of the proposed subdivision by government lot, quarter-section, section, township, range, county and state;

C. General location sketch showing the location of the subdivision within the U.S. Public Land Survey section;

D. Date, graphic scale and north arrow;

E. Names and addresses of the owner, subdivider and land surveyor preparing the plat;

F. Entire area contiguous to the proposed plat owned or controlled by the subdivider even though only a portion of said area is proposed for immediate development.

30-42. PRELIMINARY PLAT DATA.

All preliminary plats shall show the following:

A. Exact length and bearing of the exterior boundaries of the proposed subdivision referenced to a corner established in U.S. Public Land Survey and the total acreage encompassed thereby;

B. Location, right-of-way width and names of all existing streets, alleys, or other public ways, easements, railroad and utility rights-of-way and all section and quarter section lines within the exterior boundaries of the plat or immediately adjacent thereto;

C. Location and names of any adjacent subdivisions, parks and cemeteries and owners of record of abutting unplatted lands;

D. Locations of all existing property boundary lines, structures, drives, streams and watercourses, marshes, rock outcrops, wooded areas, railroad tracks and other similar significant natural and man-made features within the tract being subdivided or immediately adjacent thereto;

E. Location, width and names of all proposed public and private rights-of-way and easements;

F. Approximate dimensions of all lots together with proposed lot and block numbers and street setback lines;

G. Location, approximate dimensions and size of any sites to be dedicated for parks, playgrounds, drainage ways, or other public use or which are to be used for group housing, shopping centers, church sites, or other private uses;

H. Approximate radii of all curves;

[3] Amended 12-8-2014, Ordinance #2014-6

I. Existing zoning on and adjacent to the proposed subdivision;

J. Any proposed lake and stream access clearly indicating the location of the proposed subdivision in relation to the access;

K. Legal description of the property;

L. Also, attach the following to the Plat:

1. Name of school district;

2. Proposed development yield;

M. For a conservation subdivision attach:

1. Conservation subdivision theme;

2. Management plan for restoration of land and long term management of open space.

30-43. COVENANTS.

The Village Board or the Village Plan Commission may require submission of a draft of protective covenants whereby the subdivider intends to regulate land use in the proposed subdivision, and otherwise protect the proposed development. The Village Attorney shall review all covenants and shall approve covenants as to form, and where easements or other rights are granted to the Village therein, shall also review the content thereof.[4]

30-44. PRELIMINARY GRADING AND STORM WATER MANAGEMENT PLAN.

All preliminary plats shall show the following on a separate sheet or sheets:

A. The exterior boundaries of the proposed subdivision along with the proposed lots, lot numbers and drainage easements;

B. Existing contours at vertical intervals of not more than two feet where the slope of the ground surface is less than ten percent, and of not more than five feet where the slope of the ground surface is ten percent or more. Elevations shall be marked on such contours based on National Geodetic Datum (mean sea level) where available;

C. Water elevations of adjoining lakes and streams at the date of the submittal and approximate high and low water elevations, all referred to mean sea level datum where available, together with any proposed land and stream improvements or relocations;

D. Floodplain limits and the contour line lying a vertical distance of two feet above the elevation of the 100-year recurrence interval flood, or where such data is not available, five feet above the elevation of the maximum flood of record;

E. Location of all existing streets, alleys, or other public ways, easements, railroad and utility rights-of-way.

F. Type, width and elevation of any existing street pavements within the exterior boundaries of the plat or immediately adjacent thereto together with any legally established centerline elevations, all to mean sea level datum where available;

[4] Amended 12-8-2014, Ordinance #2014-6

G. Location, size and invert elevation of any existing sanitary or storm sewers, culverts and drain pipes, the location of manholes, catch basins, hydrants, power and telephone poles, and the location and size of any existing water and gas mains within the exterior boundaries of the plat or immediately adjacent thereto. If no sanitary or storm sewers or water mains are located on or immediately adjacent to the lands being platted, the nearest such sewers or water mains which might be extended to serve such lands shall be indicated by their direction and distance from the nearest exterior boundary of the plat and their size and invert elevations;

H. Preliminary street grading showing proposed streets with their proposed elevations and grades;

I. Preliminary storm water management features showing proposed swales, storm sewers and storm water basins. Sizes of proposed storm sewers and storm water basins shall be shown and the supporting calculations included in a report to be filed as part of the preliminary data.

J. Any proposed lake and stream improvement or relocation;

K. Soil, type and boundaries as shown on the detailed operational soil survey maps prepared by the U.S. Soil Conservation Service;

L. Location of soil boring tests, where required by law. The number of such tests shall be adequate to portray the character of the soils and the depths of bedrock and groundwater from the natural, undisturbed surface. To accomplish this purpose, a minimum of one test per three acres shall be made initially. The results of such tests shall be submitted along with the Preliminary Plan;

M. Where a subdivision is not served by public sanitary sewer, soil borings and tests shall be made to determine the suitability of the site for the use of onsite sewage treatment and disposal systems. Such borings and tests shall meet the requirements of Chapters SPS 383 and 385 of the Wisconsin Administrative Code. The location of the borings shall be shown on the Preliminary Plat and the findings, with respect to the suitability of the site for the use of onsite sewage treatment and disposal systems, shall be set forth in a separate report submitted with the plat.

N. Wetland limits as verified by the Wisconsin Department of Natural Resources, SEWRPC or a DNR certified wetland biologist;

O. Proposed erosion and sedimentation control practices;

P. Proposed measures to protect areas of significant trees.

30-45. TESTING.

The Village Plan Commission, upon recommendation of the Village Engineer, may recommend that borings be made in specified areas to ascertain subsurface soil, rock and water conditions, including depth to bedrock and depth to groundwater table. Where the subdivision will not be served by public sanitary sewer service, the provisions of the Wisconsin Administrative Code shall be complied with; and the appropriate data submitted with the preliminary plat and plan.

ARTICLE 5 FINAL PLAT

30-51. GENERAL.

A final plat prepared by a professional land surveyor licensed by the State of Wisconsin is required for all subdivisions. It shall comply in all respects with the requirements of Wis. Stat. s. 236.20.[5]

30-52. ADDITIONAL INFORMATION.

The plat shall show correctly on its face, in addition to the information required by Wis. Stat. s. 236.20, the following:

A. Railroad rights-of-way within and abutting the plat;

B. Setbacks or building lines;

C. Utility and/or drainage easements;

D. All lands dedicated to the public or reserved for the common use of property owners within the plat and the method of ownership of that common use; and

E. Special restrictions required by the Village Plan Commission relating to access control along public ways, delineation of floodland limits, or to the provision of planting strips.

30-53. DEED RESTRICTIONS.

The Village Board may require that deed restrictions be filed with the final plat.

30-54. SURVEY ACCURACY.

The survey shall meet or exceed the accuracy requirement set forth in Wis. Stat. s. 236.15(2).[6]

30-55. SURVEYING AND MONUMENTING.

All final plats shall meet all of the surveying and monumenting requirements of Wis. Stat. s. 236.15.

30-56. STATE PLANE COORDINATE SYSTEM.[7]

Where the plat is located within a U.S. Public Land Survey quarter-section, the corners of which have been relocated, monumented and coordinated by the Wisconsin Department of Transportation, the Southeastern Wisconsin Regional Planning Commission, or any County, City, Village or Town, the plat shall be tied directly to one of the section or quarter corners so relocated, monumented and coordinated. The exact grid bearing and distance of such tie shall be determined by field measurements, and the material and Wisconsin state plane coordinates of the monument marking the relocated section or quarter corner, to which the plat is tied, shall be indicated on the plat. The grid bearing and distance of the tie shall be determined by a closed survey meeting the error or closure herein specified for the survey of the exterior boundaries of the subdivision. All distances and bearings shall be referenced directly to the Wisconsin Coordinate System of 1927, South Zone, and adjusted to the control survey.

[5] Amended 12-8-2014, Ordinance #2014-6
[6] Amended 12-8-2014, Ordinance #2014-6
[7] Amended 12-8-2014, Ordinance #2014-6

30-57. CERTIFICATES.

All final plats shall provide all the certificates required by Wis. Stat. s. 236.21. The surveyor's certificate shall contain a description of the survey beginning at the U.S. Public Land Survey corner to which the survey is tied.

30-58. RECORDATION.[8]

The final plat shall only be recorded with the County Register of Deeds after the certificates have been signed by the Administrator, Division of Intergovernmental Relations, Department of Administration, the Village President and Village Clerk upon the approval by the Village Board, the surveyor, and those authorized to sign the certificates required by Wis. Stat. s. 236.21, on the face of the plat. The plat shall be recorded within the time limits set forth in Wis. Stat. s. 236.25.

[8] Amended 12-8-2014, Ordinance #2014-6

ARTICLE 6 MINOR LAND DIVISION – CERTIFIED SURVEY MAP

30-61 CERTIFIED SURVEY MAP REQUIRED.

A certified survey map (CSM) prepared by a professional land surveyor shall be required for all "minor land divisions" when it is proposed:[9]

A. To divide land into at least two but not more than four parcels or building sites including the parent remnant, any one of which is less than 35 acres in size, within a five year period; or

B. To create by land division not more than four parcels or building sites within a recorded subdivision plat without changing the exterior boundaries of a block, lot, or outlot.

C. Land Division by Metes and Bounds Description.[10]

Land divisions that do not require a Plat or CSM pursuant to this Chapter must be reviewed by the Zoning Administrator to ensure compliance with this Chapter, Chapter 35, Planning and Zoning and the other land use chapters of this Municipal Code.

30-62. PRELIMINARY MEETING.

It is recommended that the subdivider meet with the Zoning Administrator, and then the Village Plan Commission prior to submitting a conceptual plan to learn the objectives of the Land Use Plan and Land Division Chapter and understand how these will influence the planned development. It is also recommended to meet with Village Engineer. The Zoning Administrator will provide information on zoning, driveway access, sanitary requirements, floodplains, environmental corridors and wetlands on the site. It is also recommended that members of the Commission plan a site visit with the subdivider as part of a duly noticed public meeting prior to submission of the conceptual plan.

30-62. CONCEPTUAL DEVELOPMENT PLAN.

The subdivider shall prepare a conceptual development plan including general location map, inventory of existing resources, development yield analysis and proposed development.

A. General Location Map (required for all CSMs): The subdivider shall submit a map showing the general outlines of existing buildings, land use, and natural features such as water bodies, wooded areas, wetland, primary and secondary environmental corridors, isolated natural areas, agricultural land, roads, property boundaries within 500 feet of the tract and location of the proposed buildings. This information may be presented on an aerial photograph at a sale of no less than one inch equals 400 feet.

B. Inventory of existing resources: The following inventory and mapping of existing resources shall be included when creating three or more parcels including the parent remnant. These should be at a scale of no less than one inch equals 200 feet:

1. Topographic contours at two-foot intervals;

2. U.S. Department of Agriculture, Natural Resource Conservation Service soil type location and identification of soil type characteristics such as agricultural capability, depth to bedrock and water table, and suitability for wastewater disposal systems;

[9] Amended 12-8-2014, Ordinance #2014-6

[10] Amended 6-8-2015, Ordinance #2015-1

3. Hydrologic characteristics, including surface water bodies, floodplains, groundwater recharge and discharge areas, wetlands, ephemeral ponds, natural swales, drainage way and steep slopes;

4. Land cover on the site, according to general cover type (pasture, woodland, etc.). The inventory shall include comments on the health and condition of the vegetation;

5. Known current and past land use, all buildings and structures on the land, cultivated areas, brownfields, waste sites and history of waste disposal practices, paved areas and all encumbrances such as easements or covenants;

6. Known critical habitat for threatened, endangered, or protected species;

7. Views of the site, including views onto the site from surrounding roads, public areas and elevated areas, including photographs with a map indicating where they were taken;

8. Unique geological resources, such as rock outcrops and glacial features;

9. Known cultural resources: brief description of historic character of buildings and structures, historically important landscapes, and archaeological features. This includes a review of existing inventories, including those the State Historical Society of Wisconsin maintains for historic buildings, archaeological sites, and burial sites;

C. Development Yield Analysis: The subdivider shall submit a table showing the maximum number of dwelling units that would be permitted according to the adopted Land Division Chapter density formula and the Village Planning and Zoning chapters and will compare this total with the number being proposed.

1. Non-sewer district: The maximum number of parcels that can be created in the non-sewer district, including the parent remnant, is called the development yield and shall equal: Gross contiguous acres minus new and existing street rights-of-way; divide this number by 3 and round to the nearest whole number.

2. Sewer district: The maximum number of parcels which can be created in the sewer district is determined by densities specified in Map 7 in Appendix D of the November 2009 “A Multi-Jurisdictional; Comprehensive Plan for Racine County: 2035”as amended from time to time, and the Zoning chapters.

D. Using the general map location, inventory of existing resources, the development yield analysis and standards specified in Article 8, Required Land Improvements, the subdivider shall submit a conceptual development plan including at least the following information at a scale of no less than 1 inch equals 200 feet:

1. Open space areas indicating which areas are to remain undeveloped and any proposed trail locations;

2. Boundaries of areas to be developed and proposed street and lot layout;

3. Number of housing units proposed and distribution of lot sizes;

4. Proposed methods for and location of water supply, storm water management (e.g., best management practices);

5. Proposed method for sewerage treatment. Note that all new development in the sanitary sewer district shall connect to the district when a sewer line exists on the parcel road frontage. Alternate treatment systems, which meet the requirements of Chapters SPS

383 and 385 of the Wisconsin Administrative Code, may be allowed when such a line does not exist or when a line has not been approved for installation by the Western Racine County Sewerage District. Also see Chapter 10 of this Municipal Code;

6. Inventory of preserved and disturbed natural features and prominent views;

7. Preliminary development envelopes showing areas for lawn, pavement, buildings and grading;

8. The Plan Commission may also require the submission of a sketch plan, drawn to scale, showing the entire contiguous holdings owned or controlled by the subdivider and identifying proposed future development of the parcel including general street and parcel locations and potential effects of limitations on neighboring lands.

30-64. FILING OF CONCEPTUAL DEVELOPMENT PLAN.

Twelve copies of the plan shall be submitted, along with a letter of explanation, to the Village Clerk at least 20 days prior to the meeting date of the Village Plan Commission in which action is desired. Within two days of receipt, the Clerk will forward copies to the Village Engineer, the Zoning Administrator, the Village Board members, and the Village Plan Commission members.

30-65. CSM APPROVAL PROCEDURE.

The subdivider shall prepare the certified survey map in accordance with the requirements of this chapter and Wis. Stat. s. 236.34 as amended from time to time, and shall file an electronic copy of the map and at least 14 copies of the map and the letter of application with the Village Clerk.[11]

A. The Village Clerk shall, within two normal workdays after filing, transmit the copies of the map and letter of application to the Village Plan Commission members, Village Board members, and Village Engineer.

B. Village staff will assist the subdivider in identifying known floodplains, wetlands, environmental corridors, shoreland-wetlands, and shorelands.

C. Objecting and approving authority reviews and recommendations shall be transmitted to the Village Plan Commission and Village Board within 20 days from the date the map is filed. The map shall be reviewed by the Village Plan Commission for conformance with this chapter, Appendix A of this Chapter regarding Design Standards, the Rochester Land Use Plan and all other ordinances, rules, regulations, comprehensive plans and comprehensive plan components.

D. The Village Plan Commission shall, within 30 days from the date of filing of the CSM, recommend approval, conditional approval, or rejection of the CSM and shall transmit the map along with its recommendations to the Village Board.

E. The Village Board shall approve, approve conditionally and thereby require resubmission of a corrected certified survey map, or reject such certified survey map within 90 days from the date of filing of the map unless the time is extended by agreement with the subdivider. If the map is rejected, the reason shall be stated in the minutes of the meeting and a written statement forwarded to the subdivider. If the map is approved, the Village Board shall cause the Village Clerk to so certify on the face of the original map and return the map to the subdivider.

F. The subdivider shall file one hard copy and one digital copy of the certified survey map as recorded with the Village Clerk for distribution to the Village Engineer, the Zoning Administrator, Building Inspector, Assessor and other affected Village officials for their files.

[11] Amended 12-8-2014, Ordinance #2014-6

30-66. CSM INFORMATION.

A. The map shall show correctly on its face, in addition to the information required by Wis. Stat. s. 236.34, the following:

1. All existing buildings, navigability determination, drainage ditches, flood plains and other features pertinent to proper land division;

2. Location of environmental corridors, woodlands, isolated natural resources, wetlands and ephemeral ponds as delineated by SEWRPC;

3. Agricultural soil capability map; available from SEWRPC (if appropriate);

4. Historic, cultural and archaeological features;

5. Setbacks or building lines;

6. Easements for sewers, water mains, storm water management, access ways, agricultural drainage tiles and all other utilities;

7. Existing contours when required by the Village Engineer at vertical intervals of not more than two feet where the slope of the ground surface is less than ten percent and of not more than five feet where the slope of the ground surface is ten percent or more. Elevations shall be marked on such contours based on National Geodetic Vertical Datum (mean sea level) as available. This requirement may be waived if the parcel(s) are fully developed;

8. Proposed lot drainage as may be required by the Village Engineer or Village Plan Commission;

9. Name and address of the owner, subdivider and surveyor;

10. Connection point to public sewer line or, if an onsite sanitary system has been approved, show location of soil borings. Attach a report with findings on suitability of the site for an onsite sanitary system including tests as directed by Wis. Admin. Code chs. SPS 383 and 385;

11. Location of existing onsite sewerage treatment systems.

B. The Plan Commission may recommend to the Village Board and the Village Board may require:

1. For development within or within 200 feet of a primary or secondary environmental corridor, that a qualified ecological service provider provide a habitat assessment and a plan to minimize adverse effects on vegetation and wildlife within the corridor. When the affected corridor land is owned by another party(s), the assessment and plan will be waived if the owner(s) does not grant permission. At the discretion of the Plan Commission, similar information may be required for isolated natural resources. These corridors and resources are identified in “A Multi-Jurisdictional; Comprehensive Plan for Racine County: 2035” on Map VI-1.

2. That the entire area contiguous to the land encompassed within the proposed CSM and owned or controlled by the subdivider be included in the CSM even though only a portion of said area is proposed for immediate development.

3. The submission of a sketch plan, drawn to scale, showing the entire contiguous holdings owned or controlled by the subdivider and identifying proposed future development of the parcel, including general street and parcel locations. The Village Clerk shall attach a copy of the sketch plan to the CSM and retain both in the Village files.

30-67. STATE PLANE COORDINATE SYSTEM.[12]

Where the map is located within a U.S. Public Land Survey quarter-section, the corners of which have been relocated, monumented and coordinated by the Wisconsin Department of Transportation, the Southeastern Wisconsin Regional Planning Commission, or any County, City, Village, or Town, the map shall be tied directly to one of the section or quarter corners so relocated, monumented and coordinated. The exact grid bearing and distance of such tie shall be determined by field measurements, and the material and Wisconsin state plane coordinates of the monument marking the relocated section or quarter corner to which the map is tied shall be indicated on the map. All distances and bearings shall be referenced to the Wisconsin Coordinate System of 1927, South Zone, and adjusted to the control survey.

30-68. CERTIFICATES.

The surveyor's certificate shall contain a description of the survey beginning at the U.S. Public Land Survey corner to which the survey is tied. The Village Board, after a recommendation by the reviewing agencies, shall certify its approval on the face of the map. In addition, dedication of streets and other public areas shall require the owner's certificate and the mortgagee's certificate in substantially the same form as required by Wis. Stat. s. 236.21(2)(a).

30-69. RECORDATION.[13]

The subdivider shall record the map with the Racine County Register of Deeds within 12 months of its last approval by the Village Board and within 36 months of its first approval.

[12] Amended 12-8-2014, Ordinance #2014-6

[13] Amended 12-8-2014, Ordinance #2014-6

ARTICLE 7 CONSERVATION AND CONVENTIONAL SUBDIVISION REQUIREMENTS.

Sections 30-71 through 30-75 include requirements that apply to conservation subdivisions.

30-71. GENERAL.

Conservation Subdivisions shall identify a conservation theme or themes. This theme shall be identified at the time of the initial application. Conservation themes may include, but are not limited to forest stewardship, water quality preservation, farmland preservation, natural habitat restoration, view shed preservation, or archaeological and historic properties preservation. The Plan Commission will work with the developer to specify which areas shall be preserved. Refer to Appendix B, Conservation Subdivision Design Process, for additional considerations of the design process.

30-72. RESIDENTIAL LOT REQUIREMENTS.

A. A residential conservation subdivision in the sewer district shall be done as a conditional use as set forth in the Village zoning chapters. Consistent with the 40 percent open space requirement in Section 30-74, the Conditional Use will establish minimum lot size, principal building setbacks, accessory building setbacks, and maximum building height.

B. A conservation subdivision in the non-sewer district shall be zoned R-8, R-9, A-2, or C-2. Lot sizes less than 40,000 square feet may be permitted under conditional use R-8, R-9, A-2 or C-2 zoning. In such an instance, the developer and Village of Rochester Plan Commission shall establish minimum lot size, principal building setbacks, accessory building setbacks, rear lot line, and maximum building height. In all cases, the conservation subdivision development yield analysis in Section 30-33.A. and 60 percent open space requirement in Section 30-74.B. shall be maintained.

C. Lots shall be configured to minimize the amount of impervious surfaces. Maximum Lot Coverage equals 35 percent (includes buildings and other impervious surfaces).

D. Maximum Building Height equals 35 feet.

E. Access to the majority of lots shall be by interior local streets with the exception of existing farmsteads to be preserved that have an existing driveway on an arterial street.

F. Lots shall be configured to minimize the amount of road length required for the subdivision.

G. Development envelopes shall be configured to minimize loss of woodlands. However, when the objective is to preserve prime farmland for agricultural use, dwellings may be located within the woods, provided that no more than 20 percent of a single lot is cleared for the construction of a dwelling, driveway, garage, storage building, well and private onsite waste treatment system.

H. If agricultural uses are being maintained, lots shall be configured in a manner that maximizes the usable area remaining for such agricultural uses with appropriate buffers between agricultural uses and residential structures.

I. All lots within a neighborhood shall abut open space on at least one side. A local street may separate lots from the open space.

J. Lots shall be oriented around one or more of the following:

1. A central green or square.

2. A physical amenity such as a meadow, a stand of trees, or some other natural or restored feature.

K. Development envelopes should not be located on ridges, hilltops, along peripheral public roads, or in other visually prominent areas.

L. Residential structures should be oriented to maximize solar gain in the winter months.

M. A 30-foot native vegetative buffer shall be maintained around open water areas, unless a specific common beach or grassed area is identified.

N. Connectivity of environmental corridors, trails and green spaces, as well as the conservation subdivision themes of adjacent properties shall be considered in the design of the development in accordance with Appendix B, Conservation Subdivision Design Process.

30-73 RESIDENTIAL CLUSTER SITING STANDARDS.

A. All residential lots and dwellings shall be grouped into clusters. Each cluster shall contain no more than 20 dwelling units and not less than five units.

B. Residential clusters shall be located to minimize negative impacts on the natural, scenic and cultural resources of the site and to minimize conflicts between incompatible uses.

C. Residential clusters shall avoid encroaching on rare plant communities; or threatened, endangered, or protected species habitat identified by the Department of Natural Resources.

D. Whenever possible, open space shall connect with existing or potential open space lands on adjoining parcels and local or regional recreational trails.

E. Residential clusters should be sited to achieve the following goals, to the extent practicable:

1. Minimize impacts to prime farmland soils and large tracts of land in agricultural use and avoid interference with normal agricultural practices.

2. Minimize disturbance to woodlands, wetlands, grasslands and mature trees.

3. Prevent downstream impacts due to runoff through adequate onsite storm water management practices.

4. Protect scenic views of open land from adjacent roads. Visual impact should be minimized through use of landscaping and/or other features.

5. Protect archaeological sites and existing historic buildings or incorporate them through adaptive reuse.

F. Landscaping around the cluster may be necessary to reduce offsite views of residences.

30-74. OPEN SPACE DESIGN.

A. The minimum common open space required shall be owned and maintained under one of the alternatives listed in Section 30-75, as approved by the Village. The uses within the open space may be accessible to the residents of the development. These uses may also be available to the general public providing the proper approvals are received. The required open space shall be undivided and restricted in perpetuity from future development, as specified in Section 30-75.

B Common open space shall be designated as part of the development. The minimum required common open space is 40 percent of net buildable acres inside the sewer district and 60 percent of net buildable acres outside the sewer district.

C. Following is an open space conservation ranking in order of significance. The areas to be preserved shall be identified on a case-by-case basis in an effort to conserve and provide the best opportunities to restore and enlarge the best quality natural features of each particular site.

1. First priority will be given to intact natural communities, rare and endangered species, environmental corridors, natural and restored prairies, significant historic and archaeological properties, and steep slopes.

2. Second priority will be given to areas providing some plant and wildlife habitat and open spaces values.

3. Third priority will be given to areas providing little habitat but providing view shed, recreation, or a sense of open space.

D. Privately held buildings or structures may be located within the open space area provided they are accessory to the use of the open space. The area shall be counted toward the overall open space percentage requirement.

E. Septic systems and potable water systems may be located within the open space. The area shall be counted toward the overall open space percentage requirement.

F. Road rights-of-way shall not be counted towards the required minimum open space.

G. No more than 50 percent of the required open space may consist of water bodies, ponds, flood plain, or wetlands.

H. A minimum of 80 percent of the non-agricultural open space shall be maintained for plant and wildlife habitat. That portion of open space designed to provide plant and animal habitat shall be kept as intact as possible. Trails shall be designed to avoid fragmenting these areas.

I. Accessible open space in upland areas shall be available for recreational uses such as trails, play fields, or community gardens but should be designed in a manner that avoids adversely impacting archeological sites.

J. A pathway system connecting open space accessible to neighborhood residents, and connecting these areas to neighborhood streets and to planned or developed trails on adjacent parcels shall be identified in the PLAN.

30-75. OWNERSHIP AND MAINTENANCE OF OPEN SPACE.

A. Alternatives. The designated common open space and common facilities may be owned and managed by one or a combination of the following:

1. A homeowners' association.

2. A condominium association established in accordance with the Condominium Ownership Act, Wis. Stat. ch. 703.

3. A nonprofit conservation organization.

4. The Village or another government body empowered to hold an interest in real property.

5. An individual who will use the land for open space purposes as provided by a conservation easement, e.g., agriculture.

B. Conservation Easement. Common open space and/or common facilities shall be subject to a conservation easement conveyed to a qualified holder, as defined in Wis. Stat. s. 700.40 (Uniform Conservation Easement Act). The holder(s) of the easement shall have responsibility for inspecting to ensure compliance. The easement holder will negotiate a reasonable annual charge with the Homeowner Association for the annual inspection. The Village of Rochester shall have a third party enforcement right, which shall be documented in the easement documents.

C. Homeowners' Association. A homeowners' association shall be established if the common open space and/or common facilities are proposed to be owned by a homeowners' association. Membership in the homeowners' association is mandatory for all purchasers of homes in the development and their successors. The homeowners' association bylaws, guaranteeing continuing maintenance of the open space and other common facilities, and the declaration of covenants, conditions and restrictions of the homeowners' association shall be submitted for approval to the Village as part of the information required for the Preliminary Plat.

The homeowners' association bylaws or the declaration of covenants, conditions and restrictions of the homeowners' association shall contain the following information:

1. The legal description of the common land;

2. A description of common facilities;

3. The restrictions placed upon the use and enjoyment of the lands or facilities;

4. Persons or entities entitled to enforce the restrictions;

5. A mechanism to assess and enforce the common expenses for the land or facilities including upkeep and maintenance expenses, real estate taxes and insurance premiums;

6. A mechanism for resolving disputes among the owners or association members;

7. The conditions and timing of the transfer of ownership and control of land or facilities to the association;

8. Any other matter the developer deems appropriate.

D. Condominium Associations. If the common open space and facilities are to be held under the Condominium Ownership Act, Wis. Stat. ch. 703, the condominium instruments shall identify the restrictions placed upon the use and enjoyment of the common open space. All common open space shall be held as a "common element" as defined in Wis. Stat. s. 703.01(2).

E. Nonprofit Conservation Organization. If the common open space and/or common facilities are to be held by a nonprofit conservation organization, the organization must be acceptable to the Village. The conveyance to the nonprofit conservation organization must contain appropriate provisions for succession to another nonprofit conservation organization or other acceptable entity in the event that the organization becomes unwilling or unable to uphold the terms of the conveyance.

F. Public Dedication of Open Space and Streets. The Village may accept the dedication of fee title or dedication of a conservation easement to the common space as set forth in this Chapter. The Village may accept the common open space provided:

1. The common open space is accessible to the residents of the Village;

2. The Village agrees to and has access to maintain the common open space;

3. Streets or other public ways which have been designated on a duly adopted official map or element of the Village comprehensive plan shall be dedicated or reserved by the subdivider to the Village. The street or public way shall be made a part of the plat in the locations and dimensions indicated in the comprehensive plan and as set forth in this Chapter.

G. Individual Ownership. An individual may hold fee title to the land, or the owners of the land included in the plat may hold fee title in undivided shares, while a nonprofit conservation organization or other qualified organization holds a conservation easement prescribing the acceptable uses for the common open space.

H. Maintenance Plan. Every conservation subdivision must include a plan that provides evidence of a means to properly manage the common open space in perpetuity and evidence of the long-term means to properly manage and maintain all common facilities, including any storm water facilities. The plan shall be approved by the Village prior to final plat approval.

1. The plan shall do the following:

a. Designate the ownership of the open space and common facilities in accordance with this section.

b. Establish necessary regular and periodic operation and maintenance responsibilities.

c. Estimate staffing needs, insurance requirements and other associated costs and define the means for funding the same on an ongoing basis.

d. Include a land stewardship plan specifically focusing on the long-term management of common open space lands. The land stewardship plan shall include a narrative, based on the site analysis, describing:

(1) Existing conditions including all natural, cultural, historic and scenic elements in the landscape;

(2) The proposed end state for each common open space area; and the measures proposed for achieving the end state;

(3) Proposed restoration measures, including: measures for correcting increasingly destructive conditions, such as erosion; and measures for restoring historic features and habitats or ecosystems;

(4) The operations needed for maintaining the stability of the resources, including: mowing schedules; weed control; planting schedules; invasives control; clearing and cleanup;

(5) If ownership is vested in a homeowners' association or condominium association, the association must contract with a qualified conservation organization or ecological services contractor to implement the management plan. It is highly recommended that the association contract with the non-profit easement holder to implement the management plan.

(6) The Village would enforce the management plan if needed. At the Village's discretion, the applicant may be required to place in escrow sufficient funds for the maintenance and operation costs of common facilities for a maximum of one year.

2. In the event that the organization established to own and maintain the open space and common facilities, or any successor organization, fails to maintain all or a portion of the common facilities in reasonable order and condition in accordance with the maintenance plan and all applicable laws, rules and regulations, the Village may serve written notice upon such organization and upon the residents and owners of the open space and common facilities, setting forth the manner in which the organization has failed to maintain the common facilities in reasonable condition. Such notice shall set forth the nature of corrections required and the time within which the corrections shall be made.

    a. Upon failure to comply within the time specified, the organization, or any successor organization, shall be considered in violation of this Chapter, in which case the bond, if any, may be forfeited, and any permits may be revoked or suspended.

    b. The Village may enter the premises and take corrective action.

    c. The costs of corrective action by the Village shall be assessed ratably, in accordance with tax assessments, against the properties that have the right of enjoyment of the common facilities and shall become a lien on said properties.

    d. The Village, at the time of entering upon such common facilities for the purpose of maintenance, shall file a notice of such lien in the office of the County Register of Deeds upon the properties affected by such lien.

3. Management plans can be amended by the owner with the approval of the Village Board and easement holder.

Sections 30-76 and 30-77 include requirements which apply to conventional subdivisions.

30-76. RESIDENTIAL LOT REQUIREMENTS.

A. A conventional subdivision in the sewer district shall meet the requirements set forth in the zoning chapters for the desired zoning district, including minimum lot size, principal building setbacks, accessory building setbacks and maximum building height.

B. A conventional subdivision in the unsewered district shall meet the requirements set forth in Chapter 35 for the desired zoning district, including minimum lot size, principal building setbacks, accessory building setbacks, rear lot line and maximum building height. In all cases, the conventional subdivision development yield analysis in Section 30-33.C. shall be maintained.

C. Lots should be configured to minimize the amount of impervious surfaces. Maximum Lot Coverage equals 35 percent (includes buildings and other impervious surfaces).

D. The Maximum Building Height is specified in the zoning district regulations.

E. Access to the majority of lots should be by interior local streets.

F. Lots should be configured to minimize the amount of road length required for the subdivision.

G. Development envelopes should be configured to minimize loss of woodlands. However, dwellings may be located within woodlands provided that no more than 20 percent of a single lot is cleared for the construction of a dwelling, driveway, garage, storage building, well and, if necessary, a private on-site waste treatment system.

H. A 30-foot native vegetation buffer shall be maintained around open water areas, or if the land is in the Shoreland Zoning District, as specified in Chapter 36.

I. Connectivity of environmental corridors, trails and green spaces shall be considered in the design of the development.

30-77. RESIDENTIAL SITING STANDARDS.

A. Residences should be located to minimize negative impacts on the natural, scenic and cultural resources of the site and to minimize incompatible uses.

B. Residences shall avoid encroaching on rare plant communities; or threatened, endangered, or protected species habitat identified by the Department of Natural Resources.

C. Whenever possible, natural areas on each lot should connect with existing or potential open space lands on adjoining parcels.

D. Residences should be sited to achieve the following goals, to the extent practicable:

1. Minimize impacts to prime farmland soils and large tracts of land in agricultural use and avoid interference with normal agricultural practices.

2. Minimize disturbance to woodlands, wetlands, grasslands and mature trees.

3. Prevent downstream impacts due to runoff through adequate on-site storm water management practices. (See Chapters 31 and 32.)

4. Protect scenic views of open land from adjacent roads. Visual impact should be minimized through use of landscaping and/or other features.

5. Protect archaeological sites and existing historic buildings or incorporate them through adaptive reuse.

Section 30-78 includes requirements that apply to both conservation and conventional subdivisions.

30-78. STORM WATER MANAGEMENT BEST MANAGEMENT PRACTICES.

A. Minimize the use of curb and gutter and maximize the use of open swales.

B. Roof down spouts should drain to porous surfaces.

C. Comply with applicable standards of Wis. Admin. Code ss. NR216 and NR151. See also Chapters 31 and 32.

D. Landscape plantings and rain gardens should be used to increase infiltration and decrease runoff.

E. Natural open drainage systems shall be preserved.

ARTICLE 8. REQUIRED LAND IMPROVEMENTS.

30-81. GENERAL.

No division of land shall be approved, or construction or installation of improvements begun, without receiving a statement signed by the Village Clerk certifying that the improvements described in the subdivision's plans and specifications, together with agreements, meet the minimum requirements of all ordinances and design standards of the Village. The subdivider shall be responsible for the cost of all improvements and for any necessary alterations of any existing utilities which, by virtue of the plat or CSM, fall within the public right-of-way.

30-82. STREET PLANS, IMPROVEMENTS AND STANDARDS.

The division of land, including the arrangement, character, extent, width, grade and location of all streets, alleys, or other land to be dedicated for public use, shall conform to the highway system plan of the governing body responsible for the streets, and the comprehensive plan or plan component of the Village. They shall be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such streets.

A. Street improvements are required to be constructed in conformity with the Design Standards adopted by the Village.

B. Final surface for public streets must be installed no later than 12 months after the binder course.[14]

C. All minimum standards established are intended to be construed solely as minimums. Additional standards may be required depending on the topography, soil and overall geological or special conditions of each individual parcel being developed. The standards for streets shall be in conformance with the Design Standards established by the Village. The Village Engineer may recommend and the Village Plan Commission may require standards beyond the minimums set forth when geological conditions dictate the necessity for additional standards.

D. All right-of-way widths shall conform to the dimensions shown in Design Standards adopted by the Village and set forth in the appendix hereto.

E. Minor streets shall be so laid out that their use by non-local traffic will be discouraged, without impairing overall traffic or utility efficiency.

F. Alleys in residential districts are not permitted, except where deemed necessary and at the discretion of the Village Plan Commission.

G. Where an existing dedicated or platted half-street is adjacent to the tract being subdivided, the other half of the street shall be dedicated by the subdivider. The platting of new half-streets shall not be permitted.

H. Temporary termination of the streets intended to be extended at a later date shall be accomplished with a temporary cul-de-sac in accordance with the standards set forth above, or by construction of a temporary, paved, "T" intersection, 33 feet in width and 33 feet in length abutting the right-of-way lines of the access street on each side, including appropriate easements outside of the road right-of-way.

I. No street names may be used which will duplicate or be confused with the names of the existing streets. Existing street names must be continued when streets are extended wherever possible. Each street name shall be approved by the Village Board.

[14] Amended 12-8-2014, Ordinance #2014-6

J. Provisions should be made for serving lots abutting primary, major and arterial streets and highways by the use of restriction of access only to internal subdivision streets. Frontage streets should be avoided.

K. Streets are the preferred routing of the overland emergency flood way.

L. An approval letter from the jurisdiction controlling driveway access shall be provided.

M. Streets should intersect each other at as nearly right angles as topography and other limiting factors of good design permit. In addition:

1. The number of streets converging at one intersection shall be reduced to a minimum, preferably not more than two.

2. The number of intersections along major streets and highways shall be held to a minimum. Wherever practicable, the distance between the intersections shall not be less than 1,200 feet.

3. Minor streets shall not necessarily continue across arterial or collector streets; but if the center lines of such minor streets approach the major streets from opposite sides within 300 feet of each other, measured along the centerline of the arterial or collector street, then the location shall be adjusted so that the adjoinment across the major or collector street is continuous; and a jog is avoided.

30-83. UTILITY EASEMENTS.

Public Utility Easements, when required for Village utilities or utility district owned and/or maintained utilities, shall be at least 20 feet wide, shall include a provision prohibiting the installation of permanent structures or buildings other than those owned by the Village or utility district, and shall provide that anything placed in the easement by the landowner or tenant shall be at the risk of the landowner. All other easements provided for non-municipally owned utilities shall meet the requirements of the individual company.

A. The Village may require utility easements of widths deemed adequate for the intended purpose on each side of all rear lot lines and on side lot lines or across lots where necessary or advisable for electric power and communication lines, wires, conduits, side and rear yard drainage and other utility lines.

B. Where a subdivision is traversed by a water course, drainageway, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such water course, and such further width needed to straighten, or for maintenance access, or both, as will be adequate for the purposes. Parallel streets or parkways may be required in connection therewith.

C. Easements shall be added when storm water from public or other private areas drain to a publicly or privately owned and maintained stormwater management area such that a perpetual right to drain is established and the Village retains the right to enter the easement and perform any necessary maintenance if the private property owner fails to adequately maintain the privately owned area.

30-84. LOT AND BLOCK STANDARDS.

A. The lengths of blocks should, as a general rule, not be less than 600 feet or more than 1,500 feet. Blocks over 900 feet may require crosswalks. Crosswalk dedication of not less than ten feet in width shall be provided where determined necessary by the Village at the approximate centers of the blocks. A sidewalk shall be constructed on the centerline, and full length of the crosswalk. The use of additional crosswalks in any instance to provide safe and convenient access to schools, parks, or other similar destinations will be specified by the Village.

B. No specific rule concerning the shape of blocks is made, but blocks must fit easily into the overall plan of the subdivision and their design must evidence consideration of lot planning, traffic flow and public areas.

C. Blocks intended for commercial and industrial use must be designated as such and the plan must show adequate off-street areas suitably surfaced to provide for parking, loading docks and such other facilities that may be required to accommodate motor vehicles; all in accordance with applicable Village ordinances and codes.

D. The minimum lot dimensions for residential development shall be pursuant to the Village Planning and Zoning chapters and at the established building line. Corner lots shall be sufficiently larger than interior lots to allow maintenance of building set back lines on both streets.

E. Building lines shall conform to the front yard provisions of the Planning and Zoning chapters, and in no instance shall the building lines be less than 25 feet from the street line.

F. All lots shall abut publicly dedicated streets, or private streets when allowed by the Village Board.

G. Side lines of lots shall be approximately at right angles or radial to the street line.

H Double frontage lots are discouraged except where lots back upon a primary street (major thoroughfare) and in such instances, vehicular access between the lots and the thoroughfare is prohibited or where topography of the land might render subdividing otherwise unreasonable. Such lots shall have an additional rear yard depth of at least 20 feet in order to allow for a protective screen planting.

I. Lots abutting a limited access highway, railroad, watercourse, drainage way, channel, or stream shall have additional minimum width or depth as required to provide an adequate building site and afford the minimum usable area required in the Planning and Zoning chapters for front, rear and side yards.

30-85. PUBLIC SITES AND OPEN SPACES.

In the design of the plat, due consideration shall be given to the dedication of suitable sites of adequate area for drainage ways and other public purposes. If designated on the comprehensive plan, comprehensive plan component, or official map, such areas shall be made a part of the plat as stipulated in this chapter. If not so designated, consideration shall be given in the location of such sites to the preservation of scenic and historic sites, stands of fine trees, marshes, lakes and ponds, watercourses, watersheds, and the need resulting from the land division. The specific provisions are set forth in Article 11 of this Chapter.

30-86. HYDROLOGY AND SOILS.

A. Stormwater Runoff. Stormwater runoff from the proposed development shall be managed through ditches, swales, pipes and ponds such that the release rate for the two, ten, and 100 year frequency, 24-hour duration rainstorms shall be no greater than that of the land in its natural state prior to development.

B. Subsurface Drainage (Drain Tiles). The applicant shall submit a subsurface drainage inventory. The inventory shall include locations of existing farm and storm drainage tiles by means of slit trenching and other appropriate methods performed by a qualified subsurface drainage consultant. All existing drain tile lines damaged during the investigation shall be repaired to their previous working status.

1, The applicant shall provide a topographical map of the development site showing:

a. Location of and depth of each slit trench and identified to correspond with the tile investigation report and surveyed points where the tile was field staked at approximately 50 foot intervals;

b. Location of each drain tile with a flow direction arrow, tile size and any connection to adjoining properties; A summary of the tile investigation report showing trench identification number, tile size, material and quality, percentage of the tile filled with water, percentage of restrictions caused by silting, depth of ground cover, and working status;

c. Name, address and phone number of person or firm conducting tile location investigation.

2. Information collected during the drainage investigation shall be used to design and construct a stormwater management system that meets the requirements of this Code, including connecting tile lines on adjoining properties. Tiles discovered during construction that were not identified during the investigation shall be incorporated into the development stormwater system design and recorded on the development as-built documents.

C. The plans and special provisions shall include Best Management Practices (BMP's) that the developer shall utilize to eliminate the effects of soil erosion, mud tracking and the resultant sedimentation problems both on and off the site. Control of erosion shall be required both during and following construction until the soils are stabilized and expiration of the required maintenance bond. All BMP's shall meet the design criteria, standards and specifications of Wisconsin DNR Stormwater Construction and Post-Construction Technical Standards.

D. See also Chapters 31 and 32.

30-87. SEWERS AND SEWERAGE DISPOSALS; WATER FOR FIRE PROTECTION.

A. Sanitary sewerage.

1. Sanitary sewers shall be installed to comply with specifications established by the Western Racine County Sewerage District (WRCSD) and the Village, and shall be connected to the sanitary collection system of the Village as set forth in Chapter 10. The subdivider is responsible for obtaining necessary approvals from WRCSD. Where connection to public sanitary sewers is not required by Chapter 10, individual septic systems may be permitted provided they are designed in accordance with Chapter SPS 383 of the Wisconsin Administrative Code. A subdivision plat shall in no case be approved which shall be dependent upon individual septic systems and private wells, except where lots therein contain not less than 40,000 square feet each and shall not be less than 150 feet in width. All Village maintained utilities shall be placed within dedicated rights-of-way and approved easements and, specifically, those utilities shall not be placed upon private properties except for developments in which alternate agreement(s) are entered into by the Village and the developer. See also Chapter 10 of this Code.

2. Deferred assessments. The Village Board, pursuant to Wis. Stat. chs. 61, 62 and 66, shall determine the benefits to be derived from any sewer installation made after the enactment of this Municipal Code as the same may accrue to any undeveloped tract or parcel of land located within the plat approval jurisdiction of the Village. The owner of such tract or parcel shall be accorded the same legal and statutory privileges as are the owner of land immediately affected by such installation. Any assessment accordingly made by the Village Board against such tract or parcel of land shall be payable on a deferred basis; and the payment shall be made to the Village at the time such tract or parcel or any part thereof is actually connected to such sewer system, and no interest shall be charged during the interim.

B. Water Supply for Fire Protection.

1. In all commercial, industrial and recreational developments, and in all subdivisions in which five lots or more are created, the Village Plan Commission and Village Board shall consult with the contracted fire company and determine whether there is an adequate water supply for fire protection in the vicinity, and may require the Developer or Owner to install, prior to the issuance of any building permit for structures in the development or subdivision, a dry hydrant in an accessible pond, or an accessible underground cistern or holding tank, the plans for which shall be reviewed by the contracted fire company and the Village Engineer and approved by the Wisconsin Department of Natural Resources, to be used for fire protection. If required by the Village, the pond, cistern or holding tank shall contain at least 20,000 gallons of water or a greater amount determined necessary by the contracted fire company and Village Engineer.

2. It shall be the perpetual responsibility of the Developer or Owner to maintain a required pond, hydrant, and/or cistern or holding tank or to delegate the responsibility to an entity approved by the Village Board. In the event that it is not properly maintained, the Village may, but is not required to, perform said maintenance, and charge the cost thereof to the property owners in the subdivision as a special charge pursuant to Wis. Stat. s. 66.0627.

30-88. PUBLIC UTILITIES.

All existing utility lines, conduits, or cable for electric, telephone, cable television and other communication services should be placed in a minimum of 24 inches underground within the easements or within ten feet of the right-of-way line of dedicated public ways as recommended by the Village Engineer and as approved by the Village Plan Commission in conjunction with the approval of any final plat of subdivision or planned unit development. All transformer boxes shall be located so as not to be hazardous to the public.

30-89. LANDSCAPING, STREET LIGHTING, STREET SIGNS AND SURVEY MONUMENTS.

A. Landscaping shall be required to be constructed in accordance with the Design Standards adopted by the Village as set forth in the Planning and Zoning chapters.

B. Maintenance of the parkway area, defined as that area adjacent to any lot or parcel, between the property line and any street shoulder or curb, shall be the responsibility of the property owner of said lot or parcel including, but not limited to:

1. Mowing of grass or ground cover.

2. Private driveway approaches.

3. The curb (depressed) or flare from the pavement edge extended, for a private driveway approach.

4. Tree trimming and watering to assure a healthy, well-shaped appearance and maintaining adequate roadway and sidewalk clearances.

5. Keeping culvert opening free of debris.

6. Mailboxes and support structures.

7. Sidewalk installation and maintenance, where applicable.

C. Each subdivider or subdivision owner shall provide for the adequate lighting of public streets within the proposed subdivision in accordance with the standards and requirements established by the Village Engineer or utility company, in accordance with the provisions of this chapter and subject to the approval of the Village. Such lights shall be placed at each street intersection and at such interior block spacing as may be required by the Village Board. It shall be the responsibility of the subdivider or subdivision owner to pay the installation cost of all such lighting.

D. Street signs and guard rails shall, at the option of the Village Board, be obtained by the Village and placed where necessary by the Village and the cost of the same shall be paid for by the subdivider. See also Article 12.

ARTICLE 9 ACCEPTANCE PROCEDURE.

30-91. SUBSTANTIAL COMPLETION.

Upon written request of the subdivider, and after all the required improvements have been substantially completed, the Village Engineer shall make an inspection of the work.

A. The Village Engineer shall then prepare a Substantial Completion Certificate and Punch List for correction of items which do not comply with the approved drawings and specifications for Design Standards of the Village which need immediate attention. Upon completion of all items listed in the punch list, the subdivider shall sign and return the Substantial Completion Certificate.

B. If all punch list items are found to be completed, the Village Engineer shall notify the Village Clerk in writing that the project has been substantially completed.

C. The subdivider shall provide the Village with written waivers of lien from all subcontractors that performed work on the project and a final waiver of lien from the development company.

E. If items required for substantial completion are not taken care of in a timely manner, the Village Board reserves the right to make a claim on the developer's bond or letter of credit to complete the necessary work, or withhold building and occupancy permits.

30-92. FINAL ACCEPTANCE.

Upon written request of the subdivider, after all the required improvements have been completed and record drawings have been submitted, the Village Engineer shall make a final inspection of the completed work.

A. The Village Engineer shall then prepare a Final Completion Certification and Final Punch List for correction of items which do not comply with the approved drawings and specifications or Design Standards of the Village. Upon completion of all items listed in the final punch list, the subdivider shall request, in writing, a reinspection. If all punch list items are found to be completed, the Village Engineer shall notify the Village Clerk, in writing, of his or her recommendation for approval and acceptance of the work. The Village Clerk shall schedule the acceptance for the next regular Village Board meeting.

B. The Developer shall be responsible for repairing defects in the public improvements for a period of one year after the Village's acceptance of the improvements (the "guarantee period"). Prior to final acceptance of the public improvements, the subdivider shall pay any outstanding invoices and submit a five percent maintenance bond for the full value of the public improvements as estimated by the subdivider's engineer and verified by the Village Engineer. Said maintenance bond shall be the developer's guarantee against defects of the public improvements and shall terminate one year after acceptance of maintenance of the public improvements by the Village Board, provided, however, that the term of the maintenance bond shall not be required to extend past 14 months after substantial completion of the improvements. In the event that the Developer fails to repair or replace defective work during the guarantee period, the Village will use the Developer's maintenance bond and/or specially assess or specially charge the land for the cost of repairs as set forth in s. 30-102.C.

C. Upon acceptance by the Village Board, the balance of the public improvements construction bond or letter of credit and any deposited fees remaining shall be released to the subdivider.

30-93. BUILDING PERMIT.

No building permit shall be issued by any governing official for the construction of any building, structure, or improvement to the land or any lot within a subdivision as defined herein, which has been approved for

platting or replatting, until all requirements of this chapter have been fully complied with, nor will any permit for any temporary or permanent facilities or structures be issued until all roadways are capable of supporting emergency equipment.

30-94. OCCUPANCY PERMIT.

No occupancy permit shall be granted by any governing official for the use of any structure within a subdivision approved for platting or replatting until required utility facilities have been installed and made ready to service the property, and that roadways providing access to the subject lot or lots have been substantially completed, excluding final surface course. In case of corner lots, this shall include both streets upon which the property is located.

ARTICLE 10 DEVELOPMENT AGREEMENTS

30-101. GENERAL.

Prior to improving the property, a final plat must be filed for record and be accompanied by the following:

A. An opinion of probable cost of all public improvements prepared by a professional engineer licensed in the State of Wisconsin.

B. Construction plans and specifications for such improvements previously approved by the Village Engineer.

C. An Agreement executed by the Village and the subdivider wherein the subdivider agrees to make and install the improvements in accordance with the plans and specifications accompanying the final plat.

1. The agreement shall be executed by the owner, subdivider and the Village President upon approval by the Village Board, and approved by the Village Attorney, and set forth the plans and specifications for improvements required by or under the authority of this chapter, this Municipal Code, or state statutes or regulations. The land division may be constructed in such phases as the Village approves, which approval shall not be unreasonably withheld, and the phasing plan, together with the terms under which the security for each phase will be provided, shall be included in the agreement.

2. If land is divided by certified survey map for sale purposes only, and no development is anticipated within five years from the date of the division, a development agreement is not required at the time of the division; however, the resolution approving said division shall specifically state that a development agreement shall be required at the time of development and the certified survey map shall contain said language on its face.

3. If improved land is divided and no further improvements are required, no such agreement shall be required.

4. In the agreement the owner and/or subdivider shall agree that it will construct or install at its own expense all of the improvements required within the time limits prescribed in this chapter, Municipal Code or state statutes or regulations, and in accordance with the plans and specifications accompanying the final plat, certified survey map; such improvements shall be inspected during installation and construction by an inspector appointed by the Village Board or Village Engineer; and that, after completion of construction, a final inspection shall be made by the Village Engineer prior to final approval and acceptance by the Village Board by resolution, salaries and other costs in connection with such inspections be paid by the owner or subdivider, such costs to be based on the reasonable and customary charges for such service.

5. The agreement shall contain an agreement by the owner and/or subdivider that it will pay all costs incurred by the Village related to the approval of the subdivision; including, but not limited to, the costs of public notices required by law or ordinance, the administrative, legal and engineering costs related to review and approval of plans, plats, and certified survey maps, the drafting and or review of all legal documents, including development agreements, ordinances and resolutions, and any other Village costs reasonably related to said subdivision.

D.[15] Bond or Letter of Credit in a form approved by the Village in the amount of 120 percent of the Village Engineer's opinion of probable cost of the installation of such improvements in the first

[15] Amended 12-8-2014, Ordinance #2014-6

phase of the project with good and sufficient surety thereon, to be approved by the Village Board, conditioned upon the installation of the required improvements within two years of the approval of the final plat. A new bond or letter of credit shall be provided prior to the commencement of each subsequent phase of the project.

E. Maintenance bond. See section 30-92.B. A Maintenance Bond is required prior to the acceptance of the improvements.

F. The work schedule for each major phase of work to be performed under this agreement, with estimated starting and completion dates.

G. Cash deposit. In addition to the surety required in this subsection, the Village Board shall withhold its final approval until the owner or subdivider deposits with the Village, in cash or by certified check, a sum equal to the costs incurred and anticipated as set forth in the Development Agreement. The Village shall deposit said sum pursuant to policies established from time to time and shall provide itemized statements of withdrawal to the owner or subdivider at the time of withdrawal.

30-102. REDUCTION OF SURETY.[16]

A. The bond or letter of credit for each phase can be periodically reduced by the Village Clerk upon recommendation of the Village Engineer and approval by the Village Board.

1.. The subdivider may submit to the Village Engineer a list of completed items and their cost along with copies of waivers of lien for the completed items. Upon review of these submittals, the Village Engineer shall recommend to the Village Clerk the reduction in the value of the bond or letter of credit to be approved. Each reduction shall not be more than the value of items estimated in the bond or letter of credit guarantee amount.

2. The 20 percent contingency shall be held as retainage and shall not be released until substantial completion of the public improvements. Substantial completion is defined as the time the binder coat is installed on roads to be dedicated, or, if there is no road to be dedicated, at the time that 90 percent of the public improvements by cost are completed. Upon substantial completion, the amount of the surety shall be reduced to the amount to complete any uncompleted public improvements plus 10 percent of the total cost of the completed public improvements, which shall remain in place for at least 14 months after the date of substantial completion. The public improvements shall be completed in their entirety no later than 12 months after substantial completion and tendered to the Village for acceptance. Upon acceptance of the project and receipt of the five percent maintenance bond as specified in section 30-92, the original surety shall be released. If the work has not been completed in its entirety 12 months after substantial completion, the Village may declare the Developer to be in default of the Development Agreement and use the surety for completion of the public improvements.

B. RESERVATION OF ASSESSMENT RIGHTS. In the event that any financial guarantee does not provide sufficient funds to complete the public improvements as provided herein, or the financial guarantee expires, or the Developer does not repair or replace defects in the public improvements during the guarantee period, in addition to the remedies for default provided to the Village by the financial guarantee, the Village reserves the right without notice or hearing to impose special assessments or charges for any amount to which it is entitled by virtue of the Agreement upon the Development and/or individual parcels in the Development. Such special assessments or charges shall be collected on the next succeeding tax roll as are other special assessments or charges. This provision shall be included in the development agreement and the signature of the developer shall constitute the waiver of notice and consent of Developer and

[16] Amended 12-8-2014, Ordinance #2014-6

its successors and assigns to all special assessment or special charge proceedings which may be required by law.

30-103. INSURANCE.

A. The subdivider's contractor shall provide and maintain insurance which will protect the Village and each of its officers, employees, agents and consultants from claims which may arise out of or result from the performance of work by anyone directly or indirectly employed by the contractor or subcontractor, or by anyone for whose acts the contractor may be liable. Contractors engaged to perform the work required by this Agreement within the Development and public rights-of-way shall, prior to commencing such work, submit to the Village acceptable proof of the following coverages. These certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least ten days written notice has been given to the Village.

1. Unemployment and workers compensation insurance which is in strict compliance with state laws.

2. Comprehensive personal and public liability insurance which is not less than $1,000,000.

3. Comprehensive property damage insurance having limits of not less than $500,000.

4. Comprehensive automobile liability and property damage insurance for operations of all hired and non-hired motor vehicles of not less than $500,000.

5. Fire and extended coverage which shall insure against losses and damages to incomplete and completed work, materials or equipment covering the improvements to be dedicated to the Village until the same have been accepted by the Village.

6. Umbrella coverage which is not less than $3,000,000.

B. The subdivider's contractor shall not commence work until certificates of insurance showing coverage of all insurance required, signed by the insurance companies or their authorized agents have been filed with both the Village Clerk and Village Engineer.

C. The policies of insurance so required by this paragraph to be purchased and maintained shall:

1. With respect to comprehensive general liability insurance, include as additional insureds the Village and Village Engineer, all of whom shall be listed by name as additional insureds, and include coverage for the respective officers and employees of all such additional insureds;

2. Remain in effect at least until acceptance and at all times thereafter when the subdivider may be correcting, removing, or replacing defective work in accordance with this chapter, and

3. Completed operations insurance shall remain in effect for at least two years after acceptance, and the subdivider shall furnish the Village and any other additional insured to whom an insurance certificate has been furnished, evidence satisfactory to the Village and any such additional insured of continuation of such insurance at acceptance and one year thereafter.

ARTICLE 11 PUBLIC SITES AND OPEN SPACES

30-111. GENERAL.

In order that adequate open spaces and sites for public uses may be properly located and preserved as the Village develops, and in order that the cost of providing the park and recreation sites and facilities necessary to serve the additional families brought into the Village by construction of residential units may be most equitably apportioned on the basis of the additional need created by the construction of such units, the following provisions are established.

30-112. DEDICATION OR PAYMENT.

In the design of any subdivision plat submitted for Village approval, consideration shall be given to the adequate provision for and correlation with public sites or open areas.

A. Where it is determined by the Village that a portion of any subdivision plat submitted for approval is required for such public sites or open spaces, the subdivider may be required to dedicate such land to the Village pursuant to Wis. Stat. s. 236.45(6).

B. Where feasible and compatible with the comprehensive plan for development of the community, upon request of the Village Board, the subdivider shall provide and dedicate to the Village, adequate land to provide for the park and recreation needs of the subdivision.

C. The amount of land to be provided shall be determined on the basis of an amount of land equal in value to $550.00 per residential unit created by the subdivision.

D. If the Village Board, after consultation with the Plan Commission, determines that such dedication is not feasible or compatible with the comprehensive plan, there shall be paid to the Village in lieu of land dedication, a public site fee of $550.00 for each residential unit to be constructed in the subdivision. Such fee shall be used exclusively for immediate or future park or recreation area site acquisition or capital improvement and development.

E. Payment of the public site fee shall be made in a lump sum (100%) at the time of issuance of a building permit for construction of the residential units in the subdivision. It shall be the obligation of the subdivider/owner or his successor in title to pay the public site fee to the Village and the subdivider/owner shall cause written notice of such obligation to pay the public site fee to be recorded at the office of the Register of Deeds of Racine County, Wisconsin, contemporaneous with the recording of the final plat.

30-113. PUBLIC SITE FEE FOR OTHER CONSTRUCTION.

A. Except as set forth in Section 30-112 above for subdivision development, the Village requires payment of a public site fee by each new residential unit to be used exclusively for immediate or future park or recreational area, site acquisition, or capital improvement or development.

B. Payment of the public site fee shall be made in a lump sum (100%) at the time of issuance of a building permit for construction of a new residential unit. It shall be the obligation of the person or entity applying for the building permit to pay the public site fee to the Village.

C. Payment of the public site fee hereunder shall apply to new construction only or where an additional residential unit is created.

ARTICLE 12 STREET NAMES AND NUMBERS

30-121. UNIFORM SYSTEM FOR STREET NAMES.

There is hereby established an official system of street names in the Village of Rochester as shown on the "Street Names" map as maintained on file with the Village Clerk. Names of streets in the Village of Rochester shall remain as shown on said map unless officially changed by specific ordinance or resolution passed subsequent to this date.

30-122. NEW STREET NAMES.[17]

No new streets shall be accepted by the Village of Rochester; nor municipal improvements made thereon until such streets have been named.

A. If streets are extensions of existing streets, the existing names shall be continued, and if not extensions, names recorded shall not duplicate or closely approximate street names already assigned.

B. Proposed names of new streets shall be submitted to the Zoning Administration Office for review and approval. The Zoning Administrator shall compare new street names with the master index maintained in the Clerk's office. The Village Zoning Administrator shall report to the Village of Rochester within 30 days after receipt of the new street names as to approval or disapproval of the same. The names shall be approved by the Village Board as set forth in s. 30-34.

C. Name signs shall be erected and maintained at the direction of Village of Rochester Public Works Department.

30-123. UNIFORM NUMBERING SYSTEM.

A. There is hereby established a uniform system of numbering all structures used for residence, business, industry, or public assembly fronting on all streets within the Village of Rochester as shown on the "street numbering" map on file in the office of the Village Zoning Administrator.

B. The Village of Rochester Zoning Administrator shall assign address numbers as outlined by the numbering systems adopted by the Village.

C. The Zoning Administrator will notify the United States Postal Service and Racine County Emergency Services of all new addresses issued.

30-124. UNIFORM ADDRESS SIGNS.

The Village board finds that uniform address signs and the uniform location of such signage serves the health, safety, and welfare of the residents of the village by providing an efficient means for locating properties in the event of a necessary law enforcement, fire, rescue or other emergency response, as well as serving the interests of the traveling public at large.

A. Signs displaying a parcel's official address shall be installed on all improved parcels within the Village. Such address signs shall be obtained through the Village Clerk and shall be installed by the Village or its contractors. Except where the installation at such a location would be impossible or incompatible with the policy underlying uniform address signage, such signs shall be installed in the village's right-of-way near to the parcel's driveway or other point of access, or at such other location as is designated by the village.

[17] Amended 12-8-2014, Ordinance #2014-6

B. At the time of application for a building permit for a new or previously unimproved parcel, the parcel owner shall apply to the Village Clerk for the assignment of a new address to such parcel, if necessary. The Village Clerk shall also collect, in connection with the application for a new address for such parcel, for the actual costs of acquiring and installing a new address sign on such parcel, and an address sign shall thereafter be installed on the new parcel in conformance with the requirements of this Article.

C. All property owners shall maintain the uniform address signs on their properties keeping the signs clear of organic growth, debris, and any other impediments to provide a direct line of sight either way from the street at all times.

D. Within 20 days after a uniform address sign is stolen, destroyed, or materially damaged beyond repair (such determination, when in doubt, to be made by the Public Works Supervisor), the parcel owner shall apply for a replacement address sign with the Village Clerk. The first sign replacement shall be at the Village's expense, with additional sign replacements at the owner's expense. If any landowners refuse to pay for the replacement of their address sign with the exception of the first one, the Village will order it, install it, and the cost will be added to the appropriate homeowner's tax bill as a special charge. If the parcel owner fails to apply for a new sign, or violates any provision of this Chapter, the condition shall be considered as creating a public nuisance, subject to the abatement procedures set forth in Chapter 8 of this Municipal Code.

E. It shall be unlawful for any person to remove, intentionally damage, or intentionally cause to be damaged any uniform address sign installed under this article, or to change the sign installation from the original vertical post/horizontal sign array to any other configuration.

ARTICLE 20 DEFINITIONS

30-201. DEFINITIONS

The definitions in this Article shall be observed and applied, except when the context clearly indicates otherwise. Words used in the present tense shall include the future tense. Words used in the singular form shall include the plural form. Words used in the plural form shall include the singular. The word "shall" is mandatory and the words "may" and "should" are permissive.

"Common Open Space" means undeveloped land within a Conservation Subdivision that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the development, or for the preservation, restoration and management of historical, agricultural, or environmentally sensitive features. Common open space shall not be part of individual residential lots, but undivided shares of the common open space may be owned as part of the ownership of the lots. Common Open Space shall be substantially free of structures, but may contain historical structures and archaeological sites including Indian mounds and/or such recreational facilities for residents as indicated on the approved development plan. It shall be restored and managed, as appropriate, and a stewardship and management plan shall be prepared for the open space.

"Common Facilities" means those facilities which are designated, dedicated, reserved, restricted, or otherwise set aside for the use and enjoyment by residents of the development.

"Condominium" means property subject to a condominium declaration that combines individual unit ownership with shared use or ownership of common property or facilities, established in accordance with the requirements of the Condominium Ownership Act, Wis. Stat. ch. 703. A condominium is a legal form of ownership of real estate and not a specific building type or style.

"Comprehensive Plan" means the plan required by Wisconsin Statutes and currently adopted as the November 2009 "A Multi-Jurisdictional; Comprehensive Plan for Racine County: 2035" as amended from time to time (the "Village Comprehensive Plan").

"Conservation Easement" means a non-possessory interest in real property designed to protect natural, scenic and open space values in perpetuity as defined in Wis. Stat. s. 700.40 (Uniform Conservation Easement Act) and 26 U.S. Code s. 170(h).

"Conservation Subdivision" means a development in which dwelling units are concentrated and/or clustered in specific areas at a higher density than provided for by the zoning classification or Village's Comprehensive Plan in order to allow other portions of the development to be preserved for common open space, including restoration and management of historical, agricultural, or environmentally sensitive features.

"Density Factor" means the average number of acres required for a dwelling unit according to the Village's Comprehensive Plan, the Village's ordinances, and applicable zoning regulations.

"Development Envelopes" means areas within which pavement and buildings will be located.

"Development Yield" means the number of dwelling units authorized for a Conservation Subdivision or Minor Land Division.

"Ecological Restoration" means to protect, enhance, recreate, or remediate functional and healthy plant and animal communities. Ecological restoration is accomplished by implementing a Stewardship Plan for upland, wetland areas, and aquatic resource areas, which include specific remedial and management activities for sustainable maintenance of each of these areas and planting of those varieties of plants that are indigenous to the area.

"Floodplains" means those lands, including the floodplains, floodways, depressions and channels, mapped or unmapped, subject to inundation by the 100-year recurrence interval flood or, where such data are not available, the maximum flood of record. See also Chapter 37.

"Homeowners' Association" means a community association, incorporated or not incorporated, combining individual home ownership with shared use or ownership of common property or facilities.

"Habitat Assessment" means a habitat assessment and plan to minimize adverse effects on vegetation and wildlife on land developed within or within 200 feet of a primary or secondary environmental corridor:

A. Begin with cursory survey of plant life; expand to detailed survey of all species on high quality sites with broad diversity, rare species and/or few invasive plants.

B. Survey wildlife based on observed species and signs; quantify populations and provide more detailed evaluation of habitat when rare species are found.

C. Recommend areas to preserve and/or restore based on value of what exists.

D. Provide site management plan which ensures that development activities will not reduce the number of existing rare or unusual plant and animal species. Activities may reduce the number of common species as long as local populations on the site remain viable.

"Known" means existing information which can be gathered by the DNR, SEWRPC, Rochester Plan Commission, Rochester Village Board, Rochester Village Clerk, or any concerned citizen volunteering the information.

"Net Buildable Acres" means gross contiguous acres of a development parcel minus right-of- ways for new and existing state, county and Village roads.

"Non-Profit Conservation Organization" means any charitable corporation, charitable association or charitable trust (such as a land trust), the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property. Typically, such organizations have the legal right to hold conservation easements.

"Parent Parcel" means the existing parcel of record, as of the effective date of this Chapter.

"Primary Environmental Corridor" means a concentration of significant natural resources at least 400 acres in area, at least 2 miles in length, and at least 200 feet in width, as delineated and mapped by the Southeastern Wisconsin Regional Planning Commission.

"Professional Ecological Services" means an individual or firm with professional qualifications to prepare and implement an ecological Stewardship Plan for upland, wetland areas, and aquatic resource areas, including specific remedial and management activities for sustainable management of each of these areas and the planting of the variety of plants that are indigenous to the area.

"Residential Unit" means a building or portion of a building, the principal use of which is intended to provide a residence for a single family. A single-family dwelling shall be one residential unit. A duplex dwelling shall be two residential units. A multiple-family apartment building shall contain as many residential units as the number of apartments contained therein.

"Secondary Environmental Corridor" means a concentration of significant natural resources at least 100 acres in area and at least 1 mile in length. Where such corridors serve to link primary environmental

corridors, no minimum area or length criteria apply. Secondary environmental corridors are delineated and mapped by the Southeastern Wisconsin Regional Planning Commission.

"Sewer District" means the area of the Village to which sanitary sewer service is available or nearby. The Sewer District lies within the SEWRPC sewer service area, i.e., the area approved for construction of sanitary sewers by the Southeastern Wisconsin Regional Planning Commission (SEWRPC). Public sewers have not been constructed throughout the service area. When land is to be divided under this chapter, it must be evaluated to determine first whether it is in the service area, and if so, where it lies in proximity to existing public sanitary sewers on lands comprising the Western Racine County Sewerage District No. 1, the "Sewer District." If the land to be divided is required to connect to an existing sewer under Chapter 10, the landowner must apply to be annexed to the Western Racine County Sewerage District No. 1 and fulfill the requirements for annexation. Once WRCSD approves the annexation, the land will be part of the Sewer District.

"Stewardship Plan" means a comprehensive management plan for the long-term enhancement and sustainability of natural ecosystems including forests, prairies, meadows, wetlands, shore lands, lakes, river systems and other ecosystems. Such plans shall include but not be limited to management goals, monitoring schedules, identification and description of measures to be taken should degradation of the system(s) be noted, and programs for the removal and control of invasive vegetation species.

"Storm Water Treatment Train" means a combination of physical and biological features that are constructed or planted to convey, cleanse and enhance storm water quality before the remaining water is released to receiving waters.

"Street" means any road, street, alley, avenue, boulevard, highway, or other thoroughfare used or useable for vehicular traffic in the Village.

"Subdivider" means any person or entity dividing or proposing to divide land resulting in a conservation subdivision, subdivision, or minor land division.

"Threatened, Endangered, or Protected Species" means wildlife or plants designated as being threatened, endangered or protected by the Wisconsin Department of Natural Resources or the Federal government.

ARTICLE 50 ENFORCEMENT.

30-501. VIOLATIONS.

It shall be unlawful to build upon, divide, convey, record, or place monuments on any land in violation of this chapter or the Wisconsin Statutes; and no person or entity shall be issued a building permit by the Village authorizing the building on or improvement of any subdivision, minor land division, or replat within the jurisdiction of this chapter not of record as of the effective date of this chapter until the provisions and requirements of this chapter have been fully met. The Village may institute appropriate action or proceedings to enjoin violations of this chapter or the applicable Wisconsin Statutes.

30-502. PENALTIES.

A. Penalty for Violation of Article 12, Street Names and Numbers. Any person or entity violating any provision of Article 12 shall, upon conviction, pay a forfeiture of not less than $50.00 nor more than $400.00 plus all applicable costs allowed by law, including restitution, for each and every offense as set forth in Chapter 50. Each day of violation or each street sign damaged or moved in violation of this chapter shall constitute a separate offense.

B. General Penalty. Any person or entity who violates or fails to comply with the provision of this chapter shall, upon conviction thereof, forfeit not less than $100.00 nor more than $400.00 plus all applicable costs allowed by law, including restitution, for each offense as set forth in Chapter 50.Each day a violation exists or continues shall constitute a separate offense.

1. Recordation improperly made carries penalties as provided in Wis. Stat. s. 236.30.

2. Conveyance of lots in unrecorded plats carries penalties as provided for in Wis. Stat. s. 236.31.

3. Monuments disturbed or not placed carries penalties as provided for in Wis. Stat. s. 236.32.

4. An assessor's plat made under Wis. Stat. s. 70.27 may be ordered as a remedy by the Village, at the expense of the subdivider, when a subdivision as defined herein is created by successive divisions.

30-503. APPEALS.

Any person aggrieved by an objection to a plat or CSM or a failure to approve a plat or CSM may appeal such objection or failure to approve as provided in Wis. Stat. s. 236.13(5)within 30 days of notification of the rejection of the plat. Where failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a party to the action. The court shall direct that the plat be approved if it finds that the action of the approving or objecting agency is arbitrary, unreasonable, or discriminatory.

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CHAPTER 30 APPENDICES

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APPENDIX A - DESIGN STANDARDS

SECTION 1 - ENGINEERING AND ADMINISTRATIVE PROCEDURES

1.1 INTRODUCTION

These standards have been prepared to insure that the design and construction of public improvements will meet the minimum requirements of the Village. The intent of Section 1 is to provide an overview of requirements and procedures required by Chapter 30, Land Division, which govern the design and construction of public improvements. These standards are also intended to provide uniform design criteria for facilities designed for or directly by the Village, as well as provide specifications for private development within the Village. These standards shall also apply to previously platted subdivisions where improvements have not yet been installed.

1.2 DEFINITION OF TERMS

See Chapter 30, Article 20.

1.3 SCOPE

In addition to the Village, the review and approval of contract documents for certain types of improvements may also fall within the jurisdiction of other public agencies. These standards are not intended as a substitute for the requirements of other public agencies. It shall be the Subdivider's responsibility to ensure that the proposed contract documents meet the requirements of all other public agencies and that any and all permits and bonds required by such agencies are secured.

1.4 PRE-DESIGN CONFERENCE

It is recommended that after preliminary plat approval and prior to the development of detailed drawings, the Subdivider and the Design Engineer meet with the Village Engineer to review Village requirements and any other proposed projects or existing conditions that may affect the final project design. The request for this preliminary meeting, if desired, shall be initiated by the Design Engineer.

1.5 DRAWING PREPARATION REQUIREMENTS

All drawings submitted for approval shall bear the name of the Design Engineer, his/her signature, the imprint of the Professional Engineer seal, and his/her address and telephone number. Drawings shall be no larger than 24-inch x 36-inch sheets. Drawings shall be clear and legible, and shall be drawn to a conventional, even scale, which will permit all necessary information to be plainly shown. All elevations shall be referenced to the North American Vertical Datum of 1988 (NAVD88) and benchmarks shall be noted. All improvements proposed for use on the project shall be indicated on the drawings. All proposed improvements and all existing municipal and privately owned utilities shall be shown and labeled in both plan and profile.

1.6 SPECIFICATION REQUIREMENTS

A. Technical specifications shall be complete in themselves, except that appropriate specific sections of the most recent editions of the "State of Wisconsin Standard Specifications for Highway and Structure Construction", as published by the Department of Transportation, State of Wisconsin, (WDOT Standard Specifications), "Standard Specifications for Sewer and Water Construction in Wisconsin", and the various standard published material specifications prepared by associations such as the "American Society for Testing and Materials" (ASTM) or the "Concrete Reinforcing Steel Institute" (CRSI), may be incorporated by reference.

B. The specifications shall include but not be limited to all information not shown on the drawings which is necessary to establish in detail the quality of materials and work required in the project allowable parameters for testing the various parts of the project and instructions for testing material and equipment. Wherever there is conflict between the written specifications and the drawings the more stringent requirements, as determined by the Village, shall apply.

C. The specifications shall include a clause that all work included shall be guaranteed by the Contractor to be free from defects in construction and materials and in conformance with the approved drawings and specifications. Certificates of insurance shall also be provided as required in s. 30-103.

1.7 DESIGN COMPUTATION REQUIREMENTS

A. Design computations shall be made by the Design Engineer for all phases of the project when such computations are required to facilitate review by the Village Engineer. Said computations shall be neat and legible and in a form considered acceptable by the Village Engineer. Said computations shall include, but not necessarily be limited to, the following:

1. Stormwater Management Reservoir Capacity Design
2. Compensatory Floodplain Storage
3. Storm Sewer System Design Including Inlet Capacity
4. Culvert Capacity and Ditch Capacity
5. Structural Strength Design for Conduits more than 20 feet below finished grade.
6. Evaluation of Drainage System Downstream Capacity.

1.8 (RESERVED)

1.9 OTHER PERMIT APPLICATIONS AND APPROVALS

Other governmental agencies may review and approve for construction all or certain parts of the work included in a project and may require a permit for such work. They may also require that the Village execute an application for a permit. When such permit application is required, the Design Engineer shall prepare it. All required permits and necessary authorizations from other governmental agencies shall be secured by the subdivider.

1.10 REVISIONS TO APPROVED DRAWINGS AND SPECIFICATIONS

The Village Engineer shall approve any deviations from previously approved drawings or specifications affecting capacity, stability or operation of the system in writing before such changes is made. Minor changes not affecting capacity, stability or operation of the system will not require formal approval, but must be approved in writing by the Field Inspector and copies filed with the Village Engineer.

1.11 CONSTRUCTION SUPERVISION

Periodic visits to developments (including private developments) shall be conducted by the Village Engineer and/or Field Inspector which may include spot checking of grades and improvements, but full-time inspection and performance certifications are the responsibility of the Design Engineer or other independent professional employed by the Subdivider. Confirmation of approved grades and utility installation and preparation of Record Drawings are likewise the responsibility of the Design Engineer or other independent professional employed by the Subdivider. The Village may direct the Village Engineer to inspect any portion of the construction it deems in its best interest.

1.12 EXISTING FACILITIES

Drawings and specifications shall provide for the continuous operation of existing facilities without interruption during construction, unless otherwise specifically authorized by the Village Engineer.

1.13 RECORD DRAWINGS

Record drawings signed and sealed by the Design Engineer or other independent professional employed by the Subdivider shall clearly show any and all changes from the approved drawings. Paper and electronic record drawings shall be submitted to the Village Engineer prior to the Subdivider's request for final inspection of the required improvements. The record drawings shall be based on actual measurements of both horizontal and vertical dimensions, made after the completion of the work.

1.14 (RESERVED)

SECTION 2 - EROSION CONTROL

2.1 INTRODUCTION

Project construction required in connection with a development often occurs in or adjacent to areas with existing surface or underground improvements. The intent of this Section 2 is to specify Village requirements relative to construction affecting existing and future improvements. Drawings and specifications presented for Village approval shall provide for the implementation of the requirements of this Section. Where the provisions set forth in this Section differ from those in Chapter 31, the provisions in Chapter 31 shall control.

2.2 EROSION CONTROL

A. Erosion and sediment control due to run-off, equipment leaving and entering a construction site, wind, etc., are required for all construction, including individual single family lots, in the Village of Rochester. Site engineering or grading plans for projects shall either contain specific provisions for erosion control or a separate erosion control plan. The provisions or plan will follow accepted techniques and details as found in the "Wisconsin Construction Site Best Management Practice Handbook", or as directed by the Village Engineer.

B. Steep slopes (exceeding 4: 1) are to be avoided whenever possible. As much natural vegetation as possible should be retained, especially next to lakes, creeks, or other natural water sources See also Chapter 36 for Shoreland Zoning Provisions.

C. The erosion control plan should indicate the location of soil stockpiles that are to remain onsite longer than four weeks. Temporary seeding of stockpiles may be required and silt fence around the stockpile to trap runoff from the stockpile shall be placed as directed by the Village Engineer.

D. Erosion control measures should be used which include but are not limited to sediment traps, sediment basins, diversion channels, stabilized construction entrances, street sweeping operations, silt fences, straw bales, and any other measures necessary or as directed by the Village Engineer.

2.3 DESIGN REQUIREMENTS

On-site sediment control measures, as specified by the following criteria, shall be constructed and functional prior to initiating clearing, grading, stripping, excavating or fill activities on the site.

A. For disturbed areas draining less than one acre, filter barriers (including filter fences, straw bales, or equivalent control measures) shall be constructed to control all off-site runoff as specified in referenced handbooks. Vegetated filter strips, with a minimum width of 25 feet, may be used as an alternative only where runoff in sheet flow is expected. Silt filter fences and straw bales shall be inspected weekly and after rainfall events for repair or replacement. Straw bales shall be replaced as a minimum, every three months.

B. For disturbed areas draining more than one but less than five acres, a sediment trap or equivalent control measure shall be constructed at the downslope point of the disturbed area.

C. For disturbed areas draining more than five acres, a sediment basin or equivalent control measure shall be constructed at the downslope point of the disturbed area.

D. Sediment basin design shall provide for both detention storage and sediment storage. The detention storage shall be sized for the two-year 24-hour runoff from the site under maximum runoff conditions during construction with a release rate to achieve minimum detention times of at least ten hours. Sediment storage shall be designed such that sediment removal from the basin is only required once a year.

E. Disturbed areas shall be stabilized within seven days with any of the temporary or permanent measures defined in this section.

F. Any required disturbance of stream channels shall be restabilized within 48 hours of disturbance.

2.4 MAINTENANCE OF CONTROL MEASURES

A. All soil erosion and sediment control measures necessary to meet the requirements of this Code shall be maintained periodically by the applicant or subsequent land owner during the period of land disturbance and development of the site in a satisfactory manner to ensure adequate performance.

B. At the completion of any project, the storm sewers, culverts, gutters, etc., will be inspected by the Village Engineer to determine any cleaning or flushing of trapped sediment which may be required.

2.5 INSPECTION

A. The Village shall make periodic inspections and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with erosion and sedimentation control plan as approved. Plans for grading, stripping, excavating, and filling work approved by the Village shall be maintained at the site during progress of the work. Inspections can take place during any or all of the following:

1. Upon completion of installation of sediment and runoff control measures (including perimeter controls and diversions), prior to proceeding with any other earth disturbance or grading;

2. After stripping and clearing;

3. After rough grading;

4. After final grading;

5. After seeding and landscaping deadlines; and

6. After final stabilization and landscaping, prior to removal of sediment controls.

2.6 SPECIAL PRECAUTIONS

A. If at any stage of the grading of any development site the Village determines by inspection that the nature of the site is such that further work authorized by an existing permit is likely to imperil any property, public way, stream, lake, wetland, or drainage structure, the Village may require, as a condition of allowing the work to be done, that such reasonable special precautions to be taken as are considered advisable to avoid the likelihood of such peril. "Special precautions" may include, but shall not be limited to, a more level exposed slope, construction of additional drainage facilities, berms, terracing, compaction, or cribbing, installation of plant materials for erosion control, and recommendations of a soils engineer which may be made requirements for further work.

B. Where it appears that storm damage may result because the grading on any development site is not complete, work may be stopped and the permittee required to install temporary structures or take such other measures as may be required to protect adjoining property or the public safety. In large developments or where unusual site conditions prevail, the Village may specify the time of starting of grading and time of completion or may require that the operations be conducted in specific stages so as to insure completion of protective measures or devices prior to the advent of seasonal rams.

2.7 ENFORCEMENT

The Village Board may authorize exceptions to any of these requirements and regulations set forth in this Section 2, provided the granting of the exception will not be detrimental to the public welfare or injurious to other property in the vicinity of the subject property.

2.8 PROTECTION OF PROPERTY AND SURFACE STRUCTURES

A. Trees, shrubbery, fences, poles and all other property and surface structures shall be protected during construction operations. Any fences, poles or other man made surface improvements which are moved or disturbed shall be restored to their original condition, after construction is completed. A tree preservation plan may be required for all areas of a project that will be affected by the development activity. The plan shall show the location and trunk diameter of all trees of a diameter breast height of ten inches and larger. The plan shall be taken to the extent practicable to preserve healthy trees over ten inches DBH. Any trees, shrubbery or other vegetation which are approved for removal shall be removed completely, including stumps and roots.

B. Where trees which are to remain, proper care should be taken during excavation operations. Do not machine excavate in the "root protection zone," defined as a circle around the tree with a radius equal to one foot for every inch of tree diameter. Roots encountered outside this zone which are over two-inch diameter shall not be cut unless approved by the Village Engineer. Tree tunneling, where necessary, shall be determined by the Village Engineer. Shrub and tree limbs shall be tied back to prevent loss or damage. Any damaged limbs and branches shall be pruned and sealed. Spoil banks shall be removed by hand from around trees to prevent damage to trunks by construction machinery.

C. Trees and shrubs which cannot be protected or are damaged during construction may be required to be replaced in kind, or replace four-inch diameter and larger trees with one four-inch diameter size tree for each six-inch of original tree diameter or fraction thereof. An approval list of replacement species may be obtained from the Village.

D. Trees which do not survive (in good condition) for a period of one year after the construction has received final acceptance shall be removed and replaced.

SECTION 3 - RESTORATION OF EXISTING IMPROVED SURFACES

3.1 GENERAL

The Contractor shall restore all permanent type pavements, sidewalks, driveways, curbs, gutters, trees, shrubbery, lawns, fences, poles and other property and surface structures removed or disturbed during or as a result of construction operations to a condition that existed before the work began. The surface of all improvements shall be constructed of the same material and match in appearance the surface of the improvements which were removed.

3.2 SAW CUTTING

When necessary to remove sections of existing pavement, sidewalk, or curb and gutter, and prior to removal, the edges of the section to be removed shall be cleanly cut with a concrete saw.

3.3 REMOVAL OF ROADWAY PAVEMENTS, SIDEWALKS, DRIVEWAY AND CURB

Where concrete pavement, sidewalk, driveway or curbing is cut, the width of the cut shall exceed the actual width of the top of the trench at subgrade by 12 inches on each side. Exposed surface of Portland Cement or asphaltic concrete shall be cut with a pavement saw to full depth before removal.

3.4 CONCRETE PAVEMENT SURFACE

Where the existing roadway pavement surface is Portland Cement Concrete, the pavement replacement shall consist of eight inch P.C. concrete pavement or existing concrete depth, whichever is greater. Portland Cement concrete and construction methods for Portland Cement concrete pavement replacement shall conform to the current requirements of the (WDOT) Standard Specifications. Pavement joints in the replacement pavement shall conform to and match that in the adjacent pavement area.

3.5 ASPHALT PAVEMENT SURFACE

A. Where the existing pavement surface is asphaltic concrete and the base consists of a rigid material such as brick or Portland Cement Concrete, the base replacement shall consist of a minimum eight-inch Portland Cement Concrete base course. Portland Cement Concrete shall be as noted in Section 3.4 above.

B. The surface replacement shall consist of a 1.75-inch minimum surface course Hot Mix Asphalt or equivalent depth of existing asphaltic surface in two and one half inch maximum lifts conforming to the requirements of the (WDOT) Standard Specifications for Hot Mix Asphalt pavement.

3.6 BITUMINOUS PLANT PAVEMENT OR BITUMINOUS TREATED SURFACE-FLEXIBLE BASE

Where the existing pavement is asphalt concrete pavement and the base consists of a flexible material such as gravel, crushed stone, seal coat bituminous aggregate mixture, pozzolanic material or soil cement, the base replacement shall consist of a ten-inch compacted thickness of crushed aggregate base course conforming to the (WDOT) Standard Specifications Section 304.2.6, Gradation 1 or 2 and special provisions thereof. The surface replacement shall be as specified in Section 3.5 above.

3.7 CONCRETE SIDEWALKS, DRIVEWAYS, CURB, CURB AND GUTTER

A. Where necessary to remove and replace concrete sidewalk driveways, curb and curb and gutter, replacements shall be made according to the Village Ordinance regulating the construction of driveways, approaches and sidewalks.

B. Curb or curb and gutter dimensions and cross sections shall conform, as nearly as practicable, with the existing installations except that at intersections with sidewalk that does not conform to State of Wisconsin handicap requirements, sufficient depressed curb and gutter along the sidewalk shall be replaced to meet said handicap specification.

C. Construction of concrete curb and concrete curb and gutter shall be in accordance with Section 601, concrete sidewalks shall be in accordance with Section 602 and concrete driveways shall be in accordance with Section 416 and other referenced sections thereof of the (WDOT) Standard Specifications.

3.8 CULTIVATED LAWNS

Provide topsoil, seeding, sodding, and care of grass during establishment period for a complete surface restoration of lawns, parkways, and other areas disturbed as a result of the construction.

A. Topsoil and Salvaged Topsoil

1. All work associated with topsoil or salvaged topsoil shall be in accordance with Section 625 of the (WDOT) Standard Specifications.

2. Topsoil shall be furnished and properly placed, raked, and rolled to minimum depth of four-inches. The topsoil furnished shall consist of loose, friable, loamy, non-acid soil, having at least 90 percent passing a No. 10 sieve, free of large roots, brush, sticks, weeds, stones larger than 1/4-inch in diameter, and any other debris.

3. Before topsoil is placed, the area to be covered shall be brought to the proper grade. If the existing surface has become hardened or crusted, it shall be raked or otherwise loosened to a minimum depth of 2 inches to provide suitable bond with the topsoil.

4. Apply commercial grade fertilizer uniformly at a rate of seven pounds per 1,000 square feet. Work fertilizer into soil prior to seeding or sodding.

5. Topsoil shall be used for restoration of lawns in urban areas and salvaged topsoil shall be used in rural areas or as may be approved by the Village Engineer.

B. Sodding

1. Provide sod in developed areas that were grassed prior to construction and as indicated on the drawings. Sodding shall also be used in ditches and drainage swales and on all embankment slopes steeper than 4 to 1 unless protection is provided against erosion of seeding. At the Contractor's option, sodding may be substituted for seeding.

2. The cut sod shall be not less than two-inches thick. Sod which has been cut more than 48 hours prior to installation shall not be used without the approval of the Village Engineer.

3. Sod shall be placed according to Section 631 of the (WDOT) Standard Specifications. Place sod with edges in close contact and alternate courses staggered. On slopes 4 to 1 or steeper, sod shall be staked. Do not place sod when the ground surface is frozen or when air temperatures may exceed 90 degrees F.

4. In ditches, the sod shall be placed with the longer dimension perpendicular to the flow of water in the ditch. On slopes, starting at the bottom of the slope, the sod shall be placed with the longer dimension parallel to the contours of the ground.

5. New sod shall be kept thoroughly moistened as specified in Section 631 of the (WDOT) Standard Specifications for a minimum of ten days after the specified initial watering. Any defective, dead or dying sod shall be removed and replaced up to one year after receiving final acceptance of the construction.

C. Seeding

1. Seed all grassed areas disturbed by construction operations and not receiving sod, in accordance with Section 630 of the (WDOT) Standard Specifications. Do not seed in windy weather or when soil is very wet. Sow seed either mechanically or by broadcasting in two directions at right angles to each other to achieve an even distribution.

2. After seeding, rake seed lightly into ground and roll with a roller weighing between 100 and 200 pounds per foot of roller width.

3. Immediately after rolling seeded areas, apply vegetative mulch unless hydraulic seeding method is used. Apply mulch in accordance with Section 627 of the (WDOT) Standard Specifications. Place erosion control excelsior blanket or fiber mat on slopes steeper than 4 horizontal to 1 vertical. Unless otherwise indicated, also place erosion control material at sides and bottoms of ditches, swales, and all areas within ten feet of catch basins in seeded areas.

4. Immediately after placing erosion control matting or mulch, water seeded areas thoroughly. Keep soil thoroughly moist until seeds have sprouted and achieved a growth of one inch.

D. Fertilizer

1. All topsoiled areas shall be fertilized in accordance with Section 629 of the (WDOT) Standard Specifications.

2. Fertilizer shall be placed immediately before or in conjunction with seeding or sodding operations.

3. Fertilizer required for planting materials shall be in accordance with Section 632 of the (WDOT)

3.9 ENFORCEMENT

The Public Works Manager shall enforce the provisions of this section.

SECTION 4 - UNDERGROUND IMPROVEMENTS

4.1 INTERRUPTION TO UTILITIES AND DAMAGE TO SURFACE IMPROVEMENTS

A. A minimum of 48 hours prior to commencement of work, the Village and Diggers Hotline (1-800-242-8511) must be notified for location of any existing utilities. All reasonable precautions shall be taken against damage to existing utilities.

B. In the event of a break in an existing gas main, sewer or underground cable, the Contractor shall immediately notify a responsible official from the organization operating the utility interrupted. The Contractor shall lend all possible assistance in restoring services and shall assume all costs, charges or claims connected with the interruption and repair of such services unless it is determined that the utility has not been properly located.

C. In the case of the Village utilities, the cost of such work will be billed to the Contractor.

4.2 TRAFFIC CONTROL

A. All work within public rights-of-way shall conform to the requirements of the latest edition of the Federal Highway Administration “Manual on Uniform Traffic Control Devices (MUTCD),” Part 6, Temporary Traffic Control and the "Wisconsin Manual of Traffic Control Devices (WMUTCD)" Part 6, Temporary Traffic Control. The provisions of these standards will be enforced:

1. When an opening is made into the existing pavement;

2. When construction takes place adjacent to the edge of the existing pavement;

3. When a utility crossing is made beneath the existing pavement; and

4. When it is necessary to close a lane of traffic due to construction operations.

B. Permission for lane or road closure for a road under the jurisdiction of the Village must be obtained from the Village Public Works Manager, who will coordinate with the Village’s law enforcement agency prior to commencing construction. If the road is under the jurisdiction of the County or the State, permission must be obtained from the County or State, as applicable. Signing will be required in strict conformance to the MUTCD and the WMUTCD. No construction operation is to commence until such time that all required signs and barricades have been erected.

4.3 PAVEMENT CROSSING

A. Unless otherwise specifically approved by the Village Engineer, all conduits crossing existing pavements shall be installed by tunneling, jacking or auguring. When the carrier pipe is a conduit intended to operate under internal pressure, a casing pipe of adequate strength for all applied loads may be required. The

nearest face of pits or other open excavations on each side of a traveled pavement shall be at least ten feet from the edge of the pavement.

B. When open cutting is allowed or other pavement opening required, they shall be backfilled prior to the end of the working day unless otherwise authorized by the Village. All excavations shall be backfilled with 3/4-inch crushed stone chips and a temporary bituminous patch of at least 2-inches in thickness shall be constructed. It is understood that such backfilling and patching is only temporary and that permanent pavement repair will be required as specified in Section 3 of this Appendix. In lieu of bituminous patch, a steel plate (minimum depth of one-inch of thickness) over the excavation may be approved upon request by the Contractor.

4.4 TRENCHING

A. Trenches shall be excavated to the depths and grades necessary for pipelines including allowances for bedding material.

B. As determined by the Village Engineer, unsuitable soils found at or below the bottom of the trench shall be excavated to meet firm subsoil.

C. Comply with the following maximum trench widths at the top of the excavation.

Nominal Pipe Sizes (Inches)	Trench Widths (Inches)
12 or smaller	30
14-18	36
20-24	42
27-30	48
33 or larger	1-1/3 times pipe O.D.

D. If trench widths will exceed the maximum Limitations above, higher strength pipe may be required or a concrete cradle may be used to achieve the necessary load factor.

4.5 BRACING AND SHEETING

Open-cut trenches shall be sheeted and braced as required by governing federal and state laws including all OSHA Safety and Health Standards, and as may be necessary to protect life, property and the work.

4.6 BEDDING AND BACKFILL REQUIREMENTS.

A. Bedding. Bedding shall be provided for all underground pipelines, except where concrete encasement, concrete cradles, boring or jacking are indicated. Bedding shall be a minimum thickness of four inches and consist of well graded, washed, mixture of 100 percent crushed gravel or crushed stone aggregate

free of clay, loam, dirt, calcareous or other foreign matter conforming to the "Standard Specifications for Sewer and Water Construction in Wisconsin", and shall be properly compacted.

1. For sewer pipe 18 inches in diameter and smaller, use bedding inch crushed stone chips with the following gradation:

Sieve Size	Percent Passing
1/2-inch	100%
3/8-inch	90-100%
No. 8	0-15%
No. 30	0-3%

2. For sewer pipe larger than 18-inches in diameter, use bedding material of 3/4- inch crushed stone chips with the following gradation:

Sieve Size	Percent Passing
1-inch	100%
3/4-inch	90-100%
3/8-inch	20-55%
No.4	0-10%
No.8	0-5%

3. Wherever two or more pipe or conduits are placed in the same trench or excavated area, backfill the trench with granular bedding material to support the uppermost pipe or conduit.

B. Backfill

For conduits not requiring SPECIAL GRANULAR BACKFILL, backfill shall be made with materials available from the trench excavation. The material shall be free from rocks and be carefully placed in 12-inch lifts. For conduits requiring excavation beneath or within three feet horizontally of existing or proposed pavements, driveways, or sidewalks or in other areas which, in the opinion of the Village Engineer, are or may be subject to vehicular traffic loading, SPECIAL GRANULAR BACKFILL shall be provided above the bottom of the trench and shall extend upward to the surface of the ground or pavement.

Provide either sand, pit run gravel, granular material, or excavated granular materials.

1. Sand: Well graded, free from organic matter, cohesionless, complying with the “Standard Specifications for Sewer and Water Construction in Wisconsin”, with the following gradation:

Sieve Size	Percent Passing
1- inch	100%
No. 16	45 – 89%

Material finer than No. 200	2 - 10%

2. Pit run gravel: Free from organic matter, cohesionless granular material obtained from natural deposits of sand and gravel, passing ¾- inch sieve, and not more than 15 percent passing the No. 200 sieve.

3. Granular material: Use 100 percent crushed stone or gravel complying with the “Standard Specifications for Sewer and Water Construction in Wisconsin,” with the following gradation:

Sieve Size	Percent Passing
1- inch	100%
3/4- inch	90 – 100%
3/8- inch	20 – 55%
No. 4	0 – 10%
No. 8	0 – 5%

4. Excavated granular materials: A mixture of sand and gravel, free from organic matter, clay, loam, dirt, and other foreign material, passing 1 1/2-inch sieve, with not more than 15 percent passing the No. 200 sieve.

5. Crushed stone: Clean, hard, tough, durable, angular material crushed from bedrock limestone, dolomite, or granite. Gradation requirements:

Sieve Size	Percent Passing
3-inch	100%
2-1/2-inch	90-100%
2-inch	35-70%
1-1/2-inch	0-10%
3/4-inch	0-5%

Section 5 - STORMWATER DRAINAGE

5.1 INTRODUCTION

All developments, regardless of size within limits or under the control of the Village, shall include provisions for the construction of stormwater drainage facilities designed in accordance with this Section. All developments under the control of the Village shall comply with Chapter 32 of this Municipal Code. Subdivider shall submit a stormwater drainage study to the Village for review and approval by the Village Engineer. The study shall include analysis of existing drainage conditions, the impacts the development will have on stormwater drainage and calculations to support all proposed facilities and downstream impacts. The design of all stormwater drainage facilities proposed for construction as independent projects under the control of the Village shall also meet the technical requirements of this Section.

5.2 GENERAL PROJECT REQUIREMENTS

A. Surface Flow. Surface swales and ditches described in Section 5.4.C, shall be encouraged for use as with the requirements of this Section. Natural swales and storage areas shall be incorporated into stormwater facilities design wherever practicable. Evaluation of stormwater runoff from existing ground cover in agricultural areas shall average the runoff characteristics of crops typically grown in the community. Swales and ditches, together with any underground storm sewer system and overland flow, shall provide an adequate outfall for runoff from the 100- year frequency 24-hour duration rainstorm. In areas where swales and/or ditches cannot be provided, the underground storm sewer system shall be designed for the 100-year storm condition or a storm sewer system designed for a discharge of the 10-year storm with detention of the 100-year storm may be used.

B. Storm Sewer. Where allowed by the Village Engineer, storm sewers may be constructed to drain the development and any contiguous drainage areas. The Subdivider shall submit to the Village Engineer two copies of the storm drainage computations.

C. Stormwater Detention. Stormwater detention, where required, is subject to the review of the Village Engineer. Detention basins shall have high-water levels based on a 100-year design storm and shall have an outlet which allows runoff no greater than that for the land in its natural state prior to development. Detention to be provided shall be for the entire site evaluated in its natural state and shall be constructed prior to all other improvements. This shall include mass grading and all necessary erosion control measures.

D. Drainage Basin Divides. The design of stormwater drainage systems shall not result in the inter-basin transfer of drainage, unless no reasonable alternative exists and there is no legal restraint preventing such transfer.

E. Lot Grading. The proposed finished yard grade, the location and top of foundation elevation for all proposed structures shall be shown on the engineering drawings, and include existing and proposed contour lines.. Generally, the top of foundation of any structure must be constructed at least eight inches

above the proposed finished yard grade. The yard grade shall be established at an elevation to provide drainage to the street if curb and gutters were installed at the standard location relative to the proposed centerline elevations. Where foundations are lower than the street centerline, or in the case of depressed driveways, alternate means of surface drainage diversion must be shown to avoid structure flooding. Sufficient finished grade elevations must be shown on the drawings to ensure positive drainage away from each structure. Lots intended to have look-out or walk-out basements shall be noted on the subdivision grading plans, including foundation elevation steps.

5.3 DESIGN CRITERIA FOR STORMWATER DETENTION

A. Release Rates. The allowable release rates for the two-year, ten-year, and 100-year frequency, 24-hour duration rainstorms shall be no greater than that for the land in its natural state prior to development.

B. Design Calculations. The design of stormwater detention facilities shall be based on runoff hydrographs from the two-year, ten-year and 100-year frequency, 24-hour duration rainstorms. The Soil Conservation Service Method of storm runoff analysis shall be used for development of existing and proposed hydrographs. All design rainfall events shall be based on the precipitation frequency information developed by the National Oceanic and Atmospheric Administration (NOAA) and endorsed by the Southeastern Wisconsin Regional Planning Commission (SEWRPC). Stormwater models shall utilize the SEWRPC 2006 rainfall distribution or the NRCS distribution appropriate to NOAA Atlas 14. All design computations which do not rely on continuous accounting of antecedent soil moisture conditions shall assume "wet" conditions. Stormwater runoff from areas tributary to the site shall be considered in the equations for the design of the project site's drainage system. If the tributary areas are undeveloped or do not meet release rate requirements, the subdivider may bypass all tributary area flows around rather than through the storage facility. Runoff calculations for all undeveloped tributary land shall assume a reasonable fully developed land cover based on anticipated zoning.

C. Basin Design.

1. The use of wet-bottom detention basins shall be encouraged and designed to be safe, aesthetically pleasing, and available for recreational use. The permanent pool of wet-bottom basins shall be at least four feet deep, excluding near-shore banks and safety ledges. If fish habitat is provided, at least 25 percent of the basin bottom shall be a minimum of ten feet deep. Wet-bottom basins shall be designed to remove stormwater pollutants and sediments and designed in such a manner to reduce nuisance problems such as embankment erosion and algae. Embankments above normal water levels shall be either terraced or sloped at a maximum of 4:1. A safety ledge is required no greater than two feet six inches below the normal water level. Such ledges shall be no less than eight feet wide.

2. Dry-bottom detention basins shall be designed to be safe, aesthetically pleasing and available for multiple uses. Dry-bottom detention basins shall be designed and sized such that a minimum of 80 percent of the bottom area shall have standing water no longer than 72 hours for the 100-year frequency storm. The basin shall have a minimum slope of one percent, and a maximum embankment slope of 20 percent.

D. Inlet / Outlet Pipes

1. Inlet and outlet pipes shall be arranged to avoid “short circuiting” and promote stormwater mixing in the basin.

2. All concentrated stormwater discharges leaving a site must be directed into a well-defined receiving channel or pipe with adequate capacity for safe conveyance of flows from all design events.

3. Single pipe outlets shall have a minimum inside diameter of 12 inches. If design release rates call for smaller outlets, structures such as perforated risers, flow control orifices, etc., shall be used.

5.4 DESIGN CRITERIA FOR SURFACE SWALES AND STORM SEWERS

A. Storm Sewer.

1. When storm sewer construction is permitted, storm sewers shall be designed to flow full using Manning's Formula with an appropriate roughness coefficient based on pipe material. If a storm sewer is designed with a constantly submerged outfall, the sewer shall be designed using the "hydraulic gradient" with the maximum allowable water level an elevation one foot below centerline of pavement.

2. The rational method shall be employed when computing storm runoff. The storm system shall be designed with "positive street and swale drainage" such that stormwater runoff will be directed overland to the stormwater detention area in a manner to minimize property damage due to flooding.

3. Storm sewers shall be designed for minimum ten-year storm event flowing full. Velocity should not exceed ten feet per second.

4. In areas where curb and gutter and storm sewers are approved, inlets shall be installed so that the distance between each inlet shall not exceed 400 feet and each inlet drain a maximum street gutter length of 400 feet. Maximum flow depths shall not inundate more than one half of the traveled lane of the street during a ten-year storm. Where the inlet is located at a low point, additional inlets may be required by the Village Engineer. No more than three inlets shall be interconnected. Inlets shall be so located that stormwater runoff will not "pond" greater than the top of the street curbs. Depressed street crowns to facilitate drainage will not be permitted.

5. Rear lot drainage should not drain over the curb. Yard inlets shall be placed where approved or as required by the Village Engineer.

6. The minimum size storm sewer or inlet connection shall be 12 inches in diameter.

7. Unless otherwise approved by the Village Engineer, storm sewer shall be reinforced concrete pipe conforming to ASTM C76 minimum Class III.

8. Minimum cover shall be generally three feet for all storm sewers unless special precautions are taken to protect the pipe, as approved by the Village Engineer.

9. All manholes, inlet manholes, inlets and catch basins, and head walls shall be designed in accordance with the Wisconsin DOT standards or as modified by standard details of the Village.

10. Connections to sanitary sewers or existing agricultural drainage systems (tiles) will not be permitted for any new developments. All developments will utilize separate drainage systems to avoid disruption or overloading of the existing agricultural tile drainage system. Any field tile systems cut during the process of land development must be reconnected. Connection of existing agricultural drain tiles to new stormwater management systems may be approved if proper allowance for flows from said tiles is incorporated in the new design system.

B. Culverts. Culverts shall be sized for each lot along rural streets and placed on the grading plan. Culverts shall meet the following minimum standards:

1. Minimum pipe diameter of 15 inches.

2. Corrugated metal pipe (CMP) shall be hot-dipped galvanized steel or aluminum steel conforming to AASTO M36. Provide 16 gauge CMP for pipe diameter 21 inches and smaller. Provide 12 gauge CMP for pipe diameters 24 inches and larger.

3. Reinforced concrete pipe (RCP) shall conform to ASTM C76, minimum Class III.

4. Culvert slope and invert elevations should match the ditch slope and invert elevations as nearly as possible.

5. Minimum cover at driveways shall be six inches.

6. The subdivision grading plan shall include a list of driveway culvert sizes for each lot in the development.

C. Swales and Ditches. Manmade swales and ditches shall meet the following minimum design standards:

1. Minimum grade of one half of one percent (0.5%) unless approved by the Village Engineer.

2. Maximum grade of ten percent unless approved by the Village Engineer.

3. Minimum depth of 24 inches below the shoulder of the street. At high points in the roadway, a depth of 18 inches below the shoulder is allowable provided culverts in the ditches are not required.

4. Maximum bank slope of 4:1 under normal conditions. Maximum bank slope of 3: 1 under restricted conditions may be approved by the Village Engineer.

5. The bottom and banks of ditches with grades of less than four percent shall be sodded or else seeded in combination with mulch or erosion blanket.

6. The bottom and banks of ditches with grades between four and eight percent shall be sodded and equipped with permanent ditch checks.

7. The bottom and banks of ditches with grades between eight and ten percent shall be paved or otherwise stabilized as approved by the Village Engineer.

8. Whenever practicable, all areas of the property must be provided an overland flow path that will pass the l00-year flow at a stage at least one foot below foundation grades in the vicinity of the flow path. Overland flow paths designed for flows in excess of the minor drainage system capacity shall be provided in drainage easements.

SECTION 6 - ROADWAY CONSTRUCTION

6.1 INTRODUCTION

A. All developments, regardless of size within the Village limits shall include provisions for the construction of roadways and appurtenant construction to serve each parcel of property within the development. Where more than one building, other than an accessory building is located or planned on one parcel of property, the proposed construction shall also include access roadways as required to serve each such building.

B. The design of all roadways proposed for construction or as independent projects under the control of the Village, shall meet the technical requirements of this Section and the (WDOT) "Standard Specifications."

6.2 STREET CLASSIFICATION

A. Certain variables dependent on the functional classification of the street in question. For the purposes of these standards, all streets will be classified as shown in Figures A.6-1, A.6-2 and A.6-3. appended to this section.

B. In developments where more than one building is located or planned on one parcel of property and a roadway is provided to serve such buildings, that roadway shall be classified as residential unless otherwise established by the Village Engineer.

6.3 GEOMETRICS

Roadway geometries shall be as set out in Figures A.6-2 and A.6-3.

6.4 ROADWAY EXCAVATION

A. Topsoil shall be stripped from all proposed roadway areas. The roads shall then be constructed to the lines and grades as shown on the construction plans.

B. No construction required by this Section shall be permitted after November 1 without written authorization of the Village Engineer.

C. In new construction, asphaltic pavement surface course shall be placed no later than three years and no earlier than one year from the time in which the asphaltic pavement base course is placed, without written authorization by the Village Engineer.

6.5 SUBGRADE

A. The roadway shall be constructed to within +/-0.10 feet of the proposed subgrade elevation with the average subgrade within +/-0.02 feet of the proposed subgrade elevation. Certification that road subgrade

construction conforms to the required tolerances shall be presented to and approved by the Village Engineer prior to placing crushed aggregate base course. No traffic will be allowed on the subgrade.

B. Roadways shall be proof-rolled prior to construction of the base course. A fully loaded truck shall be provided to drive slowly over the area to be inspected. Areas which show deflections greater than one inch shall be repaired and pass proof-rolling tests before construction may proceed. The Village Engineer shall be present for and should be notified 24 hours prior to proof-rolling.

C. Areas of roadway subgrade not passing proof-rolling tests shall be stabilized by alternative methods approved by the Village Engineer prior to placing base course materials. Excavation below subgrade and backfill with material as specified in Section 4.6.B.5 or the use of geotextile fabric may be required.

6.6 SUB-BASE

Sub-base construction required under this section shall be crushed stone or crushed gravel complying with the applicable provisions of the (WDOT) "Standard Specifications," Gradation No.1 unless approved by the Village Engineer.

6.7 BASE COURSE

Base course construction required under this Section may be either bituminous base course or crushed stone or crushed gravel in accordance with Figures A.6-1 and A.6-2. Materials shall comply the applicable provision of the (WDOT) "Standard Specifications," Gradation No. 1 in the lower six inches of base course and Gradation No.2 in the remainder of the base course. Roadways shall be proof-rolled prior to construction of the binder course or pavement section. A fully loaded truck shall be provided to drive slowly over the area to be inspected. Areas which show deflections greater than one inch shall be repaired and pass proof-rolling tests before construction may proceed. The Village Engineer shall be present for and should be notified 24 hours prior to proof-rolling. Certification that the road base course construction conforms to the required slopes and grades shall be presented to and approved by the Village Engineer within 72 hours of the placement of asphaltic pavement base course.

6.8 PAVEMENT AND SURFACE COURSES

A. Pavement construction required under this Section may be either Hot Mix Asphaltic pavement or Portland Cement Concrete pavement in accordance with Figures A.6-1 and A.6-4A and B. Materials shall comply with Section 407 of the (WDOT) “Supplemental Specifications”, most current edition. For priming asphaltic and other stabilized surfaces, comply with the applicable provisions of the (WDOT) “Standard Specifications”.

B. Hot Mix Asphalt pavement, Type E-0.3 shall be used on all residential streets. Hot Mix Asphalt pavement, Type E-1 shall be used on all major residential streets and minor commercial streets. Hot Mix Asphalt pavement, Type E-3 shall be used on all industrial and major commercial streets.

6.9 COMBINATION CONCRETE CURB AND GUTTER

Curb and gutter construction, where applicable, shall comply with the (WDOT) “Standard Specifications”, and conform to a 30-inch Type D or Type L concrete curb and gutter, shown in the (WDOT) Standard Details. Tie bars are required for all construction joints in concrete pavements.

6.10 STANDARD DESIGN METHOD FOR PAVEMENTS

When, in the opinion of the Village Engineer, the volume and composition of the traffic anticipated to be carried by the pavement can be estimated within reasonable limits and, in all cases, where the roadway is designed as a four or more lane facility, the structural design for pavements shall be based on the latest revision of the (WDOT) Facilities Development Manual. However, in no case shall the design result in a pavement of lesser strength than those shown in Figure A.6-1.

6.11 SPECIAL REQUIREMENTS FOR UNDERGROUND UTILITIES

A. Structure Adjustment.

1. Where finished grade or alignment for existing underground structures, such as inlet basins, catch basins, manholes or valve vaults is affected by proposed work, the project drawings shall provide for the adjustment of such structures as required.

2. Where a project is to be constructed under two or more construction contracts, one or more of which includes the construction of pavement, the contract documents for those contracts including paving work shall provide for the adjustment of underground structures that may be constructed under other contracts as may be required to fit the proposed pavement.

B. Utility Crossing Protection

1. For new construction or when required by the Village or the Village Engineer, all concrete sidewalk, curb, gutter and driveways over excavated areas or utility trenches shall be reinforced with a minimum of two No. 4 bars, 12-inches on center for a length of 20 feet.

Figure A.6-1: Street Classifications and Pavement Requirements

STREET CLASSIFICATION	MIMIMUM PAVEMENT REQUIREMENTS
Residential / Cul-De-Sac	
Asphalt Pavement	4-inch Hot Mix Asphalt (Type E-0.3) 1.75-inch 9.0 mm Surface Course 2.25-inch 12.5 mm Binder Course 12-inch Aggregate Base (3/4-inch Dense Grade)
Major Residential / Minor Commercial	
Asphalt Pavement	4.5-inch Hot Mix Asphalt (Type E-1) 2.0-inch 12.5 mm Surface Course 2.5-inch 19.0 mm Binder Course 12-inch Aggregate Base (3/4-inch Dense Grade)
Industrial	
Asphalt Pavement	8-inch Asphalt Concrete Pavement (Type E-3) 2-inch 12.5 mm Surface Course 2-inch 19.0 mm Binder Course 4-inch Asphaltic Base 12-inch Aggregate Base (3/4-inch Dense Grade)
Concrete Pavement	8-inch Concrete Pavement 10-inch Aggregate Base (3/4-inch Dense Grade)
Major Commercial	
Asphalt Pavement	8-inch Asphalt Concrete Pavement (Type E-3) 2-inch 12.5 mm Surface Course 2-inch 19.0 mm Binder Course 6-inch Asphaltic Base 12-inch Aggregate Base (3/4-inch Dense Grade)
Concrete Pavement	8-inch Concrete Pavement 10-inch Aggregate Base (3/4-inch Dense Grade)

Figure A.6-2: Rural Street Geometric Criteria

ROADWAY CLASSIFICATION	MAJOR COMMERCIAL	INDUSTRIAL	MINOR COMMERCIAL/ MAJOR RESIDENTIAL	RESIDENTIAL
Right-of-way width	80-120 ft.	66-80 ft.	66-80 ft.	66 ft.
Roadway width (1)	24-76 ft.	24 ft.	24 ft.	22 ft.
Shoulder width (7)	10ft. (8ft. paved)	8ft. (3 ft. paved)	6ft. (3ft. paved)	5 ft.
Minimum ditch depth (2)	2.5 ft.	2.5 ft.	2.5 ft.	2 ft.
Number of traffic lanes (6)	2-4	2	2	2
Minimum cul-de-sac pavement radius (3)(9)	N/A	58 ft.	N/A	53 ft.
Maximum cul-de-sac length (4)	N/A	1000 ft.	N/A	800 ft.
Minimum sight distance	275 ft.	275 ft.	225 ft.	150 ft.
Maximum grade (8)	6%	6%	8%	10%
Design speed	40 mph	35 mph	30 mph	25 mph
Minimum center line Radius	500 ft.	500 ft.	350 ft.	150 ft.
Return radius	60 ft.	60 ft.	40 ft.	25 ft.
Crown	2.0%	2.0%	2.0%	2.0%
Shoulder Slope (10)	4.0%	4.0%	4.0%	4.0%

(1) Dimensions are measured from outside edge of lane to outside edge
(2) As measured from centerline evaluation
(3) Cul-de-sac R.O.W. radius shall be 75 feet for all rural pavements
(4) The combined length of the street and diameter of the cul-de-sac
(5) A tangent of at least 100 ft. shall be introduced between reverse curves on major and secondary streets
(6) Four lanes required for projected traffic volumes over 13,000 ADT.
(7) Roadways with paved shoulders require pavement markings.
(8) Minimum roadway tangent grades and ditch grades shall be 0.50%
(9) Pavement radius includes paved shoulder.
(10) Paved shoulders slope shall match pavement cross slope
(11) Design in accordance with criteria and standards as set forth in the current version of “A Policy on Geometric Design of Highways and Streets, AASHTO, and as required by the Village Board.

Figure A.6-3: Urban Street Geometric Criteria

ROADWAY CLASSIFICATION	MAJOR COMMERCIAL	INDUSTRIAL	MINOR COMMERCIAL/ MAJOR RESIDENTIAL	RESIDENTIAL
Right-of-way width	80-110 ft.	66-80 ft.	66-80 ft.	66 ft.
Roadway width (1)	48-80 ft.	36-48 ft.	36-48 ft.	36ft.
Sidewalk(5)	6 ft.	5 ft.	5ft.	N/A
Curb Type	30" – Type D	30" – Type D	30" – Type D	30" Type D
Number of traffic lanes (6)	2-4	2	2	2
Lane Width	12 ft.	12 ft.	12 ft.	11 ft.
Minimum cul-de-sac pavement radius (2)	N/A	58 ft.	N/A	53 ft.
Maximum cul-de-sac length (3)	N/A	1000 ft.	N/A	800 ft.
Minimum sight distance	275 ft.	275 ft.	225 ft.	150 ft.
Maximum grade	6%	6%	8%	10%
Minimum grade	0.5 %	0.5%	0.5%	0.5%
Design speed	40 mph	35 mph	30 mph	25 mph
Minimum center line Radius (4)	500 ft.	500 ft.	350 ft.	150 ft.
Return radius	40 ft.	40 ft.	25 ft.	15 ft.
Crown	2.0%	2.0%	2.0%	2.0%
Shoulder Slope (10)	4.0%	4.0%	4.0%	4.0%

(1) Dimensions are measured face to face of curb
(2) Cul-de-sac R.O.W. radius shall be 75 feet, except a 65 ft. radius will be allowed on residential streets with urban pavements.
(3) The combined length of the street and diameter of the cul-de-sac right of way.
(4) A tangent of at least 100 ft. shall be introduced between reverse curves on major and secondary streets.
(5) Sidewalk shall be placed in public right-of-way, 1-foot from property line, when required, unless otherwise approved by the Village.
(6) Four lanes required for projection traffic volumes over 13,000 ADT.
(7) Design in accordance with criteria and standards as set forth in the current version of "A Policy on Geometric Design of Highways and Street, AASHTO, and as required by the Village Board.

Figure A.6-4A- Minor Residential Street Cross Section – Rural (No Scale)

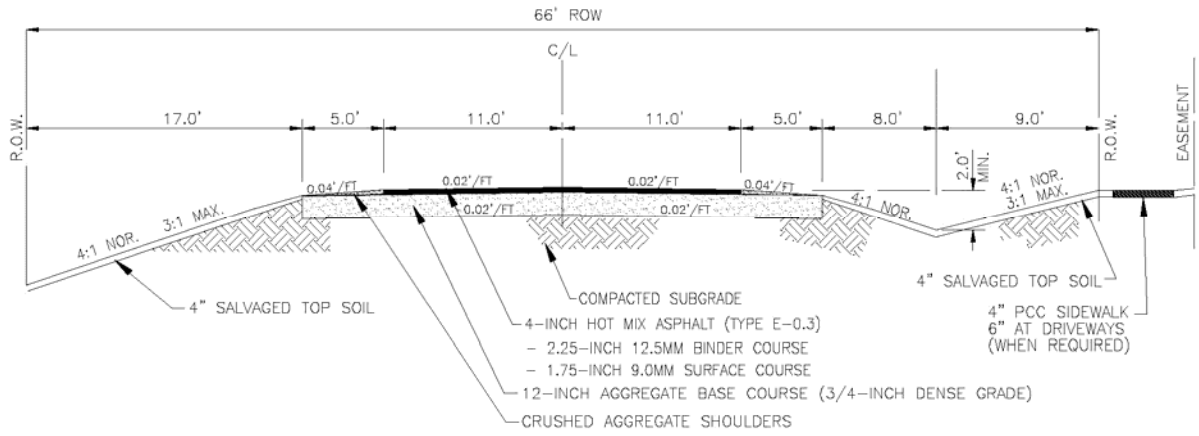
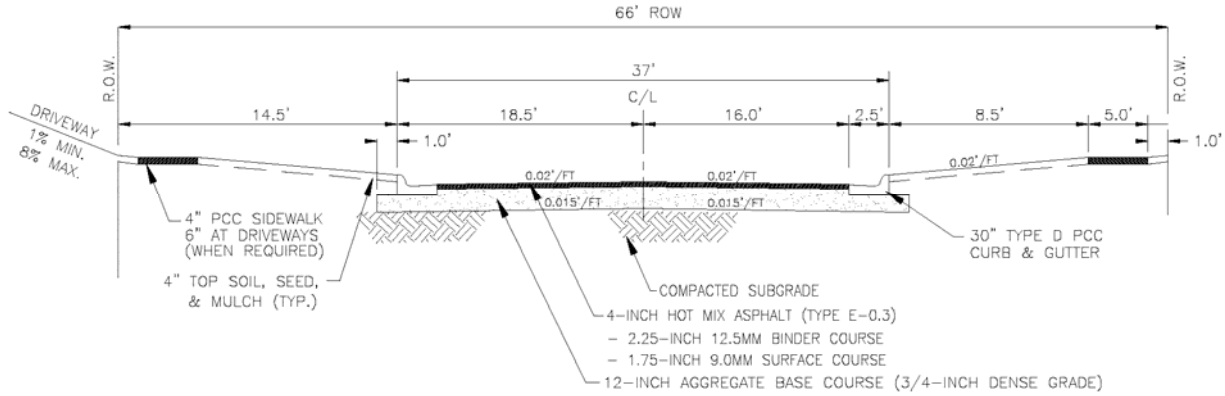


Figure A.6-4B- Minor Residential Street Cross Section – Urban (No Scale)



APPENDIX B - THE CONSERVATION SUBDIVISION DESIGN PROCESS

1.0. GENERAL.

Conservation subdivisions should be designed around the open space. That is, the areas for open space preservation should be set aside before the streets and lots are laid out. The design process for conservation subdivisions takes place in three basic steps:

A. Identification and analysis of existing conditions, or site analysis;

B. Delineation of preservation areas;

C. Layout of dwelling locations and street and lot pattern.

1.1 STEP ONE: SITE ANALYSIS

A. The design of a conservation subdivision around the open space first requires a proper site analysis. The site analysis should identify existing features that determine the landscape character of a site and analyze those features to determine the desirability of preserving them. A site analysis should also identify features that present problems that must be considered and overcome in the design.

B. The inventory of existing conditions should include all natural and man-made features of a site. Some of these will be natural areas protected by law, such as floodplains, wetlands, shoreland areas, and water bodies. Other areas that are developable, but contain certain features that may lend character to the rural landscape, should also be identified. Such areas could include hedgerows along an abutting road or dividing two fields; a healthy stand of trees atop a rise in terrain; diverse woodlands; wild flower meadows; fallow farm fields; wildlife habitats; areas that afford good views; historic buildings or ruins; fencerows; and even lone specimen trees. Problem areas that must be accommodated in the design may include such features as power line rights-of-way, transmission towers, utility easements, and drainageways.

C. It should be noted that a site analysis completed for the sketch-plan layout of a conservation subdivision is not usually as technically comprehensive as those required for engineered preliminary plats. Although the engineering constraints on a site should be generally understood and taken into account, the site analysis for the purposes of designing a sketch plan for conservation subdivision layout is intended primarily to identify landscape character, preservation areas, and building areas. While some of the elements required for sketch plans and typical preliminary plans will be the same, topography, for instance, the level of detail and accuracy required for documenting conditions for engineering purposes is not needed at the sketch-plan level. The elements of a site analysis for the purposes of conservation subdivision design would supplement and precede the site information normally required for conventional subdivision. When the approval process moves on to the preliminary-plat stage, complete documentation and analysis oriented toward proper engineering practices would then be needed. The conservation subdivision layout would then be adjusted, if necessary, to accommodate engineering considerations.

D. A good site analysis done for the purposes of conservation subdivision sketch-plan layout will include field investigations and should, at a minimum, consist of a map, or set of maps, showing the following:

1. A topographic analysis identifying slopes over 12 percent or greater and under two percent. The topographic map should have a scale of one inch equals 100 feet or more, with a vertical contour interval of two feet or less. Hilltops and ridge lines should be highlighted.

2. An analysis of drainage patterns. The management of stormwater runoff from a site depends largely upon the existing drainage patterns which, for greatest economy and site preservation, generally should not be altered. Onsite drainage patterns are part of a larger drainage network and connect to the drainage patterns of adjacent sites. The role a particular site plays in the overall watershed should be recognized.

3. A vegetation analysis, identifying woodlands, hedgerows, lone specimen trees, grasslands, meadows, pastures, and active or fallow farm fields. Vegetation should be identified as evergreen or deciduous.

   The health and condition of each vegetative type should be identified. Predominant species in hedgerows and woodlands should be identified. Specimen trees should be identified by species, size, and health. Unique or endangered plant species should be noted.

4. A delineation of soil types and identification of selected soil characteristics, as provided by the information in the regional soil survey completed for the Regional Planning Commission by the U. S. Soil Conservation Service (now the Natural Resources Conservation Service (NRCS)). Such characteristics would include, for example, suitability of soils for crops, pasture, woodland, wildlife habitat, and recreation, as well as for building foundations, roadways, and onsite sewage-disposal systems. Prime agricultural soils and alluvial floodplain soils should be noted.

5. Shoreland protection areas, including the minimum building setback from the ordinary high- water mark of navigable waters pursuant to Chapter 36.

6. The 100-year recurrence interval floodplain boundaries, and lakes, ponds, streams, and wetlands.

7. Boundaries and characteristics of primary and secondary environmental corridors and isolated natural resource areas, as identified in the adopted regional plans or local comprehensive plans.

8. Wildlife habitat, whether in fields, wetlands, or woodlands. Predominant species of birds, mammals, amphibians, fish, and reptiles should be identified when possible. The presence of rare or endangered species should be noted.

9. Historic or cultural features, including ruins and stone fencerows.

10. Other existing buildings and structures. All buildings in a farm complex should be located and identified as to their use, as well as the locations of existing wells and onsite sewage-disposal systems.

11. Scenic vistas, both into the site from adjacent roads and outward from the site.

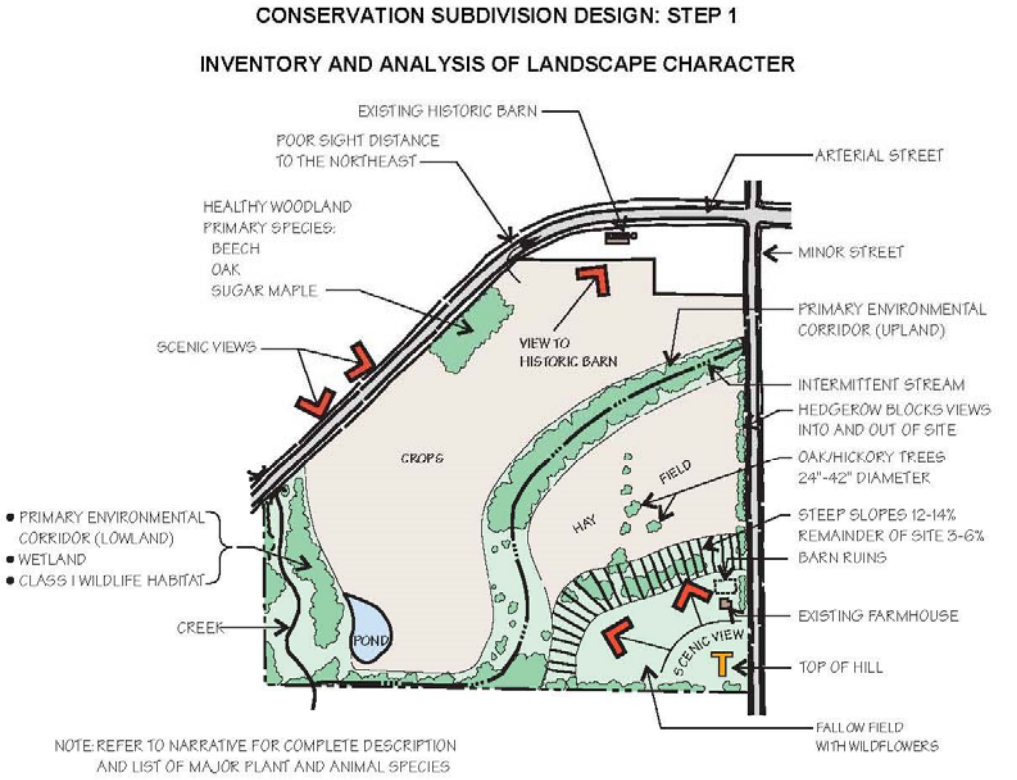
12. Classifications of existing streets and highways adjacent to the development parcel, as well as especially desirable or undesirable points of entry into the parcel. Street connections required by the local official map should be noted.

13. Existing physical conditions surrounding the development parcel within 200 feet. These might include such notes as “adjacent three-acre housing,” “connection to regional trail,” or “view to historic barn.” The size and extent of existing adjacent open space areas should be noted, as well as any further open space connections these spaces may have.

14. Future area-wide plans that affect the site should also be taken into account. These could include, among others, plans for future parks; open space, trail, and bikeway systems; agricultural preservation areas; arterial street networks; stormwater management systems and other utilities; and general land use plans.

E. Figure B.1 is an example of a typical site analysis. This is often accompanied by a written narrative that further explains the existing conditions on the site.

Figure B.1



A site analysis for the purpose of conservation subdivision design would supplement and precede the engineering information normally required for a conventional subdivision. When the approval process moves to the preliminary plat stage, the conservation subdivision layout would then be adjusted to accommodate engineering considerations.

Source: SEWRPC.

1.2 STEP TWO: DELINEATION OF PRESERVATION AREAS

A. After determining the existing conditions on a site, the next step is to determine which areas should be preserved, as shown in Figure B.2.

B. Areas of first and second priority for preservation should be identified. Areas of first priority will include two types of areas: those protected through State and Federal regulation, such as floodplains, wetlands, and shorelands, and those connecting to larger municipal, county, or regional park and greenway systems, such as primary environmental corridors. The more connected areas of open space are, the more valuable they become. The concept of connectedness is extremely important when trying to preserve meaningful open space.

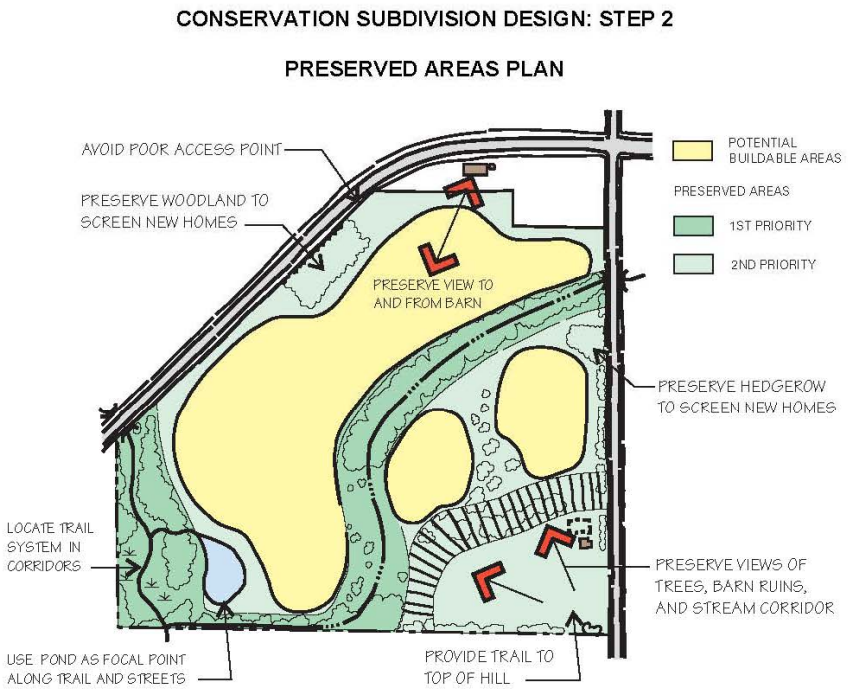
1. Fragmented open space areas lead to disrupted wildlife migration paths, nonfunctional wildlife corridors, inefficient farming operations, and piecemeal trail systems. Areas of disconnected open space preserved on a variety of development parcels, while valuable to some degree, can never have the same impact on preservation of landscape character as continuous open space does.

2. When areas of open space in conservation subdivision developments on adjacent parcels abut each other, the impact on landscape character is greater than if they are separated by visible development.

3. The goal of connectedness in open space should always be kept in mind, not only in terms of the importance of connecting onsite open space with offsite open space, but also in terms of connecting all onsite open space as much as possible. While the opportunity to connect areas of onsite open space with adjacent offsite areas is not always available, areas of open space within the site can and should be connected.

C. After designating first priority areas for preservation, regulated environmentally constrained areas and areas that provide connections to offsite open space, areas of second priority are added. These would include other developable areas with natural features that have been identified as contributing to the particular rural landscape character of the site, as seen from adjacent roads and other public ways, as well as from within the site. Some judgments may have to be made at this stage as to the desirability of preserving certain areas of marginal value. For example, a hedgerow with weak-wooded or diseased trees may not be desirable for preservation.

Figure B.2.



Areas of first and second priority for preservation should be identified and preservation areas should be connected.

Source: SEWRPC.

D. Not all the open space will be environmentally constrained land, nor should it be. On parcels that have a great deal of environmentally constrained land, not all of it should be accepted as meeting the open space requirement. On parcels with few constraints, much of the open space will be in well-drained upland areas that would be considered buildable. Decisions would have to be made as to which portions of these areas should be used for lots and which should be saved for open space. These decisions should be based on the overriding objective of preserving rural landscape character.

E. In the process of determining the preservation areas, the areas available for buildings, streets and lots are, by default, also identified. These are the “left over” areas. This process is the opposite of that often used in the design of a conventional subdivision, where the leftover areas are the areas considered unsuitable for building. Often the areas with the most attractive natural amenities are set aside first to be included in a few prime lots that can be sold at a premium price.

1.3 STEP THREE: CONCEPTUAL DELINEATION OF STREET AND LOT LAYOUT (SKETCH PLAN)

A. When preservation areas are set aside, their outlines give shape to the building areas. On many development parcels, the areas available for building will be larger than the area needed to accommodate the permitted number of lots. Thus, the third step in the conservation subdivision design process is to determine more specifically the preferred locations of building lots and how best to provide access to them with the streets (see Figure B.3).

B. The street and lot layout at this stage in the design process is conceptual only. Because of the large variety of street layouts that are possible through the flexibility permitted by conservation subdivision regulations, agreement on the general acceptability of a plan should be reached before the plan is more precisely detailed. While general municipal engineering principles should be followed, no detailed site engineering is done at this stage, although all zoning and subdivision regulations should be met.

C. It is beneficial for both the developer and the municipality to reach a consensus on a conceptual sketch plan before the developer incurs the costs of preliminary engineering. It is during review of the sketch plan that design changes can be made at little cost to the developer. Thus, before the preparation of preliminary plans is initiated, both the developer and the municipality should have agreed upon a conceptual layout.

D. The result of this process will be that streets and houses blend into the landscape in a natural way that protects the rural character of the site, rather than being forced onto the landscape in a form determined by rigid lot sizes and the configuration of parcel boundaries, as is often the case in conventional subdivision design and development.

Figure B.3.

CONSERVATION SUBDIVISION DESIGN: STEP 3

STREET AND LOT LAYOUT

After areas for preservation are identified, specific locations for building lots and streets are determined.

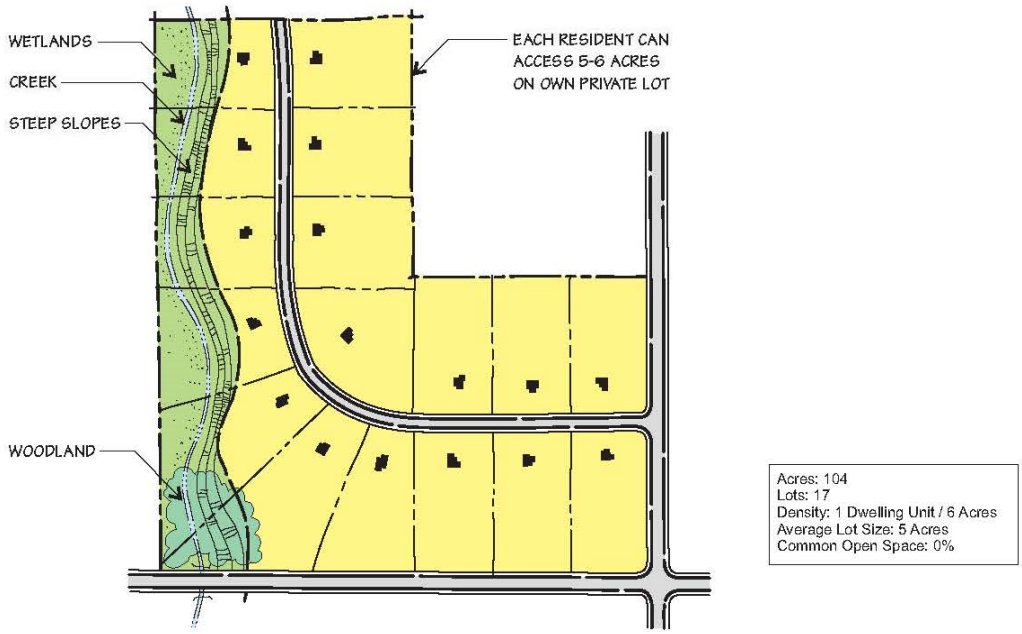
Source: SEWRPC.

2.0 EXAMPLES OF CONSERVATION SUBDIVISION DESIGNS

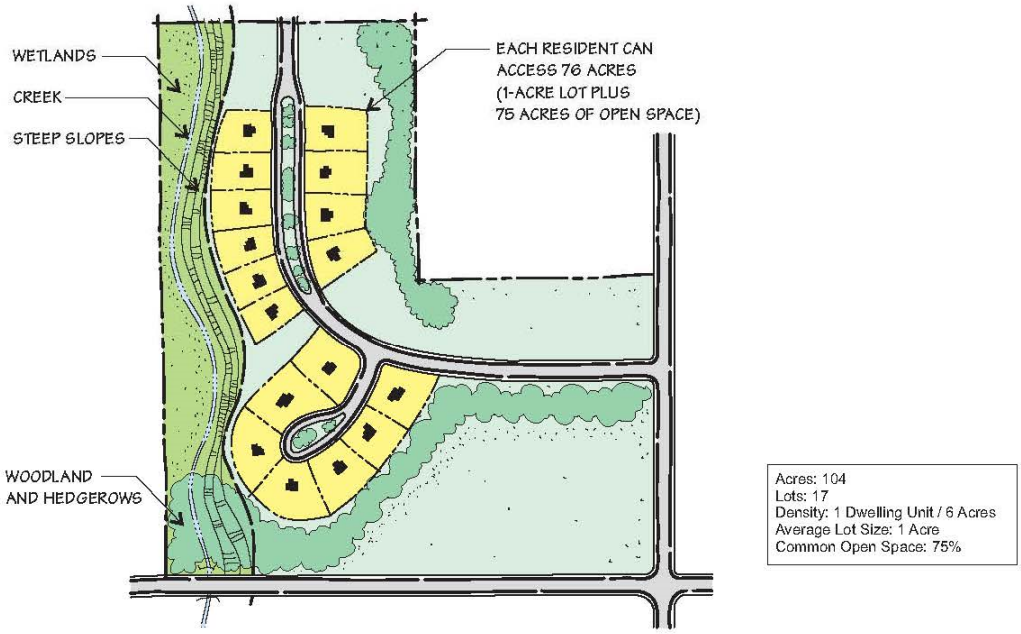
Hypothetical examples of conservation subdivision designs, contrasted with conventional designs for the same site, are presented in Figures B.4, B.5 and B.7. Additional examples of conservation subdivision designs, along with means for implementing the conservation subdivision design concept, are presented in SEWRPC Planning Guide No.7, Rural Cluster Development, 1996 and the updates thereto.

Figure B.4.

CONVENTIONAL SUBDIVISION DESIGN



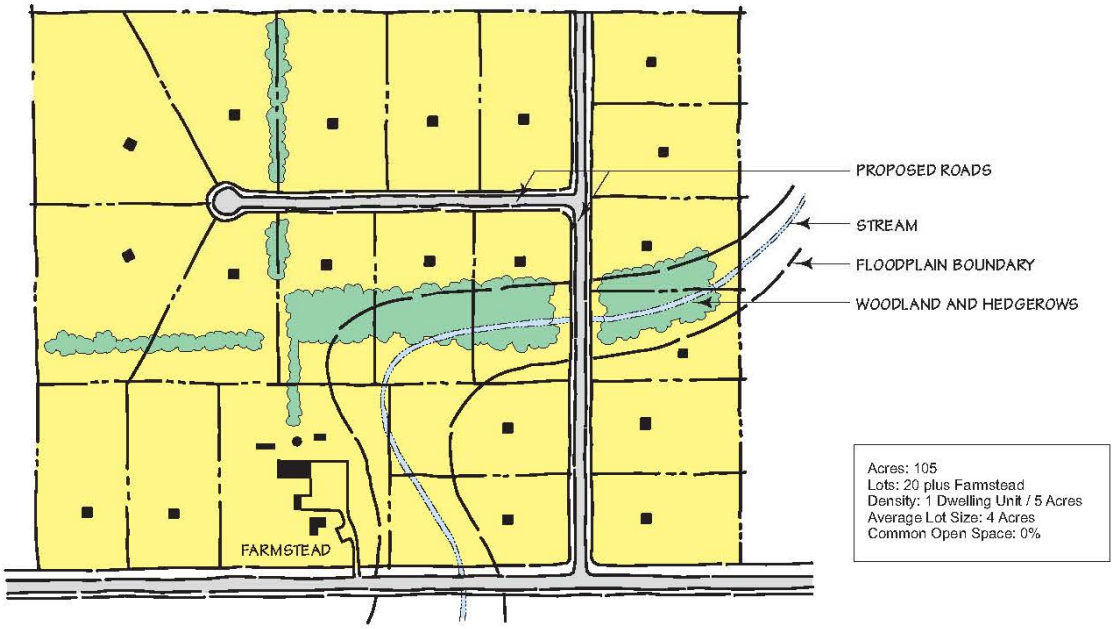
CONSERVATION SUBDIVISION DESIGN



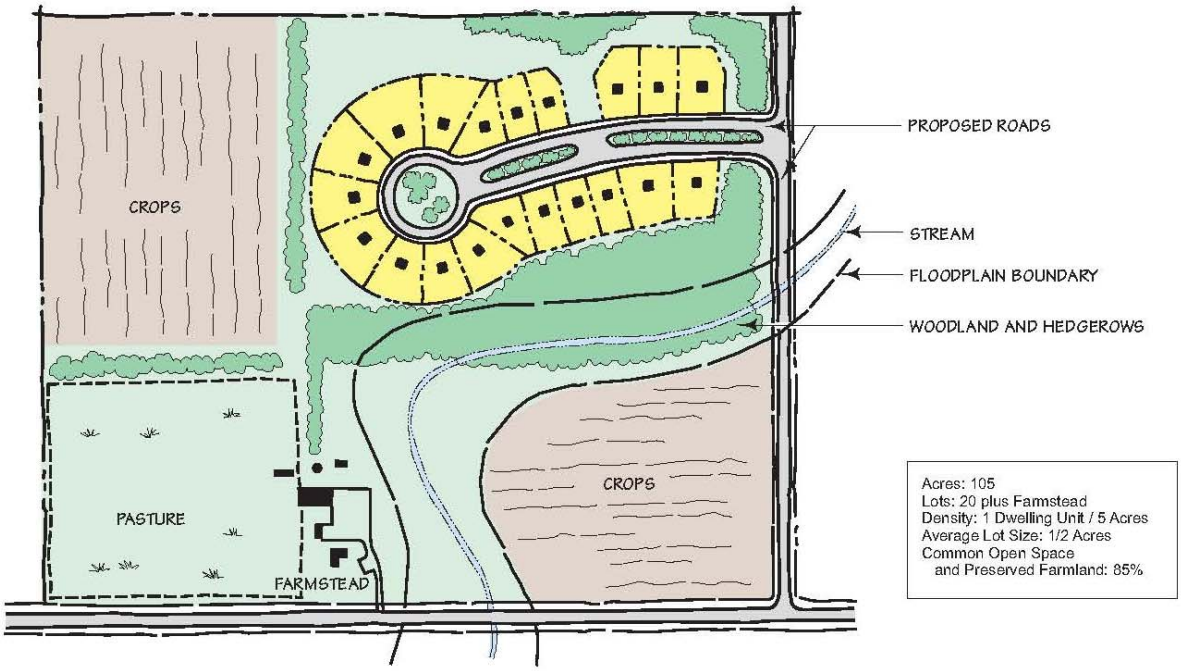
Through a reduction in lot size, open space can be created without losing density.

Figure B.5.

CONVENTIONAL SUBDIVISION DESIGN

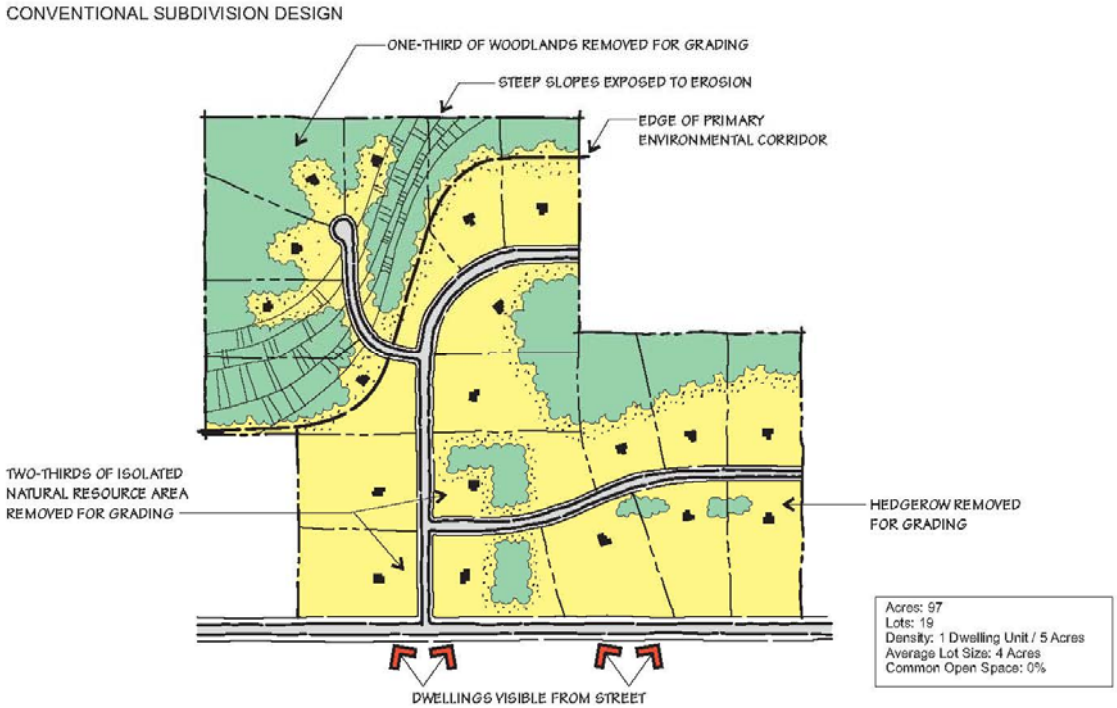


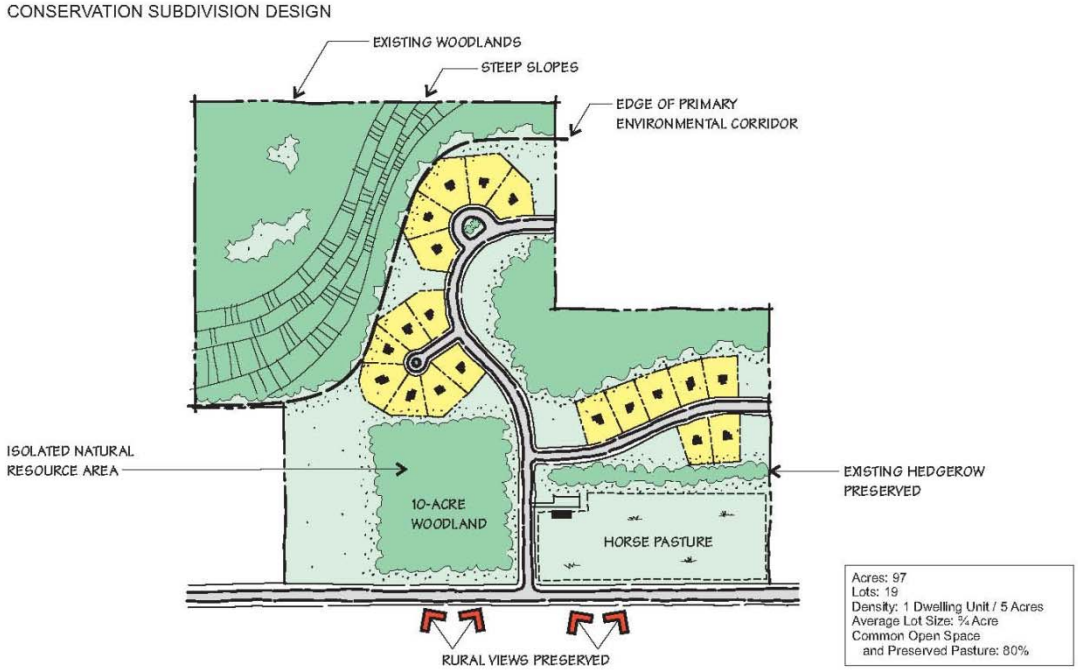
CONSERVATION SUBDIVISION DESIGN



Conservation subdivision development can help preserve farming activities.

Figure B.6.





Conservation subdivisions can preserve environmental features and views.

Source: SEWRPC.

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CHAPTER 31 CONSTRUCTION SITE EROSION CONTROL

31-1. AUTHORITY.

This Chapter is adopted under the authority granted by Wis. Stat. s. 61.354.

A. Except as otherwise specified in Wis. Stat. s. 61.354, Wis. Stat. s. 61.35 and the other zoning chapters apply to this Chapter and to any amendments to this Chapter.

B. The provisions of this Chapter are deemed not to limit any other lawful regulatory powers of the Village of Rochester.

C. The Village Board of the Village of Rochester hereby designates the Zoning Administrator and/or Village Engineer to administer and enforce the provisions of this Chapter.

D. The requirements of this Chapter do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:

1. Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under Wis. Stat. ss. 281.16 and 283.33.

2. Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Admin. Code s. NR 151.004.

31-2. FINDINGS OF FACT.

The Village Board finds that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the Village of Rochester.

31-3. PURPOSE AND INTENT.

A. Purpose. It is the purpose of this Chapter to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the Village of Rochester.

B. Intent. The intent of this Chapter is to require use of best management practices to reduce the amount of sediment and other pollutants resulting from land disturbing construction activities on sites that do not include the construction of a building and are otherwise regulated by the Wisconsin Department of Safety and Professional Services in Wis. Admin. Code chs. SPS 320-325 or 361-366. Use of this Chapter will foster consistent, statewide application of the construction site performance standards for new development and redevelopment contained in subchapters III and IV of Wis. Admin. Code ch. NR 151.

31-4. APPLICABILITY AND JURISDICTION.

A. Applicability.

1. This Chapter applies to land disturbing construction activities within the jurisdiction of the Village, except as provided under subsection B;

2. Where a subdivision plat, requiring review and approval by the village, is required under Chapter 30;

3. Where a certified survey map, requiring review and approval by the village, is required under Chapter 30;

4. Where a land disturbing construction activity affects a surface area of 4,000 square feet or greater;

5. If excavation, fill or any combination thereof will exceed 400 cubic yards;

6. If public (federal, state or local) street, road or highway is to be constructed, enlarged, relocated or substantially reconstructed;

7. If any watercourse is to be changed, enlarged, or materials are removed from a stream or lake bed;

8. Any utility work in which underground conduits, piping, wiring, water lines, sanitary sewers, storm sewers, or similar structures will be laid, repaired, replaced or enlarged, if such work involves more than 300 linear feet of earth disturbance;

9 Construction sites of any size that, in the opinion of the Zoning Administrator or Village Engineer are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

B. Exclusions. This Chapter does not apply to the following:

1. Land disturbing construction activity that includes the construction of a building and is otherwise regulated by the Wisconsin Department of Safety and Professional Services in Wis. Admin. Code chs. SPS 320 to 325 or 361 to 366;

2. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity;

3. Nonpoint discharges from agricultural facilities and practices;

4. Nonpoint discharges from silviculture activities;

5. Routine maintenance for project sites under five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility;

6. Cleaning and restoring existing drainage ditches, agricultural practices, growing and tending gardens, or silviculture activities;

7. A land disturbing construction activity for which a permit was obtained from both the Wisconsin Department of Natural Resources and from the Wisconsin State Farm Service Agency Office for programs of the United States Department of Agriculture except that the property owner shall file with the Village Clerk a copy of any such permit and approved plan;

8. Activities conducted by a state agency, as defined under Wis. Stat. s. 227.01(1), but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Wis. Stat. s. 281.33(2);

9. Activities directed and supervised by the Wisconsin Department of Transportation, which has entered into a memorandum of understanding with the Wisconsin Department of Natural Resources that satisfies Wis. Stat. s. 281.33(2).

C. Jurisdiction. This Chapter applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the Village of Rochester.

31-5. DEFINITIONS.

"Administering Authority" means the Village and the persons designated by the Village to administer this Chapter.

"Agricultural Facilities and Practices" has the meaning in Wis. Stat. s. 281.16(1).

"Average annual rainfall" means a calendar year of precipitation, excluding snow, which is considered typical.

"Best management practice" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

"Business day" means a day the office of the Village of Rochester is routinely and customarily open for business.

"Cease and Desist Order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.

"Construction Site" means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.

"Division of Land" means the creation from one parcel of two or more parcels or building sites.

"Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

"Erosion and Sediment Control Plan" means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

"Extraterritorial" means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

"Final Stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least 70 percent of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

"Governing body" means the Village Board of Trustees.

"Land Disturbing Construction Activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

"MEP" or "Maximum Extent Practicable" means a level of implementing best management practices in order to achieve a performance standard specified in this Chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.
"Performance Standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

"Permit" means a written authorization made by the Administering Authority to the applicant to conduct land disturbing construction activity or to discharge post- construction runoff to waters of the state.

"Pollutant" has the meaning given in Wis. Stat. s. 283.01(13).

"Pollution" has the meaning given in Wis. Stat. s. 281.01(1).

"Responsible Party" means any entity holding fee title to the property or performing services to meet the performance standards of this Chapter through a contract or other agreement.

"Runoff" means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

"Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

"Separate storm sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

A. Is designed or used for collecting water or conveying runoff.

B. Is not part of a combined sewer system.

C. Is not draining to a storm water treatment device or system.

D. Discharges directly or indirectly to waters of the state.

"Site" means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.

"Stop Work Order" means an order issued by the Administering Authority which requires that all construction activity on the site be stopped.

"Technical Standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

"Waters of the State" has the meaning given in Wis. Stat. s. 281.01(18).

31-6 TECHNICAL STANDARDS.

A. Design Criteria, Standards and Specifications. All BMPs required to comply with this Chapter shall meet the design criteria, standards and specifications based on any of the following:

1. Applicable design criteria, standards and specifications identified in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222 November 1993 Revision, as may be amended from time to time.

2. Other design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under Wis. Admin. Code ch. NR 151, subch. V.

3. For this Chapter, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.

4. Note: The USLE and its successors RUSLE and RUSLE2, utilize an R factor which has been developed to estimate annual soil erosion, averaged over extended time periods. The R factor can be modified to estimate monthly and single-storm erosion. A design storm can be statistically calculated to provide an equivalent R factor as an average annual calculation.

B. Other Standards. Other technical standards not identified or developed in subsection A may be used provided that the methods have been approved by the Zoning Administrator or Village Engineer.

31-7 PERFORMANCE STANDARDS.

A. Responsible Party. The responsible party shall implement an erosion and sediment control plan, developed in accordance with s. 31-9 that incorporates the requirements of this section.

B. Plan. A written plan shall be developed in accordance with s. 31-9 and implemented for each construction site. The written plan may be that specified within Wis. Admin. Code s. NR 216.46, the erosion control portion of a construction plan or other plan.

C. Erosion and Other Pollutant Control Requirements. The plan required under subsection B shall include the following:

1. BMPs that, by design, achieve to the maximum extent practicable, a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an 80% sediment reduction to meet the requirements of this paragraph. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism. Soil loss prediction tools that estimate the sediment load leaving the construction site under varying land and management conditions, or methodology identified in Wis. Admin. Code ch. NR 151, subch. V, may be used to calculate sediment reduction.

2. Notwithstanding subsection 1, if BMPs cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific explanation as to why the 80% reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.

3. Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:

   a. Prevent tracking of sediment from the construction site onto roads and other paved surfaces.

   b. Prevent the discharge of sediment as part of site de-watering.

   c. Protect the separate storm drain inlet structure from receiving sediment.

4. The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into waters of the state. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.

D. Location. The BMPs used to comply with this section shall be located prior to runoff entering waters of the state. While regional treatment facilities are appropriate for control of post-construction pollutants, they should not be used for construction site sediment removal.

E. Alternate Requirements. The Zoning Administrator or Village Engineer may establish storm water management requirements more stringent than those set forth in this section if the Zoning Administrator or Village Engineer determines that an added level of protection is needed for sensitive resources.

31-8. PERMITTING REQUIREMENTS, PROCEDURES AND FEES.

A. Permit Required. No responsible party may commence a land disturbing construction activity subject to this Chapter without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Zoning Administrator or Village Engineer.

B. Permit Application and Fees. At least one responsible party desiring to undertake a land disturbing construction activity subject to this Chapter shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of s. 31-9 and shall pay an application fee in the amount set by the Village Board and shown in the Fee Schedule of the Village. By submitting an application, the applicant is authorizing the Zoning Administrator and/or Village Engineer to enter the site to obtain information required for the review of the erosion and sediment control plan.

C. Review and Approval of Permit Application. The Zoning Administrator or Village Engineer shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

1. Within 15 business days of the receipt of a complete permit application, as required by subsection B, the Zoning Administrator or Village Engineer shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this Chapter.

2. If the permit application and plan are approved, the Zoning Administrator shall issue the permit.

3. If the permit application or plan is disapproved, the Zoning Administrator or Village Engineer shall state in writing the reasons for disapproval.

4. The Zoning Administrator or Village Engineer may request additional information from the applicant. If additional information is submitted, the Zoning Administrator or Village Engineer shall have 15 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.

5. Failure by the Zoning Administrator or Village Engineer to inform the permit applicant of a decision within 15 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

D. Surety Bond. As a condition of approval and issuance of the permit, the Zoning Administrator or Village Engineer may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.

E. Permit Requirements. All permits shall require the responsible party to:

1. Notify the Zoning Administrator within 48 hours of commencing any land disturbing construction activity.

2. Notify the Zoning Administrator of completion of any BMPs within 14 days after their installation.

3. Obtain permission in writing from the Zoning Administrator or Village Engineer prior to any modification pursuant to s. 31-9C of the erosion and sediment control plan.

4. Install all BMPs as identified in the approved erosion and sediment control plan.

5. Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.

6. Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site erosion control log.

7. Inspect the BMPs within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.

8. Allow the Zoning Administrator and/or Village Engineer to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan at the construction site.

F. Permit Conditions. Permits issued under this section may include conditions established by the Zoning Administrator or Village Engineer in addition to the requirements set forth in subsection E. where needed to assure compliance with the performance standards in s. 31-7.

G. Permit Duration. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Zoning Administrator or Village Engineer may extend the period one or more times for up to an additional 180 days. The Zoning Administrator or Village Engineer may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this Chapter.

H. Maintenance. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this Chapter until the site has undergone final stabilization.

31-9. EROSION AND SEDIMENT CONTROL PLAN, STATEMENT, AND AMENDMENTS.

A. Erosion and Sediment Control Plan.

1. An erosion and sediment control plan shall be prepared and submitted to the Zoning Administrator.

2. The erosion and sediment control plan shall be designed to meet the performance standards in s. 31-7 and other requirements of this Chapter.

3. The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:

a. The name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.

b. Description of the site and the nature of the construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.

c. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.

d. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.

e. Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.

f. Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.

g. Existing data describing the surface soil as well as subsoils.

h. Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.

i. Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps.

4. The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five feet.

    a. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year flood plains, flood fringes and floodways shall also be shown.

    b. Boundaries of the construction site.

    c. Drainage patterns and approximate slopes anticipated after major grading activities.

    d. Areas of soil disturbance.

    e. Location of major structural and non-structural controls identified in the plan.

    f. Location of areas where stabilization practices will be employed.

    g. Areas which will be vegetated following construction.

    h. Areal extent of wetland acreage on the site and locations where storm water is discharged to a surface water or wetland.

    i. Locations of all surface waters and wetlands within one mile of the construction site.

    j. An alphanumeric or equivalent grid overlying the entire construction site map.

5. Each erosion and sediment control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from reaching waters of the state. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:

    a. Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.

    b. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Zoning Administrator or Village Engineer, structural measures shall be installed on upland soils.

    c. Management of overland flow at all sites, unless otherwise controlled by outfall controls.

d. Trapping of sediment in channelized flow.

e. Staging construction to limit bare areas subject to erosion.

f. Protection of downslope drainage inlets where they occur.

g. Minimization of tracking at all sites.

h. Clean-up of off-site sediment deposits.

i. Proper disposal of building and waste materials at all sites.

k. Stabilization of drainage ways.

l. Control of soil erosion from dirt stockpiles.

m. Installation of permanent stabilization practices as soon as possible after final grading.

n. Minimization of dust to the maximum extent practicable.

6. The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel, as necessary, to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected. The plan requirements of this subsection will meet the erosion control plan requirements of Wis. Admin. Code s. NR 216.46 when prepared in accordance with good engineering practices and the design criteria, standards and specifications outlined in the Wisconsin Construction Site Best Management Practice Handbook (WDNR Pub. WR-222 November 1993 Revision).

B. Erosion and Sediment Control Plan Statement. For each construction site identified under s. 31-4.A.3., an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the Zoning Administrator. The control plan statement shall briefly describe the site, including a site map. Further, it shall also include the best management practices that will be used to meet the requirements of the Chapter, including the site development schedule.

C. Amendments. The applicant shall amend the plan if any of the following occur:

1. There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan.

2. The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.

3. The Zoning Administrator or Village Engineer notifies the applicant of changes needed in the plan.

31-10. FEE SCHEDULE.

The fees referred to in other sections of this Chapter shall be established by the Village and may from time to time be modified by resolution. A schedule of the fees established by the Village shall be available for review at the Village Hall.

31-11 INSPECTION.

A. The Zoning Administrator or Village Engineer may inspect any construction site that holds a permit under this chapter at least once a month during the period starting March 1 and ending October 31 and at least 2 times during the period starting November 1 and ending February 28 to ensure compliance with the approved sediment and erosion control plan, provided, however, that it may inspect the site more, or less, frequently as conditions require.

B. If land disturbing construction activities are being carried out without a permit required by this Chapter, the Village may obtain a special inspection warrant to enter the land pursuant to the provisions of Wis. Stat. s. 66.0119.

31-12. STOP-WORK ORDER.

A. The Zoning Administrator or Village Engineer may post a stop-work order if any of the following occurs:

1. Any land disturbing construction activity regulated under this Chapter is being undertaken without a permit.

2. The erosion and sediment control plan is not being implemented in a good faith manner.

3. The conditions of the permit are not being met.

B. If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Zoning Administrator or Village Engineer may revoke the permit.

C. If the responsible party, where no permit has been issued, does not cease the activity after being notified by the Zoning Administrator or Village Engineer, or if a responsible party violates a stop-work order posted under subsection A, the Zoning Administrator or Village Engineer may request the village attorney to obtain a cease and desist order in any court with jurisdiction.

D. The Board of Appeals may retract the stop-work order issued under subsection A or the permit revocation under subsection 2 upon appeal of the Zoning Administrator or Village Engineer's Order, under the procedures set forth in s. 31-13.

E. After posting a stop-work order under subsection A, the Village may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this Chapter. The Village may go on the land and Commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the Village, plus interest at the rate authorized by the Village, shall be billed to the responsible party. In the event a responsible party fails to pay the

amount due, the clerk shall enter the amount due on the tax rolls and collect as a special charge against the property pursuant to Wis. Stat. s.66.0627.

31-13. APPEALS.

A. Board of Appeals. The Zoning Board of Appeals created pursuant to Chapter 35, Planning and Zoning:

1. Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Zoning Administrator and/or Village Engineer in administering this Chapter except for cease and desist orders obtained under s. 31-12C;

2. Upon appeal, may authorize variances from the provisions of this Chapter which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the Chapter will result in unnecessary hardship; and

3. Shall use the rules, procedures, duties and powers authorized by statute and set forth in Chapter 35 in hearing and deciding appeals and authorizing variances.

B. Who May Appeal. Appeals to the Zoning Board of Appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the Village of Rochester affected by any decision of the Zoning Administrator and/or Village Engineer.

31-14. DAMAGE TO OR DESTRUCTION OF BMPS.

No person may destroy or render ineffective BMPs constructed to meet the performance standards of this Chapter.

31-50. VIOLATIONS AND PENALTIES.

A. Any person violating any of the provisions of this Chapter shall be subject to a forfeiture as set forth in Chapter 50 of this Municipal Code. Each day a violation exists constitutes a separate offense.

B. Compliance with the provisions of this Chapter may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before proceed to injunction proceedings.

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CHAPTER 32 POST-CONSTRUCTION STORMWATER MANAGEMENT AND POND REGULATIONS

32-1. AUTHORITY.

A. The stormwater management provisions of this Chapter are adopted by the Village Board under the authority granted by Wis. Stat. s. 61.354. This Chapter supersedes all provisions of any ordinance previously enacted under Wis. Stat. s. 61.35 that relates to stormwater management regulations. Except as otherwise provided in Wis. Stat. s. 61.354, Wis. Stat. s. 61.35 applies to this Chapter and to any amendments to this Chapter.

B. The provisions of this Chapter are deemed not to limit any other lawful regulatory powers of the same Village or other governing body.

C. The Village Board hereby designates the Zoning Administrator and/or Village Engineer to administer and enforce the provisions of this Chapter.

D. The requirements of this Chapter do not pre-empt more stringent storm water management requirements that may be imposed by any of the following:

1. Wisconsin Department of Natural Resources administrative rules, permits or approvals, including but not limited to those authorized under Wis. Stat. ss. 281.16 and 283.33.

2. Targeted performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Admin. Code s. NR 151.004.

32-2. FINDINGS OF FACT.

The Village Board finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

A. Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.

B. Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.

C. Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.

D. Reduce the quality of groundwater by increasing pollutant loading.

E. Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.

F. Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.

G. Undermine floodplain management efforts by increasing the incidence and levels of flooding.

32-3. PURPOSE AND INTENT.

A. Purpose. The general purpose of this Chapter is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:

1. Further the maintenance of safe and healthful conditions.

2. Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

3. Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.

B. Intent. It is the intent of the Village Board that this Chapter regulate post-construction storm water discharges to waters of the state. This Chapter may be applied on a site-by-site basis. The Village Board recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this Chapter is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under Wis. Stat. s. 281.16 for regional storm water management measures and have been approved by the Village Board, it is the intent of this Chapter that the approved plan be used to identify post-construction management measures acceptable for the community.

32-4. APPLICABILITY AND JURISDICTION.

A. Applicability.

1. Where not otherwise limited by law, this Chapter applies after final stabilization to a site of land disturbing construction activity meeting any of the criteria in this section, unless the site is otherwise exempt under section 2.

a. A post construction site that had five or more acres of land disturbing construction activity.

b. A post-development construction site that had one or more acres of land disturbing construction activity after March 10, 2003.

2. A site that meets any of the criteria in this section is exempt from the requirements of this Chapter.

a. A redevelopment post-construction site with no increase in impervious area.

b. A post-construction site with less than 10% connected imperviousness based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre.

c. Nonpoint discharges from agricultural facilities and practices.

d. Nonpoint discharges from silviculture activities.

e. Routine maintenance for project sites under five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

f. Underground utility construction such as water, sewer and fiberoptic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.

g. Notwithstanding the applicability requirements in section 1., this Chapter applies to post-construction sites of any size that, in the opinion of the Zoning Administrator, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

B. Jurisdiction. This Chapter applies to post construction sites within the boundaries and jurisdiction of the Village of Rochester.

C. Exclusions. This Chapter is not applicable to activities conducted by a state agency, as defined under Wis. Stat. s. 227.01(1), but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Wis. Stat. s. 281.33(2).

32-5. DEFINITIONS.

“Administering authority” means a governmental employee, or a regional planning commission empowered under Wis. Stat. s. 61.354 that is designated by the Village Board to administer this Chapter.

“Agricultural facility” and “Agricultural practice” have the meanings given in Wis. Stat. s. 281.16.

“Average annual rainfall” means a calendar year of precipitation, excluding snow, which is considered typical.

“Best management practice” or “BMP” means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.

“Business day” means a day the office of the Zoning Administrator is routinely and customarily open for business.

“Cease and desist order” means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.

“Combined sewer system” means a system for conveying both sanitary sewage and storm water runoff.

“Connected imperviousness" means an impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

“Design storm” means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

“Development” means residential, commercial, industrial or institutional land uses and associated roads.

“Division of land” means the creation from one parcel of four or more parcels or building sites of five or fewer acres each in area where such creation occurs at one time or through the successive partition within a five year period, or such lesser amounts as may be set forth in Chapter 16 of this Municipal Code.

“Effective infiltration area” means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.
“Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.

"Exceptional resource waters" means waters listed in Wis. Admin. Code s. NR 102.11.

“Extraterritorial” means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

"Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform, perennial, vegetative cover has been established, with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or employment of equivalent permanent stabilization measures.

“Financial guarantee” means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the zoning administrator by the responsible party to assure that requirements of the Chapter are carried out in compliance with the storm water management plan.

“Governing body” means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.

“Impervious surface” means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets are examples of areas that typically are impervious.

“In-fill area” means an undeveloped area of land located within existing development.

“Infiltration” means the entry of precipitation or runoff into or through the soil.

“Infiltration system” means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

“Karst feature” means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

“Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

“Maintenance agreement” means a legal document that provides for long-term maintenance of storm water management practices.

“MEP” or “maximum extent practicable” means a level of implementing best management practices in

order to achieve a performance standard specified in this Chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

“New development” means development resulting from the conversion of previously undeveloped land or agricultural land uses.

“Off-site” means located outside the property boundary described in the permit application.

“On-site” means located within the property boundary described in the permit application.

"Ordinary high-water mark" has the meaning given in Wis. Admin. Code s. NR 115.03(6).

“Outstanding resource waters” means waters listed in Wis. Admin. Code s. NR 102.10.

“Percent fines” means the percentage of a given sample of soil, which passes through a #200 sieve.

“Performance standard” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

“Permit” means a written authorization made by the Zoning Administrator to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

“Permit administration fee” means a sum of money, in an amount set by the Village Board and set forth in the Fee Schedule, paid to the Zoning Administrator by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

“Pervious surface” means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

“Pollutant” has the meaning given in Wis. Stat. s. 283.01(13).

“Pollution” has the meaning given in Wis. Stat. s. 281.01(10).

“Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.

“Pre-development condition” means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

“Preventive action limit” has the meaning given in Wis. Admin. Code s. NR 140.05(17).

"Redevelopment ” means areas where development is replacing older development.

“Responsible party” means any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction storm water BMPs.

“Runoff” means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

“Separate storm sewer” means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets

all of the following criteria:

A. Is designed or used for collecting water or conveying runoff.

B. Is not part of a combined sewer system.

C. Is not draining to a storm water treatment device or system.

D. Discharges directly or indirectly to waters of the state.

“Site” means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.

“Stop work order” means an order issued by the Zoning Administrator which requires that all construction activity on the site be stopped.

“Storm water management plan” means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has undergone final stabilization following completion of the construction activity.

“Storm water management system plan” is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

"Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

“Top of the channel” means an edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet, landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

“TR-55” means the United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

“Type II distribution” means a rainfall type curve as established in the “United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973”. The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.

“Waters of the state” has the meaning given in Wis. Stat. s. 281.01(18).

32-6. TECHNICAL STANDARDS.

The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of storm water practices needed to meet the water quality standards of this Chapter:

A. Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of Wis. Admin. Code ch. NR 151.

B. Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the Zoning Administrator.

C. In this Chapter, the following year and location has been selected as average annual rainfall: Milwaukee, 1969 (Mar. 28-Dec. 6).

32-7. PERFORMANCE STANDARDS.

A. Responsible Party. The responsible party shall implement a post-construction storm water management plan that incorporates the requirements of this section.

B. Plan. A written storm water management plan in accordance with s. 32-9 shall be developed and implemented for each post-construction site.

C. Requirements. The plan required under subsection B shall include the following:

1. Surface Flow. Natural swales and depressisonal storage areas shall be incorporated into stormwater facility design wherever practical. Swales and ditches, together with any underground storm sewer system, shall provide an adequate outfall for runoff from the 100-year frequency 24-hour duration storm. In areas where swales/ ditches can not be provided, the underground storm sewer system shall be designed for the 100-storm condition. The developer shall submit to the Village design computation for the 100-year overland flow routes.

2. Storm Sewer. Where required by the Zoning Administrator or Village Engineer, storm sewers may be constructed to drain the development and any contiguous drainage areas. The developer shall submit to the Village two copies of the storm sewer design computation, including pipe design, inlet spacing, inlet capacity and hydraulic grade line.

3. Stormwater Detention. Stormwater detention is subject to review by the Zoning Administrator and Village Engineer. Detention basins shall have a high water level based on a 100-year design. The basin berm shall have one foot of freeboard above the 100-year high water level. The detention basin shall have an outlet based on the 100-year recurrence interval of the land in its natural pre-development state. Detention to be provided shall be for the entire site in its natural state, and off-site tributary flows shall be bypassed either through or around the detention facility. The stormwater detention facility shall be constructed and functioning prior to general site construction activities. Existing mapped wetlands, as determined by the Village, may not be used to provide the required stormwater detention volume unless authorized by the Wisconsin Department of Natural Resources, the U.S. Army Corps of Engineers and the Village Engineer.

4. Total Suspended Solids. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:

a. For new development, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subsection.

b. For redevelopment, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subsection.

c. For in-fill development under five acres that occurs within ten years after the effective date of this Chapter, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subsection.

d. For in-fill development that occurs ten or more years after the effective date of this Chapter, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subsection.

e. Notwithstanding subsections. a. to d., if the design cannot achieve the applicable total suspended solids reduction specified, the storm water management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

5. Peak Discharge.

a. By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to pre-development conditions for the two-year, 24-hour design storm and the 100-year, 24-hour design storm applicable to the post-construction site. For large tributary areas a critical duration analysis may be required. Pre-development conditions shall assume “good hydrologic conditions” for appropriate land covers as identified in TR-55 or an equivalent methodology. The meaning of “hydrologic soil group” and “runoff curve number” are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 1 shall be used.

Table 1 – Maximum Pre-Development Runoff Curve Numbers for Cropland Areas

Hydrologic Soil Group	A	B	C	C
Runoff Curve Number	56	70	79	83

b. All developments shall be subject to and in compliance with the following Base Level Standards for discharge rates.

(1) The 100-year post-development peak runoff discharge shall not exceed the most restrictive of the following standards:

(a) 0.30 cubic feet per second (cfs) per developed acre, or

(b) Maximum hydraulic capacity of existing downstream conveyance facilities as determined by the Village.

(2) The post-development runoff discharges for storms up to and including the 2-year storms shall not exceed 0.04 cfs per developed acre.

(3) The hydrologic and hydraulic analyses for evaluating pre- and post-development runoff characteristics shall utilize the precipitation frequency information developed by the National Oceanic and Atmospheric Administration (NOAA) and endorsed by the Southeastern Wisconsin Regional Planning Commission (SEWRPC). Stormwater models shall utilize the SEWRPC 2006 rainfall distribution or the NRCS distribution appropriate to NOAA Atlas 14.

(4) Storm water runoff from areas tributary to the site shall be considered in the equations for the design of the project site's drainage system.

6. Infiltration. BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in subsections e. through h.

a. For residential developments one of the following shall be met:

(1) Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

(2) Infiltrate 25% of the post-development runoff from the two-year, 24-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

b. For non-residential development, including commercial, industrial and institutional development, one of the following shall be met:

(1) Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

(2) Infiltrate 10% of the runoff from the two-year, 24-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes, and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

c. Pre-development condition shall be the same as in subsection. 5.

d. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subsection h. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

e. Exclusions. The runoff from the following areas are prohibited from meeting the requirements of this subsection:

(1) Areas associated with tier 1 industrial facilities identified in Wis. Admin. Code s. NR 216.21(2)(a), including storage, loading, rooftop and parking.

(2) Storage and loading areas of tier 2 industrial facilities identified in Wis. Admin. Code s. NR 216.21(2)(b).

(3) Fueling and vehicle maintenance areas.

(4) Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.

(5) Areas with less than three feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this subsection e.(5) does not prohibit infiltration of roof runoff.

(6) Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than five feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

(7) Areas within 400 feet of a community water system well as specified in Wis. Admin. Code ch. NR 811.12, or within 100 feet of a private well as specified in Wis. Admin. Code s. NR 812.08(4), for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.

(8) Areas where contaminants of concern, as defined in Wis. Admin. Code s. NR 720.03(2) are present in the soil through which infiltration will occur.

(9) Any area where the soil does not exhibit one of the following soil characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a three-foot soil layer with 20% fines or greater; or at least a five-foot soil layer with 10% fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This subsection e(9) does not prohibit infiltration of roof runoff.

f. Exemptions. The following are not required to meet the requirements of this section:

(1) Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.

(2) Parking areas and access roads less than 5,000 square feet for commercial and industrial development.

(3) Redevelopment post-construction sites.

(4) In-fill development areas less than five acres.

(5) Infiltration areas during periods when the soil on the site is frozen.

(6) Roads in commercial, industrial and institutional land uses, and arterial residential roads.

g. Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this section.

h. (1) Infiltration systems designed in accordance with this section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with Wis. Admin. Code ch. NR 140. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

(2) Notwithstanding subsection (1), the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

7. Protective Areas.

a. "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

(1) For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in Wis. Admin. Code s. NR 103.04, 75 feet.

(2) For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

(3) For lakes, 50 feet.

(4) For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with Wis. Admin. Code s. NR 103.08(1m). This section does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

(5) For less susceptible wetlands, ten percent of the average wetland width, but no less than ten feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

(6) In subsections a.(1), (4) and (5), determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in Wis. Admin. Code s. NR 103.03.

(7) For concentrated flow channels with drainage areas greater than 130

acres, 10 feet.

b. This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to subsection d.

c. The following requirements shall be met:

(1) Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The storm water management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.

(2) Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.

(3) Best management practices such as filter strips, swales, or wet detention basins, that are designed to control pollutants from non-point sources may be located in the protective area.

d. This section does not apply to:

(1) Redevelopment post-construction sites.

(2) In-fill development areas less than five acres.

(3) Structures that cross or access surface waters such as boat landings, bridges and culverts.

(4) Structures constructed in accordance with Wis. Stat. s. 59.692(1v).

(5) Post-construction sites from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.

8. Fueling and Vehicle Maintenance Areas. Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

9. Site Drainage. Measures shall be implemented to ensure proper site drainage, prevent property damage and protect public health and safety, and include the following minimum requirements:

a. Drainage easement. Perpetual drainage easements or other deed restrictions shall be recorded on the property to preserve major storm water flow paths and permanent storm water BMP locations. Covenants in these areas shall not allow buildings or other structures and shall prevent any grading, filling or other activities that interrupt or obstruct flows in any way. Covenants shall also specify maintenance responsibilities and authorities in accordance with section 32-10.

b. Site grading. Site grading shall ensure positive flows away from all buildings, be coordinated with the general storm water drainage patterns for the area, and minimize adverse impacts on adjacent properties.

c. Street drainage. All street drainage shall be designed to prevent concentrated flows from crossing the traffic lanes to the maximum extent practicable. Design flow depths at the road centerline for on-street drainage, shall not exceed six inches during the peak flows generated by the 100-year, 24-hour design storm, using planned land use conditions for the entire contributing watershed area.

d. Bridges and cross-culverts. All new or modified bridges and cross-culverts shall comply with applicable design standards and regulations, facilitate fish passage and prevent increased flooding or channel erosion upstream or downstream from the structure. Design flow depths at the road centerline for all crossings shall not exceed six inches during the peak flows generated by the 100-year, 24-hour design storm, using planned land use conditions for the entire contributing watershed area. All predevelopment runoff storage areas within the flow path upstream of bridges and cross-culverts shall be preserved and designated as drainage easements, unless compensatory storage is provided and accounted for in modeling.

e. Subsurface drainage requirements.

(1) Basement floor surfaces shall be built one foot above the seasonal high water table elevation, as documented in the submitted soil evaluations, and shall avoid hydric soils as much as possible.

(2) A subsurface drainage investigation shall be required if the Village Engineer determines that agricultural subsurface drainage systems may be present on a proposed development site subject to this article. The subsurface drainage investigation shall be conducted as specified in Chapter 30, Land Division, of this Municipal Code.

f. Open channels. All open channel drainage systems shall at a minimum be designed to carry the peak flows from a ten-year, 24-hour design storm using planned land use for the entire contributing watershed area. Side slopes shall be no steeper than 4h:1v unless otherwise approved by the Village Engineer for unique site conditions. Open channels that carry runoff from more than 130 acres shall at a minimum be designed to carry the peak flows from a 25-year, 24-hour design storm.

g. Storm sewers. All storm sewers shall be designed as follows and in accordance with Chapter 30, Land Division, of this Municipal Code.

(1) Storm sewers shall be designed in accordance with the Wisconsin DOT Facilities design manual. Storm sewers shall be designed to flow full, using Manning's Formula with an appropriate roughness coefficient based on pipe material. If a storm sewer is designed with a constantly submerged outfall, the sewer shall be designed using the "hydraulic gradient" with the maximum allowable water level an elevation one foot below centerline of pavement.

(2) The rational method shall be employed when computing storm runoff. The storm system shall be designed with "positive street and swale drainage" such that storm water runoff will be directed overland to the

storm water detention area in a manner to minimize property damage due to flooding.

(3) Storm sewers shall be designed for a minimum ten-year storm event flowing full. The pipes shall be sloped to achieve the minimum three feet per section (fps) self-cleaning velocity and have a maximum velocity not exceeding twelve fps.

(4) In areas where curb and gutter and storm sewers are required, inlets shall be installed so that the drainage reach for each inlet shall not exceed 400 feet. Where the inlet is located at a low point, additional inlets may be required by the Village Engineer. No more than two inlets shall be interconnected. Inlets shall be so located that storm water runoff will not "pond" greater than the top of the street curbs. Depressed street crowns to facilitate drainage will not be permitted.

(5) Rear lot drainage should not drain along the side yard, over the sidewalk and curb. Rear yard inlets shall be placed where approved or as required by the Village Engineer.

(6) The minimum size storm sewer or inlet connection shall be twelve inches in diameter.

(7) Connections to sanitary sewers or existing agricultural drainage systems (tiles) will not be permitted for any new developments. All developments will utilize separate drainage systems to avoid disruption or overloading of the existing agricultural tile drainage system. Any field tile systems cut during the process of land development must be reconnected. Connection of existing agricultural drain tiles to new storm water management systems may be approved if proper allowance for flows from said tiles is incorporated in the new design system.

h. Structure protection and safety. Flows generated by the 100-year, 24-hour design storm under planned land use conditions may exceed the design capacity of conveyance systems, but shall not come in contact with any buildings. For buildings designed for human occupation on a regular basis, the following additional requirements shall apply:

(1) The lowest elevation of the structure that is exposed to the ground surface shall be a minimum of one foot above the maximum water elevation produced by the 100-year, 24 hour design storm, including flows through any storm water BMP that may temporarily or permanently store water at a depth of greater than one foot; and

(2) The structure shall be set back at least 50 feet from any storm water BMP that may temporarily or permanently store water at a depth of greater than one foot. Setback distance shall be measured from the closest edge of water at the elevation produced by the 100-year, 24-hour design storm.

D. General Considerations for On-site and Off-site Storm Water Management Measures. The following considerations shall be observed in managing runoff:

1. Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.

2. Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

3. Specific design standards for detention pond design.

4. Specific design criteria.

E. Location and Regional Treatment Option.

1. The BMPs may be located on-site or off-site as part of a regional storm water device, practice or system.

2. Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this Chapter. Post-construction BMPs may be located in nonnavigable surface waters.

3. Except as allowed under subsection 4., post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.

4. Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this Chapter if:

   a. The BMP was constructed prior to the effective date of this Chapter and the BMP either received a permit issued under Wis. Stat. ch. 30 or the BMP did not require a Wis. Stat. ch. 30 permit; and

   b. The BMP is designed to provide runoff treatment from future upland development.

5. Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this section.

   a. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.

   b. Post-construction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state and local regulations such as Wis. Admin. Code ch. NR 103 and Wis. Stat. ch. 30.

6. The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this chapter.

7. The Zoning Administrator may approve off-site management measures provided that all of the following conditions are met:

   a. The Zoning Administrator determines that the post-construction runoff is covered by a storm water management system plan that is approved by the Village of Rochester and that contains management requirements consistent with the purpose and intent of this Chapter.

   b. The off-site facility meets all of the following conditions:

      (1) The facility is in place.

(2) The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this Chapter.

c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.

8. Where a regional treatment option exists such that the Zoning Administrator exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Zoning Administrator. In determining the fee for post-construction runoff, the Zoning Administrator shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

F. Alternate Requirements. The Zoning Administrator may establish storm water management requirements more stringent than those set forth in this section if the Zoning Administrator determines that an added level of protection is needed to protect sensitive resources.

32-8. PERMITTING REQUIREMENTS, PROCEDURES AND FEES.

A. Permit Required. No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the Zoning Administrator prior to commencing the proposed activity.

B. Permit Application and Fees. Unless specifically excluded by this Chapter, any responsible party desiring a permit shall submit to the Zoning Administrator a permit application made on a form provided by the Zoning Administrator for that purpose.

1. Unless otherwise excepted by this Chapter, a permit application must be accompanied by a storm water management plan, erosion control plan, storm-water calculations, a maintenance agreement and a non-refundable permit administration fee in an amount set by the Village Board as shown in the Fee Schedule.

2. The storm water management plan shall be prepared to meet the requirements of ss. 32-7 and 32-9, the maintenance agreement shall be prepared to meet the requirements of s. 32-10, the financial guarantee shall meet the requirements of s. 32-11, and fees shall be those established by the Village Board as set forth in s. 32-30.

C. Review and Approval of Permit Application. The Zoning Administrator shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:

1. Within 30 business days of the receipt of a complete permit application, including all items as required by subsection B., the Zoning Administrator shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this Chapter.

2. If the storm water permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made, the Zoning Administrator shall issue the permit.

3. If the storm water permit application, plan or maintenance agreement is disapproved, the Zoning Administrator shall detail in writing the reasons for disapproval.

4. The Zoning Administrator may request additional information from the applicant. If additional information is submitted, the Zoning Administrator shall have 20 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

5. Failure by the Zoning Administrator to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

D. Permit Requirements. All permits issued under this Chapter shall be subject to the following conditions, and holders of permits issued under this Chapter shall be deemed to have accepted these conditions. The Zoning Administrator may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Zoning Administrator to suspend or revoke this permit may be appealed in accordance with s. 32-31.

1. Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.

2. The responsible party shall design and install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.

3. The responsible party shall notify the Zoning Administrator at least five business days before commencing any work in conjunction with the stormwater management plan, and within five business days upon completion of the stormwater management practices. If required as a special condition under subsection E., the responsible party shall make additional notification according to a schedule set forth by the Zoning Administrator so that practice installations can be inspected during construction.

4. Practice installations required as part of this Chapter shall be certified "as built" by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the Zoning Administrator or its designee to determine if they are in accordance with the approved storm water management plan and this Chapter. The Zoning Administrator or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.

5. The responsible party shall notify the Zoning Administrator of any significant modifications it intends to make to an approved storm water management plan. The Zoning Administrator may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.

6. The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the Village Board, or are transferred to subsequent private owners as specified in the approved maintenance agreement.

7. The responsible party authorizes the Zoning Administrator to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan, and consents to a special assessment or special charge against the property as authorized under Wis. Stat. ch. 66 or to charging such costs against the financial guarantee posted under s. 32-11.

8. If so directed by the Zoning Administrator, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage

ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved storm water management plan.

9. The responsible party shall permit property access to the Zoning Administrator or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit.

10. Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the Zoning Administrator may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.

11. The responsible party is subject to the enforcement actions and penalties detailed in s. 32-12 and 32-50 if the responsible party fails to comply with the terms of this permit.

E. Permit Conditions. Permits issued under this Chapter may include conditions established by the Zoning Administrator in addition to the requirements needed to meet the performance standards in s. 32-7 or a financial guarantee as provided for in s. 32-11.

F. Permit Duration. Permits issued under this Chapter shall be valid from the date of issuance through the date the Zoning Administrator notifies the responsible party that all storm water management practices have passed the final inspection required under subsection D.4.

32-9. STORM WATER MANAGEMENT PLAN.

A. PLAN REQUIREMENTS. The storm water management plan required under s. 32-8B shall contain at a minimum the following information:

1. Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of storm water management practices; and person(s) responsible for maintenance of storm water management practices prior to the transfer, if any, of maintenance responsibility to another party.

2. A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.

3. Pre-development site conditions, including:

a. One or more site maps at a scale of not less than one inch equals 50 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two feet; topography and drainage network including contiguous properties extending at least 50-feet beyond the site boundary to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all storm water conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Wis. Admin. Code s. NR 811.12.

b. Hydrology and pollutant loading computations as needed to show compliance

with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

4. Post-development site conditions, including:

   a. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.

   b. Explanation of any restrictions on storm water management measures in the development area imposed by wellhead protection plans and laws and ordinances.

   c. One or more site maps at a scale of not less than one inch equals 50 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed two feet; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all storm water conveyance sections; location and type of all storm water management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.

   d. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

   e. Results of investigations of soils and groundwater required for the placement and design of storm water management measures. Detailed drawings including cross-sections and profiles of all permanent storm water conveyance and treatment practices.

5. A description and installation schedule for the storm water management practices needed to meet the performance standards in 32-7.

6. A maintenance plan developed for the life of each storm water management practice including the required maintenance activities and maintenance activity schedule.

7. Cost estimates for the construction, operation, and maintenance of each storm water management practice.

8. Other information requested in writing by the Zoning Administrator to determine compliance of the proposed storm water management measures with the provisions of this Chapter.

9. All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this Chapter.

B. Alternate Requirements. The Zoning Administrator may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under 32-7E.

32-10. MAINTENANCE AGREEMENT.

A. Maintenance Agreement Required. The maintenance agreement required under s. 32-8B. for storm water management practices shall be an agreement between the Zoning Administrator and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be filed with the Racine County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the storm water management practices.

B. Agreement Provisions. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by s. 32-9A.6.:

1. Identification of the storm water facilities and designation of the drainage area served by the facilities.

2. A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under s. 32-8B.

3. Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under s. 32-8B.

4. Requirement that the responsible party(s), organization, or city, county, town or village shall maintain storm water management practices in accordance with the schedule included in subsection 2.

5. Authorization for the Zoning Administrator to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

6. A requirement on the Zoning Administrator to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.

7. Agreement that the party designated under subsection 3. as responsible for long term maintenance of the storm water management practices, shall be notified by the Zoning Administrator of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Zoning Administrator.

8. Authorization of the Zoning Administrator to perform the corrected actions identified in the inspection report if the responsible party designated under subsection 3. does not make the required corrections in the specified time period. The Zoning Administrator shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Wis. Stat. ch. 66.

32-11. FINANCIAL GUARANTEE.

A. Establishment of the Guarantee. The Zoning Administrator may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Zoning Administrator. The financial guarantee shall be in an amount determined by the Zoning Administrator to be the estimated cost of construction and the estimated cost of maintenance of the storm water management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Zoning Administrator the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the Zoning Administrator that the requirements of this Chapter have not been met.

B. Conditions for Release. Conditions for the release of the financial guarantee are as follows:

1. The Zoning Administrator shall release the portion of the financial guarantee established under this section, less any costs incurred by the Zoning Administrator to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The Zoning Administrator may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.

2. The Zoning Administrator shall release the portion of the financial guarantee established under this section to assure maintenance of storm water practices, less any costs incurred by the Zoning Administrator, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

32-12. ENFORCEMENT.

A. Any land disturbing construction activity or post-construction runoff initiated after the effective date of this Chapter by any person, firm, association, or corporation subject to the Chapter provisions shall be deemed a violation unless conducted in accordance with the requirements of this Chapter.

B. The Zoning Administrator shall notify the responsible party by certified mail of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.

C. Upon receipt of written notification from the Zoning Administrator under subsection B., the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Zoning Administrator in the notice.

D. If the violations to a permit issued pursuant to this Chapter are likely to result in damage to properties, public facilities, or waters of the state, the Zoning Administrator may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the Zoning Administrator plus interest and legal costs shall be billed to the responsible party.

E. The Zoning Administrator is authorized to post a stop work order on all land disturbing construction activity that is in violation of this Chapter, or to request the village attorney to obtain a cease and desist order in any court with jurisdiction.

F. The Zoning Administrator may revoke a permit issued under this Chapter for non-compliance with

Chapter provisions.

G. Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the Zoning Administrator or by a court with jurisdiction.

H. The Zoning Administrator is authorized to refer any violation of this Chapter, or of a stop work order or cease and desist order issued pursuant to this Chapter, to the village attorney for the commencement of further legal proceedings in any court with jurisdiction.

I. When the Zoning Administrator determines that the holder of a permit issued pursuant to this Chapter has failed to follow practices set forth in the storm water management plan, or has failed to comply with schedules set forth in said storm water management plan, the Zoning Administrator or a party designated by the Zoning Administrator may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The Zoning Administrator shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to s. 32-11 of this Chapter. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon.

32-20. POND REGULATIONS.

A. Permit Required. No person shall construct or make improvements to any pond located in the Village of Rochester without first obtaining site plan and zoning permit approval from the Village Plan Commission and Village Board. Except as set forth below, these provisions apply to all ponds including, but not limited to, those ponds utilized for drainage, recreation, aesthetics, sediment control, and fish management. Ponds to be constructed in the shoreland and floodplain areas remain subject to the shoreland, wetland and floodplain provisions of this Municipal Code which may limit such construction and will require conditional use permits. Prior to issuance of a pond permit, the Zoning Administrator will evaluate the application to determine whether the Construction Site Erosion Control provisions in Chapter 31 of this Municipal Code, or the Postconstruction Stormwater Drainage provisions of this Chapter, apply, and if so, the applicant shall be required to follow those provisions.

B. Exceptions. The following ponds are excluded from the provisions of this section: ponds with a depth of less than 24 inches, ponds with a diameter less than 16 feet or an area less than 200 square feet, storm water drainage ponds created by or for a drainage utility district, and ponds which have been previously reviewed and approved as part of a Post Construction Erosion Control Plan. Existing ponds are also excluded from the provisions of this section, but any enlargement, dredging or modifications to such a pond requires site plan and zoning permit approval from the Village Plan Commission and Village Board.

C. Site Plan Requirements. Before a zoning permit may be issued, the applicant shall provide the Village with a detailed site plan of the proposed pond excavation showing cross-sections, depth, area, safety ledges, proposed elevations of the pond and slopes tied into mean sea level datum, dimensions of the pond, location of the pond from existing property lines, and addressing the disposition and storage of spoils from the excavation, and the timetable for the starting and completing the pond.

D. Standards for Pond Construction.

1. Technical Requirements. Side slopes shall not exceed 4:1 or flatter ratio. The boundaries of the pond, as shown on the approved site plan shall be setback a minimum of 30 feet from all property lines. In addition, ponds shall be constructed in conformance

with the standards of the soil conservation Service Technical Guide and where applicable the Wet Detention Basin of the Wisconsin Department of Natural Resources Conservation Practices Standards.

2. Excavated material. All excavated material shall remain on site and shall be integrated into the restoration of the pond area. No excavated material from the project site shall be sold, given away, or otherwise removed from the site in a manner in which the principal use of the property appears to be soil removal, and pond construction appears to be a secondary result, unless the applicant rezones the property to M-4, Quarry District and obtains conditional use approval from the Village Plan Commission and Village Board.

E. Conditions to Permit. The Village Plan Commission and Village Board may attach conditions to the issuance of the pond permit to address such things (without limitation) as maintenance, weed control, depth of pond, landscaping and aesthetics and measures to secure the pond to avoid personal injury to frequenters, invitees, or trespassers. Other conditions appropriate to the area under consideration may be added to permit by the Village Board, after consultation with the Village Engineer, Zoning Administrator or Public Works Supervisor.

F. Additional Permits. Prior to the construction pond the applicant is responsible for obtaining all necessary pertinent permits from county, state, and federal government agencies.

G. Permit Fee. No permit will be issued until the applicant has paid a Permit Fee in an amount set by the Village Board and set forth in the Village of Rochester Fee Schedule.

H. Abatement.

1. Notice to owner. In the event that any person shall construct or make improvements to any pond located in the Village of Rochester without first obtaining a site plan approval and zoning permit as required herein or who shall construct or make improvements to any pond located in the Village or Rochester, contrary to this Section, the Village may serve notice on the person causing, permitting, or maintaining such a violation and upon the owner or the occupant of the premises on which such a violation is caused, permitted, or maintained and to post a copy of said notice on the premises. Such notice shall direct that the person causing, permitting or maintaining such a violation or the owner or the occupant of the premises to abate or remove each such violation or to obtain the necessary permits required hereby within seven days from the date of posting and shall state that unless such action is taken, the Village will cause the same to be abated, removed or otherwise brought into compliance and will charge the costs thereof to the owner, occupant, or person causing permitting or maintaining the violation, as the case may be.

2. Abatement or restoration by the Village. If the action required by the notice issued pursuant to this Section is not taken within the time provided or if the owner, occupant or person causing, permitting or maintaining the violation cannot be found, the Village shall cause the abatement or removal of the violation, and if necessary to bring the premises into compliance, the Village shall take action to restore the property to a state consistent with the conditions of the property prior to the construction of the pond or the improvements made to the pond which were made in violation of this Section.

3. Cost of Abatement or Restoration. In addition to any other penalty imposed for a violation of this Section, the cost of abating a violation of this Section by the Village shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the violation, and if notice to abate and/or remedy the violation has been given to the owner, or in case of emergency, such costs shall be assessed against the real estate as a special charge.

32-30. FEE SCHEDULE.

The fees referred to in other sections of this Chapter shall be established by the Village Board and may from time to time be modified by resolution. A schedule of the fees established by the Village Board shall be available for review in the Village Clerk's office.

32-31. APPEALS.

A. Board of Appeals. The Zoning Board of Appeals, created pursuant to Chapter 35 of the Village of Rochester Municipal Code, shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Zoning Administrator in administering this Chapter. The Board of Appeals shall use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the Board of Appeals may authorize variances from the provisions of this Chapter that are not contrary to the public interest, and where owing to special conditions a literal enforcement of the Chapter will result in unnecessary hardship.

B. Who May Appeal. Appeals to the Board of Appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the Village of Rochester affected by any decision of the Zoning Administrator.

32-32. SEVERABILITY.

If any section, clause, provision or portion of this Chapter is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Chapter shall remain in force and not be affected by such judgment.

32-50. VIOLATIONS AND PENALTIES.

A. Forfeitures. In addition to any other penalty set forth in this Chapter, any person who does not comply with the provisions of this Chapter, including constructing or making any improvements without obtaining the permits required under this Chapter, shall be subject to a forfeiture in an amount set forth in Chapter 50 of this Municipal Code per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.

B. Injunctions. Compliance with the provisions of this Chapter may also be enforced by injunction in any court with jurisdiction. This remedy is in addition to all other remedies set forth in this Chapter. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctional proceedings.

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CHAPTER 35 PLANNING AND ZONING

35-1 AUTHORITY

This Chapter is adopted under the authority granted by Wis. Stat. chs. 61, 62 and 87, and such other statutes as may be applicable under the circumstances.

35-2 PURPOSE

The purpose of this Chapter is to promote the comfort, health, safety, morals, prosperity, aesthetics, and general welfare of the Village of Rochester.

35-3 INTENT

It is the general intent of this Chapter to regulate and restrict the use of all structures, lands, and waters; regulate and restrict lot coverage, population distribution and density, and the size and location of all structures so as to: lessen congestion in and promote the safety and efficiency of the streets and highways; secure safety from fire, flooding, panic, and other dangers; provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; provide adequate sanitation and drainage; prevent overcrowding; avoid undue population concentration; facilitate the adequate provision of public facilities and utilities; stabilize and protect property values; preserve and promote the beauty of the community; and implement those municipal, watershed, county and regional comprehensive plans or components of such plans adopted by the Village of Rochester. Floodplain zoning regulations, specifically set forth in Chapter 37 of this Municipal Code, have been adopted to prevent and control erosion, sedimentation, and other pollution of surface waters; to further the maintenance of safe and healthful water conditions and prevent flood damage to persons and property; and to minimize expenditures for flood relief and flood control projects. To this end, it is further intended to provide for the administration and enforcement of this Chapter and to provide penalties for its violation.

35-4 ABROGATION OR GREATER RESTRICTIONS

It is not intended by this Chapter to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, or permits previously adopted or issued pursuant to law. However, wherever this Chapter imposes greater restrictions, the provisions of this Chapter shall govern.

35-5 INTERPRETATION

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Village and shall not be construed to be a limitation or repeal of any other power possessed by the Village powers or powers granted by the State. If any provision could be construed to regulate the property or to exclude such use from regulation, the provision shall be construed as regulating such use.

35-6 FEES

All persons performing work or using land which by this Chapter or Chapters 30 through 39 requires the issuance of a permit, or review or action by the Village, shall pay a fee to the Treasurer in an amount determined by the Village Board and set forth in the Fee Schedule. Fees shall be charged for applications including but not limited to the following:

A. Zoning Permit
B. Land Use Plan Amendment and Application for Rezoning or change to Planning and Zoning Code

C. Site and Operational Plan Review
D. Conditional Use Application (Submit Zoning Permit and Conditional Use Applications
E. Sign Permit (use Zoning Permit form)
F. Home Occupations.
G. Variance or Appeal Petition (Submit Zoning Permit and Variance or Appeal Applications
H. Annexation Petition (by applicant)
I Construction Site Erosion Control Permit (see Chapter 31)
J. Post Construction Stormwater and Pond Application (see Chapter 32)
K. Extraterritorial Plat Review
L. Shoreland/Wetland and Shoreland Application, Certificate of Compliance (see Chapter 36)
M. Floodplain Application and Certificate of Compliance (see Chapter 37)
N. Historic Preservation Certificate of Appropriateness (See Chapter 38)
O. Temporary Use Permit

35-7 JURISDICTION.

The jurisdiction of this Chapter shall include all lands and waters within the corporate limits of the Village of Rochester, Wisconsin. The terms of this Chapter shall govern the remaining land use chapters where no specific provisions for the items covered by this Chapter are provided therein.

35-8 COMPLIANCE.

No structure, land, or water shall hereafter be used and no land or structure shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered except in conformity with the regulations herein specified for the district in which it is located.

35-9 ZONING PERMIT REQUIRED.

A. No land shall be occupied or used, and no building or structure hereafter erected, altered or moved shall be occupied, and no nonconforming use shall be renewed, changed or extended until a Zoning Permit in compliance with the provisions of this Chapter has been issued by the Zoning Administrator. Such permit shall show that the land, building, structure or premises or part thereof is in compliance with the provisions of this Chapter.

B. A Zoning Permit must be obtained from the Zoning Administrator prior to the issuance of a Building Permit by the Village Building Inspector. In areas not served by municipal sanitary sewer, an applicant must obtain sanitary approval from the Racine County Code Administration office prior to obtaining a Zoning Permit from the Village to ensure that the proposed on-site sanitary system is in compliance with State and County regulations and will not interfere with the existing on-site sanitary system.

C. This section shall also apply in cases where the use of any building or premises is changed by owner or occupant, or where any nonconforming use is renewed, changed or extended. No structure within the floodplain districts hereafter erected, altered or moved shall be occupied until the applicant submits to the Zoning Administrator the certification required in Chapter 37 of this Municipal Code.

35-10 DUTIES OF ZONING ADMINISTRATOR

The duties of the Zoning Administrator shall include the administration of this Chapter and the evaluation and, if appropriate, the issuance of all permits required by this Chapter. The Zoning Administrator shall maintain records of all permits issued, and shall perform all floodplain related duties set forth in Chapter 37 of this Municipal Code and administer all other land use provisions as set forth in this Municipal Code. In addition:

A. The Zoning Administrator shall investigate all complaints, give notice of violations, issue orders to comply with this Chapter, and assist the Village Attorney in the prosecution of ordinance violators.

B. The Zoning Administrator and his duly appointed deputies may enter at any reasonable time onto any public or private lands or water to make a zoning inspection as deemed necessary by him to ensure compliance with this Chapter. If, however, he is refused entry after presentation of his identification, he may procure a inspection warrant in accordance with Wis. Stat. s. 66.0119.

C. It shall be the duty of the Zoning Administrator, with the aid of law enforcement and the Building Inspector, to enforce the land use provisions of this Code. The Zoning Administrator shall keep a record of all permits and certificates issued by him, and copies shall be furnished upon request to any person having a proprietary or tenancy interest in any land or building, or as required by the Open Records laws. The Zoning Administrator shall also keep a record of all nonconforming uses, indicating any extension or changes thereof, with the dates of such changes or extensions.

D. The Zoning Administrator shall give all notices related to Floodplain Zoning as set forth in Chapter 37 of this Municipal Code.

35-11 ZONING PERMIT REQUIREMENTS.

A. Each principal and accessory use and structure shall require the issuance of a Zoning Permit prior to the issuance of building permits under Chapter 11 and prior to a new or change in the use of a property. An application for a Zoning Permit shall be completed in triplicate and submitted to the Zoning Administrator and shall include the following (additional permits may be required under Chapter 30 to 39 of this Municipal Code):

1. Names and Addresses of the applicant, owner of the site, architect, professional engineer, or contractor.

2. Description of the subject site by lot, block, and recorded subdivision or by metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure and/or site; number of families or employees; and the zoning district within which the subject site lies.

3. Plat of Survey prepared by a registered land surveyor, or, at the discretion of the Zoning Administrator, a location sketch drawn to scale, showing the location, boundaries, dimensions, setbacks, elevations if required by the discretion of the Zoning Administrator, uses and sizes of the following: subject site; existing and proposed structures; accessory buildings; existing and proposed easements, streets, and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; wetland, high water, channel, floodway and floodplain boundaries; and existing and proposed street, side, and rear yards. In addition, the plat of survey shall show the location, elevations, and use of any abutting lands and their structures within forty feet of the subject site. Elevations shall be referenced to the National Geodetic Vertical (NGVD) Datum of 1929. When the subject site is subject to other land use restrictions set forth in this Code, the permit application shall include the information required by the applicable chapter(s).

4. Structures may not be constructed within any easements, e.g., utility easements, drainage easements, preservation easements, driveway easements, etc., without a recordable written approval from the holder of the easement allowing the encroachment.

5. In any case, no permit for excavation or for erection of any building or part of a building or for repairs to or alterations of a building shall be issued by the Building Inspector until

after a statement of its intended use has been filed with the Zoning Administrator by the applicant.

6. Minimum Utility Connections. Electricity and sanitary sewerage and water supply connections are required for all structures used or intended to be used for human habitation or occupancy. If municipal sewer service is not available, the proposed on-site sanitary sewer disposal plan must be approved by the Racine County Code Administration office, which shall state in writing that a satisfactory, adequate and safe sewage disposal system is possible on the site as proposed by the plan in accordance with the applicable local, county and state regulations.

7. Fee receipt. The Zoning Administrator shall not proceed until a receipt showing payment of the Fees required by the Village of Rochester is submitted to him.

8. Additional Information. The applicant shall submit additional information as may be required by the Village Plan Commission, Village Engineer, and/or Zoning Administrator.

B. Continuance of Existing Uses. Nothing in this Chapter shall prevent the continuance of the present occupancy or lawful use of any existing building, except as may be necessary for the safety of life and property.

C. A Zoning Permit shall be granted or denied in writing by the Zoning Administrator within 30 business days of receipt of all forms, fees, plans and documents required to process the application, and completion of any other Village prerequisite permitting requirements. Refusal to issue a Zoning Permit shall be given in writing, with the reasons for such refusal. Unless otherwise set forth in the Chapter or by statute, the Permit shall expire at the same time as the building permit issued by the Building Inspector under Chapter 11. Certificates of Compliance, and Zoning Permits for uses that do not involve building permits, shall not expire but shall be automatically void if a change is made without application for an amended or new Certificate or Zoning Permit. A Zoning Permit that was issued prior to the enactment of this Chapter that has expired will not be re-issued upon application unless the plans meet the requirements of this Chapter. A Zoning Permit issued in conflict with this Chapter shall be null and void.

35-12 USES NOT REQUIRING A ZONING PERMIT.

No Zoning Permit shall be required in any of the following instances: for repairs or improvements to an existing building not involving a change in the use of a structure, or an increase in the floor area of the structure, except in compliance with Section 35-190, Architectural Control, of this Chapter and other applicable chapters of this Municipal Code; provided, however, that any work not requiring a permit shall comply with the applicable setback, yard, height and other requirements of this Chapter. No zoning permit shall be required for the necessary and customary construction, reconstruction or maintenance of overground or underground public utility service lines and mechanical appurtenances; except in compliance with floodplain districts (see Chapter 37). No permit shall be required for gardening accessory to a principal use. See also Chapters36 to 39 for specific uses.

35-13 CERTIFICATE OF COMPLIANCE

Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of the adoption of this Chapter, certifying, after inspection, the extent and kind of use made of the building or premises and whether or not such use conforms to the provisions of the Chapter.

35-14 EXISTING PERMITS

Nothing contained in this Chapter shall require any change in the plans, construction, size or designated use of any building or part thereof for which a Zoning Permit was issued before the effective date of this Chapter, or the applicable amendment thereto, the construction of which was started within six months from the date of such permit.

35-15 SITE RESTRICTIONS.

A. No permit shall be issued and no land shall be used or structure erected where the land is unsuitable for such use of structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community. Such determination shall be made by the Village Board, and the Zoning Administrator shall be responsible for making the Village Board aware of such unsuitable conditions that come to his attention. The Village Board in applying the provisions of this section, shall in writing recite the particular facts upon which it bases its conclusion that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence contesting such unsuitability if he so desires. Thereafter the Village Board may affirm, modify, or withdraw its determination of unsuitability.

B. All Lots shall abut upon a public street, or a private road approved by the Village, or other means of access if that access was in existence prior to the adoption of this Chapter and was previously approved by the municipality. Each lot shall have a minimum frontage of 33 feet and shall also be a minimum width at the street yard setback line as prescribed for the particular zoning district in which the lot is located.

C. All Principal and Accessory Structures shall be located on a lot, and only one principal structure shall be located, erected, or moved onto a lot, unless the specific zoning for the lot allows for more than one principal structure or more buildings are allowed by conditional use permit or site plan review. All residential structures shall be attached to a permanent foundation, and shall meet the minimum area requirements for the use of the dwelling, as set forth in the specific zoning district.

D. No Zoning Permit shall be issued for a lot which abuts a public street dedicated to only a portion of its platted width. No zoning permit shall be issued for a lot which abuts upon the termination of a non-through public street unless such street has been or is to be provided with a permanent cul-de-sac or other type of permanent turnaround as determined by the Plan Commission and the Village Board.

E. Width and area of all lots not served by public sanitary sewer system, or other sewage disposal system by the State or County having jurisdiction over the approval or disapproval of such systems, shall be sufficient to permit the use of a private on-site wastewater treatment system (POWTS) designed in accordance with applicable state and county sanitary regulations but in no case shall be less than 150 feet in width and 40,000 square feet in area unless lot width and area has been approved by the Plan Commission through the land division or conditional use process.

F. Where public water supply systems are not available, private well construction shall be required to conform to Wis. Admin. Code ch. NR 812, and, if applicable, Wis. Admin. Code ch. NR 811. Where public sewer collection and treatment is not available, design and construction of private sewage systems shall be governed under Chapter 19 of the Racine County Code of Ordinances, pursuant to Wis. Stat. s. 145.20. No private waste disposal system or part therefore shall be located, installed, moved, reconstructed, extended, enlarged, converted, substantially altered or its use changed without full compliance with this chapter. A Zoning Permit for any structure or an

addition to a structure served by or to be served by a private sewage system may not be issued until evidence of such compliance is provided to the Zoning Administrator.

G. Lots abutting more restrictive district boundaries shall provide side and rear yards not less than those required in the more restrictive abutting district.

H. Notwithstanding any other provision of this Chapter, a commercial structure shall not be greater in height than its distance from a lot line, provided however that if the applicant presents to the Village a report by a licensed structural engineer certifying the fall-down radius of the proposed structure to be less than its height, the allowed setback shall be that certified distance or the setback required in this Chapter, whichever is greater, unless specifically provided in this Chapter.

I. Single family dwelling and two family dwelling requirements. No single family dwelling or two-family dwelling shall be erected or installed in any zoning district unless it meets all of the following:

1. The dwelling is set on an enclosed foundation in accordance with the standards set forth in Subchapters III, IV and V of Wis. Admin. Code ch. SPS 321.

2. The dwelling is properly connected to utilities;

3. The dwelling has a core area of living space, measured at the ground floor, of at least 20 feet by 20 feet in size; and

4. The dwelling and lot meet the minimum size requirements of the applicable zoning district.

5. a. Subject to the provisions of subsections 1. through 4. above, a modular home, as defined in Wis. Stat. s. 101.71(6), that is installed on an enclosed foundation in accordance with State of Wisconsin requirements is permitted in any district where single family or two-family dwellings are shown as permitted or conditional uses.

   b. Subject to the provisions of subsections 1. through 4. above, a manufactured home, as defined in Wis. Stat. s. 101.91(2), that is installed on an enclosed foundation in accordance with State of Wisconsin requirements may be allowed as a conditional use in any district where single family or two-family dwellings are shown as permitted or conditional uses. The Plan Commission must determine whether the manufactured home is aesthetically similar to the homes in the vicinity of the proposed manufactured home, and whether the manufactured home would have an adverse effect on the tax base or property values when determining whether to grant the conditional use permit.

35-17 to 35-19 reserved for future use.]

35-20 CHANGE OF USE.

A Zoning Permit shall be required for a new use or a change of use to property or buildings.

35-21 USE RESTRICTIONS.

The following use restrictions and regulations shall apply:

A. Principal Uses. Only those principal uses and structures specified for a district, their essential services, uses required by State or Federal law, and the uses set forth in this Section shall be permitted in that district.

B. Accessory uses, buildings and structures. Accessory uses, buildings and structures are permitted in any district (except the floodplain districts, see Chapter 37), but, except as set forth in this Section, not until the principal structure on the lot is present or under construction. Accessory uses, buildings and/or structures shall not involve the conduct of any business, trade or industry unless the use, building and/or structure is related to an allowed professional home office as defined in Section 35-300 or home occupations as set forth below. Accessory buildings and structures may be used for storage, parking facilities, gardening, private swimming pools, and private emergency shelters, and must be directly related to the principal use. Outdoor storage is not an authorized accessory use in residential, commercial, C-2, M-1 and M-2 districts, except storage of registered vehicles (also see Section 35-180 of this Chapter and Chapter 37 of this Code). Examples of accessory structures (regardless of whether attached to a foundation) include, but are not limited to: barns, detached garages, playhouses, sheds, private greenhouses, gazebos, storage sheds, boathouses, wind energies facilities, swimming pools and pump houses, wind energy structures, and tower facilities.

1. Accessory uses.

a. In-law suites. In-law suites (herein “suite”) may be allowed as an accessory use to a single family residence located in the residential, agricultural, urban reserve and C-2 zoning districts, subject to the following:

(1) Up to two persons who will be living together as a single housekeeping entity with the residents occupying the principal structure may reside in the suite and must be allowed unrestricted access to the common areas of the dwelling.

(2) The suite shall not have separate gas, water, and/or electric meters (more than one meter per utility would constitute a multi-family dwelling unit, and that is prohibited).

(3) The suite shall not be located in any detached accessory structure.

(4) The gross floor area of the suite shall not exceed 800 square feet (not including areas for common utilities such as water heater, furnace, etc.).

(5) The suite shall be connected to the main heated living area of the dwelling by way of common walls (the suite shall not be connected to the dwelling by a breezeway, garage, or corridor as this would constitute a multi-family dwelling unit, and that is prohibited). A code-compliant suite may be located above a garage that is attached in its entirety to a single-family residence.

(6) There shall be only one address and one mailbox for the lot containing the residence and suite.

(7) The suite addition shall be constructed so as to be compatible and in harmony in terms of architecture, color, materials and texture with the exterior of the principal residence.

(8) In areas not served by public sanitary sewer, any suite that is added onto or created within an existing residence must have private onsite wastewater treatment system (POWTS) sanitary approval prior to zoning permit issuance.

(9) The suite shall have its principal means of access to the outdoors from the main dwelling unit via said dwelling unit's main exterior doorways (a sole segregated doorway from the suite to the outdoors would constitute a multi-family dwelling unit and that is prohibited).

(10) The suite may have up to one bedroom, bathroom, along with a sitting room or parlor. It may not have a full kitchen (stove, refrigerator and sink).

(11) There may be no more than one suite addition within or attached to a single-family residence.

(12) Evidence of a recorded deed restriction will be required at the time of the filing of the zoning permit application that establishes that persons within the home are required to be living together in the dwelling as a single housekeeping entity, that the living area shall not be utilized as a two-family dwelling, and that the suite will be in compliance with this Code.

b. Home Occupations. "A", "C-2" and "R" district residential accessory uses and structures shall not involve the conduct of any business, trade, or industry, except if allowed as a principal or conditional use, or as set forth in section L, below.

2. Accessory Buildings and Structures on Sewered Lots. Accessory buildings and structures on lots served by public sanitary sewer are limited as set forth herein, and may modify the yard requirements, as follows:

a. Number of Accessory Buildings Limited. No more than two accessory buildings that are not part of the principal structure may be located on any building site. If two accessory buildings are present, the size of at least one of the structures is limited to no more than 200 square feet.

b. Accessory Structures, Including Buildings, Regulations.

(1) A detached accessory structure 150 square feet or less in area may be located in a side yard or rear yard provided that the structure is at least ten feet from the principal structure, is at least three feet from any lot line, is not intended for human habitation or animal shelter, and is not greater than fifteen feet in height. The five foot setback requirement of s. 35-180.B.6. of this Chapter does not apply to any accessory structure which is 150 square feet or less in area.

(2) A detached accessory structure greater than 150 square feet but no greater than 720 square feet in area may be located in a side yard or rear yard provided that the structure is at least ten feet from the principal structure, at least four feet from the lot line, is not intended for human habitation or animal shelter, and is not greater than fifteen feet in height. The five foot setback requirement of s. 35-180.B.6. of this Chapter does not apply to any detached accessory structure which is greater than 150 square feet and no greater than 720 square feet in area.

(3) A detached accessory structure greater than 720 square feet, but no greater than 1,200 square feet in area may be located in a side yard or rear yard provided that the structure is at least ten feet from the principal structure, is at least ten feet from any lot line, is not intended for human habitation or animal shelter, and is not greater than fifteen feet in height.

c. No detached accessory structure greater than 720 square feet may be located in the following zoning districts: R-1 Single Family Residential, R-2 Single Family Residential, R-3 One and Two Family Residential, and R-4 Multiple Family Residential.

d. A detached garage of masonry construction which is greater than 150 square feet but no greater than 720 square feet in area shall not be located less than five feet from any residential building. A detached garage of masonry construction which does not fall within these size parameters shall be governed by all of the other provisions set forth in this Section.

e. Accessory structure regulations for lots abutting shorelands in the area of the Village not subject to Chapter 36 are in s. 35-21E. See Chapter 36 for accessory structures in the Shoreland-wetland and Shoreland Districts.

f. Surrounding Area. No Zoning Permit shall be issued for any accessory structure, including buildings, if the plan, general design and architecture do not substantially conform to the plan, general design and architecture of the surrounding area.

3. Accessory Buildings and Structures Located on Unsewered Lots. Accessory buildings and structures, located on lots not served by public sanitary sewer, are limited as set forth herein, and may modify the yard requirements, as follows:

a. Accessory structures may be permitted in the agricultural districts prior to the presence of the principal structure provided that the parcel on which the accessory structure will be located is ten contiguous acres in size or larger, the accessory structure is intended for an agricultural use, the proposed accessory structure meets the setback requirements needed for a principal structure in that district, and the accessory structure is at least 100 feet from any existing residence on abutting parcels.

b. Except for signs and tower facilities and/or wind energy facilities, which are regulated separately, any detached accessory structure less than 36 square feet in area is exempt from the requirement for obtaining a Zoning Permit. In addition, any temporary, seasonal outdoor above-ground swimming pool, hot tub, or whirlpool bath that does not remain erected on the same lot for more than 120 consecutive days is exempt from the requirement for obtaining a Zoning Permit.

c. Detached accessory structures constructed in residential districts shall not be closer than ten feet to the principal structure; not closer than three feet to a side or rear lot line if less than or equal to 720 square feet in footprint area, or five feet to a side or rear lot line if greater than 720 square feet in footprint area; not closer than five feet to an alley line; shall not exceed 15 feet in building height; and are permitted in the rear and side yards only, except as follows:

(1) Accessory structures are permitted in the street yard portion of waterfront lots provided that they are not placed within the required minimum street yard setback.

(2) For lots with multiple street yards and no defined rear yard area, accessory structures are permitted in the street yard portion of the secondary or non-access street provided that they are not placed within the minimum required street yard setback.

(3) Accessory structures located in the nonresidential districts are limited in height to that listed for the principal structures in those districts. A greater height may be approved through a site plan review process and as allowed in Section 35-180. The minimum setback from a lot line shall be one-half of the building height or that required by s. 35-180.B.6., whichever is greater.

(4) Any portion of an accessory structure placed or constructed in a side yard area of a nonconforming principal structure shall not encroach into the minimum required street yard setback.

(5) See Sections 35-130 to 35-151 for Solar Energy Systems, Wind Energy Systems, and Tower regulations.

d. The aggregate total footprint area for all accessory structures constructed in the unsewered areas shall not exceed the following square footage for the stated lot size, exclusive of road right-of-way:

Lot Size/ Accessory Structure(s)	Maximum Aggregate Total Footprint Area
Less than 10,000 sq. ft. lot:	720 square feet
10,000 sq. ft. to less than 20,000 sq. ft. lot:	1,000 square feet
20,000 sq. ft. to less than 1 acre lot:	2,600 square feet
1 acre to less than 2 acre lot:	4,000 square feet
2 acre to less than 3 acre lot:	5,000 square feet
3 acre to less than 4 acre lot:	6,000 square feet
4 acre to less than 5 acre lot:	7,500 square feet
5 acre to less than 10 acre lot:	four percent of lot area
10 acre lot or more:	five percent of lot area

Note: A greater amount of square footage per lot size may be allowed if approved as part of a conditional use permit or site plan review when needed as an integral part of the plan of operation and where said structure(s) is used solely accessory to the permitted principal or conditional use on said lot.

4. Accessory Structures in General. Where an accessory structure is permanently attached to the principal structure by a roof or wall-to-wall, such accessory structure shall be considered as a part of the principal structure. Decks, stairs and landings that abut a

principal structure, whether or not physically attached, and outdoor swimming pools, hot tubs or whirlpools on top of, within, or immediately abutting such shall be considered to be part of the principal structure and principal structure setbacks would apply for required setbacks except where Section 35-180 Modification setbacks apply. Items such as a fence, trellis, retaining wall, and sidewalk, driveway or patio less than six inches from grade are not considered an attachment, and are exempt from setbacks except where regulated by shoreland, shoreland-wetland, floodplain or traffic visibility regulations.

C. Exemptions from yard requirements

1. Essential services, utilities, electric power and communication transmission lines and mechanical appurtenances thereto where reasonable and necessary for the preservation of the public health, safety, convenience and welfare are exempt from the yard and distance requirements of this chapter, provided, however, that tower facilities, wind energy facilities and solar energy facilities shall meet the requirements in the applicable sections of this Chapter, and the placement of utilities shall be regulated as follows:

(a) The placement of said utilities in Village rights-of-way shall be subject to section 6-6 of this Code; and

(b) The placement of said utilities in the front or side yard of any lot in the Village shall be subject to the following:

(1) All above-ground structures, cabinets or boxes shall be precisely indicated on plans submitted to the Zoning Administrator, or, if applicable, the Plan Commission, including the size and appearance thereof. The Zoning Administrator or Plan Commission may require alternative placement of said structures, cabinets or boxes as part of the permitting process if the Administrator or Plan Commission determines that the planned placement interferes with public safety, health or welfare. The Zoning Administrator or Plan Commission may also reasonably require screening of said structures, cabinets or boxes if either determines that the public welfare is harmed by the potential diminution of property values in the area because of the appearance of said structures, cabinets or boxes.

(2) Except for sanitary sewerage service in Floodplain and Shoreland Districts, no separate Zoning Permit under this Chapter shall be required for the necessary and customary construction, reconstruction or maintenance of above ground or underground public utility neighborhood service lines and mechanical appurtenances thereto, however, this section shall apply to the review of the placement of said utility facilities. When a single site is being developed, review of the placement of the sanitary facilities shall be performed as part of the building and/or zoning review.

2. Landscaping and vegetation are exempt from the yard requirements of this chapter, unless they interfere with the vision clearance triangle.

D. Conditional Uses and their accessory uses are considered as special uses requiring review, public hearing, and approval by the Plan Commission and Village Board in accordance with Section 35-100 of this Chapter.

E. Shoreyard Uses in Areas of the Village Not Subject to Chapter 36. The shoreyard is defined in Section 35-300 of this Chapter.

1. The rear yard setbacks applicable to the zoning district for principal uses on lots abutting navigable water in areas of the Village not subject to Chapter 36 apply to the shore yards, provided that no setback averaging set forth in s. 35-180.B. may allow a principal structure to be placed closer than 25 feet to the ordinary high-water mark.

2. Except as set forth in subsection 3., detached accessory buildings and structures may be placed in shoreyards but may not be placed closer than 25 feet to the ordinary high-water mark, shall be limited in size to 300 square feet or less in area, must be at least five feet but no greater than ten feet from the principal structure, must be at least three feet from any side lot line, may not be used for human habitation or animal shelter, and may not be greater than fifteen feet in height.

3. Boathouses may be located within the shoreyard, but shall not be closer than 20 feet to the ordinary high water-mark of a stream, lake, river, pond or wetland; shall not exceed one boathouse per shoreyard lot; shall not exceed 15 feet in height above the ordinary high water mark; shall not exceed 250 square feet in horizontal area covered; and shall not be closer than 15 feet to any side lot line. In no case, however, shall boathouses be allowed to project beyond the shoreline. Boathouses shall be constructed in such a manner as to orient the main opening of the boat house toward the body of water and shall be used strictly for the storage of boats and water-related recreational accessories. The use of a boat house for human habitation is prohibited. No plumbing, heating or cooking facilities may be provided in or for a boathouse.

4. Where a lot contains a shoreyard, accessory structures meeting the other requirements of this Chapter may be placed in side and street yards provided that the setbacks for those yards are met.

5. Shoreyard uses for land subject to shoreland regulation, see, Chapter 36.

F. Unclassified or Unspecified Uses may be permitted by the Zoning Board of Appeals after the Village Plan Commission had made a review and recommendation provided that such uses are similar in character to the principal uses permitted in the district, except as limited in a specific zoning district.

G. Temporary Uses of Land and Temporary Structures.

1. In this section:

   "Temporary Structure" means a structure that is not permanently attached to the ground that is removed when the designated time period, activity or use for which the temporary structure was erected or placed has ceased.

   "Temporary Use" means a use that is established for a limited duration with the intent to discontinue such use upon the expiration of the time period. A temporary use may not be permitted for more than 30 days unless the use is specifically permitted in this section.

2. Temporary Use Permits.

   a. Required. A zoning Temporary Use Permit is required for temporary uses and for the use of land for temporary structures as set forth in this section. The permit shall be referred to as a Temporary Use Permit whether it is for a

temporary use or for a temporary structure or both. When such a permit has been issued, an occupancy permit for the use is not required.

b. Fees; Applications.

(1) Fees. The applicant for a Temporary Use Permit shall pay a fee at the time of application in an amount set by the Village Board and set forth in the Fee Schedule.

(2) Applications. All applications shall contain a location sketch, drawn to scale, showing the location, actual shape and dimensions of the lot to be used and the size and location on the lot of the proposed use along with the existing buildings. The location and setbacks of temporary structures related to the proposed use shall be shown, as well as the proposed parking areas. The Zoning Administrator and Plan Commission may require such other information with regard to the lot and neighboring lots or buildings as may be necessary to determine and provide for the enforcement of this section.

3. General Standards. The Zoning Administrator may issue a Temporary Use Permit after Plan Commission review and approval as set forth in this section.

a. Zoning Administrator Review. The Zoning Administrator will review an application for a Temporary Use Permit and determine:

(1) Whether the use is allowed in the zoning district. If it is not allowed, the Zoning Administrator will deny the application.

(2) If the use is allowed in the zoning district, the Zoning Administrator will determine whether the proposed use will be served adequately by streets, off-street or on-street parking, police and fire protection, refuse disposal, and other public facilities or if the applicant will provide adequately for such facilities as well as provide for safe vehicular and pedestrian access and egress to the site. The Zoning Administrator will provide comments to the Plan Commission regarding these items, and forward the application to the Plan Commission.

b. Plan Commission Review. The Plan Commission will review the application and determine:

(1) Whether the proposed temporary use will cause undue traffic congestion or draw significant amounts of traffic through residential streets or upon residential property. Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets. If that cannot be accomplished, the Plan Commission will deny the application.

(2) Whether the proposed temporary use will be in harmony with the general and specific purposes for which this chapter was enacted and for which the regulations of the zoning district affected were established. Prior to approving a permit, the Plan Commission must determine that the proposed use will not have a substantial or undue adverse or detrimental effect upon or endanger adjacent property, the aesthetics and character of the area, or the public health, safety, comfort, and general welfare and

will not diminish or impair property values within the community or neighborhood.

4. Conditions.

   a. If the Plan Commission approves a permit, it may impose such conditions and limitations concerning use, location, maintenance, screening, operation, hours of operation (except as may be allowed by other federal, state, or village requirements), and other matters relating to the purposes and objectives of this chapter upon the premises as the Commission deems necessary or appropriate to prevent or minimize adverse effects upon other property and improvements near the subject property and upon public facilities and services, to protect the public interest, and to secure compliance with the standards and requirements specified in this chapter. Such conditions shall be expressly set forth in the Temporary Use Permit.

   b. The Plan Commission may require the applicant to mail or deliver notice of the temporary use to the neighboring property owners prior to the event. The applicant shall provide a copy of the notice, proof that the notice was mailed or delivered, and a list of the persons to whom it was mailed or delivered prior to the temporary use.

   c. Violation of any condition, limitation or requirement for notice shall be a violation of this chapter and shall constitute grounds for revocation of the Temporary Use Permit.

5. Effect Of/On Other Permits.

   a. The amendment of a Conditional Use Permit or Specific Implementation Plan is not required in order to obtain a Temporary Use Permit.

   b The approval and issuance of a Temporary Use Permit does not amend a Conditional Use Permit or Specific Implementation Plan.

   c. A Temporary Use Permit is required even when no Conditional Use Permit or Specific Implementation Plan is required under the zoning regulations.

   d. When an event that utilizes both public and private land is allowed by the Village Board, no Temporary Use Permit is required.

   e. If the terms of a Conditional Use Permit, Specific Implementation Plan or variance existing on the date of the adoption of this Chapter includes the use of the property for the specific temporary uses covered in this section, no new Temporary Use Permit is required under this section. If the CUP, Specific Implementation Plan or variance does not cover the specific temporary use, a Temporary Use Permit is required.

6. Limitations on Temporary Use Permits.

   a. Time Limitations. No Temporary Use Permit will be issued for a total of more than 30 days in any one calendar year, except as may otherwise be set forth in the specific regulations for the use or structure set forth in this section.

   b. Temporary Use Discontinuance. A Temporary Use Permit shall be deemed to

authorize only the particular temporary use for which it was issued. The Permit will automatically expire and cease to be of any force or effect if the use is discontinued.

c. A Temporary Use Permit is effective only for the dates listed in the Permit.

7. Amendments to Temporary Use Permits. Temporary Use Permits may be amended, varied, or altered only pursuant to the procedures and subject to the standards and limitations provided in this section for the original approval of a Temporary Use Permit.

8. Review of Temporary Use Permit. An existing permit may be reviewed by the Village as follows:

a. The Zoning Administrator may review a permit if any of the following determinations are made by the Zoning Administrator:

(1) The temporary use has not continued in conformity with the Village's conditions of approval of the permit or with any subsequent amendments to the permit.

(2) Violations of other statutes, ordinances, or laws.

(3) A change in the character of the surrounding area or in the temporary use itself which has caused the temporary use to become incompatible with the surrounding uses.

b. The determination of a review of a granted Temporary Use Permit shall be made by the Zoning Administrator after due notice to the property owner, occupant, or agent as indicated on the Temporary Use Permit as to the reason(s) for the review.

c. Upon review of the Temporary Use Permit, the Zoning Administrator may: take no action, revise the Temporary Use Permit, specify additional conditions to be added to the Temporary Use Permit, or may terminate the Temporary Use Permit. The Zoning Administrator will report the review and action to the Plan Commission.

d. If the permit holder is found to be out of compliance with the terms of the permit, or there has been a violation of statutes, ordinances or other laws, the permit holder shall be charged the actual cost of the review.

9. Standards applicable to all temporary uses. The following standards shall apply to all temporary uses unless different standards are provided for the specific use.

a. Trash and debris. All trash and debris shall be removed or contained daily.

b. Written consent is required. Written consent from the owner, or authorized agent, of the property shall be provided in the application for the Temporary Use Permit.

c. Signage. All signage shall be according to the Village of Rochester sign regulations.

d. Removal of materials and equipment. All materials and equipment shall be removed within three days of the end of the use.

10. Detailed standards for specific temporary uses. The following standards shall apply for the temporary use listed.

    a. Temporary Fairs and Amusement Parks. All temporary fairs and amusement parks shall be located contiguous to an arterial or collector street.

    b. Temporary Outdoor Sales. This land use includes the display of any items outside of the confines of a building which is not otherwise permitted as a permitted or conditional use or as part of an event utilizing the public right-of way that is authorized by the Village Board. Examples of this land use include, but are not limited to, seasonal garden shops, tent sales, Christmas tree sales, and food stands. Temporary outdoor sales shall adhere to the following regulations:

        (1) Location. Material for sale (such as trees, pumpkins, etc.) shall not be located in any right-of-way.

        (2) Visibility. The location of materials for sale on the property shall not block visibility for vehicles or pedestrians on or off the lot in a way that would create a safety hazard.

        (3) Hours of operation. The sales shall be limited to between the hours of 7:00 a.m. and 9:00 p.m.

        (4) The user shall provide a layout of activities as part of the permit application.

    c. Garage and yard sales. No Temporary Use Permit is required, provided that garage and yard sales shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m. No more than three rummage sales in one calendar year may be conducted from any premises. Each sale may last no longer than three consecutive days and must be conducted on the seller's property.

    d. Preconstruction Sales Offices. Preconstruction sales offices that are stand-alone (not located in a model home or model dwelling unit) used exclusively as sales offices by a builder/developer and to display the builder/developer's product or to display to prospective buyers the builder/developer's features (such as exterior siding treatments, roofing materials, interior trim, moldings, floor coverings, etc.) may be staffed by the builder/developer's sales force and are subject to the following restrictions:

        (1) District dimensional requirements to be met. The preconstruction sales office shall meet all district requirements for lot and yard dimensions.

        (2) Sign illumination. Signs shall not be illuminated after 9:00 p.m.

        (3) Business activity not permitted before 8:00 a.m. or after 9:00 p.m. The preconstruction sales office shall not be used for any business activity before 8:00 a.m. or later than 9:00 p.m.

        (4) Screening and trash receptacles. Landscape drawings shall be required and show adequate landscaping and screening from adjoining residential lots or units, with the clear marking of the boundaries of the model home lot or unit. Trash receptacles shall be provided around the model home

for use by the public.

(5) Termination of use. The use of a preconstruction sales office within a residential subdivision or condominium development, or within any single phase of a multi-phase subdivision or condominium development, is not subject to the 30 day time limit, but shall terminate when building permits have been issued for 90% of the lots therein, provided however, that the Plan Commission may extend the permit upon application by the builder or developer. The preconstruction sales office shall be removed within 30 days of the termination of the permit.

e. Outdoor concerts. Outdoor concerts shall be subject to the conditions imposed by the Plan Commission as necessary for the specific duration and attendance expected at the concert.

f. Fireworks possession and sales. This section is enacted pursuant to Wis. Stat. s. 167.10(5), as may be amended from time to time.[1]

(1) Definitions. The terms used in this section shall have the meanings indicated in s. 9-8.B. of this Municipal Code.

(2) Regulation of statutory fireworks. No person may possess or store statutory fireworks in the Village except as provided in this Section and Section 9-8 of this Municipal Code, or, if possession, sales or storage is to be a permanent use of land, under the appropriate zoning designation.

(3) Commercial novelty fireworks permit required.

(a) No person may sell, store, or possess novelty fireworks for other than personal use without a permit issued hereunder.

(b) Application. Application for novelty fireworks permits for seasonal sales shall specify the kind and quantity of fireworks that will be possessed and sold, and the dates and location of the sales. The owner or person in authority of the site of the storage and sales shall consent in writing to the use of the site. Applicants must submit a site plan identifying the location of the storage, the sales, and any existing structures on the property and within 100 feet of the property lines.

(c) Review and issuance.

[1] The application shall be reviewed by the Plan Commission and the Fire Chief.

[2] No permits shall be issued to minors.

[3] No permit shall be issued unless the Plan Commission and the Fire Chief determine that the novelty fireworks are stored in a safe and secure trailer and that sales of the novelty fireworks will be made from a temporary shelter or tent in an outdoor area that, in the opinion of

[1] Ordinance #2016-4 Adopted May 9, 2016

the Plan Commission and Fire Chief, will not be hazardous to property or endanger any person or persons. In addition:

[a] The site must be at least 80,000 square feet.

[b] The storage and sales of the novelty fireworks must be at least the minimum distances required by NFPA 1 Chapter 65.

[c] The site must be served by adequate parking, ingress and egress.

(d) No permit shall be issued unless the permittee has and maintains adequate liability insurance with minimum limits of $1,000,000 bodily injury and property damage, combined single limit, naming the Village, its officers, employees and agents as additional insureds. Said insurance shall indemnify and defend the Village, its officers, employees and agents against all claims, liability, loss damages or expenses, whether caused by or contributed to by the negligence of the Village, its officers, employees or agents. Said insurance shall provide that the Village receive written notice 30 days prior to any cancellation, nonrenewal or material change in the policy. Proof of said insurance shall be submitted to the Plan Commission and Fire Chief prior to the issuance of the permit.

(e) No permit shall be issued for the manufacture of novelty fireworks, and no permit shall be issued for the storage of novelty fireworks, except as storage may be necessary to sales permitted hereunder, or except as may be permitted for permanent uses allowed under this Chapter.

(f) A permit for the sales of novelty fireworks issued hereunder shall not be valid for a period of longer than three weeks.

(g) Temporary shelters or tents for the sale of novelty fireworks permitted hereunder may be erected no earlier than June 18 and must be removed no later than July 11. Storage trailers containing novelty fireworks may be placed on the site no earlier than June 15 and must be removed no later than July 11.

(h) No permit shall be issued to any person who, in the previous 18 months, was found guilty of two or more violations of this section.

(i) Permit regulations. The display and sales of permitted novelty fireworks shall conform to the standards set forth in NFPA 1, Chapter 65, Explosives, Fireworks and Model Rocketry, as may be amended from time to time. After the permit is issued, storage, sale and possession for sale shall be lawful for that purpose only. No permit granted hereunder is transferable.

(6) Storage and handling of commercial novelty fireworks.

(a) No person may store or handle commercial novelty fireworks on any premises unless the premises are equipped with fire extinguishers approved by the Fire Chief or Fire Inspector.

(b) No person may smoke where commercial novelty fireworks are stored or handled.

(c) A person who stores or handles commercial novelty fireworks shall immediately notify the Fire Chief or Fire Inspector of the location, description and quantity of the fireworks.

(d) No person may store commercial novelty fireworks closer than the separation distances required in NFPA 1 Chapter 65 to a dwelling.

(e) No person may store commercial novelty fireworks closer than the separation distances required in NFPA 1 Chapter 65 to public assemblages or places where gasoline or volatile liquid is sold in quantities exceeding one gallon.

(7) Parental liability. A parent, foster, or family-operated group home parent or legal guardian of a minor who consents to the presence at a place selling novelty fireworks by the minor who is under the age of 18 years of age is liable for damages caused by the minor's access to the fireworks, and in addition shall be subject to the penalty provided in this Municipal Code.

(8) Inspection, search and seizure of fireworks.

(a) Inspection and search of permitted premises. An applicant for a permit under this chapter thereby consents to the entry of the Fire Chief, Fire Inspectors, Police, or authorized representatives of the Village upon the permitted premises, including but not limited to storage areas, containers and vehicles, at all reasonable hours for the purposes of inspection and search and consents to removal from the premises and introduction into evidence in prosecutions for violations of this chapter of all things found therein in violation of this chapter or state law.

(b) Seizure. The Police or Fire Department shall seize, at the expense of the owner, all statutory or novelty fireworks stored, handled, sold, possessed or used by any person who violates this chapter. Such seized fireworks shall be destroyed after conviction for a violation, or, if storage is deemed to be dangerous, may be destroyed pursuant to statute. Statutory or novelty fireworks that are seized as evidence of a violation for which no conviction results shall be returned to the

owner if they have not been destroyed pursuant to statute.

(9) Emergency revocation of permit or authority to possess, sell or store commercial novelty fireworks. The Fire Chief, Fire Inspectors, and/or Plan Commission may revoke a permit or prohibit or terminate the possession, sale or storage of novelty fireworks when, in the opinion of the Chief and Plan Commission, atmospheric conditions or local circumstances make such possession, sale or storage a fire hazard or other hazard to the safety of the public. During such period of such prohibition, no person may sell novelty fireworks anywhere within the Village. The failure to allow the inspection and/or search of a permitted premises pursuant to this section shall be grounds for the immediate revocation of the permit. The presence of statutory fireworks on premises permitted for commercial novelty fireworks shall be grounds for the immediate revocation of a permit. The Fire Chief, Fire Inspectors and/or Plan Commission may reinstate a permit upon the permittee's compliance with this chapter.

(10) Violations and penalties.

(a) See Wis. Stat. s. 167.10(9)(b), which provides that a penalty for violation of an ordinance adopted pursuant to Wis. Stat. s. 167.10(5) may not exceed $1,000. The penalties for violation of this Section shall be set forth in the Village Deposit Schedule and shall not exceed $1000 per violation.

(b) In addition to the penalties found elsewhere in this Chapter, any violation of this section shall also constitute a public nuisance which may be enjoined in a civil action in addition to prosecution therefore.

11. Temporary Structures. The following temporary structures may be permitted as specified:

a. Construction trailers as temporary offices. A licensed contractor engaged in a construction project for which a building permit has been issued or is otherwise authorized by the Village may temporarily use a construction trailer for office facilities in the location where the work is being done for the duration of the construction, provided that the construction trailer is placed on the property on which the construction is authorized, is not placed more than 15 days prior to the commencement of the work, and is removed within 15 days after completion of the work. No Temporary Use Permit is required.

b. Fireworks stands. See s. 35-10.G.10.f., above.

c. Temporary Storage Containers. These containers are portable storage containers designed and used primarily for the temporary storage of household goods and other such materials for use on a limited basis. Temporary storage containers that adhere to the following regulations and meet the requirements of subsection (2) below shall not require a Temporary Use Permit. All temporary storage containers that do not meet these requirements must obtain a Temporary

Use Permit.

(1) The container shall not exceed outside dimensions of 20 feet in length, ten feet in width, and nine feet in height.

(2) The container shall be permitted on the property for up to 14 days associated with each change of occupancy as defined by a recorded change in property ownership or valid lease.

(3) The container cannot encroach on the public right-of-way, neighboring property, sidewalk, or be placed in the street.

(4) This section does not apply to a temporary storage container to be placed in public right-of-way. Placement of a temporary storage container or dumpster in the right-of way requires a permit from the Public Works Manager.

d. Temporary Construction Storage. Temporary construction storage includes any structure or outdoor storage area designed for the on-site storage of construction equipment and/or materials for an active construction project. Temporary construction storage, including dumpsters, may be used for the duration of the project subject to the following regulations:

(1) The structure shall be removed within 10 days of issuance of an occupancy permit.

(2) Projects requiring the structure to be in place for more than 365 days shall require a conditional use permit. Said time limit may be extended with Village Board approval.

(3) The structure shall be limited to a maximum area not exceeding 10 percent of the property's gross site area.

(4) This section does not apply to temporary construction storage or dumpsters to be placed in public right-of-way. Placement in the right-of way requires a permit from the Public Works Manager.

e. Relocatable Buildings. A relocatable building includes but is not limited to any manufactured building, shed or other rigid structure that is not permanently attached to a foundation, that can be or is used for the storage of personal property or equipment of any kind, and that is located outside of an enclosed building. When used in conjunction with a Temporary Use Permit, no separate permit is required. When used as part of the permanent use of the property, relocatable buildings are considered accessory structures that must meet the requirements of this Municipal Code for accessory structures and do not require a Temporary Use Permit. Relocatable buildings larger than 200 square feet in area require Building Permits under Chapter 11 of this Municipal Code.

f. Tents, Canopies or Other Flexible Structures.

(1) A tent, canopy or other flexible or semi-flexible structure associated with a permitted temporary use is allowed for the time period for the temporary use if it is incidental to the permitted temporary use and was

approved as part of the application. It shall not be located in the vision clearance triangle.

(2) Tents used for temporary recreational purposes in residential zoning districts shall not be regulated when they are incidental to the residential use and are placed in the side or rear yard.

(3) Tents, canopies and other flexible or semi-flexible structures shall not be used for storage of any kind in any zoning district.

H. Livestock. No livestock, sheep, poultry, or swine shall be kept, raised or bred in any district that does not specifically allow livestock.

I. Parking.

1. Parking of vehicles accessory to a residential use shall be limited to vehicles actually used by the residents or for temporary parking for guests. Vans or pickup trucks used for private and recreational use, or a motor home (recreational vehicle), or a van or pickup truck used in a business or trade, and a commercial vehicle per subsection 2. used for transportation to and from a place of employment or workplace of the occupant may be parked on a residential property.

2. One commercial vehicle of not over one-ton rated capacity may be parked per residential dwelling unit, providing all of the following conditions are met: the vehicle is registered and licensed; used by a resident of the premises; gross weight does not exceed 10,000 pounds, including any load; height does not exceed nine feet as measured from ground level, including any load, bed, or box; and total vehicle length does not exceed 26 feet, including attachments thereto (such as plows, trailers, etc).

3. Recreational vehicles shall be parked in the rear or side yards only or in compliance with the same setbacks allowed for accessory uses and structures. Recreational vehicles must maintain a minimum of a six-foot setback from the rear and side lot lines, but are not restricted to a minimum setback to the principal structure. For the purpose of this section, recreational vehicles shall include boats and trailers, snowmobiles and their trailers, mini-bikes or trail bikes and their trailers, and unoccupied tent campers, motor homes and travel trailers, all-terrain vehicles and personal watercraft and their trailers.

4. No other vehicular equipment of a commercial or industrial nature, except as stated above, shall be parked or stored for more than two consecutive hours and four accumulated hours during any 24-hour period on any lot in any zoning district except business and industrial districts or as permitted by conditional use in the A-2 district.

5. Outdoor parking of semi-tractors/trailers on commercial property (B-districts), that is not a principal use (e.g., truck sales), an accessory use (e.g., delivery vehicles), or which has not been approved through the conditional use or site plan review process is prohibited.

6. Agricultural equipment (such as farm tractors, plows, farm plows, seeders, combines, cultivators, trucks owned and used by the farmer in the operation of the farm, etc.) used in a farm operation are permitted in all agricultural districts.

J. Home Occupations.

1. It is the intent of this section to regulate the operation of home occupations so that the average neighbor, under normal circumstances, will not be aware of their existence other

than for a permitted sign. A permit is required for a home occupation.

2. A home occupation is any gainful occupation or profession engaged in by an occupant of a dwelling unit which meets the following criteria:

   a. The occupation must be clearly incidental to the use of the dwelling unit as a residence, with one-half or less of any floor being used for the home occupation.

   b. No outdoor display or storage of materials, goods, supplies or equipment used in the home occupation shall be permitted on the premises.

   c. There shall be no visible evidence that a home occupation is being operated in the residence, except for the permitted sign, one non-illuminated nameplate (name, address and type of home occupation) not to exceed two square feet in area either mounted flat on the dwelling or a yard light post or signpost set back a minimum of five feet from the street right-of-way line.

   d. A maximum of two persons other than members of the immediate family residing in the dwelling may be employed in the dwelling unit at any given time. The applicant for a home occupation permit must reside at the location of the proposed home occupation.

   e. Except for indoor storage of materials not exceeding 200 square feet in area, no activity related to a home occupation shall be conducted outside or in any detached structure or in any attached garage.

   f. No stock in trade shall be displayed or sold upon the premises.

   g. A home occupation shall not generate noise, vibration, glare, odors, fumes, or hazards detectable to the normal senses off the property.

   h. No toxic, explosive, flammable, combustible, corrosive, radioactive or other restricted materials shall be used or stored on the site for home occupation purposes.

   i. The use shall not require more than two additional off-street parking spaces for clients or customers.

   k. No equipment or process shall be used which creates visual or audible electrical interference in any radio or television receiver off the premises or causes fluctuations in line voltage off the premises, or interferes in any way with telephone or computer communications.

3. Permits granted under this section shall be temporary in nature (they do not run with the land) and shall be granted to a designated person who resides at a specific residential address. Tenants must provide written evidence of the property owner's approval prior to issuance of a permit. The permits are not transferable from person to person, or from address to address.

K. Conditional Uses.

1. Conditional uses and their accessory uses are considered as special uses which require approval and a public hearing if there is approval all in accordance **with Section 35-100** of this Chapter.

2. Any development within 50 feet of any existing or mapped state trunk highway or county trunk highway or within 150 feet of an existing or mapped centerline of an intersection with any other road shall be deemed to be a conditional use. Such development shall be specifically reviewed in accordance with Section 35-100 of this Chapter.

3. Unless otherwise provided in the permit, a conditional use permit shall have an indeterminate duration provided that the use for which it was obtained has commenced as required and continues without abandonment as provided in Section 35-100 in accordance with its terms, and a conditional use permit shall be transferable with the land, provided that the use for which it was obtained does not change.

L. Performance Standards. Performance standards listed in Section 35-250 shall be complied with by all uses in all districts.

35-22 PRINCIPLES AND STANDARDS FOR THE AESTHETIC EVALUATION OF SITE AND BUILDING PROJECTS.

A. Introduction and Intent.

1. The process of private building and development in a community may be simple or complex depending upon the size of the project, the number of participants, the ease of communication among the various private and public parties involved, and the content and clarity of the public rules and regulations. While the community representatives cannot usually directly affect either the project size or the number of project participants; they can have a direct effect on the content and clarity of rules and regulations as well as the communication, and indeed, interpretation of any such rules and regulations.

2. Like inhabitants of most developing communities, Rochester officials and citizens have legitimate concerns about both the future character of the community and the integrity of existing (and even historic) development. One such concern is in regard to land uses or the mix of land uses, both existing and planned. Another concern is the financial capability of development (developers) to provide the required and promised improvements and the financial capability of the community to provide the necessary and requested services. A third major concern, importantly, is in regard to the visual impact or image of the community by people living within or only traveling through the Village. The intent and purpose of this subsection is to provide principles and standards for use by both the potential developer and Village officials in the preparation and review of site and building plans proposed within the Village with emphasis on, and the primary objective of, heightening the visual character of the sites and buildings proposed and, thereby, the entire community. It is understood that such visual enhancement is also expected to be maintained over time and not be only an initial accomplishment to be forgotten.

3. The proponents of any new single or multiple use development (other than single and two-family single lot development) proposed to be undertaken within the Village of Rochester, must, pursuant to Section 35-230, present a site and building plan to the Plan Commission for review and approval. Such approval must be tendered prior to receipt by the builder/developer of a zoning permit or other permit to commence building or site development activity. The intent of this zoning section is twofold: to provide a systematic, equal basis for review and discussion of projects; and to provide general guidelines to be used in the review of a development or building project. In this regard the "principles", as stated in Section 35-230, are not true principles, but rather, general standards.

   Any amendment to an approved site and building plan or change to an existing building or development (other than single or two-family building or lot development) must be submitted to the Zoning Administrator for review and approval. Minor amendments that are in conformance with this Chapter may be approved by the Zoning Administrator or, at the Zoning Administrator's discretion, referred to the Plan Commission. All others will be submitted to the Plan Commission for review and approval.

4. In order to identify specific standards for the visible elements of site, and building design which embody the general desires of the community, a set of agreed upon principles have been established which form the foundation for the standards which will follow.

B. Site Planning and Design Principles. It must be noted that a principle is a truth or tenet--a statement of fact as it relates to a particular topic--in this case, site planning and design. Following is a list of principles which should be utilized by everyone concerned in any Site Planning and Design Projects in the Village of Rochester:

1. The development or building site must be viewed as only one element of the total developed and undeveloped environment in the vicinity of the site. Therefore, attention must be given to how the site and the development on the site will ultimately fit into the total environment.

2. Site planning and design is the process by which site features and uses on the site are made to be compatible, functional and visually pleasing.

3. All elements and aspects of the site, both natural and man-made, are important to the aesthetic character of the site.

4. Adjacent or contiguous uses or facilities may have a major effect on the site or site uses.

5. Major changes in land forms on the site, which thereby change the character and/or physical capabilities of the site are not, generally, conducive to good site development unless such changes are well planned and are necessary, as an example; a quarry, to final development.

6. The specific location of site access is critical to both the future use of the site and the safety and convenience of persons traveling on adjacent public ways.

7. Site grading, landscaping, paving, fencing, lighting, signage, and other site enhancement are an integral part of any building and development project.

C. Building, Design, Layout and Construction Principles. The following is a list of principles which should be utilized by everyone concerned in any Building, Design, Layout and Construction project in the Village of Rochester.

1. No side or facade of a building or structure is exempt from public view and, consequently, all sides or facades should be visually pleasing and architecturally and aesthetically compatible.

2. The shape, size, dimension, architectural style, facade material, texture and color, building landscaping, building signage, and the setting of the building within its immediate environment are all elements of the building structure design addressed by the designer, both individually and in concert.

3. Each color, texture or material of which the exterior of a building is composed may, individually, present a visual statement to the viewer and, therefore, in order not to present a conflicting or complex visual statement, the arrangement and mix of colors, textures and materials should be carefully considered and the number of such elements minimized.

4. Some building materials present a visual statement of strength and permanence to the immediate environment and to the community and should be encouraged, while other materials which make a building or structure appear temporary should be avoided.

5. Individual buildings may be attractive but when duplicated or triplicated on the same or adjacent parcels or on the same horizontal plane may detract from the visual character of the overall development.

6. Some use elements of a building structure, such as outside mechanical equipment, loading docks and areas, trash storage areas, and raw material storage areas are not, usually, attractive and often detract from the visual appearance of the building unless

careful attention is given to placement, construction, structural and/or landscape screening of such areas.

7. Building landscaping, that is landscaping which is or appears to be an integral part of the building facade design, must be carefully planned and the appropriate plant materials used so as not to detract from the architecture of the building.

8. Building signage, that is signage which is or appears to be an integral part of the building facade design, must be carefully planned and the appropriate sign materials, sign lighting and color used so as not to detract from the architecture of the building or be disruptive.

D. Site Planning and Design Standards.

A standard (or criteria) is either a quantitative or qualitative model or value level by or against which all related actions or activities are measured. In this regard a standard is sometimes referred to as a "yardstick". Moreover, quantitative standards are those which, when applied, will reveal a quantitative difference or similarity between the standard and the action or activity being measured by the standard. For example; the action related to a site planning standard that states that, "No man-made slope or disturbed natural slope shall be greater than 3:1, when 3 is the horizontal measurement", can be measured quantitatively to determine if, indeed, the standard has been met.

A qualitative standard, on the other hand, is a standard which, when applied, involves a judgment, usually subjective, that the action or activity has met or can meet the stated standard. For example; a site planning standard that states that "All parking areas shall be screened in a visually pleasing manner to soften the visual presentation of parked cars and asphalt" requires that the person(s) making the determination as to whether or not the standard is met actually looks at the screening structure, device or plant materials and makes a qualitative judgment. If it can be concluded that the materials, device or structure as designed or constructed are individually or collectively visually pleasing, there should be no problem making such a judgment. If, however, the materials are different in character the judgment is usually more difficult. Even the arrangement of individually pleasing materials may not be pleasing. Whenever possible we try to avoid purely qualitative standards.

Following are both quantitative and qualitative standards related to site development which will be used by the Zoning Administrator and/or Plan Commission, as applicable, in the review of every site plan or development. Historic Preservation Committee approval is also required if the site is located in the HPO District.

1. Size, Visual and Aesthetic Characteristics.

a. Size, Facades and Exterior Walls including Sides and Backs

(1) Intent: Size should be limited to what is appropriate for rural development. Facades should be articulated to reduce the massive scale and the uniform, impersonal appearances of large retail buildings and provide visual interest that will be consistent with the community's identity, character, and scale. The intent is to encourage a more human scale that residents of Rochester will be able to identify with their community. The resulting scale will ensure a greater likelihood of reuse of structure by subsequent tenants.

(2) Standard: Building size shall not exceed 15,000 square feet. Anything larger shall require "conditional use" approval. Developments with a

facade over 100 feet in linear length shall incorporate wall projections or recesses with a minimum of 3 foot depth and a minimum of 20 contiguous feet within each 100 feet of facade length and shall extend over 20 percent of the facade. Developments shall use animating features such as arcades, display windows, entry areas, or awnings along at least 60 percent of the facade.

b. Detail Features.

(1) Intent: Buildings shall have architectural features and patterns that provide visual interests, at the scale of the pedestrian, reduce massive aesthetic effect, and recognize local character. The elements in the follow standard shall be integral parts of the building fabric, and not superficially applied trim or graphics, or paint.

(2) Standard: Building facades shall include a repeating pattern that shall include no less than three of the elements listed below:

(a) Color change
(b) Texture change
(c) Material module change
(d) Expression of architectural or structural bay through a change in plane no less than 12 inches in width, such as an offset, reveal, or projecting rib.

c. Roofs.

(1) Intent: Variations in rooflines should be used to add interest to, and reduce the massive scale of a large building. Roof features shall complement the character of adjoining neighborhoods.

(2) Standard: Rooflines shall be varied with a change in height every 100 linear feet in the building length. Parapets, mansard roofs, gable roofs, hip roofs, or dormers shall be used to conceal flat roofs and roof top equipment from public view. Alternating lengths and designs may be acceptable and can be addressed during the preliminary development plan.

d. Materials and color.

(1) Intent: Exterior building materials and colors comprise a significant part of the visual impact of a building. Therefore, they shall be aesthetically pleasing and compatible with materials and colors used in adjoining neighborhoods.

(2) Standard: Predominant exterior building materials shall be of high quality. These include, without limitation:

(a) Brick
(b) Wood
(c) Sandstone
(d) Tinted, textured, concrete masonry units.

(3) Facade colors shall be low reflective, subtle, neutral, or earth tone colors.

The use of high intensity colors, metallic colors, black or fluorescent colors is prohibited.

(4) Building trim and accent areas may feature bright colors, including primary colors, but neon tubing shall not be an acceptable feature for building trim or accents.

(5) Predominant exterior building materials as well as accents shall not include the following:

(a) Smooth-faced concrete block
(b) Tilt-up concrete panels
(c) Pre-fabricated steel panels

2. Open Space Requirements. 20 percent of land is to remain in open space.

a. Intent: Significant existing vegetation within all setbacks shall be preserved (i.e., wetlands, prairie, vegetation, woodlands). Significant existing vegetation within the building area of any commercial lot shall be preserved through innovative site design.

b. Standard: Preservation of significant existing vegetation through careful site design is desired. The preserved areas are considered part of the 20% open space.

3. Site Landscaping.

a. Landscaping Required. Landscaping is required in bufferyards, in off-street parking areas, and in building foundation planting areas (foundation planting areas are those areas located within ten feet of principal and accessory structures). The area and/or length of each, as required herein, must be measured in order to determine the minimum amount of landscaping required.

b. Exemptions and Modifications. All developments shall meet the provisions of this Section except as specifically exempted below:

(1) Residential development on existing lots of record as of the date of the adoption of this Chapter.

(2) Additions to existing buildings where the total floor area is not increased more than ten percent of the existing total floor area.

(3) Additions to buildings which increase their overall building area from ten to 50 percent shall conform to the landscaping standards specified in this Section to the maximum extent achievable. All off-street parking areas and bufferyards shall conform to the applicable landscaping requirements of this Section. If insufficient dimensions exist on-site, in order to achieve a sufficient level of landscaping, the standards may be reduced by up to 30 percent by the Plan Commission.

(4) Floodplain, Floodway, Floodlands, and Wetland Areas. Areas located within floodplains, floodways, floodlands, and wetlands are exempt from the landscaping requirements set forth in this Section.

c. Bufferyards Required. Bufferyards are required to ameliorate nuisances between certain adjacent zoning districts.

(1) Definition. A bufferyard is a combination of a setback and a visual buffer or barrier, and is a yard or area together with the planting and/or landscape structure required thereon. The amount of land, the type of planting, and the amount of planting specified for each bufferyard requirement of this Chapter are designed to ameliorate nuisances between certain adjacent zoning districts.

(2) Bufferyards Required to Separate Different Zoning Districts. Bufferyards shall be required to separate different zoning districts from each other. Bufferyards function to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of tights, signs, and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, or danger from fires or explosions.

(3) Standard Plant Units. All landscaping requirements of this Section are stated in terms of the number of standard plant units required. This Section defines the standard plant unit and its alternatives. All required landscaping shall conform to one or more of the plant unit alternatives of this Section. The following Table 35-22(1) specifies the plant unit alternatives. The five alternative plant mixes are interchangeable. Where a year-round screen is required, alternative Unit A is preferred and may be required by the Plan Commission.

Table 35-22(1) "PLANT UNIT TYPE ALTERNATIVES"

ALTERNATIVE PLANT UNIT TYPE	TYPES OF PLANTS REQUIRED	MINIMUM SIZE OF PLANTS	MINIMUM QUANTITY OF PLANTS REQUIRED
TYPE A	Canopy/Shade Trees Single Stem: Multi-stem Clump:	 3-inch caliper 12 feet tall	1
	Ornamental Trees	1.5 inch caliper	2
	Shrubs	2 feet tall	8
TYPE B*	Canopy/Shade Trees Single Stem: Multi-stem Clump:	 3-inch caliper 12 feet tall	1
	Ornamental Trees	1.5 inch caliper	1
	Evergreen Trees	6 feet tall	1
	Shrubs	2 feet tall	6
TYPE C*	Canopy/Shade Trees Single Stem: Multi-stem Clump:	 3-inch caliper 12 feet tall	1
	Evergreen Trees	6 feet tall	2
	Shrubs	2 feet tall	5
TYPE D*	Evergreen Trees	6 feet tall	3
	Evergreen Shrubs	2 feet tall	14
TYPE E	Canopy/Shade Trees Single Stem: Multi-stem Clump:	 3-inch caliper 12 feet tall	2
	Shrubs	2 feet tall	10

*Note: Not to be used in off-street parking areas.

d. Credit for Existing Plant Materials. Credit for existing plant material will be allowed to offset required plant unit landscaping in the bufferyards and parking lots as follows:

(1) Bufferyards. Existing canopy trees six feet in height or more shall be counted on an individual basis towards the planting requirements; all other components of a plant unit are required including all ornamental trees, evergreen trees, and shrubs.

(2) Parking Lots. Any existing canopy trees six feet in height or more, and located within parking lot areas, shall be subtracted from the required amount of parking lot landscaping on a tree-by-tree basis.

e. General Landscaping Requirements.

(1) Physical Containment of Landscaped Areas. All landscaped areas located within or adjacent to a parking area, or adjacent to a public street or sidewalk, shall be designed to contain landscape materials and to prevent vehicular encroachment (i.e., through the use of continuous concrete curbing, railroad ties, headers, or depressed construction).

(2) Artificial Landscape Materials. Artificial trees, shrubs, turf, or plants shall not be permitted as landscaping.

(3) Groundcover. The use of landscape fabrics under all areas landscaped with non-living materials, except those areas set aside for stormwater retention/detention, is recommended to prevent weed growth.

(4) Location. New vegetation shall be selected, planted, and maintained so that at maturity it will not interfere with utility lines, snow storage areas, vehicular parking, pedestrian circulation, traffic sight visibility at driveways and street intersections, and will not cause damage or upheaval of sidewalks and pavement

(5) Installation.

(a) Timing of Installation. Landscaping shall be installed in accordance with the approved landscape plan prior to issuance of an Occupancy Permit The Village of Rochester will have the right to refuse approval of any project not meeting the provisions of this Section.

(b) Financial Surety Required. If approved landscaping cannot be installed prior to the issuance of an Occupancy Permit by the Building Inspector, an Occupancy Permit may be issued by the Building Inspector if the applicant provides a form of surety acceptable by the Village Attorney which meets the total estimated costs of the approved landscaping improvements. The application shall be accompanied by a complete estimate of the total cost of the approved landscaping. All landscape materials shall be guaranteed by the applicant, or applicant's contractor, for two years.

(c) Return of Financial Surety. When it is determined by the Zoning Administrator that the landscaping has been installed in accordance with the approved plans, the Village of Rochester shall return the financial surety to the applicant

(6) Maintenance. Landscaping shall be maintained as follows:

(a) Maintenance of all landscaping shall be the responsibility of the property owner or homeowners' association (as applicable) and shall consist of regular watering, pruning, mowing, fertilizing, and the removal and replacement of irrigation systems and architectural features.

(b) The owner or liable entity in control of any private premises shall at all times maintain the premises free of litter and weeds.

(c) Landscape Phasing. Future building pads within a phased development shall be maintained in a dust-free condition vegetated with ground cover.

(d) Plant Replacement. Any plant materials included in an approved landscaping plan that do not survive a plant establishment period of two years after installation shall be replaced with plant material(s) of the same or like species of equal size within the next planting season, but in any event, within six months of the plant's demise. Said replacement shall be made by the property owner or, in the case of landscape plant materials located within a landscape easement under the control of a homeowners' association, the homeowners' association shall be responsible for said replacement

f. General Bufferyard Requirements.

(1) Basis of Standards. Bufferyard standards are based on a required relative bufferyard intensity value. A variety of combinations of bufferyard width, planting intensity, and structural options (i.e., fences and earthen berms) may be selected from Table 35-22(2) to reach the required bufferyard intensity value.

(2) Location of Bufferyards. Bufferyards shall be located along the outer perimeter of a lot or parcel, and shall extend to the lot or parcel boundary line. Bufferyards shall not be located on any portion of an existing or dedicated public or private street or right-of-way.

(3) Bufferyard Plant Material Groupings. Required bufferyard plantings may be planted in natural-appearing groupings along the total length of the bufferyard and need not be spaced uniformly along said total bufferyard length.

(4) Plant Materials.

(a) For each bufferyard listed, a specific combination of deciduous canopy, shade, and ornamental trees; evergreen trees; and

shrubs is required as indicated in Table 35-22(2).

(b) All bufferyard areas shall be seeded with lawn or native groundcover unless such vegetation is already fully established.

(c) The exact placement of required plants and structures shall be the decision of the property developer.

(d) Fences. Fences used to achieve the required bufferyard intensity factor shall be constructed of rock, masonry or wood. Chain link fences and chain link with slats shall be prohibited from being used to achieve required bufferyard intensity factors. All fences used shall also meet the requirements for the construction of fences in Section 35-180.

(e) Height of Required Vegetation. Height of vegetation selected for required bufferyards shall be measured from the highest finished adjacent grade of the element to be screened.

(5) Berming. Earthen berms shall be designed to transition to existing surrounding grades, not to exceed a slope ratio of two to one (2:1) and shall be covered with plant material, groundcover, or partially rip-rapped to prevent erosion. Berms with vegetative cover shall be designed to retain irrigation water rather than encourage run off. All earthen berms shall be safely designed in order to accommodate mowing when needed.

(6) Calculation of Bufferyard Requirements.

(a) Bufferyard requirements are calculated using the standards listed in this Section for bufferyards.

(b) Bufferyard standards listed in this Section are to be calculated for every 100 linear feet of peripheral lot line boundary and/or street frontage present on a given lot.

(c) In instances where the zoning district boundary and/or street frontage is less than 100 feet, the required bufferyard planting shall be one plant unit (See Table 35-22(1)).

(7) Procedures for Determining Minimum Required Bufferyards. To determine the type of bufferyard required on a parcel, between two parcels or lots, or between a parcel or lot and a street, the following procedures shall be used:

(a) Identify whether any portion or property line of the parcel or lot coincides with a zoning district boundary. If it does, determine the abutting zoning districts on both sides of the property line.

(b) Refer to Table 35-22(2) to determine the required bufferyard intensity factor needed to be achieved between the two zoning districts.

(c) Based upon the bufferyard intensity factor required, refer to the applicable Tables 35-22(3) to 35-22(7) to select the minimum

number of plant materials (per 100 feet of bufferyard length), the bufferyard width, and required structure type combination by selecting the desired alternative bufferyard type.

(d) Calculate the actual number of plants required by selecting the minimum number of plant materials (per 100 feet of bufferyard length) from the alternatives indicated in the applicable Tables 35-22(3) to 35-22(7) and multiply by the hundreds of feet of bufferyard to be planted.

(8) Limitations on Bufferyard Use. A bufferyard may be used for passive recreation. It may contain pedestrian or bike trails provided that

(a) No plant material is eliminated;

(b) The total width of the bufferyard is maintained; and

(c) All other regulations of this Chapter are met. In no event, however, shall swimming pools, decks, drives, curbing, stormwater detention/retention ponds, tennis courts, sports fields, golf courses, parking lots, or other similar uses (as determined by the Plan Commission) be permitted in bufferyards.

g. Table of Required Bufferyards Between Zoning Districts. The minimum required bufferyard intensity factor for bufferyards between zoning districts set forth in Table 35-22(2) refers to the bufferyard width and plant unit standards set forth in Tables 35-22(3) through 35-22(7) of this Section. Bufferyards are required between adjacent zoning districts.

Table 35-22(2) MINIMUM REQUIRED BUFFERYARD INTENSITY FACTOR LEVELS OF BUFFERYARDS BETWEEN ZONING DISTRICTS. See Instructions, Key and Notes, Below.

APPLICABLE ZONING DISTRICT	R-1 R-2 R-6	R-8 R-9	R-3 R-5	R-4 R-7	B-1 Thru B-6	M-1 Thru M-4	A-1 Thru A-4 & UR	C-1 C-2	P-1 P-2	F-1 GFP FF	SW SD	PUD	HPO
R-1 R-2 R-6									0	(a)	(a)	(a)	(a)
R-8 R-9	1	0	1	1	0	0	0	0	0	(a)	(a)	(a)	(a)
R-3 R-5	2	2	0	2	2	0	0	0	0	(a)	(a)	(a)	(a)
R-4 R-7	3	3	1	0	1	0	0	0	0	(a)	(a)	(a)	(a)
B-1 Thru B-6	4	4	4	4	0	0	4	4	4	(a)	(a)	(a)	(a)
M-1 Thru M-4	5	5	5	5	5	0	5	5	5	(a)	(a)	(a)	(a)
A-1 Thru A-4 & UR	0	0	0	0	0	0	0	0	0	(a)	(a)	(a)	(a)
C-1 C-2	0	0	0	0	0	0	0	0	0	(a)	(a)	(a)	(a)
P-1 P-2	3	3	3	3	3	3	3	3	0	(a)	(a)	(a)	(a)
F-1 GFP FF	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)
SW SD	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)
PUD	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)
HPO	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)

INSTRUCTIONS, KEY AND NOTES

Read the table down to find the Applicable District, then across to find the Abutting District.

The Applicable District is the district that the land that is the subject of the permit application lies in. This is the land upon which the Bufferyard must be installed.

The Abutting District is the land that is adjacent to the land that is the subject of the permit, whether or not there is a pre-existent development on that land.

(a) As determined by the underlying zoning district(s).

0 = No bufferyard is required. All applicable zoning district setbacks are required.

1 = Bufferyard Intensity Factor 1 (See Table 35-22(3))

2 = Bufferyard Intensity Factor 2 (See Table 35-22(4))

3 = Bufferyard Intensity Factor 3 (See Table 35-22(5))

4 = Bufferyard Intensity Factor 4 (See Table 35-22(6))

5 = Bufferyard Intensity Factor 5 (See Table 35-22(7))

h. Minimum Required Bufferyard Width and Plant Material Standards. The following Tables 35-22(3) through 35-22(7) set forth the minimum bufferyard width and plant material standards required for achieving required bufferyard intensity levels. Tables 35-22(3) through 35-22(7) are designed so as to allow for choice from a variety of alternative bufferyard widths and general landscape plant material types in order to meet the required bufferyard intensity levels required elsewhere in this Section.

Table 35-22(3) BUFFERYARD INTENSITY FACTOR 1:
ALTERNATIVE PLANT MATERIAL STANDARDS

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 1	Canopy/Shade Trees	0.0	5	Minimum 5-foot tall solid fence
	Ornamental Trees	0.0		
	Shrubs	5.6		
Type 1A	Canopy/Shade Trees	0.7	5	None
	Ornamental Trees	1.4		
	Shrubs	5.6		
Type 1B*	Canopy/Shade Trees	0.6	10	None
	Ornamental Trees	0.6		
	Evergreen Trees	0.6		
	Shrubs	3.6		
Type1C*	Canopy/Shade Trees	0.5	15	None
	Evergreen Trees	0.9		
	Shrubs	2.3		
Type 1D*	Evergreen Trees	1.1	20	None
	Evergreen Shrubs	4.9		
Type 1E	Canopy Trees	0.5	25	None
	Shrubs	2.5		

*Note: Not to be used in off-street parking areas.
(a) See Table 35-22(1) for minimum required plant material sizes.

TABLE 35-22(4) BUFFERYARD INTENSITY FACTOR 2: ALTERNATIVE PLANT MATERIALS STANDARDS

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 2	Canopy/Shade Trees	0.4	10	Minimum 6-foot tall solid fence
	Ornamental Trees	0.9		
	Shrubs	3.4		
Type 2A	Canopy/Shade Trees	1.7	15	2-foot berm
	Ornamental Trees	3.4		
	Shrubs	13.6		
Type 2B*	Canopy/Shade Trees	2.3	20	None
	Ornamental Trees	2.3		
	Evergreen Trees	2.3		
	Shrubs	13.5		
Type2C*	Canopy/Shade Trees	2.1	25	None
	Evergreen Trees	4.2		
	Shrubs	10.5		
Type 2D*	Evergreen Trees	5.9	30	None
	Evergreen Shrubs	27.3		
Type 2E	Canopy Trees	2.2	30	3-foot berm
	Shrubs	11.0		

*Note: Not to be used in off-street parking areas

(a) See Table 35-22(1) for minimum required plant material sizes.

Table 35-22(5) BUFFERYARD INTENSITY FACTOR 3: ALTERNATIVE PLANT MATERIAL STANDARDS

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 3	Canopy/Shade Trees	2.3	15	Minimum 6-foot tall solid fence
	Ornamental Trees	4.6		
	Shrubs	12.4		
Type 3A	Canopy/Shade Trees	2.3	20	3-foot berm
	Ornamental Trees	4.6		
	Shrubs	18.4		
Type 3B*	Canopy/Shade Trees	3.4	20	None
	Ornamental Trees	3.4		
	Evergreen Trees	3.4		
	Shrubs	20.4		
Type 3C*	Canopy/Shade Trees	3.2	25	None
	Evergreen Trees	6.4		
	Shrubs	16.0		
Type 3D*	Evergreen Trees	9.2	30	None
	Evergreen Shrubs	42.7		
Type 3E	Canopy Trees	5.8	35	None
	Shrubs	29.0		

*Note: Not to be used in off-street parking areas.

(a) See Table 35-22(1) for minimum required plant sizes

Table 35-22(6) BUFFERYARD INTENSITY FACTOR 4: ALTERNATIVE PLANT MATERIAL STANDARDS

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 4	Canopy/Shade Trees	3.0	20	Minimum 6-foot tall solid fence
	Ornamental Trees	6.0		
	Shrubs	24.0		
Type 4A	Canopy/Shade Trees	3.0	25	4-foot berm
	Ornamental Trees	6.0		
	Shrubs	24.0		
Type 4B*	Canopy/Shade Trees	3.7	25	2-foot berm
	Ornamental Trees	3.7		
	Evergreen Trees	3.7		
	Shrubs	22.2		
Type 4C*	Canopy/Shade Trees	4.3	30	None
	Evergreen Trees	8.5		
	Shrubs	21.3		
Type 4D*	Evergreen Trees	12.3	35	None
	Evergreen Shrubs	57.4		
Type 4E	Canopy Trees	7.9	40	None
	Shrubs	39.5		

*Note: Not to be used in off-street parking areas.
(a) See Table 35-22(1) for minimum required plant sizes

Table 35-22(7) BUFFERYARD INTENSITY FACTOR 5: ALTERNATIVE PLANT MATERIAL STANDARDS

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 5	Canopy/Shade Trees	4.1	20	Minimum 6-foot tall solid fence
	Ornamental Trees	8.2		
	Shrubs	32.8		
Type 5A	Canopy/Shade Trees	4.1	25	4-foot berm
	Ornamental Trees	8.2		
	Shrubs	32.8		
Type 5B*	Canopy/Shade Trees	4.8	30	2-foot berm
	Ornamental Trees	4.8		
	Evergreen Trees	4.8		
	Shrubs	28.5		
Type 5C*	Canopy/Shade Trees	5.3	35	None
	Evergreen Trees	10.6		
	Shrubs	26.5		
Type 5D*	Evergreen Trees	15.6	40	None
	Evergreen Shrubs	72.8		
Type 5E	Canopy Trees	9.0	40	None
	Shrubs	45		

*Note: Not to be used in off-street parking areas.
(a) See Table 35-22(1) for minimum required plant sizes

i. Minimum Plant Material Standards. All new landscape plant material shall meet those standards set forth under the requirements of **Section 2.08(d)(2)(d)** of this Chapter.

4. Parking area requirements. The number of spaces required for use, relation to building and road, and landscaping can be found in Sections 35-160 through 162.

a. Intent. Parking areas should provide safe, convenient, and efficient access for vehicles and pedestrians. They should be distributed around large buildings in order to shorten the distance to other buildings and public sidewalks; and to reduce the overall scale of paved surfaces.

b. Standard. No more than 60 percent of the off-street parking area for the entire property shall be located between the front facade of the principal building(s) and the primary abutting street unless the principal building(s) and/or parking lots are screened from view by outlot development (such as restaurants) and additional tree plantings and/or berms approved by the Plan Commission. Green islands

shall be located between double loaded parking bands. A double loaded parking band is a 19 foot wide parking stall, 22 foot wide travel aisle, and 19 foot wide parking stall.

5. Sign Requirements. See Sections 35-170 through 178 of this Chapter.

6. Pedestrian Flows

(a) Intent. Pedestrian accessibility opens auto-oriented developments to the neighborhood, thereby reducing traffic impacts and enabling the development to project a friendlier, more inviting image. This section sets forth standards for public sidewalks and internal pedestrian circulation systems that can provide user-friendly pedestrian access as well as pedestrian safety, shelter, and convenience within the center grounds.

(b) Standards.

(1) How people get from one building to another on foot. Sidewalks shall be provided along the full length of the building along any facade featuring a customer entrance, and along any facade abutting public parking areas.

(2) How people from neighboring areas get to store on foot. Continuous internal pedestrian walkways shall be provided from the public sidewalk or right-of-way to the pedestrian entrances of all principal buildings on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, building and store entry points pursuant to Chapter 6, subject to review by the Plan Commission.

7. Outdoor Lighting.

a. Intent. All exterior lighting shall be unobtrusive, harmonious with the local area and constructed or located so that only the area intended is safely illuminated and off-site glare is fully controlled. Non-residential sites shall have a Lighting Plan designed by an Engineer and approved by the Plan Commission.

b. Standards.

(1) Lighting of the site shall be of a type, design, color and height to blend with the site and landscaping.

(2) Lighting of the site shall be of a design and height and shall be located so as to illuminate only the site and not be a beacon of distraction or potential hazard to traffic or to people working or living in the vicinity of the site.

8. Noise Abatement. Refer to Section 35-250, Performance Standards.

9. Location and Design of Loading Facilities and Waste Storage.

a. Intent. Loading areas and outdoor storage areas exert visual and noise impacts on surrounding neighborhoods. These areas, when visible from adjoining properties and/or public streets, should be screened, recessed or enclosed. While screens and recesses can effectively mitigate these impacts, the selection

of inappropriate screening materials can exacerbate the problem.

b. Standards.

(1) Visibility. Areas for outdoor storage, truck parking, trash collection or compaction, loading, or other such uses shall not be visible from roadways and neighboring properties.

(2) Location. No areas for outdoor storage, trash collection or compaction, loading, or other such uses shall be located within 20 feet of any public street, public sidewalk, or internal pedestrian way.

(3) Visual and acoustic impact. Loading docks, truck parking, outdoor storage, utility meters, HVAC equipment, trash dumpsters, trash compaction, and other service functions shall be incorporated into the overall design of the building and the landscaping so that the visual and acoustic impacts of these functions are fully contained and out of view from adjacent properties and public streets, and no attention is attracted to the functions by the use of screening materials that are different from or inferior to the principal materials of the building and landscape.

(4) Non-enclosed and seasonal. Non-enclosed areas for the storage and sale of seasonal inventory shall be permanently defined and screened with walls and/or fences. Materials, colors, and designs of screening walls and/or fences and the cover shall conform to those used as predominant materials and colors of the building. If such areas are to be covered, then the covering shall conform to those used as predominant materials and colors on the buildings.

35-23 REDUCTION OR JOINT USE OF LOTS

No lot, yard, parking area, building area, or other space shall be reduced in area or dimension so as not to meet the provisions of this Chapter. No part of any lot, yard, parking area, or other space required for a structure or use shall be used for any other structure or use except pursuant to a Conditional Use Permit or Planned Unit Development approved by the Plan Commission.

[35-24 to 35-28 reserved]

35-29 ZONING DISTRICTS.

For the purpose of this Chapter, the Village of Rochester is hereby divided into basic districts and overlay districts designated as follows:

R-1	Single-Family Residential District
R-2	Single-Family Residential District
R-3	One and Two Family Residential District
R-4	Multiple-Family Residential District
R-5	Two Family Residential District
R-6	Suburban Residential District (Sewered)
R-7	Suburban Residential District (Sewered-Large Lot)
R-8	Suburban Residential District (Unsewered)
R-9	Suburban Country Estates Residential District (Unsewered)
B-1	General Business District
B-2	Limited Business District
B-3	General Business District
B-4	Highway Business District
B-5	Mixed Use Business District
B-6	Water-oriented Business District
M-1	Limited Industrial District
M-2	General Industrial District
M-3	Heavy Industrial District
M-4	Quarrying District
A-1	General Farming District
A-2	General Farming and Residential District
A-3	General Farming- Holding District
A-4	Truck Farming District
UR	Urban Reserve District
C-1	Resource Conservation District
C-2	Upland Resource Conservation District
P-1	Institutional Park District
P-2	Recreational Park District
F-1	Floodway District
GFP	General Floodplain District
FF	Flood Fringe District
SW	Shoreland-Wetland District
SD	Shoreland District
PUD	Planned Unit Development Overlay District
HPO	Historic Preservation Overlay District

Boundaries of these Districts are established as shown on the map entitled "Zoning Map - Village of Rochester, Wisconsin," as established and updated pursuant to s. 35-30 of this Chapter. Such boundaries shall be construed to follow: corporate limits, U.S. Public Land Survey lines; lot or property lines; centerlines of streets, highways, alleys, easements and railroad or utility right-of-way or such lines extended, unless otherwise noted on the Zoning Map. The boundaries of the F-1 Floodway District, the GFP General Floodplain District and the FFO Flood Fringe Overlay District shall be determined as set forth in Chapter 37. Vacation of public streets and alleys shall cause the land vacated to be automatically placed in the same district as the abutting side to which the vacated land reverts.

Annexations to or consolidations with the Village subsequent to the effective date of this Chapter shall be placed in the R-1 Residential District, or as specifically set forth in the Ordinance annexing the land. Annexations or consolidations in the floodplain shall be placed in the appropriate district as set forth in Chapter 37.

35-30 ZONING MAP

A copy of the Zoning Map shall be adopted and approved with the text as part of this Chapter and shall be available to the public in the office of the Village Clerk. The Zoning Map shall also show the airport affected area as defined by Wis. Stat. s. 62.23(6)(am)1.b., i.e., the area located within three miles of an airport. Changes to the zoning districts shall be shown on the Zoning Map after adoption. Changes in the floodplain districts shall not be effective until approved by the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency (FEMA), as set forth in Chapter 37.

35-31 R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

The R-1 Single-Family Residential District is intended to provide for high quality single family development, including accessory uses and essential services.

A. Uses. Uses in the R-1 Single Family Residential District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

   Single-family dwellings at a maximum density of 3.6 units per acre on lots served by public sanitary sewer.

2. Accessory and Other Uses: See s. 35-21.

3. Conditional Uses: See s. 35-100.

   Bed and Breakfast Establishments

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 90 feet
	Area	Minimum 12,000 sq. ft.
Building	Height	Maximum 35 ft.
	Area	Minimum without garage: 1,200 sq. ft. one story; 1,700 sq. ft. multi-story.
Yard (Setbacks)	Street	Minimum 40 ft. from property line.
	Side	Minimum 8 ft. one side with a minimum total of 20 ft.
	Rear	Minimum 25 ft. or 20% of total lot depth, whichever is greater.

35-32. R-2 SINGLE-FAMILY RESIDENTIAL DISTRICT

The R-2 Single-Family Residential District is intended to provide for high quality single family residential development, including accessory uses and essential services.

A. Uses. Uses in the R-2 Single Family Residential District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

   Single-family dwellings at a maximum density of 4.6 units per acre on lots served by public sanitary sewer.

2. Accessory and Other Uses: See s. 35-21.

3. Conditional Uses: See s. 35-100.

   Bed and Breakfast Establishments.

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 66 feet*
	Area	Minimum 10,000 sq. ft.
Building	Height	Maximum 35 ft.
	Area	Minimum without garage: 1,200 sq. ft. one story; 1,700 sq. ft multi-story.
Yard (Setbacks)	Street	Minimum 25 ft. from property line
	Side	Minimum 8 ft. one side with a minimum total of 20 ft.
	Rear	Minimum 25 ft. or 20% of total lot depth, whichever is greater.

*The minimum width of the lot at the street setback line must be maintained for at least 50% of the depth of the lot for all lots divided after November 1, 2006.

35-33. R-3 ONE AND TWO-FAMILY RESIDENTIAL DISTRICT

The R-3 One and Two-Family Residential District is intended to provide for high quality one and two family residential development, including accessory uses and essential services.

A. Uses. Uses in the R-3 One and Two-Family Residential District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

   One and Two-Family dwellings at a maximum density of 7.3 units per acre on lots served by public sanitary sewer.

2. Accessory and Other Uses: See s. 35-21.

3. Conditional Uses: See s. 35-100.

Bed and Breakfast Establishments.

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 66 feet - single family* Minimum 100 feet - two family*
	Area	Minimum 10,000 sq. ft. for single family and 6,000 sq. ft per unit for two family.
Building	Height	Maximum 35 ft.
	Area	Minimum without garage: 1,200 sq. ft. one story single family; 1,700 sq. ft. multi-story single family; 1,800 sq. ft. two-family
Yard (Setbacks)	Street	Minimum 25 ft. from property line.
	Side	Minimum 8 ft. one side with a minimum total of 20 ft.
	Rear	Minimum 25 ft. or 20% of total lot depth, whichever is greater.

*The minimum width of the lot at the street setback line must be maintained for at least 50% of the depth of the lot for all lots divided after November 1, 2006.

35-34. R-4 MULTIPLE-FAMILY RESIDENTIAL DISTRICT

The R-4 Multiple-Family Residential District is intended to provide for high quality multiple family residential development, including accessory uses and essential services.

A. Uses. Uses in the R-4 Multiple Family Residential District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

   Single-family dwellings at a maximum density of three to eight units per structure on lots served by public sanitary sewer. All R-4 Multiple Family Residential development is subject to Village Plan Commission approval of building site and operational plans. (**See Section 13**)

2. Accessory and Other Uses: See s. 35-21.

3. Conditional Uses: See s. 35-100.

   Bed and Breakfast Establishments.

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 120 feet.
	Area	Minimum 18,000 sq. ft. with a minimum of 4,500 sq. ft. per one bedroom unit; and 6,000 sq. ft. per two bedroom and three bedroom units.
Building	Height	Maximum 35 ft.
	Area	Minimum 750 sq. ft. per one bedroom unit and 900 sq. ft. per unit for 2 or 3 bedroom units.
Yard (Setbacks)	Street	Minimum 40 ft. from property line.
	Side	Minimum 40 feet from each side.
	Rear	Minimum 40 ft. or 20% of total lot depth, whichever is greater.

35-35. R-5 Two-Family Residential District

A. Uses. Uses in the R-5 Two-Family Residential District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

   Two-family dwellings on lots served by a public sanitary sewer

2. Accessory and Other Uses: See s. 35-21.

3. Conditional Uses: See s. 35-100.

   Bed and Breakfast Establishments.

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 100 feet
	Area	Minimum 10,000 sq. ft.
Building	Height	Maximum 35 ft.
	Area	Minimum without garage: 1,800 sq. ft.
Yard (Setbacks)	Street	Minimum 25 ft.
	Side	Minimum 10 ft.
	Rear	Minimum 25 ft.

35-36. R-6 SUBURBAN RESIDENTIAL DISTRICT (Sewered)

A. Uses. Uses in the R-6, Suburban Residential District (Sewered) are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

   One family dwellings on large lots served by public sanitary sewer.

2. Accessory and Other Uses: See s. 35-21.

3. Conditional Uses: See s. 35-100.

   Bed and Breakfast Establishments.

B. Area Requirements.

Lot	Width	Minimum 100 ft.
	Area	Minimum 20,000 sq. ft.
Building	Height	Maximum 35 ft.
	Area	Minimum without garage: 1,200 sq. ft. for one story; 1,700 sq. ft. for multi-story.
Yard (Setbacks)	Street	Minimum 35 ft.
	Side	Minimum 10 ft.
	Rear	Minimum 50 ft.

35-37. R-7 Suburban Residential District (Sewered-Large Lot)

A. Uses. Uses in the R-7 Suburban Residential District (Sewered – Large Lot) are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

   Single family dwellings on large lots served by public sanitary sewer.

2. Accessory and Other Uses: See s. 35-21.

3. Conditional Uses: See s. 35-100.

   Bed and Breakfast Establishments..

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 150 ft.
	Area	Minimum 40,000 sq. ft.
Building	Height	Maximum 35 ft.
	Area	Minimum without garage: 1,200 sq. ft. for one story; 1,700 sq. ft. for multi-story.
Yard (Setbacks)	Street	Minimum 50 ft.
	Side	Minimum 15 ft.
	Rear	Minimum 50 ft.

35-38. R-8 Suburban Residential District (Unsewered):

A. Uses. Uses in the R-8 Suburban Residential District (Unsewered) are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

   Single family dwellings on lots not served by public sanitary sewer.

2. Accessory and Other Uses: See s. 35-21.

3. Conditional Uses: See s. 35-100.

   Bed and Breakfast Establishments.

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 150 ft.
	Area	Minimum 40,000 sq. ft.
Building	Height	Maximum 35 ft.
	Area	Minimum without garage: 1,200 sq. ft. for one story; 1,700 sq. ft. for multi-story.
Yard (Setbacks)	Street	Minimum 50 ft.
	Side	Minimum 15 ft.
	Rear	Minimum 50 ft.

35-39. R-9 Country Estates Residential District (Unsewered)

A. Uses. Uses in the R-9 Country Estates Residential District (Unsewered) are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:
Single family dwellings on estate lots and sustained yield forestry, not served by sanitary sewer.

2. Accessory and Other Uses: See s. 35-21.

3. Conditional Uses: See s. 35-100.

Bed and Breakfast Establishments
Stables, riding stables
Nurseries, orchards

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 300 feet
	Area	Minimum five acres
Building	Height	Maximum 35 ft.
	Area	Minimum without garage: 1,200 square feet for one story; 1,700 square feet for multi-story.
Yard (Setbacks)	Street	Minimum 100 ft.
	Side	Minimum 100 ft.
	Rear	Minimum 50 ft.

35-40 [Reserved for Future Use]

35-41 B-1 Central Business District

The B-1 Central Business district is intended to provide for the orderly continuation of the traditional central business district. The business activities are of a general nature and have been characterized by on-street parking and structures that abut the street right-of-way. While continuing those existing business at their present level of service, new business structures located in the B-1 business district are required to provide for off-street parking and loading, unless exempted under other provisions of this Chapter. Conditional uses require a public hearing because of their particular characteristics. These uses may also be subject to Village Plan Commission approval of building site and operational plans. (See Sections 35-100 and 35-230.)

A. Uses. Uses in the B-1 Central Business District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

Animal hospitals or veterinary clinics, provided that no service, including the boarding of animals, is offered outside of an enclosed building.
Antique or collector stores
Appliance stores
Bakeries
Banks, Savings and Loan Associations, and other financial and lending institutions
Barbershops
Bars, taverns and cocktail lounges
Beauty shops
Bookstores
Camera and photographic supply stores
Caterers
Clinics, medical or dental
Clothing and clothing repair or alteration stores
Clubs, fraternities and meeting halls (private)
Computer Stores
Confectioneries
Delicatessens
Department stores
Drugstores
Dry cleaners with no on-site cleaning facilities
Fish markets
Florists
Fruit stores
Furniture stores
Gift stores, card stores
Grocery stores
Hardware stores
Heating supply stores
Hobby and craft shops
Jewelry stores
Liquor stores, packaged beverage stores
Meat markets
Monument sales
Movie rental stores
Museums, historical societies
Music stores
Newspaper and magazine stores
Newspaper offices and press rooms
Office supply stores
Optical stores
Photographic studios and supplies
Plumbing supply stores
Professional offices, business offices
Public utility offices
Public parking lots and structures
Radio and television stores
Restaurants (sit-down, without drive-through service)
School of dance
Second-hand stores
Self-service laundromats, including pick-up laundry
Shoe stores and leather goods stores

Soda fountains, ice cream stores
Sporting goods stores
Stationery stores
Supermarkets
Tanning salons
Tobacco stores
Trade and contractor offices[2]
Trade and Variety stores
Vegetable stores
Other uses similar to or customarily incidental to the uses listed above
Note: All drive-in facilities require Conditional Use Permits
Note: All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

2. Accessory and Other Uses:

   a. Garages for storage of vehicles in conjunction with the operation of a permitted use.

   b. Off-street parking areas, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is parked entirely inside of a building, for more than two hours.

   c. See s. 35-21 of this Chapter.

3. Conditional Uses. See s. 35-100.

   Uses set forth in s. 35-100E, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours, unless otherwise allowed by the Plan Commission.

   Funeral homes, provided all principal structures and uses are not less than 25 feet from any lot line

   Light manufacturing, of a limited nature and size, that is found by the Plan Commission not to be detrimental to the neighborhood and will not emit noise, smoke, dust, dirt, odorous or noxious gases, provided that a product produced on-site is also sold at retail on-site, including, but not limited to, small wineries, hard cider manufacturers, brew pubs, specialty candy manufacturers, etc. The manufacturer may provide additional activities in the building (if properly licensed) such as conferences and workshops related to the manufactured goods, tastings, pairings, etc. Cheese manufacturing is not permitted under this category. The use shall be contained entirely within the building and there shall be no outside storage. The applicant shall provide the methods to be used to address noise and air quality in the application for the CUP.

[2] Amended 10-13-2014, Ordinance #2014-6

B. Lot, Area and Yard Requirements.

1. Sewered Lots.

Lot (sewered)	Width	Minimum 66 feet
	Area	Minimum 10,000 sq. ft.
Building	Height	Maximum 35 feet
	Area	Minimum: 1,200 sq. ft. single story; 1,700 sq. ft. multiple-story.
Yard (Setbacks)	Street	Minimum 25 feet
	Side	Minimum 6 feet
	Rear	Minimum 25 feet

2. Unsewered Lots.

Lot (unsewered)	Width	Minimum 150 feet
	Area	Minimum 40,000 sq. ft.
Building	Height	Maximum 35 feet
	Area	Minimum 1,200 sq. ft. single story 1,700 sq. ft. multiple story
Yard (setbacks)	Street	Minimum 50 feet
	Side	Minimum 25 feet
	Rear	Minimum 35 feet

35-42 B-2 LIMITED BUSINESS DISTRICT.

The B-2 Limited Business District is intended to provide for individual or limited office, professional, and special service uses where the activity would be compatible with other neighborhood uses and not exhibit the intense activity of other business districts.

A. Uses. Uses in the B-2 Limited Business District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Special Regulations. To encourage a business use environment that is compatible with the residential character of the Village, zoning permits for permitted uses in B-2 Limited Business District shall not be issued without prior review by and approval of the Village

Plan Commission. Said review and approval shall be concerned with adjacent uses, need for public or private water supply and sanitary sewage disposal facilities, general layout, building site and operation plans, ingress, egress, parking, loading and unloading, screening and landscape plans pursuant to this Chapter.

2. Permitted Principal Uses: (See Section 35-230 for review requirements).

All Permitted Principal Uses in the B-1 Central Business District, except as limited below
Furniture and upholstery repair
Crockery stores
Electric Supply stores
Food Lockers
Hotels, motels, bed & breakfast & lodges
Laundry and dry cleaning establishments employing not over seven employees
Night clubs
Paint, glass and wallpaper stores
Pawn shops
Personal service establishments
Pet shops
Places of entertainment
Printing shops
Private clubs
Publishing
Radio and television broadcasting studios
Second-hand stores
Sign stores
Tattoo parlors
Other uses similar to or customarily incidental to the uses listed above
Note: All drive-in facilities require Conditional Use Permits
Note: All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

3. Accessory and Other Uses:

a. Garages for storage of vehicles in conjunction with the operation of a permitted use.

b. Off street parking areas, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

c. See s. 35-21 of this Chapter.

4. Conditional Uses. See s. 35-100.

Animal hospital or veterinary clinic, provided that no service, including the boarding of animals, is offered outside of an enclosed building.

Child care centers, provided that any outside play area is surrounded by a security fence not exceeding a height of six feet and set back at least five feet from any street right-of-way line with landscaping provided between the fence and the street right-of-way line; that no play area shall consist of entirely a hard surface.

Funeral homes, provided that all principal structures and uses are not less than 25 feet from any lot line

Hobby use, as that term is defined by the Internal Revenue Service, provided that sales made from the site shall be limited to those occasional sales as allowed during the conditional use permitting process.

Light manufacturing, of a limited nature and size, that is found by the Plan Commission not to be detrimental to the neighborhood and will not emit noise, smoke, dust, dirt, odorous or noxious gases, including, but not limited to, small wineries, hard cider manufacturers, brew pubs, specialty candy manufacturers, etc. The manufacturer may provide additional activities in the building (if properly licensed) such as conferences and workshops related to the manufactured goods, tastings, pairings, etc. Cheese manufacturing is not permitted under this category. The use shall be contained entirely within the building and there shall be no outside storage. The applicant shall provide the methods to be used to address noise and air quality in the application for the CUP.

Storage / Warehouse, provided that storage of hazardous materials, including but not limited to explosive, flammable or combustible solid, liquid or gas, radioactive material, etiological (disease causing) agents, or any solid, liquid or gas creating a hazard, potential hazard, or public nuisance or any solid, liquid or gas having a deleterious effect on the environment shall not be allowed. Provided further that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Vehicle Sales, Service and /or Repair Structures, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Other conditional uses as set forth in Section 35-100E, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

B. Lot, Area and Yard Requirements.

1. Sewered Lots.

Lot (sewered)	Width	Minimum 75 feet
	Area	Minimum 15,000 sq. ft.
Building	Height	Maximum 35 feet
	Area	Minimum 1,200 sq. ft. single story 1,700 sq. ft. multiple story
Yard (Setbacks)	Street	Minimum 25 ft.
	Side	Minimum 10 feet
	Rear	Minimum 25 feet

2. Unsewered Lots.

Lot (Unsewered)	Width	Minimum 150 feet
	Area	Minimum 40,000 sq. ft.
Building	Height	Maximum 35 feet
	Area	Minimum 1,200 sq. ft. single story 1,700 sq. ft. multiple story
Yard (Setbacks)	Street	Minimum 50 ft.
	Side	Minimum 25 feet
	Rear	Minimum 35 feet

35-43. B-3 General Business District

This district is intended to provide for the orderly and attractive grouping at appropriate locations of commercial activities of a more general retail and wholesale nature, and of the office and service facilities serving a larger community trade area. The size and location of such districts shall be based upon relationship of the community need and economy. No such district should be less than 30,000 square feet in area.

A. Uses. Uses in the B-3 General Business District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Special Regulations. To encourage a business use environment that is compatible with the residential character of the Village, zoning permits for permitted uses in B-3 General Business District shall not be issued without prior review by and approval of the Village Plan Commission. Said review and approval shall be concerned with adjacent uses, need for public or private water supply and sanitary sewage disposal facilities, general layout, building site and operation plans, ingress, egress, parking, loading and unloading, screening and landscape plans pursuant to this Chapter.

2. Permitted Principal Uses:

Those Permitted Uses set forth under s. 35-41 for the B-2 Limited Business District, except as limited below
Auction Galleries
Bicycle Sales and Service
Building Materials and Product sales
Electronic Repair
Employment Agencies
Exterminating Shops
Garden sales
General Merchandising
Medical Appliance Stores
Physical Culture and Health studios
Radio and Television Recording studios
Trade and Contractors offices

Transportation Terminals, not including Trucking
Vending Machine Sales, Service and Repair
Welding Repair Shops
Wholesale Establishments
Note: All drive-in facilities require Conditional Use Permits
Note: All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

3. Accessory and Other Uses:

   a. Garages for storage of vehicles in conjunction with the operation of a permitted use.

   b. See s. 35-21 of this Chapter.

4. Conditional Uses. See s. 35-100.

   Child care centers, provided that any outside play area is surrounded by a security fence not exceeding a height of six feet and set back at least five feet from any street right-of-way line with landscaping provided between the fence and the street right-of-way line; and that no play area shall consist of entirely a hard surface.

   Drive-in establishments serving food or beverages for consumption outside the structure

   Experimental, testing and research laboratories.

   Flea markets

   Funeral homes, provided that all principal structures and uses are not less than 25 feet from any lot line

   General warehousing.

   Hobby Use, as that term is defined by the Internal Revenue Service, provided that sales made from the site shall be limited to those occasional sales as allowed during the conditional use permitting process.

   Landscaping contractor's offices and yards

   Light manufacturing, of a limited nature and size, that is found by the Plan Commission not to be detrimental to the neighborhood and will not emit noise, smoke, dust, dirt, odorous or noxious gases, including, but not limited to, small wineries, hard cider manufacturers, brew pubs, specialty candy manufacturers, etc. The manufacturer may provide additional activities in the building (if properly licensed) such as conferences and workshops related to the manufactured goods, tastings, pairings, etc. Cheese manufacturing is not permitted under this category. The use shall be contained entirely within the building and there shall be no outside storage. The applicant shall provide the methods to be used to address noise and air quality in the application for the CUP.

   Lumber and building supply yards.

   Printing and publishing houses and related activities.

Self-service storage facilities including incidental manager's office/quarters along county trunk highways and other similar major arterials. The maximum lot coverage by structures for a self-service storage facility, shall not exceed 50 percent, and such facility shall not exceed 15 feet in height, and shall meet the required setbacks

Off season boat storage facilities for boats and other recreational vehicles, such as campers, travel trailers, snowmobiles, off-road vehicles and motor homes, however, this is allowed only as an accessory use to an approved self-service storage facility

Service and sales establishments for automobiles, including body repair shops and used car lots but not including the storage of junked or wrecked automobiles and/or parts.

Storage / Warehouse, provided that storage of hazardous materials, including but not limited to explosive, flammable or combustible solid, liquid or gas, radioactive material, etiological (disease causing) agents, or any solid, liquid or gas creating a hazard, potential hazard, or public nuisance, or any solid, liquid or gas having a deleterious effect on the environment shall not be allowed.

B. Lot, Area and Yard Requirements.

1. Sewered Lots.

Lot	Width	Minimum 120 feet
	Area	Minimum 30,000 sq. ft.
Building	Height	Maximum 35 feet
	Area	Minimum 1,200 sq. ft. single story 1,700 sq. ft. multiple story
Yard (Setbacks)	Street	Minimum 40 ft.
	Side	Minimum 10 feet, or equal to the required sideyard in the adjacent district, whichever is greater
	Rear	Minimum 25 feet

2. Unsewered Lots.

Lot (Unsewered)	Width	Minimum 150 feet
	Area	Minimum 40,000 sq. ft.
Building	Height	Maximum 35 feet
	Area	Minimum 1,200 sq. ft. single story 1,700 sq. ft. multiple story
Yard (Setbacks)	Street	Minimum 50 ft.

	Side	Minimum 25 feet
	Rear	Minimum 35 feet

35-44 B-4 Highway Business District

The B-4 Highway Business District is intended to provide the orderly and attractive grouping at appropriate locations along principal highway routes of those businesses and customer service establishments which are logically related to and dependent upon highway traffic or which are specifically designed to serve the needs of such traffic.

A. Uses. Uses in the B-4 Highway Business District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Special Regulations. To encourage a business use environment that is compatible with the residential character of the Village, Zoning Permits for uses in B-4 Highway Business District shall not be issued without prior review by and approval of the Village Plan Commission. Said review and approval shall be concerned with adjacent uses, need for public or private water supply and sanitary sewage disposal facilities, general layout, building site and operation plans, ingress, egress, parking, loading and unloading, screening and landscape plans pursuant to this Chapter.

2. Permitted Principal Uses (see Section 35-230 for review requirements):

   Those Permitted Principal Uses set forth under Section 35-43 for the B-3 General Business District, except as limited below
   Lumber and Building Supply Stores
   Drive-in or drive-through restaurants or other establishments providing service to customers without the necessity of entering the building
   Fast food stores and restaurants
   Fuel service stations, provided that all islands and pumps shall meet the setback and yard requirements set forth herein
   Transit bus service
   Note: All drive-in facilities require Conditional Use Permits
   Note: All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

3. Accessory and Other Uses:

   a. Garages for storage of licensed vehicles in conjunction with the operation of the business or for occupants of the business.

   b. Off-street parking areas.

   c. See s. 35-21 of this Chapter.

4. Conditional Uses. See s. 35-100.

   Child care centers, provided that any outside play area is surrounded by a security fence not exceeding a height of six feet and set back at least five feet from any street right-of-way line with landscaping provided between the fence and the street right-of-way line;

and that no play area shall consist of entirely a hard surface.

Experimental, testing and research laboratories.

Funeral homes, provided all principal structures and uses are not less than 25 feet from any lot line

General warehousing.

Hobby Use, as that term is defined by the Internal Revenue Service, provided that sales made from the site shall be limited to those occasional sales as allowed during the conditional use permitting process.

Light manufacturing, of a limited nature and size, that is found by the Plan Commission not to be detrimental to the neighborhood and will not emit noise, smoke, dust, dirt, odorous or noxious gases.

Printing and publishing houses and related activities.

Storage / Warehouse, provided that storage of hazardous materials, including but not limited to explosive, flammable or combustible solid, liquid or gas, radioactive material, etiological (disease causing) agents, or any solid, liquid or gas creating a hazard, potential hazard, or public nuisance, or any solid, liquid or gas having a deleterious effect on the environment shall not be allowed.

Truck and Bus Terminals for the parking, repair and service of the vehicles, provided no trans-shipment or warehousing facilities are provided

B. Lot, Area and Width Requirements.

Lot	Width	Minimum 200 feet
	Area	Minimum two acres
Building	Height	Maximum 35 feet
	Area	Minimum 1,200 sq. ft. single story 1,700 sq. ft. multiple story
Yard (Setbacks)	Street	Minimum 55 ft.
	Side	Minimum 30 feet, or equal to the required sideyard in the adjacent district, whichever is greater
	Rear	Minimum 30 feet

35-45 B-5 Mixed Use Business District

The B-5 Business District is intended to provide for the orderly and attractive grouping of buildings which encompass more than one type of non-industrial business use which are compatible from a traffic, density and general use standpoint.

A. Uses. Uses in the B-5 Mixed Use Business District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Special Regulations. To encourage a business use environment that is compatible with the residential character of the Village, zoning permits for uses in B-5 Mixed Use Business District shall not be issued without prior review by and approval of the Village Plan Commission. Said review and approval shall be concerned with adjacent uses, need for public or private water supply and sanitary sewage disposal facilities, general layout, building site and operation plans, ingress, egress, parking, loading and unloading, screening and landscape plans pursuant to this Chapter.

2. Site Development. If the development is proposed to be completed in phases or divided into saleable parcels, the owner/developer of each phase or separate parcel will be required to submit, and receive approval of a detailed site and operations plan as set forth in Section 35-230 of this Chapter.

3. Any division of the overall development parcel shall be accomplished in accordance with Chapter 30, Land Division, of this Municipal Code, and review and approval of the Plan Commission per the Design Standards specified in Section 35-22 of this Chapter.

4. Permitted Principal Uses:

   Those Permitted Principal Uses set forth under s. 35-44 for the B-4 Highway Business District
   Note: All drive-in facilities require Conditional Use Permits
   Note: All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

5. Accessory Uses:

   a. Garages for storage of vehicles in conjunction with the operation of a permitted use.

   b. Off-street parking areas. Off street parking and loading space adequate to meet the initial and projected needs of the principal use shall be provided for individual lot development within the development. No loading or unloading will be allowed on the streets or access ways within the parcel or on adjacent streets, roads or highways. See the parking requirements in Sections 35-160 through 162 of this Chapter.

   c. See s. 35-21 of this Chapter.

6. Conditional Uses. See s. 35-100.

   Uses as set forth in s. 35-100E.

   The conditional uses set forth in s. 35-44, B-4 Highway Business District

Animal Hospitals provided the lot area is not less than three acres, and all principal structures and uses are not less than 100 feet from any residential district

Drive-in theaters provided that a planting screen at least 25 feet wide is created along any side abutting a residential district and no access is permitted within1,000 feet of any arterial street

Drive-in establishments serving food or beverages for consumption outside the structure

Flea markets

Funeral homes, provided all principal structures and uses are not less than 25 fee from any lot line

Motels

Self-service storage facilities including incidental manager's office/quarters. The maximum lot coverage by structures for a self-service storage facility, shall not exceed 50 percent, and such facility shall not exceed 15 feet in height, and shall meet the required setbacks

Off season boat storage facilities for boats and other recreational vehicles, such as campers, travel trailers, snowmobiles, off-road vehicles and motor homes, however, this is allowed only as an accessory use to an approved self-service storage facility

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 200 ft.
	Area	Minimum 87,120 sq. ft. (2 acres)
Building	Height	Maximum 35 ft.
	Area	Minimum 1,200 sq. ft. single story 1,700 sq. ft. multiple story
Yard (Setbacks)	Street	Minimum 55 ft.
	Side	Minimum 30 ft.
	Rear	Minimum 30 ft.

35-46. B-6 Water-Oriented Business District

A. Uses. Uses in the B-6 Water-Oriented Business District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses.

Bathing and fishing areas
Bait shops
Boat launching areas
Fishing equipment sales
Restaurants and taverns without outside facilities
Water oriented commercial uses in existence on the day of the adoption of this Chapter, such as bathhouses, boat and marine sales**,** boat liveries, boat storage, repair and service marinas, dance halls, motels, resorts, and restaurants and taverns with outside facilities are grandfathered; any extension or expansion of these uses requires a Conditional Use Permit.
Note: All drive-in facilities require Conditional Use Permits
Note: All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

2. Accessory Uses. See s. 35-21 of this Chapter.

3. Conditional Uses. See s. 35-100.

New, extended or expanded water oriented commercial uses, not listed as permitted uses, such as bathhouses, boat and marine sales, boat liveries, boat storage, repair and service marinas, dance halls, motels, resorts, and restaurants and taverns with outside facilities

B. Area Requirements.

Lot	Width	Minimum 150 feet
	Area	Minimum 40,000 sq. ft.
Building	Height	Maximum 35 feet
	Area	Minimum 1,200 sq. ft. single story; 1700 sq. ft. multiple story
Yard (Setbacks)	Street	Minimum 50 ft.
	Side	Minimum 50 ft.
	Rear	Minimum 75 ft.

35-47 to 35-50 [Reserved for Future Use]

35-51. M-1 Limited Industrial District

A. Uses. The following uses are allowed and/or limited in the M-1 Limited Industrial Zoning District, provided that the Village Plan Commission, in approving or disapproving proposed locations for uses under this subsection, shall give due consideration to the character and suitability for development of the neighborhood in which any such use is proposed to be located and shall also base its decision on such evidence as may be presented to the Plan Commission regarding thee attributes of the proposed use, such as increased traffic on the public streets, heavy vehicular traffic, and the emission of noise, smoke, dust, or dirt, odorous or noxious gases and the like, that would be detrimental to such character and such suitability for development.

1. Permitted Principal Uses

Apparel and findings products
Baked goods, bakeries (wholesale)
Blank Books, loose leaf binders and devices
Books: publishing, printing, and binding
Boot and shoe cut stock
Brooms and brushes
Dental equipment and supplies
Electrotyping and sterotyping
Electrical appliances manufacturing,
Engineering, laboratory and scientific and research instruments and associated equipment
Envelopes
Greeting cards
Mechanical measuring and controlling instruments
Morticians' goods
Musical instruments and parts
Ophthalmic goods
Optical instruments and lenses
Orthopedic, prosthetic, and surgical appliances and supplies
Pens, pencils and other office and artist materials
Photoengraving instruments and apparatus
Photographic equipment and supplies
Pleating, decorative and novelty stitching and tucking for the trade
Signs and advertising displays
Surgical and medical instruments and apparatus
Watches, clocks, clockwork-operated devices and parts
Yarns and threads
Other uses similar to or customary incidental to any such use
All drive-in facilities require Conditional Use Permits
All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

2. Accessory Uses:

Garages for storage of vehicles used in conjunction with the operation of the industry.
Off-street parking and loading areas

Office, storage, power supply and other uses normally auxiliary to the principal industrial operation.
See s. 35-21 of this Chapter

3. Conditional uses. See s. 35-100.

   Adult Oriented Entertainment Business (see specific provisions in s. 35-100).

   Bus and rail depots

   Experimental and research laboratories

   Office use not related to principal industrial operations

   Veterinary clinic, provided no service, including the boarding of animals, is offered outside of an enclosed building

   Recycling center, provided no chemicals or hazardous materials are collected, stored, or processed and all storage and processing operations are conducted in an enclosed building

   Construction services, including general building contractors, carpentry, wood flooring, concrete services, masonry, stonework, tile setting, plastering services and roofing, sheet metal services and water well drilling services

   Indoor skating parks. Issues that the Plan Commission should consider are as follows, but are not limited to:

   a. The use shall be housed completely indoors

   b. Outdoor skating and or bicycling on the premises shall not be allowed

   c. No outdoor storage is permitted, and all skates, bicycles, and equipment used in the operation of said use shall be stored indoors

   d. All trash and debris shall be removed or contained weekly

   e. Any repair of skates, bicycles, and equipment used in the operation of said use shall be done indoors

   f. The indoor skate park conditional use permit shall be reviewed by the Village Plan Commission one year after issuance to assure compliance with the conditions stated in the conditional use permit

   Vocational schools, including data processing, business and secretarial schools, provided that adequate off-street parking is provided as determined by the Plan Commission

4. Site Plans. Every builder of any building hereafter erected or structurally altered for manufacturing uses shall, before a zoning permit is issued, present detailed site plans pertaining to the proposed structure to the Village Plan Commission, which will approve said plans only after determining that the proposed building will not impair an adequate supply of light or air to adjacent property or substantially increase the danger of fire or traffic congestion or otherwise endanger the public health or safety or substantially diminish or impair property values within the neighborhood.

B. Lot, Area and Yard Requirements.

Lot	Width	Minimum 120 feet (sewered) Minimum 150 feet (unsewered)
	Area	Minimum 18,000 sq. ft.(sewered) Minimum 40,000 sq. ft. (Unsewered)
Building	Height	Maximum 35 feet
Yard (Setbacks)	Street	Minimum 25 ft.
	Side	Minimum 20 feet with no buildings, structure, stockpile or equipment storage being located within 50 feet of any residential district property line.
	Rear	Minimum 25 feet with no building, structure, stockpile or equipment storage being located within 50 feet of any residential district property line.

C. Lighting Plans and Standards. Exterior lighting standards must be met and submission of a lighting plan is required. Exterior lighting plans are required for new development or redevelopment of existing exterior lighting in the M-1 Limited Industrial District. At the time any exterior light is installed or substantially modified in the M-1 District, and whenever a zoning permit application is required for new development or redevelopment, an exterior lighting plan shall be submitted to the Plan Commission in order to determine whether the requirements of this subsection have been met and that adjoining property will not be adversely impacted by the proposed lighting.

1. A lighting plan submitted pursuant to the requirements of this subsection shall have, at a minimum, the following elements:

   a. A catalog page, cut sheet, or photograph of the luminaire, including the mounting method, a graphic depiction of the luminaire lamp (or bulb) concealment, and graphic depiction of light cutoff angles.

   b. A photometric data test report of the proposed luminaire graphically showing the lighting distribution in all angles vertically and horizontally around the luminaire.

   c. A plot plan, drawn to a recognized engineering or architectural scale, indicating the location of the luminaire(s) proposed, mounting and/or installation height in feet, the overall illumination levels (in footcandles) and lighting uniformities on the site, and the illumination levels (in foot candles) at the property boundary lines. This may be accomplished by means of an isolux curve or computer printout projecting the illumination levels.

2. Exterior lighting in the M-1 District shall be limited to total-cutoff-type luminaires (with angle greater than 90°). The maximum permitted illumination shall be two foot candles and the maximum permitted luminaire height shall be 30 feet as measured from surrounding grade to the bottom of the luminaire. (Note: This standard does not address

illumination levels or fixture height which may be required by the Village of Rochester for the adequate lighting of public street rights-of-way. It represents maximum illumination levels on private property.)

3. For the purposes of this subsection, light shall be measured as follows:

   a. Metering equipment. Lighting levels shall be measured in foot candles with a direct-reading, portable light meter. The meter shall be read within an accuracy of plus or minus 5%. The meter shall have been tested, calibrated, and certified by an independent commercial photometric laboratory or the manufacturer within 30 days of its use.

   b. Method of measurement. The meter sensor shall be mounted not more than six inches above ground level in a horizontal position at the interior line of the buffer yard or at the property line, as required herein. Readings shall be taken only after the cell has been exposed long enough to provide a constant reading. In order to eliminate the effects of moonlight and other ambient light, measurements shall be made after dark with the light source in question on, then with the same sources off. The differences between the two readings shall be compared to the maximum permitted illumination allowed under this subsection.

35-52. M-2 General Industrial District

A. The following uses are allowed, limited and/or prohibited in the M-2 General Industrial Zoning District, provided that the Village Plan Commission, in approving or disapproving proposed locations for uses under this subsection, shall give due consideration to the character and suitability for development of the neighborhood in which any such use is proposed to be located and shall also base its decision on such evidence as may be presented to the Plan Commission regarding the attributes of the proposed use, such as increased traffic on the public streets, heavy vehicular traffic, and the emission of noise, smoke, dust, or dirt, odorous or noxious gases and the like, that would be detrimental to such character and such suitability for development.

1. Permitted Principal Uses:

   All Permitted Principal Uses in the M-1 Limited Industrial District (See s. 35-51)

   Manufacturing, fabrication, packing, packaging, and assembly of products from fur, glass, leather, metals, paper, plaster, plastic, textiles and wood

   Manufacturing, fabrication, packing , packaging, and assembly of candy and confections products; canvas products; cereals; cosmetics; creamery butter; curtains and draperies; dress and work gloves; distributors; fabrics; felt goods; flavor extracts and syrups; floor coverings (limited to rugs and carpeting); food processing, except cabbage; flavor extracts and flavor syrups; floor coverings; footwear; fresh and frozen fruits, fruit juices, and vegetables; greenhouses (wholesale); handbags and other personal leathers; hats, caps, and millinery; household furniture and furnishings; ice; ice cream and frozen desserts; knit goods; leather fabrication, not including tanning; instruments; electrical appliances; electronic devices; foods; men, woman and youth clothing; lace goods; lamp shapes; luggage; laboratories; macaroni, spaghetti, vermicelli and noodles; office furniture; paper coating and glazing; partitions, shelving, lockers and office and store fixtures; instruments; jewelry; pharmaceuticals; sanitary paper products; silverware and plated ware; tire cord and fabric; toys; tobacco and toiletries; umbrellas; venetian blinds and shades; wallpaper products; warehousing; waterproof garments; and yarns and threads

Manufacturing and bottling of nonalcoholic beverages.

Painting

Printing, publishing binding of books, periodicals, and newspapers

Contractors offices and warehouses

Machine shops

Millwork

Light metal fabrication and die casting

All drive-in facilities require Conditional Use Permits

All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

2. Accessory Uses:

Garages for storage of vehicles used in conjunction with the operation of the industry

On site parking and loading areas

Office, storage, power supply and other uses normally auxiliary to the principal industrial operation

See also s. 35-21 of this Chapter

3. Conditional uses:

All Conditional Uses in the M-1 District (except as permitted herein)

Animal hospitals provided the lot area is not less than three acres, and all principal structures and uses are not less than 100 feet from any residential district

Metal stamping use not to exceed 5000 square feet in building area

Commercial service facilities, such as restaurants and fueling stations provided all such services are oriented toward industrial district users and employees and other users are only incidental customers

Recycling drop-off sites

Self-service storage facilities including incidental manager's office/quarters. The maximum lot coverage by structures for a self-service storage facility, shall not exceed 50 percent, and such facility shall not exceed 15 feet in height, and shall meet the required setbacks

Transmitting towers; receiving towers; relay and microwave towers without broadcast faculties or studios; and wireless communications towers, antennas and associated

accessory structures and facilities

See also Section 35-100, Conditional Uses, and Section 35-230, Plan Commission Approval.

4. Prohibited Uses. Outside storage is prohibited in the M-2 Zoning District.

5. Site Plans. Every builder of any building hereafter erected or structurally altered for manufacturing uses shall, before a zoning permit is issued, present detailed site plans pertaining to the proposed structure to the Village Plan Commission, which will approve said plans only after determining that the proposed building will not impair an adequate supply of light or air to adjacent property or substantially increase the danger of fire or traffic congestion or otherwise endanger the public health or safety or substantially diminish or impair property values within the neighborhood. See also Section 13, Plan Commission Approval.

B. Area Requirements.

Lot	Width	Minimum 150 feet
	Area	Minimum 40,000 sq. ft.
Building	Height	Maximum 35 ft.
Yard (Setbacks)	Street	Minimum 50 feet
	Side	Minimum 20 feet
	Rear	Minimum 25 feet

C. Lighting Plans and Standards. Exterior lighting standards must be met and submission of a lighting plan is required. Exterior lighting plans are required for new development or redevelopment of existing exterior lighting in the M-2 General Industrial District. At the time any exterior light is installed or substantially modified in the M-2 District, and whenever a zoning permit application is required for new development or redevelopment, an exterior lighting plan shall be submitted to the Plan Commission in order to determine whether the requirements of this subsection have been met and that adjoining property will not be adversely impacted by the proposed lighting.

1. A lighting plan submitted pursuant to the requirements of this subsection shall have, at a minimum, the following elements:

a. A catalog page, cut sheet, or photograph of the luminaire, including the mounting method, a graphic depiction of the luminaire lamp (or bulb) concealment, and graphic depiction of light cutoff angles.

b. A photometric data test report of the proposed luminaire graphically showing the lighting distribution in all angles vertically and horizontally around the luminaire.

c. A plot plan, drawn to a recognized engineering or architectural scale, indicating the location of the luminaire(s) proposed, mounting and/or installation height in feet, the overall illumination levels (in footcandles) and lighting uniformities on the site, and the illumination levels (in foot candles) at the property boundary lines.

This may be accomplished by means of an isolux curve or computer printout projecting the illumination levels.

2. Exterior lighting in the M-2 District shall be limited to total-cutoff-type luminaires (with angle greater than 90°). The maximum permitted illumination shall be two foot candles and the maximum permitted luminaire height shall be 30 feet as measured from surrounding grade to the bottom of the luminaire. (Note: This standard does not address illumination levels or fixture height which may be required by the Village of Rochester for the adequate lighting of public street rights-of-way. It represents maximum illumination levels on private property.)

3. For the purposes of this subsection, light shall be measured as follows:

   a. Metering equipment. Lighting levels shall be measured in foot candles with a direct-reading, portable light meter. The meter shall be read within an accuracy of plus or minus 5%. The meter shall have been tested, calibrated, and certified by an independent commercial photometric laboratory or the manufacturer within 30 days of its use.

   b. Method of measurement. The meter sensor shall be mounted not more than six inches above ground level in a horizontal position at the interior line of the buffer yard or at the property line, as required herein. Readings shall be taken only after the cell has been exposed long enough to provide a constant reading. In order to eliminate the effects of moonlight and other ambient light, measurements shall be made after dark with the light source in question on, then with the same sources off. The differences between the two readings shall be compared to the maximum permitted illumination allowed under this subsection.

35-53. M-3 Heavy Industrial District

A. Uses. Uses in the M-3 Heavy Industrial District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses.

   All permitted principal uses in the M-1 and M-2 Districts (see ss. 35-51 and 35-52)

   Manufacturing and processing of abrasives, bedding, candles, carpeting, celluloid, cereals, coffee, cordage, dextrin, felt**,** glucose, hair products, ice, ink, lime, lime products, linoleum, cloth, peas, perfume, pickles, plaster of paris, rope, shoddy, starch, and textiles

   Manufacturing, processing, and storage of building materials, dry ice, flues, and grains,

   Manufacturing and bottling of alcoholic beverages; bag cleaning, cold storage warehouses; electric and steam generating plants; lithographing; and weaving provided such uses shall be at least 600 feet from residential and public and semi-public uses.

   Outside storage and manufacturing areas

   Inside storage warehouses

   Farm machinery sales and repair

   Vehicle upholstery, body and repair

All drive-in facilities require Conditional Use Permits

All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

2. Accessory uses:

Garages for storage of vehicles used in conjunction with the operation of the industry

On-site street parking and loading areas

Office, storage, power supply and other uses normally auxiliary to the principal industrial operation

Uses customarily incidental to a permitted use

3. Conditional uses:

Manufacturing and processing of acetylene, acid, alkalies, ammonia, asbestos, asphalt, batteries, bleach, bone, cabbage, cement, charcoal, chemicals, chlorine, coal tar, coke, creosote, disinfectant, dye, excelsior, farm machinery, felt, fish & fish products, fuel, gelatin, gypsum, insecticide, lampblack, matches, meat and meat products, oil, paint, plastics, poison, polish, potash, pulp, pyroxylin, radium, rubber, sausage, stove polish, and varnish

Manufacturing, processing, and storage of explosives, fat, fertilizer, flammables, gasoline, grease, lard, plastics, radioactive materials, shellac, soap, turpentine, vinegar and yeast

Canneries, electroplating, enameling; forges, foundries, garbage incinerators, lacquering, processing of offal, rubbish or animal reduction, oil, coal, and bone distillation, refineries, road test facilities, slaughterhouses, smelting, stockyards and tanneries provided such uses shall be at least 600 feet from residential and public and semi-public uses.

Freight Yards

Freight Terminals and trans-shipment depots

Breweries

Crematories

Food lockers and plants

Rice mills

All drive-in facilities require Conditional Use Permits

All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

All conditional uses in the M-1 and M-2 Districts, unless made a permitted use herein

Animal hospitals provided the lot area is not less than three acres, and all principal structures and uses are not less than 100 feet from any residential district

Solid waste facilities as defined in Wis. Stat. s. 289.01(35), including facilities for solid waste treatment, solid waste storage or solid waste disposal, sanitary landfills, dumps, land disposal sites, incinerators, transfer stations, storage facilities, collection and transportation services and processing, treatment and recovery facilities, including the land where the facility is located, when operated pursuant to a license issued by the State and in accordance with applicable statutes and administrative codes, and provided no chemicals or hazardous materials are collected, stored, or processed. When the provisions of this Chapter conflict with state or federal law, the state or federal law prevails.

Facilities for the processing of scrap iron, steel or nonferrous metal using large machines to produce a principal product of scrap metal for sale or use for remelting purposes, provided that these uses shall be completely surrounded by a solid fence or evergreen planting screen, preventing a view from any other property or public right-of-way and shall be at least 600 feet from any residential, business, agricultural, conservation, park, floodway, shoreland-wetland, or shoreland district.

Recycling facilities which use large machines to sort, grade, compact or bale clean wastepaper, fibers or plastics, not mixed with other solid waste, for sale or use for recycling purposes, provided no chemicals or hazardous materials are collected, stored, or processed and all storage and processing and operations are conducted in an enclosed building.

Auto junk yards and scrap metal salvage yards, provided that these uses shall be completely surrounded by a solid fence or evergreen planting screen, preventing a view from any other property or public right-of-way and shall be at least 600 feet from any residential, business, agricultural, conservation, park, floodway, shoreland-wetland, or shoreland district. Wis. Stat. s. 175.25 shall apply to these uses.

Off-season storage facilities for boats and other recreational vehicles, such as campers, travel trailers, snowmobiles, off-road vehicles and motor homes

Fueling stations and restaurants oriented toward industrial district users

Glass manufacturing

Recycling drop-off sites

Self-service storage facilities including incidental manager's office/quarters. The maximum lot coverage by structures for a self-service storage facility shall not exceed 50 percent, and such facility shall not exceed 15 feet in height, and shall meet the required setbacks

PODS, garages & temporary portable storage containers

See also Section 35-100, Conditional Uses and Section 35-230, Plan Commission Approval.

4. Site Plans. Every builder of any building hereafter erected or structurally altered for manufacturing uses shall, before a zoning permit is issued, present detailed site plans

pertaining to the proposed structure to the Village Plan Commission, which will approve said plans only after determining that the proposed building will not impair an adequate supply of light or air to adjacent property or substantially increase the danger of fire or traffic congestion or otherwise endanger the public health or safety or substantially diminish or impair property values within the neighborhood. See also Section 35-230, Plan Commission Approval.

B. Area Requirements:

Lot	Width	Minimum 150 feet
	Area	Minimum 40,000 sq. ft.
Building	Height	Maximum 35 feet
Yard (Setbacks)	Street	Minimum 50 feet
	Side	Minimum 20 feet
	Rear	Minimum 25 feet

C. Lighting Plans and Standards. Exterior lighting standards must be met and submission of a lighting plan is required. Exterior lighting plans are required for new development or redevelopment of existing exterior lighting in the M-3 Heavy Industrial District. At the time any exterior light is installed or substantially modified in the M-3 District, and whenever a zoning permit application is required for new development or redevelopment, an exterior lighting plan shall be submitted to the Plan Commission in order to determine whether the requirements of this subsection have been met and that adjoining property will not be adversely impacted by the proposed lighting.

1. A lighting plan submitted pursuant to the requirements of this subsection shall have, at a minimum, the following elements:

   a. A catalog page, cut sheet, or photograph of the luminaire, including the mounting method, a graphic depiction of the luminaire lamp (or bulb) concealment, and graphic depiction of light cutoff angles.

   b. A photometric data test report of the proposed luminaire graphically showing the lighting distribution in all angles vertically and horizontally around the luminaire.

   c. A plot plan, drawn to a recognized engineering or architectural scale, indicating the location of the luminaire(s) proposed, mounting and/or installation height in feet, the overall illumination levels (in foot candles) and lighting uniformities on the site, and the illumination levels (in foot candles) at the property boundary lines. This may be accomplished by means of an isolux curve or computer printout projecting the illumination levels.

2. Exterior lighting in the M-3 District shall be limited to total-cutoff-type luminaires (with angle greater than 90°). The maximum permitted illumination shall be two foot candles and the maximum permitted luminaire height shall be 30 feet as measured from surrounding grade to the bottom of the luminaire. (Note: This standard does not address illumination levels or fixture height which may be required by the Village of Rochester for the adequate lighting of public street rights-of-way. It represents maximum illumination

levels on private property.)

3. For the purposes of this subsection, light shall be measured as follows:

   a. Metering equipment. Lighting levels shall be measured in foot candles with a direct-reading, portable light meter. The meter shall be read within an accuracy of plus or minus 5%. The meter shall have been tested, calibrated, and certified by an independent commercial photometric laboratory or the manufacturer within 30 days of its use.

   b. Method of measurement. The meter sensor shall be mounted not more than six inches above ground level in a horizontal position at the interior line of the buffer yard or at the property line, as required herein. Readings shall be taken only after the cell has been exposed long enough to provide a constant reading. In order to eliminate the effects of moonlight and other ambient light, measurements shall be made after dark with the light source in question on, then with the same sources off. The differences between the two readings shall be compared to the maximum permitted illumination allowed under this subsection.

35-54. M-4 Quarrying District

The M-4 Quarrying District is intended to provide for the orderly continuation or restoration of quarries or other extractive and related operations existing on November 9, 2009 (the original date of enactment of this ordinance), and to provide for the location in appropriate places of new extractive operations that provide maximum protection to the natural environment. This district further provides for the restoration of quarries in a manner that will not deteriorate the natural environment.

A. Uses. Uses in the M-4 Quarrying District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

   1. Permitted Principal Uses.

      Quarrying, mineral extraction operations, and concrete and concrete products manufacturing that are in existence on the date of the enactment of this ordinance. The manufacture of concrete and concrete products, including concrete and asphalt batch plants, may occur on a parcel only during the duration of the on-site mineral extraction activity. Any change in or expansion of the use in existence on the date of the enactment of this ordinance shall require application for, and approval of, a conditional use permit. Upon expiration of a conditional use permit issued by Racine County prior to consolidation of the Village and Town of Rochester, the provisions of subsection B. shall apply.

      All drive-in facilities require Conditional Use Permits

      All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

   2. Accessory Uses.

      See section 35-21 of this Municipal Code.

   3. Conditional Uses. See. s. 35-100.

Existing quarrying, mineral extraction operations, concrete and asphalt batch plants, and concrete and concrete products manufacturing upon expiration of a Racine County Conditional Use Permit for said operation

Extension of, expansion of, or changes to legally existing quarrying or mineral extraction operations, concrete and asphalt batch plants, and/or manufacture of concrete and concrete products

New quarrying or mineral extraction operations. New manufacturing of concrete and concrete products. The manufacture of concrete and concrete products, including concrete and asphalt batch plants, may occur on a parcel only during the duration of the on-site quarrying or mineral extraction activity.

B. Area Requirements.

Lot	Width	Lots shall be not less than 80 feet in width for the first 100 feet from the public right of way
	Area	Lots shall provide sufficient area for the principal structure and its accessory structures, the extractive industrial operation, off-street parking and loading, and yards as required herein
Building	Height	No structure, building, or parts of a building shall exceed 45 feet in height above the original land elevation of the parcel
Yard	The extractive operation shall be set back at least 200 feet from any public or private right-of-way and all exterior property lines. The uses accessory to the extractive operation such as offices, scales, parking areas, and stockpiles shall be located at least 100 feet from any public or private right-of-way and all exterior property lines. When a quarrying or mineral extraction operation abuts another such operation, the 200 foot setback for each operation from their common lot line may be reduced to a zero lot line setback through Village Plan Commission and Village Board approval of the reclamation plan(s) for both operations in order to establish a reasonable restoration of such operations. Any operation, accessory use, facility or equipment already in place on November 9, 2009 that has been approved by Racine County but that is in violation of this setback may remain in place, but may not be extended. If an accessory use, facility or equipment is moved, it must conform to the setback provided herein. If the operation, accessory use, facility or equipment is discontinued for a period of 12 months, any future use of the operation, accessory use, facility or equipment shall conform to this section.	

35-55 to 35-60 [Reserved for Future Use]

35-61 A-1 General Farming District

A. Uses. Uses in the A-1 General Farming District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses.

Apiculture
Dairying
Forestry
Grazing, pasturage and paddocks
Greenhouses, plant nurseries, floriculture
Raising of hay, cash crop grain, mint, grass, seed crops, silage, tree fruits, nuts and berries, and vegetables
Livestock raising, including poultry, provided that new or expanded livestock facilities with 500 or more animal units require a license and must meet the requirements as set forth in Chapter 39
Orchards
Paddocks and pasturage
Stables
Truck farming permitted in s. 35-64, A-4 Truck Farming District, subject to the size and height requirements provided therein.
Viticulture

2. Accessory Uses.

Farm dwellings for those farm owners and laborers actually engaged in a principal use and residential dwellings for the parents and children of the farm owners are accessory uses to the farm operation but shall comply with all the dwelling requirements of the A-2 General Farming and Residential District. Such residential dwellings for parents and children are permitted as such a use is in compliance with the adopted farmland preservation plan. A separate, recorded lot shall be recorded for such dwellings.

Existing dwellings not accessory to any farm operation and farm dwellings remaining after consolidation of neighboring farms are permitted but shall comply with all the provisions of the A-2 General Farming and Residential District.

Not more than one roadside stand on any one farm shall be permitted as an accessory use.

See also s. 35-21 of this Chapter.

3. Conditional Uses. See s. 35-100.

Animal hospitals, provided the lot area is not less than three acres, and all principal structures and uses are not less than 100 feet from any residential district

Commercial raising, training[3], propagation, boarding or butchering of animals not defined as livestock, including but not limited to dogs, mink, rabbits, foxes, emus, ostriches, camels, alpacas and llamas

Condenseries, creameries, pea vineries

[3] Amended June 8, 2015, Ordinance #2015-1

Grain elevators, commercial grain storage and seed operations, which operate exclusive of any farm operation

Migratory laborer's housing

Worm farms and sod farms.

Airstrips and landing fields for the use of the property owner for personal and farm related activities

B. Area Requirements

Lot (Farm)	Width	Minimum 150 feet
	Area	Minimum 35 Acres.
Building/Structure:		
Dwelling	Height	Maximum 50 feet
	Area	Minimum 1,200 sq. ft. single story; 1700 sq. ft. multiple story
Agricultural Structures such as barns, silos, sheds and storage bins	Height	Maximum: Two times the distance from the nearest lot line
Yard (Setbacks)	Street	Minimum 100 feet
	Side	Minimum 100 feet
	Rear	Minimum 100 feet

35-62. A-2 General Farming and Residential District

A. Uses. Uses in the A-2 General Farming and Residential District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses.

All permitted principal uses in the A-1 General Farming District.

One and two family dwellings, whether or not such dwelling is associated with farm operations.

The principal structure shall be the residential structure, intended to service the parcel on which such residence is located.

2. Accessory Uses.

See s. 35-21 of this Chapter.

3. Conditional Uses. See s. 35-100.

All conditional uses in the A-1 General Farming District, unless the use is a permitted principal use under subsection 1. or is revised below

The parking of school buses, semi-tractors and trailers or other vehicles of a commercial nature provided all such uses are at least 600 feet from any residential district and 100 feet from any other residence and landscape screening to be determined on a site specific basis is in place. If the vehicles are parked inside a structure, the above distance may be reduced. Only one vehicle unit (school bus, semi-tractor or trailer, etc.) may be allowed on a parcel of land.

Airstrips and landing fields for the use of the property owner for personal and farm related activities

Bed and Breakfast Establishments

Cluster Residential Developments

Manufactured Home Communities as set forth in s. 35-100

Storage and maintenance of construction equipment and vehicles. The storage area for all such equipment and vehicles shall be at least 600 feet from Residential, Institutional Park, and Recreational Park districts

Off season storage facilities for boats and other recreational vehicles, such as campers, travel trailers, snowmobiles, off-road vehicles and motor homes. Such storage may not occur in a barn or other accessory building that was constructed prior to January 1, 2000

Non-municipal, non-commercial off-road trails for off-road vehicles subject to the following:

a. The off-road trails shall be at least 600 feet from residential, institutional park and recreational park districts.

b. A detailed plan shall be presented showing the location of off-road trails and indicating speed limits and the posting thereof along with warning and cautionary signs.

c. Noise, land disturbance, dust and safety issues must be addressed. In addition, a restoration plan must be in place if the landscaping is altered.

d The Village Plan Commission shall consider the effect of the proposed operation upon existing streets, neighboring development. proposed land use, drainage, erosion, and natural beauty.

e. The conditional use permit shall be valid for one year. Renewal requests shall be filed with the Zoning Administrator at least 60 days prior to the expiration date

f. Seasonal snowmobile trails mapped by the Racine County Alliance of Snowmobile clubs and/or with oversight by the Racine County Public Works

Department are exempt from the provisions of this subsection.

B. Area Requirements

Lot	Width	Minimum 150 feet
	Area	Minimum:
		Single Family, 40,000 sq. ft. Two Family, 80,000 sq. ft.
Building/Structure:		
Dwelling	Height	Maximum 35 feet
	Area	Minimum 1200 sq. ft. single story; 1700 sq. ft. multiple story
Accessory Structures residential and farm (such as barns, silos, sheds and storage bins)	Height	Maximum: Two times the distance from the nearest lot line
Yard (Setbacks)	Street	Minimum 75 feet
	Side	Minimum 25 feet
	Rear	Minimum 25 feet

35-63. A-3 General Farming District – Holding District

The Village of Rochester Board of Trustees adopting this chapter find that urbanization is taking place in certain areas of the Village at a rapid pace, that scattered urbanization can greatly increase the public cost of installing public facilities, such as sewers and schools required to service such growth, and therefore that the public interest will be best served by channeling such development to suitable Village area only at such time as it is economically feasible to plan, budget, and commit to construction of the necessary supporting public services and facilities. Consequently, some areas of potential growth within the Village will be placed in the A-3 General Farming District – Holding District, where non-agricultural development be deferred until the Village Board determines that it is economically feasible to provide public services and facilities for uses other than those permitted in the Holding District. It is intended that the status of the Holding District will be reviewed by the Village Plan Commission no less frequently than every five years in order to determine whether in light of the foregoing general standards, there should be a transfer of all or part of a Holding District to some other use district. Any such review will consider the need for permitting other uses on such land, the nature of the use or uses to be permitted and the cost and availability of the public services and facilities which will be necessitated by such new use or uses.

A. Uses. Uses in the A-3 General Farming District – Holding District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses.

All Permitted Principal Uses in the A-1 General Farming District. See s. 35-61.

2. Accessory Uses.

See s. 35-21 of this Chapter.

3. Conditional Uses.

All Conditional Uses in the A-1 General Farming District

B. Area and Yard requirements.

The lot, building and yard requirements in the A-3 General Farming District – Holding District are the same as in A-1 General Farming District.

35-64. A-4 Truck Farming District.

A. Uses. Uses allowed in the A-4 Truck Farming District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses.

Apiculture, floriculture, greenhouses, horticulture, nurseries, orchards, viticulture
Paddocks, raising of horses not to exceed three horses per five acres
Raising of cash crops
Truck farming
Farm dwellings for those resident owners actually engaged in a principal agricultural use
Existing dwellings not accessory to any farm operation or dwellings remaining after consolidation of neighboring farms are permitted but shall comply with all provisions of the R-8 Suburban Residential District

2. Accessory Uses.

Residential dwellings for laborers actually engaged in a principal agricultural use are accessory uses in the farm operation but shall comply with all provisions of the R-8 Suburban Residential District. See s. 35-21 of this Chapter.

Not more than one roadside stand per farm shall be permitted as an accessory use.

3. Conditional Uses. See s. 35-100 of this Chapter

Airstrips and landing fields for the use of the property owner for personal and farm related activities

Animal hospitals, provided the lot area is not less than three acres, and all principal structures and uses are not less than 100 feet from any residential district

Creameries, condenseries, pea vineries

B. Area requirements

Lot (Farm)	Width	Minimum 300 feet
	Area	Minimum 10 acres
Building/Structure:		
Dwelling	Height	Maximum 35 feet
	Area	Minimum 1200 sq. ft. single story; 1700 sq. ft. multiple story
Agricultural Structures such as barns, silos, sheds and storage bins	Height	Maximum: Two times the distance from the nearest lot line
Yard (Setbacks)	Street	Minimum 100 feet
	Side	Minimum 100 feet
	Rear	Minimum 100 feet

35-65 to 35-69 [Reserved for future use]

35-70 UR Urban Reserve District

The purpose of the UR Urban Reserve District is to preserve the availability of vacant and agricultural land for future urban expansion, and to prevent the premature development of lands where urban public utilities are not presently available. These lands are to be retained in a natural state or in agricultural or specifically permitted residential uses pending the proper timing for the economical provision of sewer, water, streets, parks, storm drainage and other public utilities and services so that orderly development can occur. When such services are available, the property should be rezoned to the appropriate designation.

A. Uses. Uses in the UR Urban Reserve District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses.

Apiculture; floriculture; forestry; grazing; greenhouses; hay; orchards; paddocks; pasturage; plant nurseries; raising of cash grain crops, mint, grass, seed crops, silage, tree fruits, nuts and berries, and vegetables; stables; truck farming; and viticulture.

Livestock Facilities as defined in s. 39-3 of this Municipal Code in existence on the date of the adoption of this Ordinance, but no new or expanded Livestock Facilities are allowed.

Farm dwellings for those farm owners and laborers actually engaged in a principal use and residential dwellings for the parents or children of the farm owners are accessory uses to the farm operation but shall comply with all the dwelling lot requirements set forth

herein. A separate, recorded lot shall be created for such dwellings. Existing dwellings not accessory to any farm operation and farm dwellings remaining after consolidation of neighboring farms are permitted but shall comply with all the provisions set forth herein.

2. Permitted Accessory Uses.

Agricultural structures such as barns, silos, sheds and storage bins

Not more than one roadside stand on any one farm shall be permitted as an accessory use.

See also s. 35-21.

3. Conditional Uses. The following conditional uses shall be allowed in the UR District, based upon procedures set forth in and regulated by this Chapter of the Municipal Code.

Commercial raising, propagation, boarding or butchering of foxes, mink, and rabbits; commercial raising, propagation, or boarding of dogs and cats; pea vineries; condenseries; creameries; grain elevators, commercial grain storage and seed operations, which operate exclusive of any farm operation; airstrips and landing fields for farm or personal use only; migratory laborers' housing; worm farms and sod farming.

Animal hospitals, provided the lot area is not less than three acres and all principal structures and uses are not less than 100 feet from any residential district.

Utilities, provided that all principal structures and uses are not less than 50 feet from any residential lot line.

B. Lot, Area and Yard Requirements. The following minimum requirements shall be observed in a UR District subject to the additional requirements, exceptions and modifications set forth in this Chapter:

Lot (Farm)	Width	Minimum 150 feet
	Area	Minimum 35 acres
Lot (Residential)	Width	Minimum 150 feet
	Area	Minimum 40,000 sq. ft.
Building/Structure:		
Dwelling	Height	Maximum 35 feet
	Area	Minimum 1200 sq. ft. single story; 1700 sq. ft. multiple story
Agricultural Structures such as barns, silos, sheds and storage bins	Height	Maximum: Two times the distance from the nearest lot line
Residential accessory structures	Height	Maximum 17 feet

Yard (Setbacks), Farm	Street	Minimum 100 feet
	Side	Minimum 100 feet
	Rear	Minimum 100 feet
Yard (Setbacks), Residential	Street	Minimum 75 feet
	Side	Minimum 25 feet
	Rear	Minimum 25 feet

35-71. C-1 Resource Conservation District.

A. Uses. Uses in the C-1 Resource Conservation District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses.

Fishing
Flood overflow and floodwater storage
Hunting
Navigation
Pedestrian and equestrian trails
Preservation of scenic, historic and scientific areas
Public fish hatcheries
Soil and water conservation practices
Sustained yield forestry
Stream bank and lakeshore protection
Water retention ponds
Wildlife areas.

2. Accessory Uses.

Structures Restricted. Structures are not permitted in the C-1 Resource Conservation District, except accessory to the principal or conditional use. No structure shall be placed closer than 50 feet to a lot line.

3. Conditional Uses.

Boating drainageways
Game farms
Grazing
Orchards
Shooting preserves
Swimming
Truck farming
Utilities
Water measurement and water control facilities
Wildcrop harvesting.
The above uses shall not involve drainage; dumping; filling; tilling; mineral, soil, or peat

removal; or any other use that would substantially disturb or impair the natural fauna, flora, watercourses, water regimen or topography.

35-72. C-2 Upland Resource Conservation District

The primary purpose of this district is to preserve, protect, enhance, and restore all significant woodlands, areas of rough topography, and related scenic areas within the Village; and to provide for limited residential development at the densities set forth below. Regulation of these areas will serve to control erosion and sedimentation and will promote and maintain the natural beauty of the Village, while seeking to assure the preservation and protection of areas of significant topography, natural watersheds, ground and surface water, potential recreation sites, wildlife habitat, and other natural resource characteristics that contribute to the environmental quality of the Village.

A. Uses. Uses in the C-2 Upland Resource Conservation District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses.

   Single family dwellings at a density not to exceed one dwelling unit per three acres
   Farming and related agricultural uses when conducted in accordance with soil and water conservation service standards, except livestock facilities exceeding 500 animal units
   Hunting and fishing
   Forest preservation; forest and game management
   Preservation of scenic, historic, and scientific areas
   Recreation areas
   Arboreta and botanical gardens

2. Accessory Uses.

   See section 35-21 of this Chapter, except as limited by this section.

   Gardening, tool, and storage sheds incidental to the residential use

3. Conditional Uses. See s. 35-100.

   Hunting and fishing clubs
   Recreation camps, public or private campgrounds
   General farming buildings, including barns, silos, sheds, and storage bins
   Private garages and carports
   Cluster residential development
   Utilities.

B. Area Requirements.

Lot	Width	Minimum 300 feet
	Area	Minimum 3 acres
Building/Structure:		
Dwelling	Height	Maximum 35 feet
	Area	Minimum 1200 sq. ft. single story; 1700 sq. ft. multiple story
Agricultural and other structures	Height	Maximum: Two times the distance from the nearest lot line
Residential accessory structures	Height	Maximum 15 feet
Yard (Setbacks)	Street	Minimum 100 feet
	Side	Minimum 25 feet
	Rear	Minimum 100 feet

C. Limitations.

a. Tree Cutting and Shrubbery Clearing Limited

Land lying within the C-2 Upland Resource Conversation District shall not be clear cut of trees, shrubbery, or underbrush. No more than 20 percent of the natural vegetation shall be removed from the parcel.

Normal pruning, trimming and shearing of vegetation; removal of dead, diseased, insect-infested vegetation; and silvicultural thinning conducted under the recommendation of a forester, shall be exempted from this restriction.

35-73 P-1 Institutional Park District

The Public Facilities Districts are intended to accommodate a wide range of public and quasi-public uses distributed throughout the community, such as locations that support government, civic, cultural, recreational, health and infrastructure, including but not limited to public and private educational institutions, child care centers, transportation facilities, public buildings and facilities, community and group meeting centers, fire stations, museums, hospitals, cemeteries, libraries and similar compatible uses. These districts also accommodate large scale public facilities such as sewerage treatment plants.

The Institutional Park district is intended to eliminate the ambiguity of maintaining unrelated use districts, areas that are under public or public-related ownership and where the use for the public or quasi-public purpose is anticipated to be permanent.

A. Uses. Uses in the P-1 Institutional Park District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

   Public or private schools, colleges, and universities, provided that the lot area is not less than two acres
   Religious and charitable institutions
   Public recreational and community center buildings and grounds
   Public emergency shelters
   Churches, including residential quarters for clergy
   Nursing homes, assisted living facilities
   Libraries, museums, and art galleries
   Lodges (e.g. Moose Lodge, Knights of Columbus, Lions Club)
   Government buildings, post offices
   Public utility buildings and facilities

2. Permitted Accessory Uses:

   Garages for the storage of vehicles used in conjunction with the operation of a permitted use
   Gift store operated in conjunction with a permitted use
   Service buildings and facilities normally accessory to the permitted uses, including but not limited to residential quarters for caretakers
   Off street parking and loading areas associated with a permitted use
   Open space and recreational uses listed under s. 39-74.A.1 associated with a permitted use

3. Conditional Uses. The following are conditional uses in the P-1 District. See s. 35-100.

   Hospitals and Sanitariums
   Music halls
   Penal Institutions
   Cemeteries
   Crematories
   Police, Fire and Rescue Stations
   Recycling drop-off sites (municipally owned)
   Sewerage Treatment Plants
   Child Care Centers, providing that traffic is managed in a manner to minimize danger to children
   Gift store operated in conjunction with a conditional use
   Clubs, fraternities, lodges, sororities, religious, and charitable institutions where the principal use of the facility is to provide lodging and meals to the members of the organization, provided that setbacks are met. This provision is not intended to limit "community living arrangements" as defined by statute.
   Service buildings and facilities normally accessory to the conditional uses, including but not limited to residential quarters for caretakers
   Off street parking and loading areas associated with a conditional use
   Open space and recreational uses listed under 35-74.A.1. associated with a conditional use
   Buildings and uses in existence on the date of the adoption of this section that are conditional uses under the P-1 zoning shall be deemed to have conditional use approval for the existing uses, which shall be documented by the Zoning Administrator. The addition of a use or construction of an additional building on the property shall require that the owner obtain conditional use approval for the new use or building.

B. Area requirements

Lot	Width: Sewered	No Minimum, provided all setbacks are met
	Width: Unsewered	150 feet
	Area: Sewered	No Minimum, provided all setbacks are met
	Area: Unsewered	40,000 sq. feet
Building	Height (to peak of roof)	Maximum 35 feet
Yard (Setbacks)	Street	Minimum 50 feet
	Side	Minimum 50 feet
	Rear	Minimum 50 feet

C. Multiple Buildings on a Lot. Notwithstanding s. 35-15, more than one main building may be present on a lot in the P-1 District, provided, however, that the presence of more than one main building shall transform a permitted use to a conditional use. The number of buildings and their uses, the lot width and area, the minimum setbacks of all proposed structures and uses from the property lines, the distances between the buildings and the lighting and landscaping plans shall be established by the Village Plan Commission. See s. 35-100.

D. Nonconforming Structures. See s. 35-200.

E. Exterior lighting standards and lighting plan required. Exterior lighting plans shall be required for new development or redevelopment of existing exterior lighting in the P-1 District. At the time any exterior light is installed or substantially modified in a P-1 District, and whenever a zoning permit application is made for new development or redevelopment, an exterior lighting plan shall be submitted to the Plan Commission in order to determine whether the requirements of this subsection have been met and that adjoining property will not be adversely impacted by the proposed lighting.

1. Exterior lighting in the P-1 District shall be limited to total-cutoff-type luminaires (with angle greater than 90°). The maximum permitted illumination shall be two footcandles and the maximum permitted luminaire height shall be 30 feet as measured from surrounding grade to the bottom of the luminaire. (Note: This standard does not address illumination levels or fixture height which may be required by the Village of Rochester for the adequate lighting of public street rights-of-way. It represents maximum illumination levels on private property.)

2. Ball diamonds, playing fields, golf driving ranges, tennis courts, and similar outdoor recreational facilities have unique requirements for nighttime visibility and generally have limited hours of operation. These uses (excluding their associated off-street parking lots) may be exempted by the Plan Commission from the exterior lighting standards of this subsection if the applicant can satisfy the Plan Commission, upon site plan and lighting plan review, that the following requirements are met:

a. Any exterior light sources shall not exceed the maximum permitted post height of 70 feet.

b. If the luminaire is shielded in either its orientation or by a landscaped bufferyard to prevent light and glare spillover to adjacent residential property(s) or residential zoning districts, then the luminaire may exceed a total cut-off angle of 90°. The maximum permitted illumination at the interior bufferyard line of all required bufferyards shall not exceed two footcandles.

3. A lighting plan submitted pursuant to the requirements of this subsection shall have, at a minimum, the following elements:

a. A catalog page, cut sheet, or photograph of the luminaire, including the mounting method, a graphic depiction of the luminaire lamp (or bulb) concealment, and graphic depiction of light cutoff angles.

b. A photometric data test report of the proposed luminaire graphically showing the lighting distribution in all angles vertically and horizontally around the luminaire.

c. A plot plan, drawn to a recognized engineering or architectural scale, indicating the location of the luminaire(s) proposed, mounting and/or installation height in feet, the overall illumination levels (in footcandles) and lighting uniformities on the site, and the illumination levels (in footcandles) at the property boundary lines. This may be accomplished by means of an isolux curve or computer printout projecting the illumination levels.

4. For the purposes of this subsection, light shall be measured as follows:

a. Metering equipment. Lighting levels shall be measured in footcandles with a direct-reading, portable light meter. The meter shall be read within an accuracy of plus or minus 5%. The meter shall have been tested, calibrated, and certified by an independent commercial photometric laboratory or the manufacturer within 30 days of its use.

b. Method of measurement. The meter sensor shall be mounted not more than six inches above ground level in a horizontal position at the interior line of the bufferyard or at the property line, as required herein. Readings shall be taken only after the cell has been exposed long enough to provide a constant reading. In order to eliminate the effects of moonlight and other ambient light, measurements shall be made after dark with the light source in question on, then with the same sources off. The differences between the two readings shall be compared to the maximum permitted illumination allowed under this subsection.

35-74 P-2 Recreational Park District

The P-2 Recreational District is intended to accommodate a wide range of public and quasi-public recreational uses distributed throughout the community.

A. Uses. Uses in the P-2 Recreational Park District are allowed and/or limited as set forth below and in the referenced sections of this Municipal Code.

1. Permitted Principal Uses:

Public and private recreational uses, such as beaches, parks, arboretums, bathing, boating, cycling, fishing, horseback riding, marinas, swimming, skating, sledding, nature trails and hiking

Golf courses and driving ranges (private & public), provided that the facility is designed to prevent golf balls from leaving the site
Conservatories
Campgrounds
Play grounds
Driving ranges
Polo and soccer fields
Tennis courts
Public swimming pools and bathhouses
Botanical gardens
Athletic fields
Picnic areas
Community centers
Gymnasiums
Sports clubs
Public emergency shelters
Picnic Areas (shelters, pavilions, gazebos)
Community gardens

2. Permitted Accessory Uses.

Parking areas, service buildings and rest rooms associated with a permitted use

3. Conditional Uses. The following uses shall be conditional uses in the P-2 District. See s. 35-100.

Dog Parks
Zoological gardens.
Archery and fire arm ranges
Stadiums
Parking areas, service buildings and rest rooms associated with a conditional use
Buildings and uses in existence on the date of the adoption of this section that are conditional uses under the P-2 zoning shall be deemed to have conditional use approval for the existing uses, which shall be documented by the Zoning Administrator. The addition of a use or construction of an additional building on the property shall require that the owner obtain conditional use approval for the new use or building.

B. Area requirements

Lot	Width: Sewered	No Minimum, provided all setbacks are met
	Width: Unsewered	150 feet
	Area: Sewered	No Minimum, provided all setbacks are met
	Area: Unsewered	40,000 sq. feet
Building	Height (to peak of roof)	Maximum 35 feet
Yard (Setbacks)	Street	Minimum 40 feet
	Side	Minimum 40 feet

	Rear	Minimum 40 feet

C. Multiple Buildings on a Lot. Notwithstanding s. 35-15, more than one main building may be present on a lot in the P-2 District, provided, however, that the presence of more than one main building shall transform a permitted use to a conditional use. The number of buildings and their uses, the lot width and area, the minimum setbacks of all proposed structures and uses from the property lines, the distances between the buildings and the lighting and landscaping plans shall be established by the Village Plan Commission. See s. 35-100.

D. Nonconforming Structures. See s. 35-200.

E. Exterior lighting standards and lighting plan required.

Exterior lighting plans shall be required for new development or redevelopment of existing exterior lighting in the P-2 District. At the time any exterior light is installed or substantially modified in a P-2 District, and whenever a zoning permit application is made for new development or redevelopment, an exterior lighting plan shall be submitted to the Plan Commission in order to determine whether the requirements of this subsection have been met and that adjoining property will not be adversely impacted by the proposed lighting.

1. Exterior lighting in the P-2 District shall be limited to total-cutoff-type luminaires (with angle greater than 90°). The maximum permitted illumination shall be two footcandles and the maximum permitted luminaire height shall be 30 feet as measured from surrounding grade to the bottom of the luminaire. (Note: This standard does not address illumination levels or fixture height which may be required by the Village of Rochester for the adequate lighting of public street rights-of-way. It represents maximum illumination levels on private property.)

2. Ball diamonds, playing fields, golf driving ranges, tennis courts, and similar outdoor recreational facilities have unique requirements for nighttime visibility and generally have limited hours of operation. These uses (excluding their associated off-street parking lots) may be exempted by the Plan Commission from the exterior lighting standards of this subsection if the applicant can satisfy the Plan Commission, upon site plan and lighting plan review, that the following requirements are met:

   a. Any exterior light sources shall not exceed the maximum permitted post height of 70 feet.

   b. If the luminaire is shielded in either its orientation or by a landscaped bufferyard to prevent light and glare spillover to adjacent residential property(s) or residential zoning districts, then the luminaire may exceed a total cut-off angle of 90°. The maximum permitted illumination at the interior bufferyard line of all required bufferyards shall not exceed two footcandles.

3. A lighting plan submitted pursuant to the requirements of this subsection shall have, at a minimum, the following elements:

   a. A catalog page, cut sheet, or photograph of the luminaire, including the mounting method, a graphic depiction of the luminaire lamp (or bulb) concealment, and graphic depiction of light cutoff angles.

b. A photometric data test report of the proposed luminaire graphically showing the lighting distribution in all angles vertically and horizontally around the luminaire.

c. A plot plan, drawn to a recognized engineering or architectural scale, indicating the location of the luminaire(s) proposed, mounting and/or installation height in feet, the overall illumination levels (in footcandles) and lighting uniformities on the site, and the illumination levels (in footcandles) at the property boundary lines. This may be accomplished by means of an isolux curve or computer printout projecting the illumination levels.

4. For the purposes of this subsection, light shall be measured as follows:

a. Metering equipment. Lighting levels shall be measured in footcandles with a direct-reading, portable light meter. The meter shall be read within an accuracy of plus or minus 5%. The meter shall have been tested, calibrated, and certified by an independent commercial photometric laboratory or the manufacturer within 30 days of its use.

b. Method of measurement. The meter sensor shall be mounted not more than six inches above ground level in a horizontal position at the interior line of the bufferyard or at the property line, as required herein. Readings shall be taken only after the cell has been exposed long enough to provide a constant reading. In order to eliminate the effects of moonlight and other ambient light, measurements shall be made after dark with the light source in question on, then with the same sources off. The differences between the two readings shall be compared to the maximum permitted illumination allowed under this subsection.

35-75. F-1 Floodway District.

The provisions of this Chapter apply along with the specific provisions set forth in Chapter 37.

35-76. GFP General Floodplain District.

The provisions of this Chapter apply along with the specific provisions set forth in Chapter 37.

35-77. FFO Flood Fringe Overlay District.

The provisions of this Chapter apply along with the specific provisions set forth in Chapter 37.

35-78 SW Shoreland-Wetland District.

The provisions of this Chapter apply along with the specific provisions set forth in Chapter 36.

35-79 SD Shoreland District.

The provisions of this Chapter apply along with the specific provisions set forth in Chapter 36.

35-80 [Reserved for Future Use.]

35-81 PUD Planned Unit Development Overlay District

A. Intent.

The Planned Unit Development overlay district (hereinafter referred to as PUD) is established to provide a voluntary regulatory framework designed to encourage and promote improved environmental and aesthetic design in the Village by allowing for greater freedom, imagination and flexibility in the development of land while ensuring substantial compliance with the Village Planning and Zoning Chapter and the general plan for community development. A PUD provides for the superimposing of an approved plan for development on property already designated as a basic zoning district identified in the Planning and Zoning Chapter. PUD districts are approved specifically for the development being proposed. If the development is not implemented within twenty-four months of approval of the Specific Implementation Plan, the property shall revert to its original zoning. The amount of implementation progress required to prevent reversion to the original zoning shall be included as part of the Specific Implementation Plan approval. Some specific purposes of developments in the PUD are:

1. Residential Planned Developments. To offer recreational opportunities close to home, to enhance the appearance of neighborhoods by conservation of streams and local spots of natural beauty, to add to the sense of spaciousness through the preservation of natural spaces, to counteract the effects of urban monotony and congestion in the streets, to encourage cooperative relationships between neighbors and participation by all age groups in the use and care of local open space tracts in new residential subdivisions, to promote harmonious architecture between adjacent dwellings or institutional buildings, and to encourage the placement of structures in proper relationship to the natural characteristics of the site.

2. Business or Commercial Planned Development. To promote the cooperative development of business or commercial centers, each with adequate off-street parking, to control access points on thoroughfares, to separate pedestrians and automobile traffic, to aid in stabilizing property values, to develop centers of size and location compatible with marked potential green spaces and to encourage harmonious architecture between adjacent commercial structures and between home and commercial structures.

3. Industrial/Manufacturing Planned Development. To promote the establishment of industrial parks, to permit groups of industrial buildings with integrated design and coordinated physical plan, to encourage recreational facilities with industrial areas with landscaped green spaces.

B. Principal Uses.

Principal uses are as follows: Other than the existing use, no use shall be permitted in the Planned Unit Development Overlay District except in conformity with an approved recorded Specific Implementation Plan adopted pursuant to the provisions hereinafter set forth.

C. Minimum Area for PUD District.

Each Planned Unit Development Overlay District shall have an area of at least one and one half acres.

D. Lot size, floor area ratio, open space, signs and off-street parking.

In the Planned Unit Development Overlay District there shall be no predetermined specific lot area, lot width, height, floor area ratio, yard, usable open space, sign and off-street parking requirements. Such requirements are made a part of an approved recorded Specific

Implementation Plan agreed upon by the owner and the Village, and shall be construed with the recorded plan itself, as a part of this Section.

E. Criteria for approval.

As a basis for determining the acceptability of a Planned Unit Development Overlay District application, the following criteria shall be applied with specific consideration as to whether or not it is consistent with the spirit and intent of this Section and has the potential for producing significant community benefits in terms of environmental and aesthetic design.

1. Character and intensity of Land Use. In a Planned Unit Development Overlay District the uses and their intensity, appearance and arrangement shall be of a visual and operation character which:

    a. Are compatible with the physical nature of the site of area;

    b. Would produce an attractive environment of sustained aesthetic desirability, economic stability and functional practicality compatible with the General Development Plan;

    c. Would not adversely affect the anticipated provision for school or other municipal service unless jointly resolved; and

    d. Would not create a traffic or parking demand incompatible with existing or proposed facilities.

2. Economic Impact. A Planned Unit Development shall not adversely affect the economic prosperity of the Village or of surrounding properties.

3. Preservation and Maintenance of Open Space. In a Planned Unit Development Overlay District, adequate provisions for the improvement and continuing preservation and maintenance of attractive open space shall be made.

4. Implementation Schedule. A PUD shall include suitable assurances that each phase could be completed in a manner which would not result in an adverse effect upon the community as a result of termination at any point in the development. The implementation schedule shall designate to what extent the development shall be implemented within a twenty-four month period of time of approval of the implementation plan for the property so as not to revert back to its original zoning.

F. Procedure for rezoning as a Planned Unit Development Overlay District.

The procedure for rezoning to a Planned Unit Development Overlay District shall be as required for any other zoning district change in this Chapter, except that in addition thereto the rezoning may only be considered in conjunction with a development plan, and shall be subject to the following additional requirements:

1. General Development Plan. The proponent of the zoning change shall file the following with the Plan Commission:

    a. A statement describing the general character of the intended development;

    b. An accurate map of the project area including its relationship to surrounding properties and existing topography and key features;

c. A plan of the proposed project showing sufficient detail to make the possible evaluation of the criteria for approval as set forth in subsection E.of this Section; and

d. When requested, a general outline of intended organizational structure related to property owners' association, deed restrictions, and private provision of common services, together with such other additional relevant information as may be required by the Plan Commission.

2. Referral and Hearing.

a. Within sixty days after completion of the filing of the petition for approval for a General Development Plan, the Plan Commission shall forward the petition to the Village Board with recommendations that the plan is to be approved as submitted, approved with modifications or conditions or disapproved. This time limit may be extended by mutual agreement.

b. Upon receipt of the recommendations, the Village Board shall determine whether or not to initiate a proposed zoning change to establish the proposed Planned Unit Development Overlay District and to schedule the public hearing required by s. 35-220. If the Board fails to initiate such a change within sixty days, the petitioner may file a petition directly with the Village Clerk.

c. Approval of the rezoning and related General Development Plan shall establish the basic right of use for the area when in conformity with the plan as approved, but such plan shall be conditioned upon approval of a Specific Implementation Plan, and shall not make permissible any of the uses as proposed until a Specific Implementation Plan is submitted and approved for all or a portion of the General Development Plan. If the approved General Development Plan is not recorded as approved within twelve months of the date of approval by the Village Board the approval shall be null and void and a new petition and approval process shall be required to obtain General Development Plan approval.

G. Procedure for approval of Specific Implementation Plan. The Specific Implementation Plan shall be submitted to the Plan Commission.

1. Required information. The Specific Implementation Plan submitted shall include the following detailed construction and engineering plans and related detailed documents and schedules and all other information deemed relevant by the Plan Commission, except when specific documents are waived by such Commission:

a. An accurate map of the area covered by the plan including the relationship to the total General Development Plan;

b. The pattern of public and private roads driveways, walkways, and parking facilities;

c. Detailed lot layout and subdivision plat where required;

d. The arrangement of building groups, other than single-family residences, and their architectural character;

e. Sanitary sewer and water mains;

f. Grading plan and storm drainage system;

g. The location and treatment of open space areas and recreational or other specific amenities;

h. The location and description of any areas to be dedicated to the public;

i. Landscape plan and plant list;

j. Proof of financing capability;

k. Analysis of economic impact upon the community;

l. A construction schedule indicating the approximate dates when construction of the project can be expected to begin and be completed. The construction schedule shall include a statement as to what extent the project plan will be implemented within twenty four months of the time of the approval of the Specific Implementation Plan;

m. Agreements, bylaws, provisions or covenants which govern the organizational structure, use, maintenance and continued protection of the development and any of its common services, common open areas or other facilities.

2. Procedure for Approving Specific Implementation Plan.

a. Following a review of the Specific Implementation Plan, the Plan Commission shall recommend to the Village Board that it be approved as submitted, approved with modifications or conditions, or disapproved. The Plan Commission or Village Board may require any reasonable condition or design which will promote proper development or benefit to the community.

b. Upon receipt of the Plan Commission recommendation, the Board may approve the Plan and authorize the development to proceed accordingly, or disapprove the Plan and send it back with specific objections to the Plan Commission for further negotiation with the developer.

c. In the event of approval of the Specific Implementation Plan, the building, site and operational plans for the development, as approved, as well as all other commitments and contractual agreements with the Village shall be recorded by the developer within twelve months of the date of approval by the Village Board in the Racine County register of deeds office. This recording shall be accomplished prior to the issuance of any building permit. If the Specific Implementation Plan is not recorded as approved within twelve months of the date of approval by the Village Board the approval shall be null and void, and a new petition and approval process shall be required to obtain Specific Implementation Plan approval.

d. Any subsequent change or addition to the Plan or use shall first be submitted for approval to the Plan Commission and if, in the opinion of the Plan Commission, the change or addition constitutes a substantial alteration of the original Plan, the procedure provided for in subsection F. of this Section shall be required.

35-82 HPO Historic Preservation Overlay District.

A. Intent. The HPO Historic Preservation Overlay District is intended to provide for the protection and preservation of those structures and areas whose architectural, archeological or historic interests are valuable contributions to the character and charm of the Village or areas of the Village and to the Village's cultural, social, economic, political and architectural history or heritage. Such structures and areas are hereby deemed to represent a community asset justifying the public regulation of such structures and areas to ensure their preservation. The intent of this district is to safeguard the Village's historic and cultural heritage, as embodied and reflected in such structures or areas, stabilize and improve property values, foster civic pride, enhance the visual and aesthetic character of the Village, and protect and enhance the Village's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.

B. District Standards and Uses. District standards shall conform to those required in the underlying basic zoning district. See also subsection D. of this section. Permitted, accessory, and conditional uses shall be as allowed in the underlying basic zoning district.

C. Designation / Creation of Historic Preservation Overlay District.

1. The Historic Preservation Committee shall select geographically defined areas within the Village of Rochester to be designated Historic Preservation Overlay Districts pursuant to Chapter 38, Historic Preservation, of this Municipal Code. If a petition for rezoning to an HPO District is received from a source other than the Historic Preservation Committee, it shall be referred to the Committee for its review and recommendation.

2. The Village Board may designate an area an HPO District upon recommendation by the Plan Commission and the Historic Preservation Committee. The public hearing to be held pursuant to Chapter 38 shall be held jointly by the Plan Commission and the Historic Preservation Committee, and notice of the hearing shall conform to the requirements of both Chapter 38 and the notice required in this Chapter.

3. The criteria for rezoning to an HPO District shall be based upon the requirements found in Chapter 38.

D. Limitation on Structural or Appearance Changes.

1. Certificate of Appropriateness Required. There shall be no alterations in the architectural appearance of any structure within an HPO District without the approval of plans for such alterations by the Historic Preservation Committee and the Committee's grant of a Certificate of Appropriateness pursuant to Chapter 38 of this Municipal Code. For purposes of this section, alterations shall include any exterior color change, addition to, or demolition of any part or all of the exterior of a structure.

2. Repairs, Destruction and Reconstruction. Notwithstanding the provisions of s. 35-200 of this Chapter as to non-conforming structures, total lifetime structural repairs, restoration, or alterations of a preservation structure may exceed 50 percent of the Village's equalized value of the structure if the Historic Preservation Committee determines that the structure will be repaired, restored, or altered in a way that maintains the character of the structure and the character of the HPO District without significant alteration or change in such character. No person in charge of an historic structure or improvement in an HPO District shall demolish such a structure or improvement without a Certificate of Appropriateness for the demolition. See, however, Chapter 37 for historic structures located in floodplain districts.

3. Notwithstanding the provisions of Section 35-200 of this Chapter as to non-conforming structures, the Historic Preservation Committee may grant a Certificate of Appropriateness for, and may recommend to the Plan Commission, that all or part of a structure which has been destroyed or altered over the course of time may be rebuilt or reconstructed to the structure's original footprint, inclusive of uncovered porches, if such reconstruction or restoration is in keeping with the historic significance of the structure and area, regardless of current setback, side yard and rear yard requirements, so long as no safety issues (such as vision clearance triangles) are implicated. An example of such a recommendation would be the restoration of a porch to its original length and width, as proven by photographic or other documented evidence, if such porch was removed in a remodeling of the structure. The Plan Commission may approve such restoration or reconstruction, and such approval shall not be considered a variance or waiver but shall rather be considered to meet the appropriate standards of the HPO District. See, however, Chapter 37 for historic structures located in floodplain districts.

4. In the case of the destruction of a structure in the HPO District, the Plan Commission may determine upon recommendation from the Historic Preservation Committee that a replacement structure may be constructed in a manner that, while not identical to the original structure, maintains the historic character of the destroyed structure. See, however, Chapter 37 for historic structures located in floodplain districts.

35-83 to 35-99 [Reserved for Future Use]

35-100 CONDITIONAL USES

A. Conditional Use Permits.

The Village Plan Commission may authorize the Zoning Administrator to issue a conditional use permit for conditional uses after review and a public hearing, provided that such conditional uses and structures are in accordance with the purpose and intent of this Chapter and are not found to be hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the neighborhood or the community. Conditional uses in the floodplain districts shall be required to meet the requirements in Chapter 37.

B. Applications.

Applications for conditional use permits shall be made to the Zoning Administrator and shall include the following:

1. A site plan of the property accurately dimensioned showing the location of all existing and proposed structures and use area.

2. Name of project

3. Owner's and/or developer's name and address.

4. Architect and/or engineer's name and address.

5. Date of plan submittal.

6. Existing topography shown at a contour interval not less than two feet, or where not readily available elevations at appropriate locations.

7. Proposed changes in topography.

8. The characteristics of soils related to contemplated uses.

9. The type, size, location and dimensions of all structures including fences and walls.

10. Location and number of parking stalls and loading and storage areas.

11. Primary building materials used in construction of all structures.

12. Height of building(s).

13. Location and size of existing and proposed sanitary sewers, septic tanks and disposal fields, holding tanks, storm sewers and water mains.

14. Location of proposed solid waste (refuse) and recycling storage areas.

15. Location of pedestrian sidewalks and walkways.

16. Existing and proposed public right-of-way widths.

17. Location, type, height and intensity of proposed lighting.

18. Location of existing trees and extent, and type of proposed plantings including type and

extent of erosion control.

19. A graphic delineation of any planned development staging.

20. Architectural plans, elevations, and perspective drawings and sketches illustrating the design and character of proposed structures.

21. Any other site or use information, such as 100 year internal flood lines, which will assist the Plan Commission in making a determination and recommendation on the proposal. Conditional uses in the floodplain districts are required to submit the plans required as set forth in Chapter 37.

22. Operations plan data to be submitted with all plan review applications shall include at least the following:

    a. Specific use of site and building(s).

    b. Hours of operations.

    c. Number of full and part time employees.

    d. Estimate of daily truck and auto trips to the site.

    e. Type of materials and equipment to be stored on site.

    f. Method of handling solid and liquid waste disposal.

    g. Method of exterior maintenance (site and buildings).

    h. Method of site and building security other than local police.

    i. Copies of all special use permits issued by state or county agencies.

    j. Any other information which will assist the Plan Commission in making a determination and recommendation of the proposal.

C. Review and Approval.

1. The Village Plan Commission shall review the site, existing and proposed structures, architectural plans, neighboring land and water uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, waste disposal, water supply systems, and the effect of the proposed use, structure, operation, and improvement upon flood damage protection, water quality, shoreland cover, natural beauty, and wildlife habitat.

2. Conditions such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, location, size and number of signs, water supply and waste disposal system, higher performance standards, street dedication, certified survey maps, floodproofing, ground cover, diversions, silting basins, terraces, stream bank protection, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or additional parking may be required by the Village Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Chapter and the Wisconsin Statutes. Compliance with all other provisions of this

Chapter, such as lot width and area, yards, building height, parking, loading, traffic, highway access, aesthetic evaluation and performance standards shall be required of all conditional uses.

3. The Plan Commission shall hold a public hearing, giving notice therefor as set forth in s. 35-240, and shall make its recommendation to approve or deny the Conditional Use Permit to the Village Board. The Village Board shall approve the conditional use permit and the conditions to be applied thereto, or shall deny the permit.

4. Variances shall only be granted as provided in Section 35-210 and other applicable chapters of this Municipal Code.

D. Residential Conditional Uses. The following residential and quasi-residential uses shall be conditional uses and may be permitted as specified:

1. Cluster residential developments in the residential, A-2 and C-2 districts shall be permitted as conditional uses. The district regulations may be varied provided that the adequate open space shall be provided so that the average intensity and density be no greater than one dwelling unit per three acres. The original and all subsequent owners shall assure, by deed restrictions enforceable by the Village, proper preservation, care and maintenance of exteriors; designs; all common structures; facilities; utilities; accesses; and open spaces.

Development	Area	Minimum 20 acres
Lot	Width	Minimum 150 feet
	Area	Minimum 40,000 sq. ft.
Dwelling	Height Area	Maximum 35 feet Minimum 1200 sq. ft. single story 1700 sq. ft. multiple story
Residential Accessory Structures	Height	Maximum 15 feet
Agricultural Accessory Structures (barns, silos, sheds, storage bins	Height	Maximum two times the distance from the nearest lot line
Yard (Setbacks)	Street	Minimum 50 feet
	Side	Minimum 15 feet
	Rear	Minimum 50 feet

2. Manufactured Homes.

a. Definitions. The following words, terms and phrases shall have the meanings set forth in section 21-1 of this Municipal Code, except where the context clearly indicates a different meaning: “Licensee,” “Community,” “Manufactured Home,” “Mobile Home,” “Unit,” “Manufactured Home Community,” and “Site.”

b. When, Where Allowed.

(1) Manufactured Home Communities may be allowed as a conditional use in the A-2 Agricultural District subject to the requirements of this subsection and all provisions of this Chapter pertaining to conditional uses.

(2) No manufactured home shall be used as a residence within the Village unless:

(a) It is located within a manufactured home community for which a conditional use permit has been issued; or

(b) It is located on a farm and the occupants of the manufactured home are the father, mother, son, daughter, brother or sister of the farm owner or operator or where the occupants of the manufactured home works on the farm and a conditional use permit has been issued. The individual site, area and yard requirements of this section shall apply to manufactured homes located on a farm; or

(c) It meets the requirements set forth in s. 35-15.I.5.b., or

(d) In the event a dwelling on real estate outside of a manufactured home community was destroyed by fire or other casualty, the dwelling is voluntarily removed by the owner of the dwelling, and the owner desires to rebuild a home on the location of the home so destroyed or removed, the owner may apply to the Plan Commission for a permit to temporarily keep a manufactured home on the real estate for occupancy as a dwelling by persons who had occupied the destroyed or removed dwelling. The permit may be granted by the Plan Commission for a period not to exceed one year. The manufactured home shall conform to all applicable requirements of this Municipal Code. In the event a new dwelling cannot be completed within the initial permit period, the owner may apply for and the Plan Commission may grant an extension of up to 90 days.

c. Application for Zoning Permit.

(1) An application for a conditional use permit for a manufactured home community shall be accompanied by a license or application for a license from the Village pursuant to Chapter 21 and application for plan approval and a permit from the Wisconsin Department of Safety and Professional Services pursuant to Wis. Admin. Code ch. SPS 326. In the absence of a Village license or State Permit, the application for a conditional use permit shall be denied. The application shall be filed with the Zoning Administrator along with plans and specifications in compliance with the all Village ordinances and state laws and a performance bond in the amount necessary to insure completion of the manufactured home community within nine months from the date of the issuance of the conditional use permit and insuring further that such completion is in compliance with the requirements of this Chapter. No manufactured

home shall be occupied until all conditions of this Chapter have been met.

(2) The construction or expansion of a manufactured home community shall be completed within nine months, but the time may be extended for not more than an additional 90 days in the aggregate by the Zoning Administrator with the approval of the Plan Commission for good cause shown.

(3) The provisions of Wis. Admin. Code ch. SPS 326 are minimum requirements enforced by the State. The local of this Chapter and Chapter 21 are in addition to the requirements set forth in Wis. Admin. Code ch. SPS 326 and where the provisions of this Municipal Code are more restrictive than the state requirements, the provisions of this Municipal Code shall prevail.

(4) The application shall contain the following information:

(a) Name, address and telephone number of applicant;

(b) Legal description of the land upon which applicant seeks to have a zoning permit for a manufactured home community;

(c) The names and addresses of all persons owning land abutting upon such land; and

(d) The names and addresses of all persons owning lands located across the street from such land.

(e) Copies of the plans submitted to the Wisconsin Department of Safety and Professional Services required under Wis. Admin. Code ch. SPS.

d. Location. No manufactured home shall be located less than 50 feet from any highway right-of-way line. The location of each manufactured home community shall be approved or denied in writing. In approving such location, the Zoning Administrator shall view the proposed site or sites and shall consider such evidence as may be presented, bearing upon the general purposes and intent of this Chapter to promote the public health, safety and general welfare and the specific purpose of this section to prevent the overcrowding of land and the development of housing blight in rural areas.

e. Specific requirements.

(1) Drainage. Every manufactured home community and every manufactured home within the community shall be located on a well-drained area and shall be so graded and adequately drained to prevent the accumulation of stormwater or other waters in the manufactured home community or on any site, and drainage easements shall be obtained when necessary.

(2) Sewage. Adequate provisions shall be made for the disposal of all sewage from a manufactured home community into a municipal sanitary

sewer where available, or by a properly constructed and maintained sewage system approved by Racine County and the DNR.

(3) Water. Where a public water supply is not available within the manufactured home community an adequate supply of pure water for drinking and domestic purposes shall be provided in an amount sufficient to care for the needs of the maximum number of persons which can be accommodated in such manufactured home community, approved by the DNR.

(4) Refuse. Every manufactured home shall conform to the refuse and recycling requirements of this Municipal Code. Refuse shall be disposed of as often as necessary to prevent decomposition or overflow.

(5) Lighting. All entrances, exits, lanes, and driveways between rows of manufactured homes used or occupied in any manufactured home community shall be lighted by electric lighting of at least one watt per lineal foot.

f. Manufactured Home Sites and Automotive Vehicle Parking.

(1) Each manufactured home shall be located on a site of not less than 6,000 square feet with a minimum width of 50 feet. Each double manufactured home shall be located on a site of not less than 9,000 square feet with a minimum width of 75 feet. If parking is not provided on the individual site, but within a reasonable distance of the site, the square footage of the site may be reduced by 400 square feet for a single manufactured home or 600 square feet for a double manufactured home.

(2) Each manufactured home site shall contain a pad upon which the manufactured home shall be situated, which shall be paved with concrete or bituminous material. Each pad shall not be less than ten feet wide nor of less length than the length of the manufactured home to be parked thereon, plus five feet.

(3) Off street parking spaces in a ratio of one and one-half for each site shall be provided for and maintained in good condition. There shall be off-street parking places for automotive vehicles within the community, either on each site or located within a reasonable distance from each unit, paved with concrete or bituminous material, equal to not less than 400 square feet for each manufactured home site. Each automobile parking place shall not be less than nine feet wide and 160 square feet in area, exclusive of maneuvering and access space.

g. Streets and Sidewalks.

(1) Streets.

(a) In a manufactured home community there shall be a system of private streets with a minimum of 66-foot dedicated widths.

(b) The private streets shall be paved with concrete or bituminous material, providing access from each and every manufactured

home site and automotive parking space within the manufactured home community to the public street or highway; provided that there shall not be more than two entrances from or exits to the public street or highway from any one community. The private street shall be paved to the following widths:

[1] Parking one side or no street parking: 28 feet

[2] Parking two sides: 32 feet.

(2) Sidewalks. If recreation buildings, laundry facilities, or any other service areas are provided for the convenience of the manufactured home community residents, there shall be sidewalks, with a minimum of 30-inch widths, paved with concrete or bituminous material, from every manufactured home site within the manufactured home community to the building, facility or area.

h. Setbacks and Yards.

(1) Each manufactured home pad shall be separated from all other manufactured home pads, automobile parking spaces or service buildings or structures within the community by open spaces, permanently planted to grass, flowers, shrubs or trees, which shall not be less than 15 feet wide, except a garage, or accessory structure belonging to the site or unit owner may be closer to the pad if it meets the accessory structure requirements of this Chapter.

(2) The setback from the private street right-of-way shall be not less than ten feet.

(3) Each manufactured home community shall be completely surrounded, except for permitted entrances and exits, by a yard, in addition to all other required yards and open spaces, which shall not be less than 15 feet wide.

(4) Each manufactured home community shall contain an open area for recreation and park purposes which shall be appropriately landscaped and planted to grass and trees. Said open area shall not be less than two acres for every 25 manufactured home spaces in the manufactured home community.

i. Rules and Regulations. The manufactured home community licensee shall provide the rules and regulations it will prescribe and enforce so as to insure:

(1) That the community will be kept and maintained in a neat, sightly and orderly manner.

(2) That no public or private nuisance may be kept or maintained in the community.

(3) That no manufactured home shall be used for illegal purposes.

(4) That no manufactured home shall be used for other than residential purposes or by more than one person, whether child or adult, for each 125 square feet of floor area thereof.

j. Manufactured Home Use Restrictions: Businesses Prohibited. No business shall be conducted in any manufactured home in a manufactured home community.

k. Appeal from Denial. In the event an application for a conditional use permit is denied, the applicant has the right to appeal the decision as set forth in this chapter and as set forth in Wis. Admin. Code s. SPS 326.05(2).

E. Commercial Conditional Uses.

The following commercial uses shall be conditional uses and may be permitted as specified:

All drive-in facilities require Conditional Use Permits

All developments within 50 feet of any existing or mapped state trunk highway or county trunk highway and/or within 150 feet of an existing or mapped centerline of intersection with any other road require Conditional Use Permits

Any development involving multiple, principal use buildings or multiple tenants in a single commercial building or any single commercial building 2,500 gross square feet or larger

Drive-in banks in all business districts.

Motor vehicle sales and service repair, upholstery repair, body shops, trailer sales, rentals, and service, and tractor and other farm implement sales and service, including vehicle washing facilities, and public parking lots in all Business Districts, but not including the storage of junked or wrecked automobiles and/or parts, provided all parking of vehicles (including vehicles with more than six wheels) is specifically addressed in the permitting process. Gas pumps shall not be located closer than 30 feet from a side lot line or a rear lot line, and not closer than 25 feet from an existing or proposed street line

Residential quarters for the owner, proprietor, commercial tenant or rental apartments on a non-ground floor level shall be deemed a conditional use and shall be subject to Village Plan Commission approval of building, site and operational plans.

Commercial recreational facilities, such as bowling alleys, gymnasiums, lodges, miniature golf, pool and billiard halls, indoor skating rinks, and indoor theaters are conditional uses and may be permitted in all Business Districts.

F. Industrial / Manufacturing Uses.

1. Unless a conditional use must be conducted outdoors, all structures and improvements for conditional principal uses, including their related accessory uses, are subject to the following general provisions:

a. No merchandise shall be handled for sale or service rendered on the premises except such as are incidental or accessory to the principal permissible use of the premises, except for sales or service to industrial customers

b. All operations and activities of all uses within this district shall be conducted wholly inside a building or buildings

c. No continuous or intermittent noise from operations greater than the volume and range of noise emanating from vehicular traffic or its equivalent in noise shall be detectable at the boundary line of any residence district

d. No toxic matter, noxious matter, smoke, or gas, and no odorous or particulate matter detectable beyond the lot lines shall be emitted

e. No vibrations shall be detectable beyond the lot lines

f. No glare or heat shall be detectable beyond the lot lines

g. Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light upon any residence district or into public streets or parks

2. The storage or use of chemicals, whether solid, liquid or gas, shall be subject to the following conditions:

a. The storage, utilization, or manufacturing of materials or products ranging from incombustible to moderate burning is permitted

b. The storage, utilization or manufacturing of materials, or products ranging from free to active burning is permitted provided the following condition is met: said materials or products shall be stored, utilized, or manufactured within completely enclosed buildings having incombustible exterior walls and protected throughout by an automatic fire extinguishing system

c. The manufacture of flammable materials which produce explosive vapors or gases is prohibited

3. Special Conditional Use Provisions for Quarrying Operations.

Quarrying operations, including mineral extraction, washing, crushing or other processing, are conditional uses permitted in the M-4 Quarrying District. No person or other entity shall operate a quarry, gravel pit, sand pit, asphalt or tar paving mix plant or a concrete ready mix plant within the Village without first obtaining conditional use permit approval from the Plan Commission and Village Board as hereinafter provided.

a. Reclamation Plan.

(1) The application for the conditional use permit shall include a restoration plan. Under Wis. Admin. Code ch. NR 135, Nonmetallic Mining Reclamation, and Racine County Code chapter 12.5, the applicant is required to submit a copy of the reclamation plan to the Racine County Planning Division for its review and approval, unless exempted thereunder.

(2) The reclamation plan provided by the applicant shall meet the requirements of Racine County. The applicant shall pay all fees required by Racine County directly to Racine County, and shall provide financial security to Racine County which names Racine County as the beneficiary thereunder, which will enable Racine County to perform the planned restoration on the site in the event of default by the applicant.

(3) No conditional use permit issued by the Village of Rochester shall be effective until the applicant's reclamation plan has been approved by Racine County.

b. Conditional Use Permit.

Application. Applications for permits shall be submitted in writing, in duplicate to the Village Plan Commission and shall set forth the following information:

(1) Completed zoning and conditional use applications forms.

(2) A written report and site plan outlining the following issues:

(a) Name and address of the applicant.

(b) Name and address of the owner of the site on which use is taking place.

(c) Description of site for use by lot, block, and recorded subdivision or by metes or bounds.

(d) Address of site.

(e) Statement of the nature of the proposed operation, and appropriate exhibits, including:

[1] List of equipment and machinery to be used to conduct operations.

[2] Type and amount of explosives to be used or stored, if any.

[3] Size, location, and use of the buildings to be constructed on the site.

[4] Smoke and dust control devices to be utilized, if any.

[5] Highways to be used for the truck traffic to and from the subject site.

[6] Deodorants or odor control devices.

[7] Proposed devices for muffling of noise.

[8] The employment of safety devices to protect the public from dangers inherent to the proposed use.

[9] Method of concealing unsightly deposits, if any.

[10] Employee and machinery/equipment parking areas.

[11] Any other pertinent data which the applicant deems material, or as requested by the Village.

(f) Zoning of the site to be used. Existing land use and zoning abutting subject property.

(g) Depth of existing and proposed excavations.

(h) Commencement and completion dates of each type of operation proposed.

(i) Hours and days of operation.

(j) Number of employees.

(k) Method and manner of draining surface water and accumulated water from the premises.

(l) Method and manner of restoring the areas of the operation after the cessation of operation to a condition of practical usefulness and reasonable physical attractiveness.

(m) Topographic mapping of the site showing existing and proposed contours, with a contour interval no greater than two feet. (12 copies)

(n) Existing trees four inches or more in diameter, measured four feet from the existing elevation and proposed tree plantings; provided, however that, for heavily wooded areas, the perimeter of the heavily wooded area may be delineated and the types of trees and range of diameters may be provided.

(o) Landscaping berms, fencing and gates.

(p) Sign locations and sizes

(q) Existing and proposed access roads.

(r) Water supply facilities, including the source quantity and disposition of the water to be used.

(s) Proposed sanitary facilities (obtain Racine County sanitary approval for on-site sanitary facilities).

(t) Test results of area water wells, and proposed testing plans, where the proposed use includes excavation below the water table, along with sureties to insure performance of continued testing and resolution of issues identified, in a form determined by the Village Plan Commission upon the Village Plan Commission finding that such condition or conditions are proper for protection of health, safety and or welfare of the public.

(u) Highway access restrictions, deed restrictions, and traffic control, along with repair plans for Village roads affected by the operation. Where determined necessary by the Village Plan Commission, the applicant shall submit a financial surety for the projected road repair.

(v) Letter of Agreement from the applicant agreeing to restore the subject site in accordance with the approved reclamation plan (see subsection (**5.07.c.(1)**).

(w) The Village Plan Commission may also as a condition precedent to the issuance of the zoning permit and conditional use permit, require an agreement with the applicant and owner whereby they agree to restore the site to a condition of practical usefulness and reasonable physical attractiveness.

c. Fees.

(1) An application for an original permit or a renewal of an existing permit shall be accompanied by a fee, in an amount set by the Village Board and set forth in the Village of Rochester Fee Schedule, to defray the cost of publication of notice of hearing, investigation of the site, public hearing, and permitting.

(2) An application for a permit, where the operation plan of the property is not changed, shall be accompanied by a fee in an amount set by the Village Board and set forth in the Village of Rochester Fee Schedule.

d. Review and Hearing.

(1) Upon receipt of an application submitted the Village Plan Commission shall inspect the site for which a permit is requested and shall review the proposed structures, neighboring land and water uses, driveway locations, highway access, traffic generation and circulation drainage, waste disposal, water supply system, effect of the proposed use and operation upon use of surrounding lands, natural beauty, soil erosion, water quality, wildlife habitat, and shoreland cover and method, manner and practicality of restoration of the area after cessation of use.

(2) A public hearing shall be held by the Village Plan Commission at its regular meeting place and a notice of said meeting shall be sent by regular mail to the applicant and all persons owning property lying within 500 feet of the site designated in the application. In addition, the Village Clerk shall post a notice of such meeting and a Class 2 notice shall be published, the last insertion to be at least 10 days before the date of said public hearing. At such hearing, the Village Plan Commission shall hear all persons interested in granting or denying said permit and may, if it deems fit, take testimony relative to the applications.

Where the permit applied for relates to the continuation of an existing business that previously held a conditional use permit, the Village Board shall have the option to require a public hearing, but in the absence of such requirement, no public hearing shall be held and no public hearing notice or mailing shall be required. An application for the expansion of, or changes to, an existing business shall require a public hearing.

(3) After the public hearing, the Village Plan Commission shall meet to consider the application and make a recommendation on said application to the Village Board. The Village Plan Commission shall particularly

consider the effect of the proposed operation upon existing streets, neighboring development, proposed land use, drainage, water supply, soil erosion, natural beauty, character and land value of the locality and shall also consider the practicality of the proposed restoration of the site in making its recommendation to the Village Board.

e. Determination by Village Board.

Within 90 days after the public hearing the Village Board shall either grant or deny the conditional use permit. In making such determination the Village Board shall consider whether the proposed use will be detrimental to the health, safety and /or welfare of the public; such determination shall be made on the basis of the information contained in the application, the inspection and review of the Village Plan Commission, the recommendation of the Village Plan Commission and information presented at the public hearing. The Village Board may also inspect the site.

The Village Board shall particularly consider the effect of the proposed operation upon existing streets, neighboring development, proposed land use, drainage, water supply, soil erosion, natural beauty, character and land value of the locality and shall also consider the practicality of the proposed restoration of the site.

f. Terms of Permit.

(1) A conditional use permit issued pursuant to this Section shall be for a term of not to exceed two years and may be renewed upon application for successive periods of not more than two years. Modifications or additional conditions may be imposed upon application for renewal and the procedure for renewal shall be the same as that in application for the original permit. In any event, such permit shall terminate:

(a) Upon change of ownership of the site for which the permit is issued; or upon change of ownership of the firm, company, corporation or municipality operating the business holding the conditional use permit.

(b) In the event the use for which the permit was issued is discontinued for any period of more than one year during the term of the permit.

(c) In the event of the occurrence of (a) or (b), above, another permit shall be applied for and obtained by the proposed operator as a condition precedent to the continued operation of the business, the operation of a new business, or the resumption of the discontinued business.

(d) In the event of application for a permit to which (a) or (b) above applies, the Village Board may consider the same without the necessity of holding a public hearing.

(2) Any permit issued pursuant to this subsection shall be deemed an original permit and the permitted operator shall be bound by the terms thereof.

g. Suspension and Revocation.

(1) The following acts shall constitute grounds for suspension or revocation of an M-4 conditional use permit:

(a) Failure to discharge or drain surface water or accumulated water from the permitted premises in such method and manner as will not hamper, hinder, infringe on, disturb or damage the lands, drains, and/or ditches of other persons, firms or corporations, or municipalities, whether owned or otherwise.

(b) The use specified in the permit is not carried on in accordance with the representations contained in the application or conditions required by the Village Board, or any change in the manner of operation specified in the conditional use permit approved by the Village Board.

(c) Failure during and/or after excavation to provide adequate lateral support to roadways or to the lands of abutting property owners.

(d) Failure to comply with conditions required in the conditional use permit issued by the Village Board.

(2) A proceeding to suspend or revoke a permit shall be instituted pursuant to s. 35-100.I.3.

4. Special Conditional Use Provisions for Solid Waste Facilities, Scrap Iron, Steel or Nonferrous Metal Processing Facilities, Recycling Facilities, Auto Junkyards and Auto Scrap Metal Salvage Yards.

a. Solid waste facilities, scrap iron, steel or nonferrous metal processing facilities, recycling facilities, auto junkyards and auto scrap metal salvage yards, including their accessory uses, are conditional uses permitted in the M-3 District. No person or other entity shall operate one of these facilities within the Village without first obtaining conditional use permit approval from the Plan Commission and Village Board as hereinafter provided.

b. Application. Applications for permits shall be submitted in writing, in duplicate to the Village Plan Commission and shall set forth the following information:

(1) Completed Village zoning and conditional use application forms and copies of all plans of operation, license applications and other submissions to the State of Wisconsin.

(2) A written report and site plan outlining the following issues:

(a) Name and address of the applicant.

(b) Name and address of the owner of the site on which the use is taking place.

(c) Description of site for use by lot, block, and recorded subdivision or by metes or bounds.

(d) Address of site.

(e) Statement of the nature of the proposed operation, and appropriate exhibits, including:

[1] List of equipment and machinery to be used to conduct operations.

[2] Type and amount of explosive materials to be used or stored, if any.

[3] Size, location, and use of the buildings to be constructed on the site.

[4] Smoke and dust control devices to be utilized, if any.

[5] Highways to be used for the truck traffic to and from the subject site.

[6] Deodorants or odor control devices.

[7] Proposed devices for muffling of noise.

[8] The employment of safety devices to protect the public from dangers inherent to the proposed use.

[9] Method of concealing unsightly deposits, if any.

[10] Employee and machinery/equipment parking areas.

[11] Method of using and/or removing and disposing methane and other gases generated by the site.

[12] Method of controlling vermin, flies and other vectors.

[13] Any other pertinent data which the applicant deems material, or as requested by the Village.

(f) Zoning of the site to be used. Existing land use and zoning abutting subject property.

(g) Depth of existing and proposed excavations.

(h) Commencement and completion dates of each type of operation proposed.

(i) Hours and days of operation.

(j) Number of employees.

(k) Method and manner of draining surface water and accumulated water from the premises.

(l) Method and manner of restoring the areas of the operation after the cessation of operation to a condition of practical usefulness and reasonable physical attractiveness.

(m) Topographic mapping of the site showing existing and proposed contours, with a contour interval no greater than two feet (12 copies).

(n) Existing trees four inches or more in diameter, measured four feet from the existing elevation and proposed tree plantings; provided, however that, for heavily wooded areas, the perimeter of the heavily wooded area may be delineated and the types of trees and range of diameters may be provided.

(o) Landscaping berms, fencing and gates.

(p) Sign locations and sizes.

(q) Existing and proposed access roads.

(r) Water supply facilities, including the source quantity and disposition of the water to be used.

(s) Proposed sanitary facilities (obtain Racine County sanitary approval for on-site sanitary facilities).

(t) Test results of area water wells, and proposed testing plans, where the proposed use includes excavation below the water table, along with sureties to insure performance of continued testing and resolution of issues identified, in a form determined by the Village Plan Commission upon the Village Plan Commission finding that such condition or conditions are proper for protection of health, safety and or welfare of the public.

(u) Highway access restrictions, deed restrictions, and traffic control, along with repair plans for Village roads affected by the operation. Where determined necessary by the Village Plan Commission, the applicant shall submit a financial surety for the projected road repair.

(v) Letter of Agreement from the applicant agreeing to restore the subject site in accordance with the approved restoration or reclamation plan.

(w) The Village Plan Commission may also, as a condition precedent to the issuance of the zoning permit and conditional use permit, require an agreement with the applicant and owner whereby they agree to restore the site to a condition of practical usefulness and reasonable physical attractiveness. A financial surety may be required by the Village if the use of the property does not require proof of financial responsibility under state law.

c. Fees.

(1) An application for an original permit or a renewal of an existing permit shall be accompanied by a fee, in an amount set by the Village Board and set forth in the Fee Schedule, to defray the cost of publication of notice of hearing, investigation of the site, public hearing, and permitting.

(2) An application for a permit, where the operation plan of the property is not changed, shall be accompanied by a fee in an amount set by the Village Board and set forth in the Fee Schedule.

d. Review and Hearing.

(1) Upon receipt of an application submitted the Village Plan Commission shall inspect the site for which a permit is requested and shall review the proposed structures, neighboring land and water uses, driveway locations, highway access, traffic generation and circulation drainage, waste disposal, water supply system, effect of the proposed use and operation upon use of surrounding lands, natural beauty, soil erosion, water quality, wildlife habitat, and shoreland cover and method, manner and practicality of restoration of the area after cessation of use.

(2) A public hearing shall be held by the Village Plan Commission at its regular meeting place and a notice of said meeting shall be sent by regular mail to the applicant and all persons owning property lying within 500 feet of the site designated in the application. In addition, the Village Clerk shall post a notice of such meeting and a Class 2 notice shall be published, the last insertion to be at least 10 days before the date of said public hearing. At such hearing, the Village Plan Commission shall hear all persons interested in granting or denying said permit and may, if it deems fit, take testimony relative to the applications.

Where the permit applied for relates to the continuation of an existing business that previously held a conditional use permit, the Village Board shall have the option to require a public hearing, but in the absence of such requirement, no public hearing shall be held and no public hearing notice or mailing shall be required. An application for the expansion of, or changes to, an existing business shall require a public hearing.

(3) After the public hearing, the Village Plan Commission shall meet to consider the application and make a recommendation on said application to the Village Board. The Village Plan Commission shall particularly consider the effect of the proposed operation upon existing streets, neighboring development, proposed land use, drainage, water supply, soil erosion, natural beauty, character and land value of the locality and shall also consider the practicality of the proposed restoration of the site in making its recommendation to the Village Board.

e. Determination by Village Board.

(1) Within 90 days after the public hearing the Village Board shall either grant or deny the conditional use permit. In making such determination the Village Board shall consider whether the proposed use will be detrimental to the health, safety and /or welfare of the public; such determination shall be made on the basis of the information contained in the application, the inspection and review of the Village Plan

Commission, the recommendation of the Village Plan Commission and information presented at the public hearing. The Village Board may also inspect the site.

(2) The Village Board shall particularly consider the effect of the proposed operation upon existing streets, neighboring development, proposed land use, drainage, water supply, soil erosion, natural beauty, character and land value of the locality and shall also consider the practicality of the proposed restoration of the site.

(3) The Village Board may, as a condition to the issuance of the permit, demand an agreement with the applicant to ensure performance of any or all of the following restrictions:

(a) There shall be no burning or fire of any kind allowed on the premises for which the permit is issued. In the event a fire is started on the premises, whether or not through the fault of the permittee and the services of a fire department are used to extinguish said fire, the permittee shall pay any and all costs thereof to the fire departments or fire companies involved, upon demand.

(b) No raw garbage, dead animals, manure, animal or vegetable waste from any source whatsoever, oil, paint, solvents or other liquid chemicals, or any similar material shall be dumped on the premises for which the permit is issued.

(c) The proposed operation shall not be detrimental to the sources of water supply at the residences in the area.

(d) All wastes disposed of at the site shall be covered with at least six inches of compact earth after each day of operation.

(e) The working force of the operation shall be confined to as small an area as possible and surrounded with a snow fence or other appropriate facilities to confine possible windblown materials to the area. All wind-blown material resulting from the operation shall be properly picked up and the site and surrounding properties maintained.

(f) The entrance to the premises for which the permit is issued shall be fenced and shall contain a gate which shall be capable of being securely locked. The premises shall be kept locked at all times except when immediate supervision is provided to insure compliance with the provisions of the ordinance and agreement.

(g) The operation and access roads to the site shall be maintained in a manner to eliminate the possibility of causing a dust problem in the area.

(h) The premises shall be restored to the satisfaction of the Village Board; said restoration to progress as the area is filled, and the Board may demand that a performance bond, written by a licensed surety company in an amount sufficient to secure the

performance of the restoration agreement, be furnished to the Village.

(i) The disposal shall be conducted in a sanitary manner by use of the sanitary landfill method in accordance with the requirements established by the State of Wisconsin, which are incorporated herein by reference.

f. Terms of Permit.

(1) A conditional use permit issued pursuant to this Section shall be for a term of not to exceed two years and may be renewed upon application for successive periods of not more than two years. Modifications or additional conditions may be imposed upon application for renewal and the procedure for renewal shall be the same as that in application for the original permit. In any event, such permit shall terminate:

(a) Upon change of ownership of the site for which the permit is issued; or upon change of ownership of the firm, company, corporation or municipality operating the business holding the conditional use permit.

(b) In the event the use for which the permit was issued is discontinued for any period of more than one year during the term of the permit, or any permit or license issued by the state is suspended or revoked

(c) In the event of the occurrence of (a) or (b), above, another permit shall be applied for and obtained by the proposed operator as a condition precedent to the continued operation of the business, the operation of a new business, or the resumption of the discontinued business.

(d) In the event of application for a permit to which (a) or (b) above applies, the Village Board may consider the same without the necessity of holding a public hearing.

(2) Any permit issued pursuant to this subsection shall be deemed an original permit and the permitted operator shall be bound by the terms thereof.

g. Suspension and Revocation.

(1) The following acts shall constitute grounds for suspension or revocation of a conditional use permit under this subsection:

(a) Failure to discharge or drain surface water or accumulated water from the permitted premises in such method and manner as will not hamper, hinder, infringe on, disturb or damage the lands, drains, and/or ditches of other persons, firms or corporations, or municipalities, whether owned or otherwise.

(b) The use specified in the permit is not carried on in accordance with the representations contained in the application or conditions required by the Village Board, or any change in the manner of operation specified in the conditional use permit approved by the Village Board.

(c) Failure during and/or after excavation to provide adequate lateral support to roadways or to the lands of abutting property owners.

(d) Failure to comply with conditions required in the conditional use permit issued by the Village Board.

(2) A proceeding to suspend or revoke a permit shall be instituted pursuant to s. 35-100.I.3.

G. Adult Oriented Entertainment Businesses.

1. Findings of Fact:

a. The Village Board finds that adult establishments as defined in this chapter require special zoning in order to protect and preserve the health, safety, and welfare of the Village.

b. Based on its review of the “Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses;” and based on its review of National Law Center Summaries of “SOB Land Use” Studies; and based on studies conducted in St. Croix County, Wisconsin; New Hanover County, North Carolina; Town and Village of Ellicottville, Cattaraugus County, New York; City of Garden Grove, California; and Newport News, Virginia; and based on the findings incorporated in Renton v. Playtime Theatres, Inc.,475 U.S. 41 (1986) and Young v. American Mini Theatres, 427 U.S. 50 (1976), the Board finds that there is convincing evidence that the secondary effects of adult establishments include an increased risk of prostitution, high-risk sexual behavior, crime, and other deleterious effects upon existing business and surrounding residential areas, and decreased property values.

2. Intent.

a. The Board intends to control the impact of the secondary effects of sex oriented businesses in order to protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of surrounding neighborhoods and areas.

b. It is not the Board's intent to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of adult establishments while providing an outlet for First Amendment protected activities.

c. In order to minimize and control the secondary effects of adult establishments upon the Village, it is the Board's intent to prevent the concentration of adult establishments within a certain distance of other specified locations which are incompatible with and would suffer from the secondary effects of adult establishments.

d. To accommodate the needs of residents and businesses while protecting health, safety and welfare, to minimize adverse visual effects of adult oriented entertainment businesses through careful design and siting standards and to minimize the detrimental effect sexually-oriented businesses have on adjacent land uses, the Village Board recognizes that it has a great interest in the present and future character of the Village's residential and commercial neighborhoods and adopts the land use regulations set forth herein.

3. Purpose. The purpose of this Section is to control through zoning regulations certain adult oriented entertainment uses that have a direct and detrimental effect on the character of the Village's residential neighborhoods and commercial areas. These regulations are enacted because there is convincing documented evidence, set forth in subsection 1, that:

a. The location, siting, design, construction and use of adult oriented entertainment businesses can have adverse impacts on the surrounding area, whether residential or commercial; and

b. Adult oriented entertainment businesses can exert a dehumanizing influence on persons attending places of worship, children attending licensed daycare homes, persons using public parks, and children and other persons attending public schools; and

c. Adult oriented entertainment businesses can contribute to an increase in criminal activity in the area where such businesses are located, taxing local law enforcement services; and

d. Adult oriented entertainment businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the value of the residential housing in the area in which such businesses are located; and

e. The concentration of adult oriented entertainment businesses in one area can have a substantially detrimental effect on the area in which such businesses are concentrated and on the overall quality of urban life. A cycle of decay can result from the influx and concentration of sexually-oriented businesses. The presence of such businesses is perceived by others as an indication that the area is deteriorating and the result can be devastating as other businesses and residences move out of the vicinity. Declining real estate values, which can result from the concentration of such business, erode the Village's tax base; and

f. The Village is authorized to enact zoning regulations to promote the public health, safety and general welfare of the citizens of the Village of Rochester as provided under Wis. Stat. s. 62.23.

4. Section Not a Limitation on Constitutionally Protected Speech. This section shall not impose a limitation on the content of any communication materials, including sexually oriented materials as protected by the First Amendment. This section is enacted to address the secondary effects of adult oriented entertainment businesses. It shall not be

applicable to theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music, and dramatic performances of serous artistic merit are offered on a regular basis; and in which the predominant business or attraction is not the offering of entertainment which is intended for the sexual interests or titillation of customers; and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances.

5. Definitions.

"Adult Oriented Entertainment Business" means an adult use only bookstore, adult indoor or outdoor theater, adult massage parlor, adult sauna, adult entertainment center, adult cabaret, adult health/sport club, adult steam room/bathhouse facility, adult video store, adult motel, adult novelty shop, adult modeling studio, adult body painting studio or any other business whose primary business activity is characterized by emphasis on matters depicting, describing, or relating to nudity, sexual conduct, sexual excitement or sadomasochistic abuse as defined herein.

"Nudity" means the showing of the human male or female genitals or pubic area with less than a fully opaque covering or the depiction of covered male genitals in a discernibly turgid state and/or the appearance of bare buttocks, anus, or female breast.

"Sexual Conduct" means acts of masturbation, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks, or, if such person be a female, her breast.

"Sexual Excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

6. Applicability. The provisions of this Section of the Planning and Zoning Chapter shall apply to all existing and future adult-entertainment oriented businesses. However, any such existing business that does not meet the zoning district restrictions or the distance limitations, may continue its existence as a non-conforming use; provided, however, that no such business may be enlarged or increased in size. If such business is discontinued for a period of 180 days or more it shall lose its status as a legal non-conforming use.

7. General Requirements.

a. Zoning District. An adult oriented entertainment business as defined in this Section may be operated or maintained only within the M-1 Limited Industrial District provided that it is located on a minor or major arterial road and subject to the distance limitations noted below. It shall be a prohibited use in any other zoning district.

b. Distance Limitations. No adult oriented entertainment business as defined in this Section shall:

(1) be operated or maintained within 1,000 feet of the boundary of any Residentially Zoned (R) District; or

(2) be operated or maintained within 1,000 feet of a church, park, recreational site, licensed daycare facility, public library, public or private educational facility which serves persons age seventeen or younger, elementary school, high school, place of worship, or elderly housing facility; or

(3) be operated or maintained so that there are more than two such businesses within 2,500 feet as measured by the radius from each business; or

(4) be operated or maintained within 1,000 feet of the State Trunk Highway 36 corridor.

c. Distance limitations set forth herein shall be measured in a straight line from the main public entrances of said premises or from the lot lines of properties in Residentially Zoned (R) Districts.

8. Same Use Restrictions. No adult oriented business shall be located in the same building or upon the same property as another such use.

9. Sign Limitations. Notwithstanding any other provision of this code, an adult oriented entertainment business shall not be permitted more than one sign advertising its business within the Village, which shall be an on-premises or building sign only. The size of the sign shall be not larger than four feet by four feet. Temporary signs shall not be permitted in connection with any adult establishment. All such signs shall meet the following criteria:

a. A sign shall have no merchandise or pictures of the products or entertainment on the premises displayed in window areas or any area where it can be viewed from the sidewalk in front of the building.

b. No sign shall be placed in any window. A one square foot sign may be placed on the door to state hours of operation and admittance to adults only.

c. No sign shall contain any flashing lights, moving elements, or mechanically changing messages.

d. No sign shall contain any depiction of the human form or any part thereof nor shall it contain sexually explicit language such as "nude dancing" or "Girls, Girls, Girls," etc.

e. No sexually-oriented business may have any off-premise sign within the Village.

f. In order to allow currently operating adult oriented entertainment businesses to recover their financial investment in current signage, any currently operating adult oriented entertainment business shall bring its signage into conformity with the provisions of this paragraph within one year from the date of passage of this Chapter.

10. Operating Standards. All such adult oriented entertainment businesses shall operate in accordance with the following:

a. Hours of operation: No adult establishment shall be open for business at any time between the hours of 2:00 a.m. and 12:00 noon.

b. Animals: No animals, except only for service animals required to assist the disabled, shall be permitted at any time at or in any adult establishment or permitted premises.

c. Restricted access. No adult establishment patron shall be permitted at any time

to enter into any of the non-public portions of any adult establishment, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of adult establishment employees. This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the permitted premises; provided, however, that any such persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.

d. Exterior display. No adult establishment shall be maintained or operated in any manner that causes, creates, or allows public viewing of any adult material, or any entertainment depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," from any sidewalk, public or private right-of-way, or any property other than the lot on which the permitted premises is located. No portion of the exterior of an adult establishment shall utilize or contain any flashing lights, search lights, or spotlights, or any other similar lighting systems, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent specifically allowed by this chapter with regard to signs. This subsection shall apply to any advertisement, display, promotional material, decoration, or sign; to any performance or show; and to any window, door, or other opening.

e. Noise. No loudspeakers or sound equipment audible beyond the adult establishment shall be used at any time.

f. Manager's stations. Each adult establishment shall have one or more manager's stations. The interior of each adult establishment shall be configured in such a manner that there is a direct and substantially unobstructed view from at least one manager's station to every part of each area, except restrooms, of the establishment to which any adult establishment patron is permitted access for any purpose. The cashier's or manager's station shall be located so that someone working there can quickly move to physically halt any attempted or accidental entry by a minor. An employee shall occupy the station at all times when patrons are in and on the premises.

g. Adult booths prohibited. Adult booths shall be prohibited in all adult establishments.

h. No loitering policy. The adult establishment shall clearly post and enforce a no loitering policy.

i. Age limit restrictions. The adult establishment shall clearly post and enforce age-limit restrictions. A one-square-foot sign shall be placed on each public entrance which shall state "Admittance to adults only" and may include other pertinent business information. No person under the age 18 shall be employed or upon premises for any reason.

j. Measuring disbursement distances: The distances in this section shall be measured by following a straight line, without regard to intervening structures, from the public entrance (existing or proposed) of an adult establishment to the nearest point of the protected use as described below.

k. Adequate parking. One parking space per 150 square feet of total gross floor area shall be provided in a lighted area on the permitted premises of an adult establishment.

l. Spacing requirement. No more than one adult establishment may be located on any one parcel and the location of any one adult establishment shall be at least 2,500 feet from the establishment of any other adult establishment. This distance shall be measured from the public entrance of one adult establishment to the public entrance of the other adult establishment.

m. Display windows prohibited: All points of access into structures containing adult establishments and all windows or other openings shall be located, constructed, covered, or screened in a manner which will prevent a view into the interior.

n. Location requirement: In the case of an area zoned residential, the distance shall be measured from the nearest point on the residential district zoning boundary line. From an area not zoned residential but used for residential purposes, the measurement shall be taken from the public entrance of the adult establishment to the nearest entrance of the building in residential use. From schools, houses of worship, day care centers, libraries, and museums, the distance shall be measured from the public entrance of the adult establishment to the main public entrance of the protected use. From playgrounds, public parks, recreation areas, and schools, houses of worship and day care centers with playgrounds or recreation areas, the distance shall be measured from the public entrance of the adult establishment to the nearest property line of the playground, public park, or recreation area. Along State Trunk Highway 36, this distance is measured from the outside highway right-of-way line, including frontage road(s).

o. Residential quarters not allowed. No residential quarters shall be allowed on a premises with an adult establishment.

p. No employee shall solicit business outside the building in which the business is located.

q. No male or female person, while on the premises, shall expose to public view his or her genitals, pubic area, anus, or anal cleft. Full nudity is prohibited.

r. No person on the premises shall engage in sexual conduct, sadomasochistic abuse or in any way fondle their genitals.

s. Nudity is prohibited for any employee of an adult oriented business where such person is in direct, personal contact with another person.

11. Building's Exterior Appearance. The building's exterior shall meet the following criteria:

a. colors are to be earth or neutral tones with primary accent colors to be within the same color family.

b. stripes and geometric patterns are prohibited.

c. a color scheme which is directly inherent to a unique recognized architectural style but not otherwise compliant with this section may be reviewed and approved by the Village Board.

d. the exterior shall be adequately maintained in good condition.

12. Permit. A conditional use permit for an adult establishment shall require the following:

a. The details of the ownership of the entity applying, as follows:

(1) Individuals.

(a) Applicant's legal name, all of the applicant's aliases, and the applicant's age

(b) Applicant's business address

(2) Corporations.

(a) Applicant corporation's complete name and official business address

(b) Legal names, all aliases, the ages, and business addresses of all directors, officers, and managers of the corporation and of every person owning or controlling more than 25 percent of the voting shares of the corporation

(c) Applicant corporation's date and place of incorporation and the objective for which it was formed

(d) Proof that the corporation is a corporation in good standing and authorized to conduct business in the State of Wisconsin

(e) Name of the registered corporate agent and the address of the registered office for service of process

(3) Partnerships (general or limited), joint ventures, or any other type of organization where two or more persons share in the profits and liabilities of the organization

(a) Applicant organization's complete name and official business address

(b) Legal name, all aliases, the ages, and business addresses of each partner (other than limited partners) or any other person entitled to share in profits of the organization, whether or not any such person is also obligated to share in the liabilities of the organization

(4) Land trusts.

(a) Applicant land trust's complete name

(b) Legal, name, all aliases, and the business address of the trustee of the land trust

(c) Legal name, all aliases, the ages, and business addresses of each beneficiary of the land trust and the specific interest of each beneficiary in the land trust

(d) The interest, if any, that the land trust holds in the premises

(5) If a corporation or partnership is an interest holder in an entity, that interest shall be disclosed and such entity shall disclose the information required in this section with respect to its interest holders.

b. The general character and nature of the applicant's business, and the length of time that the applicant has been in the business of that character.

c. The location (including street address and legal description) and telephone number of the premises for which the conditional use permit is sought.

d. The specific name of the business that is to be operated under the adult establishment conditional use permit.

e. The identity of each owner of the permitted premises, and the type of ownership (fee simple, land contract holder, etc.)

f. A diagram showing the internal and external configuration of the premises, including all doors, windows, entrances, exits, the fixed structural internal features of the premises, plus the interior rooms, walls, partitions, stages, performance areas, and restrooms. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, provided, however, that each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions to an accuracy of plus or minus six inches and sufficient to show clearly the various interior dimensions of all areas of the premises and to demonstrate compliance with the provisions of this chapter. The approval or use of the diagram required pursuant to this subsection shall not be deemed to be, and may not be interpreted or construed to constitute, any other Village approval otherwise required pursuant to applicable Village ordinances and regulations.

g. The specific types(s) of adult establishment(s) that the applicant proposes to operate on the permitted premises.

h. A copy of each adult establishment's permit, liquor license, and gaming license currently held by the applicant, or any of the individuals identified in the application pursuant to subsection a. above.

i. The name of the individual(s) who shall be the day-to-day, on-site manager(s) of the proposed adult establishment.

j. The fees set forth in the Village fee schedule.

k. Any other information the Zoning Administrator may reasonably require to apply the requirements of this chapter.

l. The Zoning Administrator may require a survey from a surveyor licensed by the State of Wisconsin to determine the spacing requirements adopted in this Section.

m. A site plan, landscaping plan, zoning permit application, and letter of agent status, if necessary, as required by site plan review application requirements adopted by the Village.

n. Incomplete applications returned. Any application for a conditional use permit for

an adult establishment that does not include all of the information and documents required pursuant to this Chapter, as well as the required fees, shall be deemed to be incomplete and shall not be acted on by the Zoning Administrator, who shall give the applicant a written notification and explanation of such action pursuant to this section.

13. Applicant cooperation required. An applicant for a Conditional Use Permit for an adult establishment shall cooperate fully in the inspections and investigations conducted by the Village. The applicant's failure or refusal to:

    a. Give any information reasonably relevant to the investigation of the application;

    b. Allow the permitted premises to be inspected;

    c. Appear at any reasonable time and place, or

    d. Otherwise cooperate with the investigation and inspection required by this chapter

    shall constitute an admission by the applicant that the applicant is ineligible for a conditional use permit for an adult establishment and shall be grounds for denial of the permit by the Zoning Administrator.

14. Time for issuance or denial of permit. The Zoning Administrator shall, within 90 days after submittal of a completed application, or within such other period of time as the Village and the applicant shall otherwise agree, either issue or deny an adult establishment conditional use permit pursuant to the provisions of this chapter.

15. Standards for issuance or denial of permit.

    a. Issuance. The Zoning Administrator shall issue an adult establishment permit to an applicant if the Zoning Administrator finds and determines all of the following:

        (1) All information and documents required by this Chapter for issuance of an adult establishment permit have been properly provided.

        (2) No person identified in the application may:

            (a) Have been denied an adult establishment permit within 12 months immediately preceding the date of the application;

            (b) Be a person whose adult establishment permit has been revoked within 12 months immediately preceding the date of the application; or

            (c) Be a person whose adult establishment permit is under suspension at the time of application.

        (3) The adult establishment and the permitted premises comply with all requirements under this Chapter and the applicant has obtained a license required for the adult establishment by the village, if any.

        (4) The applicant has signed the permit he or she has received indicating his or her acceptance of the conditions of the permit.

b. Denial: If the Zoning Administrator determines that the applicant has not met any one or more of the conditions set forth in this section, then the Zoning Administrator shall deny issuance of the adult establishment permit and shall give the applicant a written notification and explanation of such denial.

c. License deemed to be issued: If the Zoning Administrator does not issue or deny the adult establishment permit within 90 days after the properly completed application is submitted, then the adult establishment permit applied for shall be deemed to have been issued.

16. Enforcement.

a. A violation of any conditions or an adult establishment permit is a violation of this Chapter.

b. Notwithstanding any other remedy, a violation of any conditions or an adult establishment permit shall be grounds for revocation of the adult establishment permit.

17. Continued conforming status. An adult establishment lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant of the adult establishment permit, if a protected use is located within 1,000 feet of the adult establishment.

18. If any section, subsection, sentence, clause, or phrase of this section is for any reason held to be invalid or unconditional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phase or portion thereof.

H. Amendment of Conditional Use Permits.

1. When permissible: application. At such time as the holder of a conditional use permit wishes to change the terms of its permit in a manner which does not change the nature of the use but that could increase or expand the operation of the use by 25% or less, the holder of the permit shall apply to the Plan Commission for an amendment to its permit, and shall state in its application the precise changes it wishes to make and the expected effect of the changes upon the site, neighboring uses, parking, traffic generation and circulation, and the drainage, sewerage and water systems. The applicant shall also list the names of the property owner and all abutting property owners. Changes to a permit which are expected to change the nature of a use, change the location of the use to a site which is not in the same structure as the existing use, or create greater than a twenty-five-percent increase in the operation of a use may not be made; in that event, application must be made for a new conditional use permit. When a holder of a conditional use permit sells or transfers the underlying business or other use, this section shall apply. When a use is vacant for 12 months or longer, a new conditional use permit shall be required.

2. Procedure. No fee shall be required to apply for an amendment to a conditional use permit. Upon application for an amendment to a conditional use permit, the Clerk shall schedule such application for review by the Plan Commission at an open meeting, and shall mail notice thereof to the property owner and all abutting property owners along with a copy of the application not less than 14 days prior to the date of the scheduled review. No public hearing shall be required, but the Plan Commission shall accept comments

from any person attending the open meeting.

3. Review and approval. The Village Plan Commission shall conduct a review of the application as set forth in s. 35-100C. In the event that the Plan Commission approves the amendment, no action by the Village Board shall be required. If the Plan Commission denies the amendment, the applicant may appeal its decision to the Village Board.

I. Penalties.

1. In every instance where work commences upon a project subject to this Section prior to the conditional use permit being applied for and granted, there shall be a double fee imposed for the permit, and the applicant shall remain required to meet full compliance with this chapter.

2. It shall be unlawful to use or improve any structure or land in violation of any of the provisions of the section. In addition to penalties imposed under Chapter 50 of this Code, the Village may institute appropriate action to enjoin a violation of this section, or to cause any structure so constructed or altered to be vacated or removed.

3. It shall be unlawful to use or improve any structure or land in violation of any of the terms of a conditional use permit. In addition to or as an alternative to the penalties imposed under s. 35-500 and Chapter 50, the Village may:

a. Send notice to the permit holder of the violation, and require that the violation be corrected within five days, or more if allowed by the Zoning Administrator or Village Attorney, after written notice is given.

b. If the violation is not corrected, or a second violation is incurred within a twelve-month period of the first violation, the Village may act to suspend or revoke the conditional use permit, as follows:

(1) Complaint. The Zoning Administrator or any resident may file a sworn written complaint with the Village Clerk alleging one or more violations.

(2) Summons. Upon the filing of the complaint, the Plan Commission shall issue a summons, signed by the Clerk and directed to any peace officer in the municipality. The summons shall command the permit holder complained of to appear before the Plan Commission on a day and place named in the summons, not less than three days and not more than 30 days from the date of issuance, and show cause why his or her conditional use permit should not be revoked or suspended. The summons and a copy of the complaint shall be served on the permit holder at least three days before the time at which the licensee is commanded to appear. Service shall be in the manner provided under Wis. Stat. ch. 801 for service in civil actions in Circuit Court.

(3) Procedure on hearing.

(a) If the permit holder does not appear as required by the summons, the allegations of the complaint shall be taken as true, and if the Plan Commission finds the allegations sufficient, the conditional use permit shall report its findings to the Village Board. If the Village Board concurs, the Conditional Use Permit shall be revoked. The Village Clerk shall give notice of the

revocation to the person whose permit is revoked.

(b) If the permit holder appears as required by the summons and denies the complaint, both the complainant and the permit holder may produce witnesses, cross-examine witnesses and be represented by counsel. The permit holder shall be provided a written transcript of the hearing at his or her expense.

(c) If the Plan Commission finds the complaint to be true, the Plan Commission shall determine whether the conditional use permit shall either be suspended for not less than 10 days nor more than 90 days or revoked and shall report the same to the Village Board.

(d) If the Plan Commission finds the complaint untrue, it shall recommend that the proceeding be dismissed without cost to the accused. If the Plan Commission finds the complaint to be malicious and without probable cause, it shall recommend that the costs be paid by the complainant. The Plan Commission may require the complainant to provide security for such costs before issuing the summons.

(4) The Plan Commission shall submit a report to the Village Board, including findings of fact, conclusions of law and a recommendation as to what action, if any, the Village Board should take with respect to the conditional use permit. The Commission shall provide the complainant and the permit holder with a copy of the report. Either the complainant or the permit holder may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the Village Board. The Village Board shall determine whether the arguments shall be presented orally or in writing or both.

(5) If the Village Board, after considering the Plan Commission's report and any arguments presented by the complainant or the permit holder, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the conditional use permit shall be suspended or revoked as recommended by the Plan Commission.

(6) If the Village Board finds the complaint untrue, the proceeding shall be dismissed without cost to the accused. If the Village Board finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant.

(7) The Village Clerk shall give notice of each suspension or revocation to the person whose permit is suspended or revoked.

(8) Effect of revocation. When a conditional use permit is revoked under this subsection, the revocation shall be recorded by the Village Clerk and no other conditional use permit issued under this chapter may be granted within 12 months of the date of revocation to the person whose permit was revoked. In the event, however that a new application reveals a material difference in any of the items specified hereof, the Village Board may, upon a finding that the new application does include such material difference, proceed to hear and determine such application within said

year.

(9) Judicial review. The action of the Village Board in suspending or revoking any permit, or the failure to revoke or suspend any permit for good cause, may be reviewed by the circuit court for Racine County, upon application by any permit holder or resident of the Village. The procedure on review shall be the same as in civil actions instituted in the Circuit Court. The person desiring review shall file pleadings, which shall be served on the Village Board in the manner provided in Wis. Stat. ch. 801 for service in civil actions, and a copy of the pleadings shall be served on the permit holder. The Village Board or permit holder shall have the time allowed by statute to file an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled. The decision of the court shall be filed pursuant to Racine County Circuit Court Rules and a copy of the decision shall be transmitted to each of the parties. The decision shall be binding unless it is appealed to the Court of Appeals.

35-101 to 35-129 [Reserved for Future Use]

35-130 SOLAR ENERGY SYSTEMS

A. Intent. It is intended that conditional use permits shall be issued under this Section to promote the effective and efficient use of solar energy and to review proposed solar energy systems and regulate solar energy systems so that the public health and safety will not be jeopardized.

B. Authority; Adoption of State Law. This Section is enacted pursuant to the authority granted in Wis. Stat. s. 66.0401, as amended from time to time, which is adopted herein. This section is not intended to be more restrictive than said authority, and in the event of a conflict, the statutory provisions supersede the provisions of this Section. In the event of a conflict between this Section and other provisions of this Chapter, the provisions of the statutes and this Section supersede the balance of the Chapter.

C. Regulation and Applicability.

1. Regulation. Except as provided in subsection 2., an owner must apply for and receive a conditional use permit prior to the construction of a solar energy system or the expansion of an existing or previously approved solar energy system.

2. Applicability. This Section applies to solar energy systems for which a permit is applied for on or after the date of the enactment of this Section, except:

a. Subject to subsection c., free standing passive solar energy systems that meet all of the site regulations, inclusive of setback and height requirements, for primary or accessory structures (as applicable) in the zoning districts in which they are located.

b. Subject to subsection c., roof or wall mount solar energy systems located on buildings that meet all of the site regulations, inclusive of setback and height requirements, for the zoning districts in which they are located.

c. Subsections a. and b. do not apply to free standing passive solar energy systems located in the front or side yards of Historic Structures or structures located in the Historic Preservation Overlay District, or solar energy systems installed on the front elevation of Historic Structures or structures located in the Historic Preservation Overlay District. Such systems shall be submitted to the Historic Preservation Committee for review, comment and recommendation to the Plan Commission, and shall require conditional use permits. Notwithstanding the provisions of Chapter 38, Historic Preservation, a Certificate of Appropriateness is not required for solar energy systems.

D. Definitions. In this Section:

“Active solar energy system” means a solar energy system which operates with mechanical means, including but not limited to motors, pumps and valves.

“Passive solar energy system” means a solar energy system which operates without mechanical means.

“Photovoltaic solar energy system” means a solar energy system which converts solar energy directly into electricity.

“Solar energy” means radiant energy received from the sun.

"Solar energy system" means equipment which directly converts and then transfers or stores solar energy into usable forms of thermal or electrical energy.

"Solar farm" means a collection of photovoltaic solar energy panels that together have a total capacity to generate more than 300 kilowatts of electricity.

E. Siting Criteria.

1. Type of Use. A solar energy system may be a primary use or an accessory use. The siting provisions set forth in this Section apply to the system regardless of the type of use and supersede the setback distances and height provisions of the underlying zoning district.

2. Location. A solar energy system may be located in any zoning district where it is not otherwise barred by federal or state law or an ordinance adopted in conformance with that law.

3. Setback Distance and Height Requirements. Solar energy systems regulated under this Section shall meet the setback and height provisions determined by the Plan Commission on a case by case basis.

F. Application and Notice Procedures.

1. It is recommended, but not required, that the applicant meet with the Zoning Administrator and Building Inspector prior to submitting an application for a solar energy system to discuss filing requirements, application formats, timelines, permits from outside agencies, the handling of confidential information, and fees.

2. Application Required. An owner shall file an application to construct a solar energy system regulated under this Section in conformance with this section. The owner shall ensure that the information contained in the application is accurate, and shall file the number of paper and electronic copies required by the Village for review and for availability to the public. The application shall include all of the following:

a. Solar energy system description and maps showing the locations of all proposed solar energy facilities.

b. Manufacturer's brochures and all plans and specifications of the solar energy system.

c. Timeline and process for constructing the solar energy system.

d. Information regarding anticipated impact of the solar energy system on local infrastructure.

e. Information regarding noise anticipated to be attributable to the solar energy system.

f. Information regarding the extent to which shadows would be created on adjacent and neighboring properties or sunlight would be blocked by the proposed solar energy system.

g. Information regarding the extent of glare on adjacent and neighboring properties.

h. Information regarding the anticipated effects of the solar energy system on airports and airspace.

i. A list of all state and federal permits required to construct and operate the solar energy system.

j. For solar farms, information regarding the planned use and modification of roads within the Village during the construction, operation, and decommissioning of the solar energy system, including a process for assessing road damage caused by solar energy system activities and for conducting road repairs at the owner's expense.

k. For solar farms, a decommissioning and site restoration plan providing reasonable assurances that the owner will be financially able to remove the solar energy system and restore the site.

l. Potential shared revenue and community benefits set forth in Wis. Stat. ch. 79.

m. Any other information necessary to understand the construction, operation or decommissioning of the proposed solar energy system.

3. Notice and Hearing. The provisions for notice and hearing set forth under s. 35-100, Conditional Use, shall apply.

G. Application Completeness and Time Limits.

1. An application is complete if it meets the filing requirements under this Section.

2. The Village shall determine the completeness of an application, and shall notify the owner in writing of the completeness determination, no later than 45 days after the day the application is filed. An application is considered filed the day the owner notifies the Village in writing that all the application materials have been filed. If the Village determines that the application is incomplete, the notice provided to the owner shall state the reasons for the determination.

3. An owner may file a supplement to an application that the Village has determined to be incomplete. There is no limit to the number of times that an owner may re-file an application. For incomplete applications, the owner shall provide additional information as specified in the notice under subsection 2.

4. An additional 45-day completeness review period shall begin the day after the Village receives responses to all items identified in the notice under subsection 2.

5. If the Village does not make a completeness determination within the applicable review period, the application is considered to be complete.

6. Requests for additional information. The Village may request additional information necessary to understand the solar energy system after determining that an application is complete. An owner shall provide additional information in response to all reasonable requests. An owner shall respond to all inquiries made subsequent to a determination of completeness in a timely, complete, and accurate manner.

H. Village Review and Approval of a Solar Energy System.

1. Standard for Approval. The Village shall review each proposed system on a case by case basis, and may not unreasonably deny an application for a solar energy system or impose unreasonable conditions, provided, however, that the Village may impose the following conditions and restrictions on approval of solar energy systems, inclusive of systems located on Historic Structures and in the Historic Preservation Overlay District:

    a. The Village may impose a restriction that serves to preserve or protect the public health and safety.

    b. The Village may impose a restriction that does not significantly increase the cost of a system or significantly decrease its efficiency.

    c. The Village may impose a restriction that allows for an alternative system of comparable cost and efficiency.

2. Written Decision.

    a. The Village shall issue a written decision to grant or deny an application for a solar energy system. The written decision shall include findings of fact supported by evidence in the record. If an application is denied, the decision shall specify the reason for the denial. Approval is subject to the conditions set forth in this Section.

    b. The Village shall provide its written decision to the owner. If the Village approves an application for a solar energy system, the Village shall provide the owner with a duplicate original of the decision. The owner shall record the duplicate original of a decision approving an application with the register of deeds for Racine County

3. Effect of ownership change on approval. Approval by the Village of a solar energy system remains in effect if there is a change in the owner of the solar energy system. An owner shall provide timely notice of any change in the owner of the solar energy system to the Village.

4. Fees.

    a. The owner shall pay the fee adopted by the Village Board and set forth in the Fee Schedule. The fee shall consist of a reasonable application fee and a requirement that the owner reimburse the Village for reasonable expenses relating to the review and processing of the application for a solar energy system. The fee and reimbursement requirement shall be based on the actual and necessary cost of the review of the solar energy system application, and may include the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts. The Village may by ordinance set standardized application fees based on the size and complexity of a proposed solar energy system.

    b. The Village may require the owner of a solar energy system to submit up to 50 percent of the total estimated amount of the estimated reimbursement for the solar energy system application review under subsection a. before issuing a written decision under subsection 2 if the Village gives written notice to the owner of its intent to do so within ten days of the date the application is deemed

complete and the notice contains an estimate of the amount of the fee and the relevant reimbursement requirements.

c. The Village may not charge an owner an annual fee or other recurring fees to operate or maintain a solar energy system.

I. Record of Decision.

1. Recordkeeping.

a. The Village shall keep a complete written record of its decision-making relating to an application for a solar energy system.

b. If the Village denies an application, the Village shall keep the record for at least 7 years following the year in which it issues the decision.

c. If the Village approves an application, the Village shall keep the record for at least 7 years after the year in which the solar energy system is decommissioned.

2. Record Contents. The record of a decision shall include:

a. The approved application and all additions or amendments to the application.

b. A copy of any notice or correspondence that the Village issues related to the application.

c. A record of any public meeting and any hearing related to the application. The record may be an electronic recording, a transcript prepared from an electronic recording, or a transcript prepared by a court reporter or stenographer. The record shall include any documents or evidence submitted by meeting or hearing participants.

d. Copies of any correspondence or evidentiary material that the Village considered in relation to the application, including copies of all written public comments filed with the Village.

e. Minutes of any Village Board, Plan Commission or other committee meetings held to consider or act on the application.

f. A copy of the written decision.

g. Other materials that the Village prepared to document its decision-making process.

h. A copy of any Village ordinance cited in or applicable to the decision.

3. Post-construction Filing Requirement. Within 90 days of the date a solar farm commences operation, the owner shall file with the Village an as-built description of the solar farm, an accurate map of the solar farm showing the location of all solar energy system facilities, geographic information system information showing the location of all solar energy system facilities and current information identifying the owner of the solar farm.

J. Modifications to an Approved Solar Energy System.

1. Material Change.

   a. An owner may not make a material change in the approved design, location or construction of a solar energy system without the prior written approval of the Village.

   b. An owner shall submit an application for a material change to an approved solar energy system to the Village.

2. Review Limited.

   a. When the Village receives an application for a material change to a solar energy system under subsection 1.b., it may not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.

   b. An application for a material change shall contain information necessary to understand the material change.

   c. The Village may hold at least one public meeting to obtain comments on and to inform the public about a proposed material change to an approved solar energy system.

K. Monitoring Compliance of Solar Farms.

1. Monitoring Procedure. The Village may establish a procedure to monitor compliance by the owner with any condition on an approved solar farm or to assess when solar farm facilities are not maintained in good repair and operating condition. The procedure may include timelines, provide for payment of reasonable fees for conducting an assessment, and provide for notification to the public.

2. Third-party Inspector during Construction. The Village may require an owner to pay a reasonable fee for a third-party inspector to monitor and report to the Village regarding the owner's compliance with permit requirements during construction of a solar farm. An inspector monitoring compliance under this subsection shall also report to a state permitting authority upon the state permitting authority's request.

L. Complaint Process.

1. Making a Complaint.

   a. An aggrieved person may make a complaint regarding failure by an owner to comply with an obligation under this Section.

   b. A complaint under subsection a. shall be made first to the owner of the solar energy system pursuant to a complaint resolution process developed by the owner.

   c. A complainant may petition the Village for review of a complaint that is not resolved within 45 days of the day the owner receives the original complaint.

2. Complaint Resolution.

a. An owner shall use reasonable efforts to resolve complaints regarding a solar energy system and shall investigate complaints regarding a solar energy system at the owner's expense.

b. For Solar Farms:

(1) Within 30 days of receiving a complaint, an owner shall provide an initial response to the complainant.

(2) An owner shall make a good faith effort to resolve complaints within 45 days of receiving a complaint. An owner shall notify the Village of complaints that have not been resolved within 45 days of the date the owner received the original complaint.

(3) An owner shall maintain a log of all complaints received regarding the solar farm. The owner shall include in the log the name and address of each complainant, the nature of each complaint, and the steps taken to resolve each complaint. An owner shall make any complaint log available to the Village upon request.

(4) An owner shall develop a complaint resolution process that is consistent with this subsection.

3. Monitoring Committee for Solar Farms.

a. Committee. Except as provided in subsection c., the Village may establish a monitoring committee to oversee resolution of complaints regarding a solar farm.

b. Duties. A monitoring committee established under subsection a. may do any of the following:

(1) Maintain a record of all complaints brought to it.

(2) Require the owner to provide the committee with information regarding the owner's response to any complaint forwarded to the owner by the committee.

(3) Recommend to the Village a reasonable resolution to a complaint based upon the information gathered by the committee.

35-140 WIND ENERGY SYSTEMS

A. Intent. It is intended that conditional use permits shall be issued under this Section to promote the effective and efficient use of wind energy and to review proposed wind energy systems and regulate wind energy systems so that the public health and safety will not be jeopardized.

B. Authority; Adoption of State Laws. This Section is enacted pursuant to the authority granted in Wis. Stat. s. 66.0401 and Wis. Admin. Code ch. PSC 128, as amended from time to time, which are adopted herein. Pursuant to Wis. Admin. Code s. 128.03, this section is not intended to be more restrictive than said authority, and in the event of a conflict, the statutory and administrative code provisions supersede the provisions of this Section. In the event of a conflict between this Section and other provisions of this Chapter, the provisions of the statutes, the administrative code, and this Section supersede the balance of the Chapter.

C. Regulation and Applicability.

1. Regulation. Except as provided in subsection 2., an owner must apply for and receive a conditional use permit prior to the construction of a wind energy system or the expansion of an existing or previously approved wind energy system.

2. Applicability.

a. This Section applies to wind energy systems for which construction began on or after March 1, 2011; systems placed in operation on or after March 1, 2011; systems approved by the Village on or after March 1, 2011, or systems for which an application was filed with the Village on or after March 1, 2011.

b. Pursuant to Wis. Stat. s. 196.491(3)(d), the Wisconsin Public Service Commission reviews and has final authority over all applications for wind energy systems classified as large electric generating facilities designed for nominal operation at a capacity of 100 megawatts or more. Such applications are not, by statute, subject to direct Village review and approval. The Village may determine to submit public comments, intervene in the proceeding, or take any other action allowed by law upon notification by the PSC that such an application has been received.

c. Pursuant to Wis. Admin. Code s. 128.02(4), the PSC may apply individual consideration to exceptional or unusual situations for individual wind energy systems and may alter the requirements herein.

D. Definitions. In this Section:

“Commercial Communications" includes communications used by government and military entities for emergency purposes, licensed amateur radio service, and non-emergency communications used by agricultural, business, government, and military entities including aviation radar, commercial mobile radio service, fixed wireless service, global positioning, line-of-sight, microwave, personal communications service, weather radar, and wireless internet service.

"Commission" or “PSC” means the Public Service Commission.

"Decommissioning" means removal of all of the above ground portion of a wind energy system, including wind turbines and related facilities, except for access roads if removal has been waived by the property owner; and all below ground facilities, except underground collector circuit facilities and those portions of concrete structures 4 feet or more below grade.

"DNR" means the Wisconsin Department of Natural Resources.

"Maximum Blade Tip Height" means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, "maximum blade tip height" means the actual hub height plus the blade length.

"Nameplate Capacity" means the nominal generating capacity of a wind energy system, as listed in the wind turbine specifications provided by the wind turbine manufacturer.

"Nonparticipating Property" means real property that is not a participating property.

"Nonparticipating Residence" means a residence located on nonparticipating property.

“Occupied Community Building" means a school, church or similar place of worship, daycare facility or public library.

"Owner" means a person with a direct ownership interest in a wind energy system, regardless of whether the person was involved in acquiring the necessary rights, permits and approvals or otherwise planning for the construction and operation of a wind energy system; and/or, at the time a wind energy system is being developed, a person who is acting as a wind energy system developer by acquiring the necessary rights, permits and approvals for or by planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system.

"Participating Property" means a turbine host property; and/or real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from an owner regardless of whether any part of a wind energy system is constructed on the property or specifies in writing any waiver of a requirement or right under this section and that the landowner's acceptance of payment establishes the landowner's property as a participating property.

“Participating Residence" means a residence located on participating property.

“Personal Communications" includes wireless telecommunications, personal communications service, radio, television, wireless internet service, and other systems used for personal use purposes.

"Residence" means an occupied primary or secondary personal residence including a manufactured home as defined in Wis. Stat. s. 101.91(2), a hospital, community-based residential facility, residential care apartment complex or similar facility, or a nursing home. "Residence" includes a temporarily unoccupied primary or secondary personal residence. "Residence" does not include a recreational vehicle as defined in Wis. Stat. s. 340.01(48r), notwithstanding the length of the vehicle; a camping trailer as defined in Wis. Stat. s. 340.01(6m); or a permanently abandoned personal residence.

"Shadow Flicker" means a pattern of moving shadows cast on a residence or an occupied community building caused by sunlight shining through moving wind turbine blades resulting in alternating changes in light intensity.

"Small Wind Energy System" means a wind energy system that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts. \

“Turbine Host Property" means real property on which at least one wind turbine is located.

"Wind Access Easement" means a written document that creates a legal interest in real property that restricts the use of the property to avoid interference with the wind resource on another property.

"Wind Energy System" has the meaning given in Wis. Stat. s. 66.0403(1)(m), and is used to convert wind energy to electrical energy.

"Wind Energy System Easement" means a written document that creates a legal interest in real property that permits an owner to place, construct or operate a wind turbine or other wind energy system facility on the property.

"Wind Energy System Emergency" means a condition or situation at a wind energy system that presents a significant threat of physical danger to human life or a significant threat to property or a natural event that causes damage to wind energy system facilities.

"Wind Energy System Facility" means any component of a wind energy system, such as a wind turbine, collector circuit, access road, electric system interconnection facility or operation and maintenance facility.

"Wind Energy System Lease" means a written agreement between a landowner and an owner that establishes the terms and conditions associated with the placement, construction or operation of a wind turbine or other wind energy system facility on a landowner's property.

E. Development of a Wind Energy System; Owner Notice Requirements.

1. Pre-application notice. At least 90 days (60 days for small wind energy systems) before an owner files an application to construct a wind energy system, the owner shall use commercially reasonable methods to provide written notice of the planned wind energy system to all of the following:

   a. Landowners within one mile of a planned wind turbine host property. [**Note**: For small wind energy systems, notice shall be provided only to adjacent land owners.

   b. Political subdivisions within which the wind energy system may be located.

   c. Emergency first responders and air ambulance service providers serving a political subdivision within which the wind energy system may be located. [**Note**: Not required for small wind energy systems.]

   d. The Wisconsin department of transportation, the PSC, the Wisconsin department of agriculture, trade and consumer protection, and the office of the deputy undersecretary of the U.S. department of defense. [**Note**: Not required for small wind energy systems.]

2. Additional Pre-application Notice to Commission. At least 180 days before filing an application to construct a wind turbine with a maximum blade tip height exceeding 600 feet, the owner shall provide written notice of the planned wind energy system to the PSC.

3. Pre-application notice requirements. The owner shall include all of the following in a notice under subsection 1. or 2:

   a. A complete description of the wind energy system, including the number and size of the planned wind turbines.

b. A map showing the planned location of all wind energy system facilities.

c. Contact information for the owner.

d. A list of all potential permits or approvals the owner anticipates may be necessary for construction of the wind energy system.

e. Whether the owner is requesting a joint application review process under Wis. Admin. Code s. PSC 128.30(7) and the name of each political subdivision that may participate in the joint review process.

F. Real Property Provisions.

1. Easement recording required. A wind energy system easement or wind access easement shall be recorded under Wis. Stat. ch. 706. A wind energy system easement or wind access easement shall include the term of the easement and a full legal description of the property subject to the easement.

2. Wind lease and waiver provisions. A wind energy system lease and any waiver under subsections H or J shall hold harmless and indemnify the real property owner for all of the following:

a. Any violation of federal, state or local law by the owner of the wind energy system.

b. Any damages or bodily injury caused by the construction, operation or decommissioning of the wind energy system.

G. Existing Property Uses.

1. Land use and commercial enterprises. An owner shall make reasonable efforts to ascertain and accommodate any land use or commercial enterprise located on a nonparticipating property within 0.5 mile of a proposed wind turbine site if the land use or commercial enterprise exists when the owner gives notice under subsection E.1., or if complete publicly-available plans for construction are on file with the Village within 30 days of the date the owner gives notice under subsection E.1. [**Note**: For small wind energy systems, this section applies only to existing land uses and enterprises that are located on adjacent non-participating properties.]

2. Agricultural use. An owner shall design a wind energy system to reasonably minimize the conversion of land from agricultural use.

H. Siting Criteria.

1. Type of Use. A wind energy system may be a primary use or an accessory use. The siting provisions set forth in this Section apply to the system regardless of the type of use and supersede the setback distances and height provisions of the underlying zoning district.

2. Location. A wind energy system may be located in any zoning district where it is not otherwise barred by federal or state law or an ordinance adopted in conformance with that law, provided that the Village may deny an application for approval of a wind energy system that has a nominal capacity of at least one megawatt if the proposed site of the wind energy system is in an area primarily designated for future residential or commercial

development, as shown in a map that is adopted as part of a comprehensive plan under Wis. Stat. s. 66.1001(2)(b) and (f) before June 2, 2009, or as shown in such maps after December 31, 2015 as part of a comprehensive plan that is updated as required under Wis. Stat. s. 66.1001(2)(i).

3. Setback Distance and Height Requirements.

a. For wind energy systems that are not classified as small wind energy systems, an owner shall design and construct the system using the following wind turbine setback distances, provided, however, that the owner of a nonparticipating residence or occupied community building may waive the applicable wind turbine setback distances for those structures to a minimum setback distance of 1.1 times the maximum blade tip height. The owner of a nonparticipating property may waive the applicable wind turbine setback distance from a nonparticipating property line:

Setback Description	**Setback Distance**
Occupied Community Buildings	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Residences	1.1 times the maximum blade tip height
Nonparticipating Residences	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	1.1 times the maximum blade tip height
Public Road Right-of-way	1.1 times the maximum blade tip height
Overhead Communication and Electric Transmission or Distribution Lines – Not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height
Overhead Utility Service Lines – Lines to individual houses or outbuildings	None

b. For small wind energy systems, an owner shall design and construct the system using the following wind turbine setback distances, provided, however, that the owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the applicable turbine setback distances:

Setback Description	**Setback Distance**
Occupied Community Buildings	1.0 times the maximum blade tip height
Participating Residences	None
Nonparticipating Residences	1.0 times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	1.0 times the maximum blade tip height
Public Road Right-of-way	None
Overhead Communication and Electric Transmission or Distribution Lines –	1.0 times the maximum blade tip height

Not including utility service lines to individual houses or outbuildings	
Overhead Utility Service Lines – Lines to individual houses or outbuildings	None

c. An owner shall measure wind turbine setback distances as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature, as applicable.

d. An owner shall work with the Village and owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships.

e. The height and setback distance limitations for a wind turbine near a public use airport or heliport shall conform to the airport and airport approach protection provisions under Wis. Stat. ss. 114.135 and 114.136 or the wind turbine height and setback distance provisions set by the federal aviation administration obstruction standards in 14 CFR Part 77, whichever applies. The height and setback distance limitations for wind turbines near a private heliport at a medical facility used for air ambulance service, or a private use airport or heliport, shall conform to the federal aviation administration obstruction standards that apply to public use heliports.

I. Noise Criteria.

1. Definitions. In this section, nighttime hours are the hours beginning at 10:00 p.m. and ending at 6:00 a.m. daily and daytime hours are the hours beginning at 6:00 a.m. and ending at 10:00 p.m. daily.

2. Planning.

a. The noise limits in this section apply at the outside wall of a nonparticipating residence or occupied community building that exists when the owner gives notice under subsection E, or for which complete publicly-available plans for construction are on file with the Village within 30 days of the date on which the owner gives notice under subsection E.

b. An owner shall design the proposed wind energy system to minimize noise at a residence or occupied community building to the extent reasonably practicable.

c. An owner shall design a wind energy system to comply with the noise standards in this section under planned operating conditions.

3. Noise limits.

a. Except as provided in subsection b. and in subsections 4.c. and 5, an owner shall operate the wind energy system so that the noise attributable to the wind energy system does not exceed 50 dBA during daytime hours and 45 dBA during nighttime hours.

b. In the event audible noise due to wind energy system operations contains a steady pure tone, such as a whine, whistle, screech, or hum, the owner shall promptly take corrective action to permanently eliminate the noise. This

paragraph does not apply to sound the wind energy system produces under normal operating conditions.

4. Compliance.

   a. If an owner uses sound level measurements to evaluate compliance with this section at a nonparticipating residence or occupied community building, those measurements shall be made as near as possible to the outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the owner of the nonparticipating residence or occupied community building. The owner may take additional measurements to evaluate compliance in addition to those specified by this section.

   b. Upon receipt of a complaint regarding a violation of the noise standards in subsection 3.a., an owner shall test for compliance with the noise limits in subsection 3.a. The Village or the Plan Commission may not require additional testing to show compliance with subsection 3.a. if the owner has provided the results of an accurate test conducted within two years of the date of the complaint showing that the wind energy system is in compliance with subsection 3.a. at the location relating to the complaint.

   c. Methods available for the owner to comply with subsection 3 shall include operational curtailment of one or more wind turbines. Upon receipt of a complaint about a noise under subsection 3.b., the owner shall use operational curtailment to eliminate the noise until the owner permanently corrects the problem.

   d. An owner shall evaluate compliance with subsection 3.a. as part of pre- and post-construction noise studies. An owner shall conduct pre- and post-construction noise studies under the most current version of the noise measurement protocol as described in Wis. Admin. Code s. PSC 128.50(2). [**Note**: This subsection does not apply to small wind energy systems.]

5. Waiver. Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the owner of the wind energy system of the requirement to meet any of the noise limits in this section at the affected residence or occupied community building by written contract with the wind energy system owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded under Wis. Stat. ch. 706.

6. Notification.

   a. Before entering into a contract under subsection 5., an owner of a wind energy system shall provide written notice of the requirements of this section to the owner of an affected nonparticipating residence or occupied community building.

   b. Before the initial operation of the wind energy system, an owner of a wind energy system shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a contract under subsection 5. [**Note**: For small wind energy systems, the requirement for notice applies only to

each adjacent nonparticipating residence or occupied community building before the initial operation of the small wind energy system.]

J. Shadow Flicker.

1. Planning.

a. The shadow flicker requirements in this subsection apply to a nonparticipating residence or occupied community building that exists when the owner gives notice under subsection E or for which complete publicly-available plans for construction are on file with the Village within 30 days of the date on which the owner gives notice under subsection E.

b. An owner shall design the proposed wind energy system to minimize shadow flicker at a residence or occupied community building to the extent reasonably practicable.

c. An owner shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by a wind energy system and shall design the wind energy system so that computer modeling indicates that no nonparticipating residence or occupied community building will experience more than 30 hours per year of shadow flicker under planned operating conditions. [**Note**: Not applicable to small wind energy systems.]

2. Shadow Flicker Limits. An owner shall operate the wind energy system in a manner that does not cause more than 30 hours per year of shadow flicker at a nonparticipating residence or occupied community building. If a nonparticipating residence or occupied community building experiences more than 30 hours per year of shadow flicker under the wind energy system's normal operating conditions, the owner shall use operational curtailment to comply with this subsection.

3. Shadow flicker mitigation.

a. An owner of a wind energy system shall work with an owner of a nonparticipating residence or occupied community building to mitigate the effects of shadow flicker to the extent reasonably practicable.

b. An owner shall provide reasonable shadow flicker mitigation at the owner's expense for a nonparticipating residence or occupied community building experiencing 20 hours or more per year of shadow flicker. [**Note**: Not applicable to small wind energy systems.]

c. An owner shall model shadow flicker and a nonparticipating residence or occupied community building is eligible for mitigation if computer modeling shows that shadow flicker at the nonparticipating residence or occupied community building will be 20 hours or more per year. An owner of a nonparticipating residence or occupied community building is not required to document the actual hours per year of shadow flicker if modeling indicates the nonparticipating residence or occupied community building is eligible for mitigation. A nonparticipating residence or occupied community building that experiences 20 hours or more per year of shadow flicker based on records kept by the resident of a nonparticipating residence or the occupant of an occupied community building shall also be eligible for mitigation. [**Note**: Not applicable to small wind energy systems.]

d. An owner may provide shadow flicker mitigation for any residence or occupied community building in addition to the mitigation required under subsection b. [**Note**: Not applicable to small wind energy systems.]

e. The requirement under subsection b. to mitigate shadow flicker applies when the owner receives a complaint or request for mitigation regarding shadow flicker for an eligible nonparticipating residence or occupied community building. If shadow flicker mitigation is required, the owner of the wind energy system shall allow the owner of the nonparticipating residence or occupied community building to choose a preferred reasonable mitigation technique, including installation of blinds or plantings at the wind energy system owner's expense. [**Note**: Not applicable to small wind energy systems.]

4. Waiver. Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the wind energy system owner of a requirement under subsection 2. or 3.b. at the affected nonparticipating residence or occupied community building by written contract with the wind energy system owner. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned, and shall be recorded under Wis. Stat. ch. 706.

5. Notification.

a. Before entering into a contract under sub.4., a wind energy system owner shall provide notice of the requirements of this section to individual owners of an affected nonparticipating residence or occupied community building. [**Note**: Not applicable to small wind energy systems.]

b. Before the initial operation of the wind energy system, a wind energy system owner shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a contract under sub.4. [**Note**: Not applicable to small wind energy systems.]

K. Signal Interference.

1. Planning.

a. Except as provided in subsection 4, the signal interference requirements in this section apply to commercial communications and personal communications in use when the wind energy system begins operation.

b. An owner shall use reasonable efforts to avoid causing interference with commercial communications and personal communications to the extent practicable.

c. An owner may not construct wind energy system facilities within existing line-of-sight communication paths that are used by government or military entities to provide services essential to protect public safety. The Village shall require an owner to provide information showing that wind turbines and other wind energy system facilities will be in compliance with this subsection.

2. Commercial Communications Interference Mitigation. An owner shall use reasonable and commercially available technology to mitigate interference caused by a wind energy system with commercial communications in use when a wind energy system begins operation. Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for commercial communications interference problems. Except as provided in subsection 4., an owner shall mitigate commercial communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier. [**Note**: Not applicable to small wind energy systems.]

3. Personal Communications Interference Mitigation.

   a. An owner shall use reasonable and commercially available technology to mitigate interference with personal communications in use when a wind energy system begins operation caused by a wind energy system. A political subdivision may require an owner to use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the wind energy system began commercial operation, if a wind energy system is causing the interference and the interference occurs at a location at least 0.5 mile from a wind turbine. [**Note**: Not applicable to small wind energy systems.]

   b. Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for personal communications interference problems. Except as provided in subsection 4., an owner shall mitigate personal communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier. [**Note**: Not applicable to small wind energy systems.]

4. Mitigation protocol. The Village may, under a protocol established by the PSC under Wis. Admin Code s. PSC 128.50(2), require an owner to implement a new mitigation solution that becomes commercially available before the wind energy system is decommissioned to address interference for which mitigation is required under subsection 2 or 3 and for which the original mitigation solution implemented is only partially effective. [**Note**: Not applicable to small wind energy systems.]

L. Stray Voltage.

1. Testing Required.

   a. An owner shall work with the local electric distribution company to test for stray voltage at all dairy and confined animal operations within 0.5 mile of a wind energy system facility pursuant to the stray voltage protocol established by the PSC before any wind energy system construction activity that may interfere with testing commences and again after construction of the wind energy system is completed, except as otherwise specified by commission staff under subsection b.

   b. Before any testing under subsection a. begins, an owner shall work with PSC staff to determine the manner in which stray voltage testing will be conducted

and on which properties. The electric distribution company serving a dairy or confined animal operation where testing is required under subsection a. shall conduct or arrange to conduct all required testing at the expense of the owner.

2. Results of Testing. An owner and the electric distribution company shall provide to commission staff the results of all stray voltage testing in writing.

3. Requirement to Rectify Problems. An owner shall work with the electric distribution company and farm owner to rectify any stray voltage problems attributable to the construction and operation of the wind energy system, in compliance with the commission's stray voltage protocol.

M. Construction and Operation.

1. Physical Characteristics.

a. An owner may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine. An owner may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. An owner may attach a safety feature or wind monitoring device to a wind turbine.

b. An owner shall ensure that a wind turbine has a conventional or unobtrusive finish.

c. An owner shall install lighting at a wind energy system that complies with standards established by the federal aviation administration. The Village may not establish lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration. The Village requires the use of shielding or control systems approved by the federal aviation administration to reduce visibility of lighting to individuals on the ground.

d. An owner shall take appropriate measures to ensure that a wind turbine is not readily climbable except by authorized personnel.

e. An owner shall ensure that all wind turbine access doors and electrical equipment are locked when authorized personnel are not present.

f. An owner shall place appropriate warning signage on or at the base of each wind turbine.

g. An owner shall post and maintain up-to-date signs containing a 24-hour emergency contact telephone number, information identifying the owner, and sufficient information to identify the location of the sign within the wind energy system. An owner shall post these signs at every intersection of a wind energy system access road with a public road and at each wind turbine location. [**Note**: Not applicable to small wind energy systems.]

h. An owner shall clearly mark guy wires and supports for a wind energy system, meteorological tower or other device for measuring wind speeds so that the wires and supports are visible to low flying aircraft under fair weather conditions.

2. Electrical Standards.

   a. An owner shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and Wis. Admin. Code ch. PSC 114 and shall construct, maintain, and operate all wind energy system facilities in a manner that complies with the national electrical code.

   b. An owner shall construct collector circuit facilities for a wind energy system underground to the extent practicable. [**Note**: Not applicable to small wind energy systems.]

   c. An owner shall establish an inspection schedule for all overhead collector circuits to ensure that third-party facilities, including cable television and telecommunications cables, are not attached or bonded to overhead collector circuit grounding. If third-party facilities are found attached to the overhead collector facilities, the owner shall ensure that the third-party facilities are promptly removed. [**Note**: Not applicable to small wind energy systems.]

3. Construction, Operation, and Maintenance Standards.

   a. An owner shall construct, operate, repair, maintain and replace wind energy system facilities as needed to keep the wind energy system in good repair and operating condition and in a manner that protects individuals from injury.

   b. An owner shall minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land during the construction or decommissioning of the wind energy system. The Village may establish reasonable requirements designed to minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land applicable to the site as part of the conditional use permit. [**Note**: Not applicable to small wind energy systems.]

   c. Except for the area physically occupied by the wind energy system facilities, an owner shall restore the topography, soils and vegetation of the project area to original condition after construction is complete, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements. [**Note**: Not applicable to small wind energy systems.]

   d. An owner shall carry general liability insurance relating to claims for property damage or bodily injury arising from the construction, operation or decommissioning of the wind energy system and shall include turbine host property owners as additional insured persons on the policy. [**Note**: Not applicable to small wind energy systems.]

4. Emergency Procedures.

   a. An owner shall notify the Village of the occurrence and nature of a wind energy system emergency within 24 hours of the wind energy system emergency.

   b. [**Note**: the entirety of this subsection b. is not applicable to small wind energy systems.] An owner shall establish and maintain liaison with the Village and with fire, police, and other appropriate first responders serving the wind energy system to create effective emergency plans that include all of the following:

(1) A list of the types of wind energy system emergencies that require notification under subsection a.

(2) Current emergency contact information for first responders and for the wind energy system owner, including names and phone numbers.

(3) Procedures for handling different types of wind energy system emergencies, including written procedures that provide for shutting down the wind energy system or a portion of the system as appropriate.

(4) Duties and responsibilities of the owner and of first responders in the event of a wind energy system emergency.

(5) An emergency evacuation plan for the area within 0.5 mile of any wind energy system facility, including the location of alternate landing zones for emergency services aircraft.

c. The owner shall review the emergency plan at least annually in collaboration with fire, police and other appropriate first responders to update and improve the emergency plan as needed.

d. The owner shall distribute current copies of the emergency plan to the Village and fire, police and other appropriate first responders as identified by the Village.

e. The Village may require the owner to provide annual training for fire, police and other appropriate first responders regarding responding to a wind energy system emergency until the wind energy system has been decommissioned.

f. An owner of a wind energy system shall do all of the following:

(1) Furnish its operator, supervisors and employees who are responsible for emergency action a copy of the current edition of the emergency procedures established under this subsection to ensure compliance with those procedures.

(2) Train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective.

(3) As soon as possible after the end of a wind energy system emergency, review employee activities to determine whether the procedures were effectively followed.

N. Decommissioning.

1. Requirement to Decommission.

a. An owner of a wind energy system shall decommission and remove the wind energy system when the system is at the end of its useful life.

b. A wind energy system is presumed to be at the end of its useful life if the wind energy system generates no electricity for a continuous 360-day period (540 day period for a small wind energy system). This presumption may be rebutted under subsection c (except for small wind energy systems).

c. [**Note**: The entirety of this subsection c. is not applicable to small wind energy systems.] Upon application by the owner, and except as provided in subsection d., the Village shall grant an extension of the time period for returning the wind energy system to service by one or more additional 180 day periods if the owner demonstrates it is likely the wind energy system will operate again in the future and any of the following occur:

(1) The owner submits a plan to the Village that demonstrates an ongoing good faith effort to return the wind energy system to service and outlines the steps and schedule for returning the wind energy system to service in a reasonable period of time, including by repairing, replacing or repowering the wind energy system facilities as necessary to generate electricity.

(2) The owner demonstrates that the wind energy system is part of a prototype or other demonstration project being used for ongoing research or development purposes.

(3) The owner demonstrates that the wind energy system is being used for educational purposes.

d. The Village may deny a request for an extension under subsection c. if the wind energy system has not generated any electricity for a continuous period of 540 days or more and the Village finds that the owner is not capable of returning the wind energy system to service within a reasonable period of time. [**Note**: This subsection is not applicable to small wind energy systems.].

e. [**Note**: the entirety of this subsection e. is not applicable to small wind energy systems.] A wind energy system is irrebuttably presumed to be at the end of its useful life if the wind energy system generates no electricity for a period of 540 days and any of the following occur:

(1) The owner does not request an extension of the time period for returning the wind energy system to service under subsection c.

(2) The Village denies a request for an extension under subsection d. and any appeal rights have expired.

f. When decommissioning is required, the owner shall begin decommissioning within 360 days after the wind energy system has reached the end of its useful life. The owner shall complete decommissioning and removal of the wind energy system within 540 days after the wind energy system has reached the end of its useful life.

2. Decommissioning Review. The Village may establish a decommissioning review process to determine when a wind energy system has reached the end of its useful life.

3. Financial Responsibility. [**Note**: the entirety of this subsection 3. is not applicable to small wind energy systems.]

a. The owner of a wind energy system with a nameplate capacity of one megawatt or larger shall maintain proof of the owner's ability to fund the actual and necessary cost to decommission the wind energy system and shall ensure the

availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

b. The owner of a wind energy system with a nameplate capacity of one megawatt or larger shall provide financial assurance of the owner's ability to pay for the actual and necessary cost to decommission the wind energy system before commencing major civil construction activities such as blasting or foundation construction at the wind energy system site. An owner may comply with this paragraph by choosing to provide a bond, deposit, escrow account, irrevocable letter of credit, or some combination of these financial assurances, that will ensure the availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

c. The owner shall provide the financial assurance under subsection b. in the amount of the estimated actual and necessary cost to decommission the wind energy system. The owner shall:

(1) Provide the Village three cost estimates of the actual and necessary cost to decommission the wind energy system prepared by third parties agreeable to the owner and the Village.

(2) Establish financial assurance that places the Village in a secured position, and provide that any secured funds may only be used for decommissioning the wind energy system until either the Village determines that the wind energy system has been decommissioned under subsection 5.b. or until the Village has otherwise approved the release of the secured funds, whichever is earlier.

(3) Establish financial assurance that allows the Village to access funds for the purpose of decommissioning the wind energy system if the owner does not decommission the wind energy system when decommissioning is required.

d. The Village may not require the amount of the financial assurance to exceed the average of the cost estimates provided.

e. The Village’s approval of a wind energy system is conditioned on the owner's compliance with subsections b. and c.

f. During the useful life of a wind energy system, the Village may periodically request information from the owner regarding the industry costs for decommissioning the wind energy system. If the Village finds that the future anticipated cost to decommission the wind energy system is at least ten percent more or less than the amount of financial assurance previously provided under subsection b., the Village may correspondingly increase or decrease the amount of financial assurance required for the wind energy system. The Village may not adjust the financial assurance under this subsection more often than once in a five-year period.

g. The Village may require an owner to submit to the Village a substitute financial assurance of the owner's choosing under subsection b. if an event occurs that

raises material concerns regarding the viability of the existing financial assurance.

4. Site Restoration. [**Note**: the entirety of this subsection 4. is not applicable to small wind energy systems.]

   a. Except as provided in subsection b., if a wind energy system was constructed on land owned by a person other than the owner of the wind energy system, the owner of the wind energy system shall ensure that the property is restored to preconstruction condition, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements.

   b. If a wind energy system was constructed on a brownfield, as defined in Wis. Stat. s. 238.13(1)(a), the owner shall restore the property to eliminate effects caused by the wind energy system, except for the effects of environmental remediation activities, as defined in Wis. Stat. s. 238.13(1)(d).

5. Decommissioning Completion.

   a. An owner shall file a notice of decommissioning completion with the Village and the commission when a wind energy system approved by the Village has been decommissioned and removed.

   b. Within 360 days of receiving a notice of decommissioning, the Village shall determine whether the owner has satisfied the requirements of subsections 1.a. and 4.

O. Application and Notice Procedures.

1. It is recommended, but not required, that the applicant meet with the Zoning Administrator, Building Inspector and Public Works Director prior to submitting an application for a wind energy system, to discuss filing requirements, application formats, timelines, permits from outside agencies, the handling of confidential information, and fees.

2. Application Required. An owner shall file an application to construct a wind energy system with the Village in conformance with the Application Filing Requirements developed by the PSC as provided in Wis. Admin. Code s. PSC 128.50 and published on the PSC website. The owner shall ensure that the information contained in the application is accurate, and shall file the number of paper and electronic copies required by the Village for review and for availability to the public. The application shall include all of the following:

   a. Wind energy system description and maps showing the locations of all proposed wind energy facilities.

   b. Technical description of wind turbines and wind turbine sites.

   c. Timeline and process for constructing the wind energy system.

   d. Information regarding anticipated impact of the wind energy system on local infrastructure.

e. Information regarding noise anticipated to be attributable to the wind energy system.

f. Information regarding shadow flicker anticipated to be attributable to the wind energy system.

g. Information regarding the anticipated effects of the wind energy system on existing land uses within 0.5 mile of the wind energy system. [**Note**: For small wind energy systems, the required information is limited to the effect on parcels adjacent to the wind energy system.]

h. Information regarding the anticipated effects of the wind energy system on airports and airspace.

i. Information regarding the anticipated effects of the wind energy system on line-of-sight communications.

j. A list of all state and federal permits required to construct and operate the wind energy system.

k. Information regarding the planned use and modification of roads within the Village during the construction, operation, and decommissioning of the wind energy system, including a process for assessing road damage caused by wind energy system activities and for conducting road repairs at the owner's expense.

l. A copy of all emergency plans developed in collaboration with appropriate first responders under Wis. Admin. Code s. PSC 128.18(4)(b). An owner may file plans using confidential filing procedures as necessary. [**Note**: Not required for small wind energy systems.]

m. A decommissioning and site restoration plan providing reasonable assurances that the owner will be able to comply with Wis. Admin. Code s. PSC 128.19. [**Note**: Not required for small wind energy systems.]

n. A representative copy of all notices issued under subsection 3. and Wis. Admin. Code ss. PSC 128.105(1)(a) and 128.42(1).

o. A copy of all non-binding recommendations about whether the owner has consulted with and received any non-binding recommendations for constructing, operating or decommissioning the wind energy system from a state or federal agency, and whether the owner has incorporated such non-binding recommendations into the design of the wind energy system. [**Note**: Not required for small wind energy systems.]

p. Specification of whether nonparticipating landowners will receive annual monetary compensation pursuant to section Q, including the criteria for determination of which nonparticipating landowners will receive the compensation, how the payments will be modified annually, and a representative copy of the agreements. [**Note**: Not required for small wind energy systems.]

q. Description of the use of aerial spraying for pest control or seeding at project farm area operations, the impacts of the proposed wind energy system on the spraying, and the potential mitigation of the impacts, including monetary

compensation, as set forth in section Q. [**Note**: Not required for small wind energy systems.]

r. The proposed form of the annual report required under section Q.

s. Potential shared revenue and community benefits set forth in Wis. Stat. ch. 79.

t. Any other information necessary to understand the construction, operation or decommissioning of the proposed wind energy system.

3. Notice to Property Owners and Residents.

a. On the same day an owner files an application for a wind energy system, the owner shall, under Wis. Stat. s. 66.0401(4)(a)3, use commercially reasonable methods to provide written notice of the filing of the application to property owners and residents located within one mile of the proposed location of any wind energy system facility. . [**Note**: For small wind energy systems, the required notice shall be provided only to the property owners and residents of the parcels adjacent to the wind energy system.] The notification shall include all of the following:

(1) A complete description of the wind energy system, including the number and size of the wind turbines.

(2) A map showing the locations of all proposed wind energy system facilities.

(3) The proposed timeline for construction and operation of the wind energy system.

(4) Locations where the application is available for public review.

(5) Owner contact information.

b. After the Village receives an application for a wind energy system, the Village shall publish a Class 1 Notice as set forth in Wis. Stat. s. 66.0401(4)(a)1 and Wis. Admin. Code. s. PSC 128.30(4)(b) stating that an application for approval has been filed with the Village that includes a brief description of the proposed wind energy system and its proposed location, the locations where the application is available for public review, the method and time period for the submission of public comments to the Village, and the approximate schedule for review of the application by the Village.

4. Public Participation.

a. The Village shall make an application for a wind energy system available for public review at the Rochester Public Library and the Village Hall, and may publish it on the Village website.

b. The Village shall accept written comments by letter and by electronic mail, and shall provide them to the Plan Commission for consideration at the public hearing required in subsection c. hereunder and Section 35-100.

c. The Village shall hold the public hearing required in Section 35-100 to obtain comments on and to inform the public about a proposed wind energy system, at which the Plan Commission shall also consider the written comments received. [**Note**: A public hearing for small wind energy systems is optional under Wis. Admin. Code s. PSC 128.61(8), but is required by Section 35-100 of this Code.]

5. Joint application review process. If the wind energy system is proposed to be located in more than one political subdivision with jurisdiction over the wind energy system, the provisions of Wis. Admin. Code s. 128.30(7) will apply and the procedures set forth herein may be modified pursuant to that section.

P. Application Completeness and Time Limits.

1. An application is complete if it meets the filing requirements under this Section.

2. The Village shall determine the completeness of an application, and shall notify the owner in writing of the completeness determination, no later than 45 days after the day the application is filed. An application is considered filed the day the owner notifies the political subdivision in writing that all the application materials have been filed. If a political subdivision determines that the application is incomplete, the notice provided to the owner shall state the reasons for the determination.

3. An owner may file a supplement to an application that the Village has determined to be incomplete. There is no limit to the number of times that an owner may re-file an application. For incomplete applications, the owner shall provide additional information as specified in the notice under subsection 2.

4. An additional 45-day completeness review period shall begin the day after the Village receives responses to all items identified in the notice under subsection 2.

5. If the Village does not make a completeness determination within the applicable review period, the application is considered to be complete.

6. Requests for additional information. The Village may request additional information necessary to understand the wind energy system after determining that an application is complete. An owner shall provide additional information in response to all reasonable requests. An owner shall respond to all inquiries made subsequent to a determination of completeness in a timely, complete, and accurate manner.

Q. Village Review and Approval of a Wind Energy System.

1. Standard for Approval. The Village may not unreasonably deny an application for a wind energy system or impose unreasonable conditions, provided, however, that the Village shall impose the following conditions on approval of wind energy systems:

a. Permits. For all wind energy systems, the owner shall submit to the Village copies of all necessary state and federal permits and approvals.

b. For all wind energy systems that are not classified as small wind energy systems:

(1) Studies. The owner shall cooperate with any study of the effects of wind energy systems coordinated by a state agency.

(2) Monetary compensation. The owner of a wind energy system shall offer an agreement that includes annual monetary compensation to the owner

of a nonparticipating residence, if the residence is located within 0.5 mile of a constructed wind turbine. For one turbine located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed $600. For two turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed $800. For three or more turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed $1,000. The initial annual monetary compensation under this subsection shall apply to agreements entered into in 2011. For agreements entered into in 2012 and thereafter, the initial annual amounts shall increase each year by the greater of two percent or the increase in the Consumer Price Index, as described in Wis. Stat. s. 196.374(5)(bm)2.b., from the previous year. An agreement offered under this subsection shall specify in writing any waiver of a requirement or right under this Section and whether the landowner's acceptance of payment establishes the landowner's property as a participating property under this chapter.

(3) Aerial spraying. The owner of a wind energy system shall offer an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located within 0.5 mile of a constructed wind turbine if the farm operator demonstrates all of the following:

(a) Substantial evidence of a history, before the wind energy system owner gives notice under section E, of using aerial spraying for pest control or disease prevention for growing potatoes, peas, snap beans or sweet corn on all or part of a farm field located within 0.5 mile of a constructed wind turbine.

(b) A material reduction in potato, pea, snap bean or sweet corn production or a material increase in application costs on all or part of a farm field located within 0.5 mile of a constructed wind turbine as a result of the wind energy system's effect on aerial spraying practices.

(4) Annual reports. The owner shall be required to file an annual report with the Village documenting the operation and maintenance of the wind energy system during the previous calendar year.

2. Written Decision.

a. The Village shall issue a written decision to grant or deny an application for a wind energy system. The written decision shall include findings of fact supported by evidence in the record. If an application is denied, the decision shall specify the reason for the denial. Approval is subject to the conditions set forth in this Section.

b. The Village shall provide its written decision to the owner and to the commission. If the Village approves an application for a wind energy system, the Village shall provide the owner with a duplicate original of the decision. The owner shall record the duplicate original of a decision approving an application with the register of deeds for Racine County

3. Effect of ownership change on approval. Approval by the Village of a wind energy system remains in effect if there is a change in the owner of the wind energy system. An owner shall provide timely notice of any change in the owner of the wind energy system to the Village.

4. Fees.

   a. The owner shall pay the fee adopted by the Village Board and set forth in the Fee Schedule. The fee shall consist of a reasonable application fee and a requirement that the owner reimburse the Village for reasonable expenses relating to the review and processing of the application for a wind energy system. The fee and reimbursement requirement shall be based on the actual and necessary cost of the review of the wind energy system application, and may include the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts. The Village may by ordinance set standardized application fees based on the size and complexity of a proposed wind energy system.

   b. The Village may require the owner of a wind energy system to submit up to 50 percent of the total estimated amount of the estimated reimbursement of for the wind energy system application review under subsection a before issuing a written decision under subsection 2 if the Village gives written notice to the owner of its intent to do so within ten days of the date the application is deemed complete and the notice contains an estimate of the amount of the fee and the relevant reimbursement requirements.

   c. The Village may not charge an owner an annual fee or other recurring fees to operate or maintain a wind energy system.

R. Record of Decision.

1. Recordkeeping.

   a. The Village shall keep a complete written record of its decision-making relating to an application for a wind energy system.

   b. if the Village denies an application, the Village shall keep the record for at least 7 years following the year in which it issues the decision.

   c. If the Village approves an application, the Village shall keep the record for at least 7 years after the year in which the wind energy system is decommissioned.

2. Record Contents. The record of a decision shall include all of the following:

   a. The approved application and all additions or amendments to the application.

   b. A representative copy of all notices issued under this Section.

   c. A copy of any notice or correspondence that the Village issues related to the application.

   d. A record of any public meeting and any hearing related to the application. The record may be an electronic recording, a transcript prepared from an electronic

recording, or a transcript prepared by a court reporter or stenographer. The record shall include any documents or evidence submitted by meeting or hearing participants.

e. Copies of any correspondence or evidentiary material that the Village considered in relation to the application, including copies of all written public comments filed with the Village.

f. Minutes of any Village Board, Plan Commission or other committee meetings held to consider or act on the application.

g. A copy of the written decision.

h. Other materials that the Village prepared to document its decision-making process.

i. A copy of any Village ordinance cited in or applicable to the decision.

3. Post-construction filing requirement. Within 90 days of the date a wind energy system commences operation, the owner shall file with the Village and the commission an as-built description of the wind energy system, an accurate map of the wind energy system showing the location of all wind energy system facilities, geographic information system information showing the location of all wind energy system facilities and current information identifying the owner of the wind energy system. An owner shall in the filings under this subsection label each wind turbine location with a unique identifier consistent with the information posted at the wind turbine location under Wis. Admin. Code s. PSC 128.18(1)(g). [**Note**: Not required for small wind energy systems.]

S. Modifications to an Approved Wind Energy System.

1. Material Change.

a. An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the Village.

b. An owner shall submit an application for a material change to an approved wind energy system to the Village.

2. Review Limited.

a. When the Village receives an application for a material change to a wind energy system under subsection 1.b., it may not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.

b. An application for a material change is subject to sections O.2. (intro) and O.2.o., O.3., O.4.a. and b., O.5, P., Q. and R.

c. An application for a material change shall contain information necessary to understand the material change.

d. The Village may hold at least one public meeting to obtain comments on and to inform the public about a proposed material change to an approved wind energy system.

T. Monitoring Compliance. [**Note**: Not applicable to small wind energy systems.]

1. Monitoring Procedure. The Village may establish a procedure to monitor compliance by the owner with any condition on an approved wind energy system or to assess when wind energy system facilities are not maintained in good repair and operating condition. The procedure may include timelines, provide for payment of reasonable fees for conducting an assessment, and provide for notification to the public.

2. Third-party Inspector During Construction. The Village may require an owner to pay a reasonable fee for a third-party inspector to monitor and report to the Village regarding the owner's compliance with permit requirements during construction. An inspector monitoring compliance under this subsection shall also report to a state permitting authority upon the state permitting authority's request.

U. Complaint Process.

1. Making a Complaint.

a. An aggrieved person may make a complaint regarding failure by an owner to comply with an obligation under this Section.

b. A complaint under subsection a. shall be made first to the owner of the wind energy system pursuant to a complaint resolution process developed by the owner.

c. A complainant may petition the Village for review of a complaint that is not resolved within 45 days of the day the owner receives the original complaint.

d. The Village's decision under subsection c. is subject to PSC review under Wis. Stat. s. 66.0401(5).

2. Complaint Resolution.

a. An owner shall use reasonable efforts to resolve complaints regarding a wind energy system and shall investigate complaints regarding a wind energy system at the owner's expense.

b. For wind energy systems not classified as small wind energy systems:

(1) Upon receipt of a complaint, an owner shall provide the complainant with a copy of the notice described in subsection 4. Within 30 days of receiving a complaint, an owner shall provide an initial response to the complainant.

(2) An owner shall make a good faith effort to resolve complaints within 45 days of receiving a complaint. An owner shall notify the Village of complaints that have not been resolved within 45 days of the date the owner received the original complaint.

(3) An owner shall maintain a log of all complaints received regarding the wind energy system. The owner shall include in the log the name and address of each complainant, the nature of each complaint, and the steps taken to resolve each complaint. An owner shall provide a copy of

a complaint log monthly, at no cost, either to a monitoring committee established under subsection U.3. or, if a monitoring committee has not been established, to the Village. An owner shall make any complaint log available to the commission upon request.

(4) An owner shall develop a complaint resolution process that is consistent with this subsection.

3. Monitoring Committee. [**Note**: Not applicable to small wind energy systems.]

a. Committee. Except as provided in subsection c., the Village may establish a monitoring committee to oversee resolution of complaints regarding a wind energy system. A monitoring committee shall include on the committee a member who is a local employee of an owner of a wind energy system and, if in existence, at least one nonparticipating landowner residing in the Village within 0.5 mile of a wind turbine that is located in the Village.

b. Duties. A monitoring committee established under subsection a. may do any of the following:

(1) Maintain a record of all complaints brought to it.

(2) Require the owner to provide the committee with information regarding the owner's response to any complaint forwarded to the owner by the committee.

(3) Recommend to the Village a reasonable resolution to a complaint based upon the information gathered by the committee.

c. Multiple Jurisdictions. If a wind energy system is located in more than one political subdivision with jurisdiction over the wind energy system and multiple political subdivisions decide to establish a monitoring committee, the political subdivisions shall jointly establish a single monitoring committee to oversee resolution of complaints regarding the wind energy system.

4. Notice to Property Owners and Residents. [**Note**: Not applicable to small wind energy systems.]

a. Notice of Process for Making Complaints. Before construction of a wind energy system begins, an owner shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within 0.5 mile of any wind energy system facility. An owner shall include in the notice the requirements under subsection 1 for submitting a complaint to the owner, a petition for review to the Village, and an appeal to the commission, and shall include a contact person and telephone number for the owner for receipt of complaints or concerns during construction, operation, maintenance and decommissioning.

b. Notice to Village. An owner shall provide a copy of the notice under subsection a. to the Village and any political subdivision with jurisdiction over the wind energy system, and the owner shall keep the contact person and telephone number current and on file with the Village and the political subdivision.

V. Commission Review. Appeals to the PSC shall follow the procedures set forth in Wis. Stat. s. 66.0401(5) and Wis. Admin. Code ch. PSC subch. V. In the event of remand to the Village, the Village shall abide by the time frames for review set forth in the commission's order.

35-150 TOWER REGULATIONS.

A. Intent. It is intended that mobile service facilities and radio broadcast service facilities be regulated hereunder by conditional use permit for the public health and safety. Reports from multiple studies gathered by the National Institute of Health have found links between radiofrequency electromagnetic fields and negative health effects, but also reflect that the scientific community is split as to whether prolonged radiofrequency exposure is dangerous to human health. Until such time as exposure to electromagnetic radiation is proven safe, the Village Board presumes that human health is affected by the placement of towers and antennas from which exposure may occur. In addition, towers that contain the mobile and broadcast facilities may collapse and cause catastrophic damage to Village citizens and property. The regulations herein reflect the minimum practical regulation that is necessary to accomplish the protection of the public.

B. Definitions.

"Antenna" means communications equipment that transmits and receives radio waves or electromagnetic radio signals and is used in the provision of mobile services or radio broadcast services.

"Application" means an application for a permit under this section to engage in an activity specified as new construction or substantial modification of mobile service facilities or radio broadcast facilities or a class 2 collocation.

"Building Permit" means any applicable permit issued by the Building Inspector that authorizes an applicant to conduct construction activity that is consistent with the Village Building, Plumbing, Electrical and Mechanical Code, Chapter 11 of this Municipal Code.

"Class 1 Collocation" means the placement of a new mobile service facility or radio broadcast service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility but does need to engage in substantial modification.

"Class 2 Collocation" means the placement of a new mobile service facility or radio broadcast service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility or engage in substantial modification.

"Collocation" means class 1 or class 2 collocation or both.

"Distributed Antenna System" means a network of spatially separated antenna nodes that is connected to a common source via a transport medium and that provides mobile service within a geographic area or structure.

"Equipment Compound" means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities or radio broadcast service facilities.

"Existing Structure" means a support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with the Village.

"Fall Zone" means the area over which a mobile support structure or radio broadcast tower or antenna is designed to collapse.

"Mobile Service" has the meaning given in 47 USC 153 (33).

"Mobile Service Facility" means the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is

necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

“Mobile Service Provider” means a person who provides mobile service.

“Mobile Service Support Structure” means a freestanding structure that is designed to support a mobile service facility.

“Permit” means a Conditional Use Permit or Zoning Permit required by this section which authorizes any of the following activities by an applicant:

1. A class 1 collocation.

2. A class 2 collocation.

3. The construction of a mobile service support structure.

4. The construction of a radio broadcast service facility.

“Public Utility” has the meaning given in Wis. Stat. s. 196.01(5).

“Radio Broadcast Services” means the regular provision of a commercial or noncommercial service involving the transmission, emission, or reception of radio waves for the transmission of sound or images in which the transmissions are intended for direct reception by the general public.

“Radio Broadcast Service Facilities” means commercial or noncommercial facilities, including antennas and antenna support structures, intended for the provision of radio broadcast services.

“Search Ring” means a shape drawn on a map to indicate the general area within which a support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.

“Substantial Modification” means the modification of a support structure, including the mounting of an antenna on such a structure that does any of the following:

1. For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet, except it shall not be considered a substantial modification if a greater height is necessary to avoid interference with an existing antenna.

2. For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more, except it shall not be considered a substantial modification if a greater height is necessary to avoid interference with an existing antenna.

3. Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by 20 feet or more, unless a larger area is necessary for collocation, or unless a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable.

4. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

"Support Structure" means an existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure, or a radio broadcast antenna support structure.

"Tower Facility" means the support structure for mobile services or radio broadcast services.

"Utility Pole" means a structure owned or operated by an alternative telecommunications utility, as defined in Wis. Stat. s. 196.01(1d); public utility, as defined in Wis. Stat. s. 196.01(5); telecommunications utility, as defined in Wis. Stat. s. 196.01(10); political subdivision; or cooperative association organized under Wis. Stat. ch. 185; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in Wis. Stat. s. 182.017(1g)(cq); for video service, as defined in Wis. Stat. s. 66.0420 (2)(y); for electricity; or to provide light.

C. Applicability.

1. Facilities Regulated. The following facilities are subject to the regulations set forth in this Section and in section 35-151, Tower Site Standards:

a. New mobile service support structures and radio broadcast service support structures require conditional use permits.

b. Class 1 collocations that involve the substantial modification of an existing support structure, mobile service facilities, and radio broadcast service facilities require conditional use permits.

c. Class 2 collocations are permitted uses, require zoning permits, and are subject to the provisions set forth in subsection F.

2. Regulation. No installation or construction of the facilities regulated by this section are permitted except as provided in this section and Section 35-151, Tower Site Standards**.**

D. Location.

1. Mobile Service Support Structures. Pursuant to Wis. Stat. s. 66.0404(4)(c), the Village may not prohibit the placement of a mobile service support structure in particular locations in the Village.

2. Radio Broadcast Facilities. Pursuant to Wis. Stat. s. 66.0406(4), the Village may only deny the placement, construction or modification of radio broadcast service facilities in the Village for public health or safety concerns; therefore, pursuant to the intent of this Section set forth in subsection A, radio broadcast service facilities regulated by this Section, except amateur or citizen band towers that do not transmit a constant signal, shall not be located in any residential zoning district.

E. Submission Requirements for New or Substantial Modifications of Facilities and Support Structures. The siting and construction standards for new or substantial modifications of mobile support structures and facilities and new or substantially modified radio broadcast service facilities are set forth in s. 35-151. Pursuant to Wis. Stat. ss. 66.0404 and 66.0406, the Village is limited in its regulation of such structures. In the event that said statutes are amended or repealed, the construction or modification of such structures shall be required to abide by the requirements set forth in s. 35-22, Principles and Standards for the Aesthetic Evaluation of Site and Building Projects, and s. 35-100, Conditional Uses of this Code if those requirements are allowed. While said statutes are in effect, notwithstanding the requirements found in ss. 35-22 and 35-100, the applicant shall only be required to supply the following information in its

application for a zoning permit and conditional use permit under this section, but shall be required to meet the requirements set forth in s. 35-151, Tower Site Standards:

1. The application shall be in writing and shall contain all of the following information:

    a. The name and business address of, and the contact individual for, the applicant.

    b. The location of the proposed or affected support structure.

    c. The location of the proposed mobile service facility or radio broadcast service facility.

    d. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

    e. If the application is to construct a new mobile service support or radio broadcast support structure, a construction plan which describes the proposed support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new support structure.

    f. If an application is to construct a new mobile support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the service provider.

2. If an applicant submits an application for a permit hereunder which contains all of the information required under subsection 1, the application shall be considered complete. If the application is incomplete, the Zoning Administrator shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

3. Within 90 days of its receipt of a complete application, the Village shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the 90 day period:

    a. Review the application to determine whether it complies with all applicable aspects of the Building, Plumbing, Electrical and Mechanical Code and, subject to the limitations in this section, this Chapter.

    b. Make a final decision whether to approve or disapprove the application.

    c. Notify the applicant, in writing, of its final decision.

    d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

4. The Village may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under subsection 1.f.

5. If an applicant provides the Village with an engineering certification showing that a mobile service support structure, a radio broadcast service facility structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in s. 35-151, that requirement does not apply to such a structure unless the Village provides the applicant with substantial evidence that the engineering certification is flawed.

F. Collocation on Existing Support Structures.

1. A class 2 collocation is a permitted use and does not require a conditional use permit, but is regulated as follows:

a. A class 2 collocation is subject to the building permit requirements set forth in this Municipal Code.

b. If an applicant submits an application for a permit to engage in a class 2 collocation, the zoning application shall be in writing and shall contain all of the following information:

(1) The name and business address of, and the contact individual for, the applicant.

(2) The location of the affected support structure.

(3) The location of the proposed mobile service facility or radio broadcast service facility.

c. The Village shall consider an application containing the information required in subsection b. complete.

d. If any of the required information is not in the application, the Zoning Administrator shall notify the applicant in writing, within five days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

e. Within 45 days of its receipt of a complete application, the Village shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the 45 day period:

(1) Make a final decision whether to approve or disapprove the application.

(2) Notify the applicant, in writing, of its final decision.

(3) If the application is approved, issue the applicant the relevant zoning permit.

(4) If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

G. Limitations. The Village is subject to the following statutory limitations when reviewing the applications for conditional use permits and/or zoning permits for the placement, construction or substantial modification of mobile service facilities or Class 2 collocations:

1. No application shall be disapproved based solely on aesthetic concerns.

2. No environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions may be required.

3. No regulation of radio frequency signal strength or the adequacy of mobile service quality is allowed.

4. The placement of emergency power systems may not be prohibited, and backup battery power may not be required.

5. The Village may not require that a support structure be placed on property owned by the Village.

6. No application may be disapproved based solely on the height of the tower structure or on whether the structure requires lighting, and the height of the structure may not be limited to under 200 feet.

7. Approval of an application shall not be conditioned on the agreement of the owner to provide space on or near the structure for the use of or by the Village at less than the market rate, or to provide the Village other services via the structure or facilities at less than the market rate, nor permitting the Village to place at or collocate mobile service facilities provided or operated by the Village or its entities or interests.

8. The applicant may not be required to construct a distributed antenna system instead of a new tower structure or engaging in collocation.

9. The application may not be disapproved because the Village has assessed that other locations may be suitable for conducting the activity.

10. The applicant may not be required to indemnify or insure the Village in connection with the Village's exercise of its authority to approve the application.

H. Fees.

1. Permits. The fees for Conditional Use Permits and Zoning Permits required hereunder shall be set by the Village Board and reflected in the Fee Schedule, provided, however, that pursuant to Wis. Stat. s. 66.0404(4)(d), the fee for a Conditional Use Permit required under subsection C.1.a. or b. shall not exceed $3,000 and the fee for a Zoning Permit required under subsection C.1.c. shall not exceed the cost of the Building Permit or $500, whichever is less. No recurring fee is allowed.

2. Technical review. In the event the Plan Commission determines that it is necessary to consult with a third party in considering an application, all reasonable costs and expenses associated with such consultation shall be borne by the applicant, but the applicant shall not be required to pay travel expenses of the consultant. Failure to pay such costs and expenses or provide information required under this Section shall be grounds for denial or revocation of a permit. The applicant may provide to the Plan Commission the names

of consultants which the applicant believes are qualified to assist in resolving the issues before the Plan Commission.

I. Abandonment.

1. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned. In such circumstances, the owner of such antenna or tower or owner(s) of the property where the tower or antenna is located shall remove said antenna and/or tower including all supporting equipment, buildings, and foundations to a depth of five feet, and shall restore the location to its natural condition (except that any landscaping and grading may remain in the after-condition as determined by the Zoning Administrator) within 90 days of receipt of notice from the Zoning Administrator. If removal and restoration to the satisfaction of the Zoning Administrator does not occur within the said 90 days, the Zoning Administrator may remove and salvage said antenna/tower and all supporting equipment and buildings, and restore the site at the antenna/tower owner's or property owner's expense.

2. Security for Removal. The applicant shall provide to the Village, prior to the issuance of the conditional use permit, a surety in a form acceptable to the Village in the amount of $20,000.00 to guarantee that the tower and all supporting equipment, buildings and foundations will be removed when no longer in operation. The Village must be named as the beneficiary of the surety, and the terms of the surety must provide that the Village will be given notice if the surety provider cancels the surety. If, prior to the removal of the tower, tower removal rates exceed $20,000.00, the Village reserves the right to impose a special charge on the property in the event that the Village is required to remove the facilities.

J. Expiration of Permits; Continued Compliance.

1. A permit issued hereunder shall not expire, provided that the permit holder shall remain in compliance with all applicable laws and ordinances.

2. Upon written inquiry by the Plan Commission, the permit holder under this section shall present credible evidence of the continued compliance with the conditional use permit. Failure to establish compliance with the conditional use permit shall be grounds for the revocation of the permit. All reasonable costs and expenses associated with such consultation shall be borne by the holder of the permit. Failure to pay such costs and expenses or provide information requested by the Plan Commission shall be grounds for revocation of the permit. The holder of the permit may provide to the Plan Commission the names of consultants which the permit holder believes are qualified to assist in resolving the issues before the Plan Commission.

K. Village Not Responsible. The Village does not warrant any tower against design or structural failure. The Village does not certify that the design is adequate for any tower and the Village hereby accepts no liability through the issuance of a conditional use permit or zoning permit.

L. Coordination Between Village Departments. The Zoning Administrator shall coordinate with Building Inspector to ensure that all required time limits set forth in this Section are met.

M. Appeal. A party who is aggrieved by the final decision of the Village may bring an action in Racine County Circuit Court.

35-151 TOWER SITE STANDARDS

A. Purpose. The site standards for tower facilities set forth in this section are to ensure site construction and development in a manner which will result in an appearance compatible with permitted uses in the zoning district and to protect adjacent property from safety hazards such as tower failure or falling ice.

B. Site Size and Tower Setbacks.

1. The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line. Such setback shall be sufficient to:

   a. Protect adjoining properties from the potential impact of tower failure and falling ice by being large enough in area to accommodate such failure and falling ice on the site.

   b. Conform to the minimum shore yard setbacks.

2. Setbacks. Setbacks shall not be less than the height of the tower above grade between the base of the tower and any property line. If the applicant presents to the Plan Commission a report by a structural engineer certifying the fall-down radius of the proposed tower to be less than its height, the allowed set back shall be that certified distance.

3. Maximum Height. There is no maximum tower or antenna height, provided, however, that the height and setback distance limitations for a tower or antenna near a public use airport or heliport shall conform to the airport and airport approach protection provisions under Wis. Stat. ss. 114.135 and 114.136 or the tower or antenna height and setback distance provisions set by the federal aviation administration obstruction standards in 14 CFR Part 77, whichever applies. The height and setback distance limitations for towers or antennas near a private heliport at a medical facility used for air ambulance service, or a private use airport or heliport, shall conform to the federal aviation administration obstruction standards that apply to public use heliports. Prior written approval from the F.A.A. and Wisconsin Department of Transportation Bureau of Aeronautics, if applicable, shall be submitted to the Village.

4. When more than one tower is placed on a site, all setback, design and landscape requirements shall be met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of each tower on the site will not lead to multiple failures in the event that one fails.

C. Guy setback.

1. For a guyed structure, the site shall be of a size and shape sufficient to provide an adequate setback from a guy anchor to any property line abutting a residential district, public property or public street.

2. A site with a guyed structure shall provide:

   a. A setback of at least 25 feet between a guy anchor and any property line abutting a residential district, public property or street; and

b. A setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not a public property or street, nor in a residential district.

3. A guy anchor may be located on an adjoining property when:

a. Written authorization from the adjoining property owner is provided at the time of application for conditional use approval; and

b. The guy anchor meets the requirements of subsection 2., above, as to all other adjoining property lines.

D. Setbacks for Accessory Uses. Setbacks for all accessory structures and uses shall be at least as great as the required yards of the underlying zone for accessory structures. Accessory structures shall be limited to 15 feet in height.

E. Tower Appearance and Illumination.

1. For towers not regulated by the Wisconsin Department of Transportation Bureau of Aeronautics or the Federal Aviation Administration, a surface paint or finish shall be used that reduces the visibility of the tower.

2. Facility structures and equipment, including supporting structures, shall be located, designed and screened to blend with the existing natural or built surroundings so as to reduce visual impacts.

F. Landscaping. Landscaping of the site which abuts or is visible from streets, residences, public parks or areas with access to the general public other than the owner of the adjoining property, in order to mitigate the aesthetic and visual impacts of the tower, is suggested but not required.

G. Site development, Roads and Parking.

1. A minimum of one parking space shall be provided on each site. On sites with personnel routinely in attendance, additional parking spaces may be required by the Plan Commission.

2. All sites must be served by a minimum 30-foot wide easement with a turnaround. The Plan Commission may modify the easement and turnaround requirement. All sites shall use existing access points and roads whenever possible.

H.. Use of existing structures. A tower or antenna may locate on an existing alternative support structure such as a clock tower, steeple, silo, light pole, building, water tower or similar structure provided that towers located on roofs shall not occupy more than 50 percent of the roof surface of a building and shall be secured from the remaining area to prevent unauthorized access. The towers and antenna(s) shall be painted or otherwise treated to match the exterior of the structure.

35-160 TRAFFIC, PARKING AND ACCESS

A. Vision Clearance at Intersections.

1. Corner lot. On a corner lot in any district, no obstructions, such as structures, parking or vegetation, shall be erected, placed, planted or allowed to grow to impede vision between a height of two feet and 10 feet above the curbline grade in the vision clearance triangle.

2. Dimensions.

a. Definitions. In this subsection:

(1) The “vision distance lines” are:

(a) At the intersection of two public or private streets, the lines extending a designated length from the intersection of the streets along the back of the curb of each street, and if no curb exists, along the edge of the shoulder of the street;

(b) At the intersection of a public or private street and an alley or driveway, the line extending a designated length from the intersection of the street and the driveway or alley along the back of the curb or the edge of the shoulder of the street, and the line extending a designated length from the intersection of the street and the driveway or alley along the edge of the pavement of the driveway or alley.

(2) The “vision clearance line” is the straight line connecting the non-intersecting ends of the vision distance lines.

(3) The “vision clearance triangle” is the triangular area created by the intersection of the two vision distance lines with the vision clearance line.

(4) See Exhibit 35-160(1).

b. The dimensions of a specific vision clearance triangle shall be determined by the Zoning Administrator, with input from the Public Works Manager. If the land owner disagrees with the decision of the Zoning Administrator, the land owner may request a determination by the Village Engineer, at the cost of the land owner, as follows:

(1) At the intersection of any street with a State or County Highway, the vision clearance triangle shall be determined by the method used by the State of Wisconsin Department of Transportation or the County, whichever is applicable.

(2) At the intersection of public or private streets, the length of the vision distance lines shall be 40 feet from their intersection.

(3) At the intersection of a driveway or alley with a public or private street, the length of the vision distance lines shall be 30 feet from their intersection.

c. Exceptions. The requirements of subsection A.2.a. do not apply to:

(1) Public utility poles;

(2) Trees trimmed (to the trunk) from the ground to a line at least eight feet above the level of the pavement;

(3) Official warning signs or signals;

(4) Signs mounted nine feet or more above the ground and supported by a single support with a maximum cross section of 12 inches;

(5) Earth-formed obstructions, including retaining walls, at intersections which were existing on the date of passage of this Chapter.

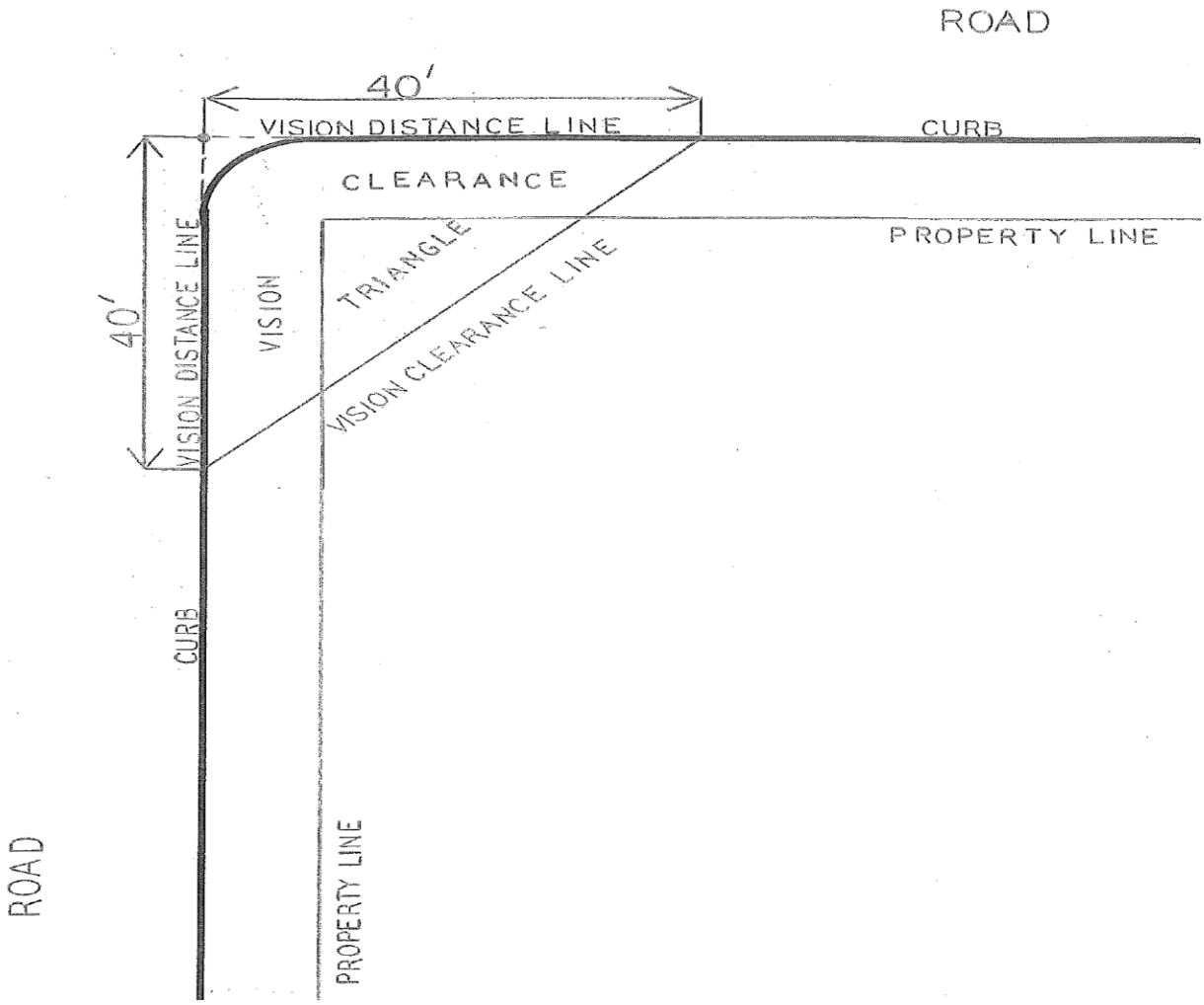
(6) Mailboxes.

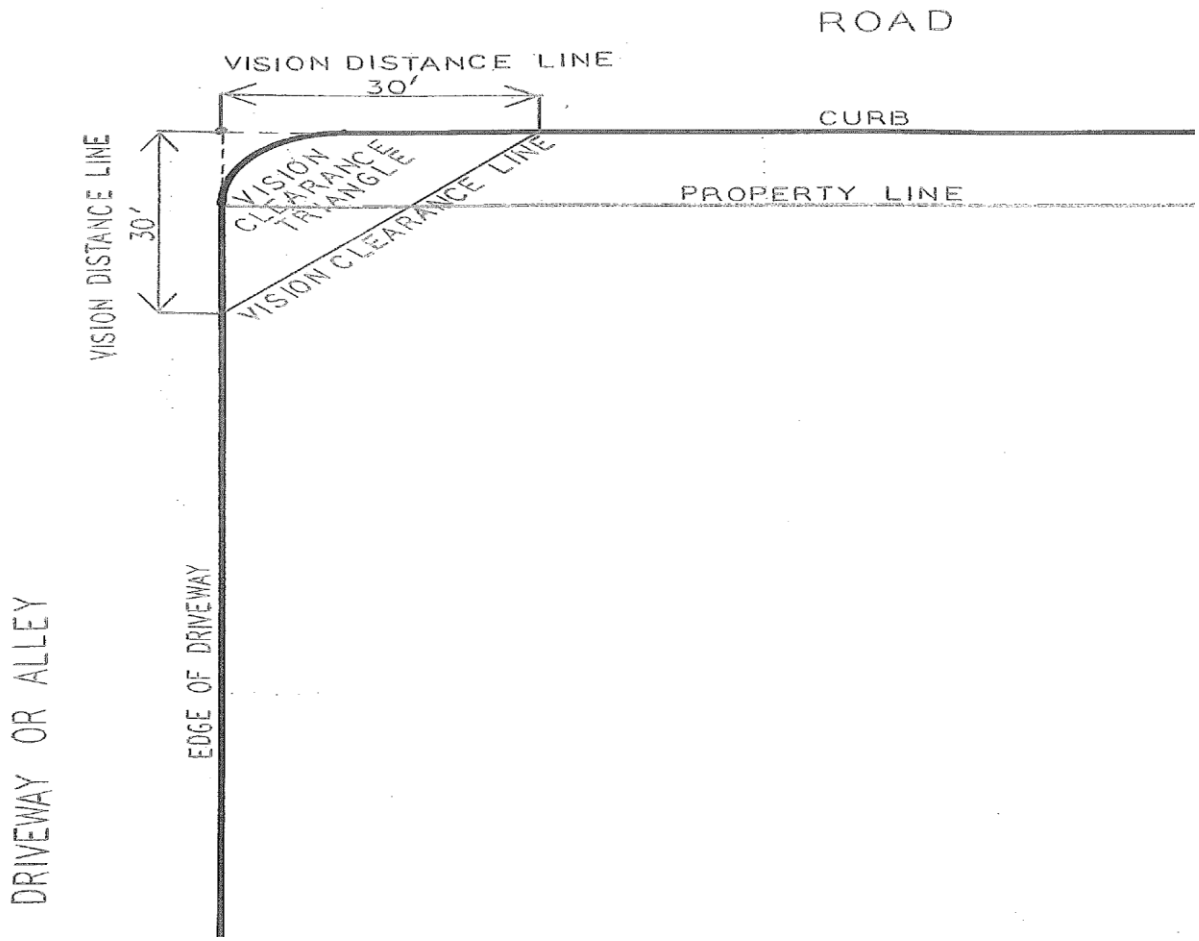
3. Existing Buildings. Except as otherwise set forth in this Chapter, no building located at the intersection of two or more streets, where a vision clearance less than provided above exists as of the date of the passage or amendment of this Chapter, shall be structurally altered on the exterior within the vision clearance triangle unless a vision clearance triangle meeting the requirements of this section is provided at the corner of the building nearest such intersection.

4. Historic Preservation Overlay District. Buildings in the HPO shall follow the guidelines for that District, and the Historic Preservation Committee may grant exceptions to the requirements of this section. Other obstructions, except as set forth in subsection A.2.c., may not be placed in the vision clearance triangle.

5. Exceptions by Plan Commission. The Plan Commission may grant exceptions to the vision clearance requirements where the characteristics of the intersection are such that traffic safety hazards would not be created and the placement of signs or structures within the vision clearance triangle would contribute to the objectives of the zoning district. Such an exception shall be subject to review and approval by the Public Works Manager.

EXHIBIT 35-160(1):





B. Loading Requirements. On every lot on which a business, trade or industrial use is hereafter established, space with access to a public street or alley shall be provided as indicated below for the loading and unloading of vehicles off the public right-of-way.

1. B-1 through B-6 Districts (Business): one space at least 10 x 25 feet for each 5,000 sq. ft. of floor space or part thereof.

2. M-1 through M-3 Districts (Industrial): one space of at least 10 x 50 feet for each 10,000 sq. ft. of floor area or part thereof.

35-161 PARKING REQUIREMENTS.

In all districts and in connection with every use, there shall be provided at the time any use or building is erected, enlarged, or extended, increased off-street parking stalls for all vehicles in accordance with the following:

A. Adequate access to a public street shall be provided for each parking space, and driveways shall be at least 12 feet wide for one and two family dwellings, and a minimum of 24 feet wide for all other uses. The minimum width for all other uses may be reduced to 14 feet where the drive is to accommodate one-way exit vehicle flow only.

B. Each required off-street parking space shall open directly onto an aisle or driveway that is wide enough to provide safe and efficient means of vehicular access to the parking space.

C. The size of each parking space shall be not less than 180 square feet in area nor less than nine feet in width, exclusive of the space required for ingress and egress.

D. Location.

1. The location of the required parking shall be on the same lot as the principal use or not over 400 feet from the principal use. When planning new parking lots, every attempt shall be made to minimize the effect of headlights and noise from parking lot driveway entrances and exits on adjacent residential areas.

2. Alternatives to on-site parking: municipal, shared or off-site parking. When the provisions of subsection 1. cannot be met, parking may be provided by municipal, shared, or off-site parking.

a. The petitioner shall submit written documentation to the satisfaction of the Plan Commission that shared parking spaces are available to satisfy the parking requirements. Shared parking agreements shall provide evidence that either parking lots are adequate in total number of spaces to accommodate multiple users or that parking spaces will be shared at certain times of the day (i.e., one activity uses the spaces during daytime hours and another activity uses the spaces during evening hours). Off-site parking lots shall be located not more than 400 feet from the principal building entrance that it is intended to serve, unless the petitioner's business or other use is located in the HPO Historic Preservation Overlay District and may be served by a municipal parking lot.

b. When a reduction of parking spaces attributable to shared parking or off-site parking is requested, the petitioner shall submit written verification that such parking is available for the life of the applicant's use and shall include copies of any contracts, joint lease agreements, easements, and other such documentation to show that such shared parking can be accomplished. The method by which the required shared parking will be provided is subject to the approval of the Village Attorney upon request by the Village Zoning Administrator, and may be required to be recorded under the provisions of subsection (c) of this section. Off-site parking spaces shall be clearly posted for the joint use of employees, tenants and/or customers of each respective use sharing those spaces.

c. Recording of restrictions. The Plan Commission may require that a declaration of land use restriction be recorded upon the subject property at the Racine County Register of Deeds to ensure that future owners are informed of use restrictions resulting from the administration of this section.

E. Minimum Required Parking Lot Setbacks, Landscaping, and Plans.

1. Minimum Required Setback for Off-Street Parking Areas Abutting a Public Street Right-of-Way Line. No off-street parking area shall be closer than eight feet from a public street right-of-way line. The area between the parking lot and the adjacent street right-of-way shall consist of landscaping meeting the requirements of this Chapter.

2. Minimum Required Setbacks for Off-Street Parking Areas. Except in cases where greater restrictions apply, as set forth in paragraph 3 below, no off-street parking area or associated driveway serving more than five vehicles shall be closer than eight feet to a

side or rear lot line of an abutting lot or parcel. The area between the parking lot and the lot or parcel line shall consist of landscaping meeting the requirements of this Chapter.

3. Minimum Required Setbacks for Off-Street Parking Areas Abutting Residential Districts. No off-street parking area or associated driveway serving more than five vehicles shall be closer than ten feet to a side or rear lot line of an abutting Residential District. The area between the parking lot and the lot or parcel line shall be screened from such district by a solid wall, solid fence, and/or coniferous plantings of an equivalent solid visual density or other effective means deemed adequate by the Plan Commission and shall be built and maintained at a minimum height of six feet.

4. Minimum Distance of Truck Parking from Any Residential Zoning District. No truck parking of Class 7 trucks (26,001 to 33,000 lbs., GVW) or greater shall be allowed within 150 feet of any residential zoning district.

5. Minimum Required Landscaped Area and Landscaping Within Off-Street Parking Lots.

   a. All public off-street parking areas that serve ten vehicles or more and are created, redesigned, and/or rebuilt subsequent to the adoption of this Chapter, shall be provided with evenly dispersed landscape areas within the interior of such off-street parking areas.

   b. The landscaped area shall total not less than five percent of the surfaced area (inclusive of both parking stalls and associated drives). Perimeter landscaped areas adjacent to the off-street parking lot shall not be included in the aforementioned required five percent. The minimum size of each such required landscape area in the off-street parking lot shall not be less than 100 square feet in area and not less than nine feet in width or length. Canopy trees shall be provided at the rate of one tree for each 15 off-street parking spaces (or fraction thereof) within the interior of the off-street parking area. The preservation of existing canopy trees in the parking area may be included in the calculation of the required minimum landscape area.

6. Minimum Landscaping Requirements To Be Met. All landscape plant materials required by this Chapter shall meet the following minimum requirements.

   a. General Plant Material Standards. All new landscape plant material shall be grown in a nursery located in plant hardiness zone 4 and shall conform to the applicable requirements as specified in the current edition of American Standard for Nursery Stock as approved by the American National Standards Institute, Inc. and sponsored by the American Nursery and Landscape Association. Botanical plant names shall be in accordance with the current edition of New Pronouncing Dictionary of Plant Names prepared by the American Joint Committee on Horticultural Nomenclature.

   b. Plant Material Minimum Size Standards. All required new landscape plant material shall be, at the time of installation, those minimum sizes as set forth in Table 35-161.1.

Table 35-161(1)
MINIMUM SIZE STANDARDS FOR REQUIRED PLANT MATERIALS

Plant Material Type	Minimum Required Size of Plants
Canopy Trees: Single Stem: Multi-stem Clump:	 3-inch caliper 12 feet tall
Coniferous Trees	6-feet tall
Ornamental Trees	1.5 inch caliper
Shrubs	2 feet tall

c. Off-Street Parking Area Surfacing. All open, off-street parking and loading spaces in all zoning districts except residential districts shall be improved with pavement of either asphalt or concrete. Storm water drainage facilities shall be as required and approved by the Village Engineer.

d. Concrete Curb and Gutter Required for All Off-Street Parking Areas and Associated Drives. Concrete curb and gutter shall be required for all off-street parking areas serving five or more vehicles in the following zoning districts: R-4, R-8, B-1, B-2, B-3, B-4, B-5, M-1, M-2, M-3, and P-1. The expansion of any existing off-street parking lot must meet this requirement.

e. Permanent Marking of Off-Street Parking Stalls. All off-street parking areas serving five or more vehicles shall have all parking stalls permanently marked by painted lines or other approved material and said marking shall be maintained so as to be legible at all times.

f. Parking Spaces for Use by Persons with Disabilities. All open, off-street parking areas shall provide parking spaces for persons with disabilities meeting all applicable "Americans with Disabilities Act (ADA) Guidelines for Buildings and Facilities" as documented in the Federal Register. Vol. 56, No. 144, July 26, 1991 as amended. Unless conflicting with the above specified "Americans with Disabilities Act (ADA) Guidelines for Buildings and Facilities" requirements as amended, the following standards are applicable:

(1) Minimum Required Number of Accessible Off-Street Parking Spaces for Use by Persons with Disabilities. The following Table 35-161(2) shall apply. The minimum required number of accessible off-street parking spaces for use by persons with disabilities shall be considered as a part of the total off-street parking spaces required.

Table 35-161(2) "MINIMUM REQUIRED NUMBER OF ACCESSIBLE OFF-STREET PARKING SPACES FOR PERSONS WITH DISABILITIES" ADA Standards for Accessible Design 4.1.2(5)

Total Number of Off-Street Parking Spaces in Parking Lot or Area	Minimum Required Number of Accessible Off-Street Parking Spaces (60" & 96" aisles)	Van-Accessible Parking Spaces with min. 96" wide access aisle	Accessible Parking Spaces with min. 60" wide access aisle
	Column "A"		
1 to 25	1	1	0
26 to 50	2	1	1
51 to 75	3	1	2
76 to 100	4	1	3
101 to 150	5	1	4
151 to 200	6	1	5
201 to 300	7	1	6
301 to 400	8	1	7
401 to 500	9	2	7
501 to 1,000	2 percent of total parking provided in each lot	1/8 of Column "A"*	7/8 of Column "A"**
1,001 and over	20 plus 1 for each 100 over 1,000	1/8 of Column "A"*	7/8 of Column "A"**
*one out of every 8 accessible spaces		**7 out of every 8 accessible parking spaces	

(2) Minimum Dimensions for Off-Street Parking Spaces Provided for Use by Persons with Disabilities. The minimum dimensions for all parking spaces provided for use by persons with disabilities shall be 14 feet wide by 20 feet long for automobiles and 17 feet wide by 20 feet long for vans. The minimum access aisles for such spaces shall be 60 inches for automobile spaces and 96 inches for van spaces.

(3) Distance to Facility Entrances for the Location of Off-Street Parking for Persons with Disabilities. Off-street parking spaces provided for the use of persons with disabilities shall be located as close as possible to an entrance which allows such persons to enter and leave the parking area without assistance.

(4) Signage of Off-Street Parking Spaces Serving Persons with Disabilities. All parking spaces provided for the use of disabled persons shall be marked by a sign which includes the international symbol for barrier-free environments and a statement informing the public that the parking space is reserved for use by disabled persons. Such signs shall comply with the requirements of the aforementioned "Americans with Disabilities Act (ADA) Guidelines for Buildings and Facilities" as amended and with Wis. Stat. ss. 346.50, 346.503, and 346.505.

g. Minimum Number of Off-Street Parking Spaces required:

Table 35-161(3) NUMBER OF PARKING STALLS

Use	*Minimum Parking Required*
Single-family, two-family, multi-family dwellings	2 spaces for each dwelling unit
Motels, hotels, lodging, and boarding houses	1 space for each guest room plus 1 space for each 2 employees
Hospitals and dormitories	1 space for each 2 beds plus 1 space for each 2 employees
Sanitariums, institutions, rest and nursing homes	1 space for each 5 beds, plus 1 space for each 2 employees
Medical and dental clinics	5 spaces for each doctor
Churches, theaters, auditoriums, community centers, vocational and night schools, and other places of public assembly	1 space for each 4 seats
Colleges, secondary, and elementary schools	1 space for each 2 employees plus 1 space for each 10 students of 16 years of age or more
Restaurants, bars, places of entertainment, repair shops, retail and service stores	1 space for each 150 square feet of floor area and 1 space for each 2 employees
Manufacturing and processing plants, laboratories and warehouses	1 space for each 3 employees
Financial institutions, business, government, and professional offices	1 space for each 300 square feet of floor area and 1 space for each 2 employees
Funeral Homes	1 space for each 4 seats
Bowling alleys	5 spaces for each alley
Lodges and clubs	1 space for each 5 members
Automotive repair garages	1 space for each regular employee plus 1 space for each 250 square feet of floor area used for repair work
Gasoline filling stations	3 spaces for each grease rack or similar facility plus 1 space for each attendant
Uses not listed	In the case of structures or uses not mentioned, the provision for a use which is similar shall apply.
Combinations of any of the above uses shall provide the total of the number of stalls required for each individual use.	

h. Employee Parking. Parking spaces required on an employee basis, as set forth in Table 35-161(3) shall be based on the average number of employees on duty or residing, or both, on the premises at any one time.

i. Minimum Width of Off-Street Parking Rows and Aisles. The design of all off street parking regulated by this Chapter shall be in conformance with the requirements set forth in Table 35-161(4).

Table 35-161(4) MINIMUM WIDTH OF OFF-STREET PARKING ROWS AND AISLES

Type of Row	*Parallel Spaces*	*45 Degree Angle Spaces*	*60 Degree Angle Spaces*	*90 Degree Angle Spaces*
Single Row & Aisle	20 ft.	35 ft.	40 ft.	45 ft.
Double Row& Aisle	28 ft.	60 ft.	62 ft.	65 ft.

j. Modifications to required parking spaces. The Village recognizes that, due to the particularities of any given land use or development, the inflexible application of the parking supply requirements set forth in subsection g. of this section may result in a land use or development either with inadequate parking supply or parking supply far in excess of its needs. Therefore, the Plan Commission may permit or require deviations from the requirements of subsection g. of this section and may require more parking or allow less parking whenever it finds that such deviations are more likely to satisfy the standards set out in subsections j.(1), j.(2) and j.(3) of this section. Whenever the Plan Commission permits or requires a modification to the prescribed parking supply requirements, it may also request the recording of the same under the provisions of subsection D.2.c. of this section with the Racine County Register of Deeds.

(1) Additional parking spaces can be required if it is determined that the prescribed requirement for a particular development will lead to traffic congestion or parking violations in adjacent streets or unauthorized parking in nearby private parking lots.

(2) A reduction in parking spaces can be required if it is determined that the prescribed requirement for a particular development would result in the wasteful use of property that could more desirably be used for additional building development, in the case of a land use or development which would produce less parking demand, or for environmentally useful or aesthetically pleasing open space.

(3) In the HPO Historic Preservation Overlay District, the Plan Commission may also eliminate or modify the parking lot landscaping requirements of this Section.

35-162 DRIVEWAYS.

A. Definition. For the purpose of this section, a driveway shall be defined as a private road, drive or roadway giving access from a public way, road or highway to abutting grounds.

B. Application and Permit. The procedures for obtaining a Driveway Permit and certain standards for driveways are set forth in section 6-7, Driveway Permits; Protection of Streets During Construction, of this Municipal Code.

C. All driveways installed, altered, changed, replaced or extended after the effective date of this Chapter shall meet the requirements in this section. Driveway culverts and apron end walls shall be constructed and/or installed as may be required in section 6-7 of this Code.

D. Surface.

1. Driveway aprons in all zoning districts shall be asphaltic concrete as provided in s. 6-7, except driveways directly accessing agricultural land.

2. All lots in the R-1 through R-5 Residential, B-1 through B-6 Business, M-1 through M-3 Manufacturing and P-1 Institutional Park Zoning Districts hereafter constructed shall, at the time of said construction, have installed thereon, at the owner's or builder's expense, a hard-surfaced, dustproof, paved driveway and off-street parking meeting the standards and specifications as herein provided within 12 months of occupancy.

   For houses existing in one of these districts prior to the effective date of this Code that have existing driveways, a hard-surfaced drive shall not be required for modifications to the driveway, with the exception that if the width of the approach is widened, then a hard-surfaced apron, consistent with section 6-7 of this Municipal Code, shall be required from the road to the property line.

3. Driveways in zoning districts not listed in subsection 2. may consist of gravel or other surfaces, provided that the road strength of the driveway is capable of supporting emergency and fire vehicles.

E. Width and Location.

1. Driveway aprons in all zoning districts shall be at least the width required in s. 6-7.

2. Driveways for one and two family dwellings shall have a minimum width of 12 feet. Driveway widths for all other uses shall be determined during the plan review and shall be established by the Public Works Manager and Zoning Administrator based on traffic flows, current conditions and future expectations for the area.

3. Openings for vehicular ingress and egress in all zoning districts, except the Manufacturing and Agricultural Districts, shall not exceed 30 feet at the street line and 35 feet at the roadway. Openings for vehicular ingress and egress in the Manufacturing and Agricultural Districts shall not exceed 30 feet at the street line and, at the roadway, shall not exceed the width determined by the Public Works Manager.

4. Islands between driveway openings shall be provided with a minimum of six feet between all driveways and three feet at all lot lines. The area between the lot line and adjacent driveway shall be a landscaped area.

5. Vehicular Entrances and Exits to drive-in theaters, banks and restaurants; motels; funeral homes; vehicular sales, service, washing and repair stations; or garages shall be not less than 200 feet from any pedestrian entrance or exit to a school, college, university, church, hospital, park, playground, library, public emergency shelter, or other place of public assembly.

6. For existing single-family residences located on interior lots where the side yard is not adequate to permit access to an off-street parking area located in back of the building setback line, a parking area adequate to park one or two automobiles may be constructed in front of the building setback line, if approved by the zoning administrator.

7. For existing single-family residences located on corner lots where the side yard or back yard is not adequate to permit access to an off-street parking area located in back of the building setback line, a parking area adequate to park one or two automobiles may be constructed in front of the building setback line at a place farthest from the intersection of the streets, if approved by the zoning administrator.

4. Length.

   1. The driveway shall extend from the curb or, in the absence of a curb, from the street surface to an off-street parking area or garage. The off-street parking area and/or garage combined shall be adequate to park the required number of vehicles, consistent with s. 35-161, behind the setback line for the zoning in which the construction takes place.

   2. Driveways extending 1,000 feet or more from a public or private road shall receive approval from the contracted fire company and additional driveway width may be required to accommodate fire vehicles in case of an emergency prior to obtaining a driveway permit.

F. Hard Surface Specifications. Where driveway aprons, driveways and off-street parking areas must be hard-surfaced and dust proof, they must be constructed to meet the specifications of this section and the requirements of the Public Works Manager as to finish, slope and strength. Expansion joints shall be located as required.

   1. The driveway apron on a public right of way shall meet the requirement of s. 6-7 of this Code.

   2. Driveways and parking beyond the apron.

      a. On property where pavement is required, the driveway from the apron to the edge of the right of way shall consist of three inches of asphalt (one and one-half inch binder course, one and one-half inch surface course) on a six inch compacted granular base. The driveway from the edge of the right of way into the property shall be constructed of six inches of portland cement reinforced concrete on a four inch compacted granular base, or three inches of asphalt (one and one-half inch binder course, one and one-half inch surface course) on a six inch compacted granular base.

      b. Where driveways and/or parking areas consist of materials other than asphaltic concrete are allowed, they shall have road strength capable of supporting emergency and fire vehicles.

G. Street Projects. When a street project necessitates the removal of a portion of a driveway:

   1. Regardless of zoning district, if asphaltic concrete is removed to accommodate a street project, it will be replaced with asphaltic concrete as part of the project.

   2. If a hard surface material that is not asphaltic concrete was used in the right-of-way in a zoning district where a hard surface is required for a driveway, the Village may remove that material to accommodate street projects, may replace the material with asphaltic concrete, and shall not be liable for replacing it with the same or similar material.

   3. If a hard surface material was used in a zoning district where a hard surface material is not required for a driveway, in the event the Village intends to remove the other hard-surface material as part of a street project, it will notify the property owner in writing. In the event that the property owner wishes to restore the other hard-surface material at his or her own expense (rather than have the Village restore the driveway within the right-of-way with asphalt), the property owner must notify the Village within 30 days of receiving the Village's notice, in which case the Village will place gravel rather than asphalt in the portion of the driveway located in the right-of way beyond the required depth of the asphaltic concrete apron. The property owner will have one year to restore that portion of

the driveway with the other hard-surface material. If the driveway has not been restored with the other hard surface material within one year of the placement of the gravel, the Village will place asphalt on the portion of the driveway located in the right-of-way and will charge the full cost of doing so to the property owner as a special charge pursuant to Wis. Stat. s. 66.0627, and if the property owner fails to pay the special charge within 30 days of being billed therefore, the charge shall be considered delinquent and shall become a lien on the property and shall be included in the tax roll for collection.

H. The Zoning Administrator may revoke any driveway permit issued by written notice at any time that the Administrator finds that the provisions of this Chapter or any laws, orders, plans and specifications are not being complied with. See s. 6-7 of this Municipal Code.

35-163 HIGHWAY ACCESS

A. No direct private access shall be permitted to the existing or proposed rights-of-way of any controlled access arterial street without permission of the highway agency that has access control jurisdiction. No direct public or private access shall be permitted to the existing or proposed rights-of-way of arterial streets intersecting other arterial streets or local streets within 100 feet of the intersection of the right-of-way lines.

B. Access Barriers, such as curbing, fencing, ditching, landscaping, or other topographic barriers, may be required to prevent unauthorized vehicular ingress or egress to the above specified streets or highways.

C. Temporary Access to the above rights-of-way may be granted by the Plan Commission after review and recommendation by the highway agencies having jurisdiction. Such access permit shall be temporary, revocable, and subject to any conditions required and shall be issued for a period not to exceed 12 months.

D. With respect to each lot in residential districts R-1 to R-3 inclusive only one driveway shall be permitted to exit/enter said lot from each street that directly abuts such lot on the front, rear and each side; and any driveway exiting/entering said lot from more than one street will connect with the driveway or driveways exiting/entering from any other street or streets. This provision shall only apply to driveways constructed after the effective date of this Code.

35-170 SIGNS.

A. Intent. It is the intent of this Chapter to insure that signs compliment both the natural environment around them and the architecture of the buildings associated with the signs. Signs must convey information clearly without being aesthetically distracting. The sign regulations are intended to promote the effective use of signs; to maintain and enhance the aesthetic environment of the Village; to promote pedestrian and vehicular safety; to protect property values by minimizing the adverse effects of signs; and to provide a procedure for fair and consistent enforcement, by:

1. Establishing a permit system to allow a broad variety of sign types in commercially and industrially zoned districts and a limited variety of signs in other zoned districts, subject to the standards and procedures of this Chapter.

2. Allowing certain signs in residentially zoned districts that are small, unobtrusive and incidental to the principal use of the respective premises on which they are located, subject to the substantive requirements of this Chapter, but without a requirement for permits.

3. Prohibiting all signs not expressly permitted by this Chapter.

4. Prohibiting all signs which have the potential for disrupting or distracting vehicular traffic.

35-171 PERMITTED AND PROHIBITED SIGNS; PERMITS.

A. Regulations. Signs shall be allowed or prohibited as set forth in this Chapter. Signs that are allowed require a sign permit unless otherwise noted. No sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered unless it is in conformity with the provisions of this Chapter.

1. Type of signs allowed.

a. Monument. The design of freestanding signs should recognize that they are part of the landscape. These signs use low mounting walls, masonry bases, shrubs, and ground cover, and seasonal plantings to integrate them with their sites.

b. Wall. Wall signs shall complement the architecture of the building. They shall not extend above the roofline.

2. Types of signs not allowed.

a. Roof.

b. Pole.

c. Projecting.

3. Location of Signs. All signs shall be located on the premises of the business. Off premises advertising signs (billboards) are not allowed.

B. Permits. A zoning permit application for a sign must be submitted to the Zoning Administrator on forms provided by the Village, and shall be accompanied by the fee for the permit application determined by the Village Board and set forth in the Fee Schedule. The zoning permit application must contain or have attached thereto at least the following information:

1. Applicant's name, address, and telephone number.

2. Location of building, structure, or lot to which or upon which the sign is to be located.

3. Name of person or entity erecting the sign.

4. A drawing of such sign indicating the materials to be used, the type of illumination, if any, and the method of construction and attachment. The drawing must be drawn at a scale no smaller than 1/10 inch equals one foot or dimensions must be shown on the drawing.

5. A drawing indicating the location and position of the sign in relation to nearby buildings, structures, and lot lines. The drawing must include the sign's height above finished yard grade. The drawing must be at a scale no smaller than one inch equals 50 feet or dimensions must be shown on the drawing. All setback measurements must be taken from the street right of way and lot lines.

6. Signs requiring county, state and/or federal approval must provide a copy of all such approvals with the sign permit application.

7. Additional information as may be required by the Zoning Administrator, the Plan Commission, the Village Board or the Board of Appeals.

35-172 MEASURING SIGNS.

A. In calculating the area of a sign to determine whether it meets the requirements of this Chapter, the Zoning Administrator will include the sign copy and any border or frame surrounding that copy. Customary supporting members of a sign will be excluded from the area calculation. The area of irregularly-shaped signs or of signs containing two or more detached elements will be determined by the area of the smallest circle, square, triangle, rectangle, or combination thereof, that will encompass all elements of the sign. Where individual letters, words, emblems, symbols, etc. are affixed to a building, a rectangle around the entire phrase or sentence will be measured to compute the sign area. Where the sign background is made a different color from the building such as by painting, the area of different color will be measured. Back-to-back, side-by-side, bottom-on-top, and V-shaped signs constitute one sign.

B. Spherical, free-form, sculptural, or other non-planar sign area is 50 percent of the sum of the areas using only the four vertical sides of the smallest four-sided polyhedron that will encompass the sign structure. Signs with more than four faces are prohibited.

C. The sign height shall be computed as the distance from the base of the sign or structure to which it is attached at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of:

1. Existing grade prior to construction; or

2. The newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of elevating the sign. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a street or the grade of the principal pedestrian entrance to the principal structure on the site, whichever is lower.

35-173 SIGNS ALLOWED IN ALL ZONING DISTRICTS, NO PERMIT REQUIRED.

The following signs do not require permits, but must meet the size and placement limitations of this Chapter.

A. Real Estate Signs. Real estate signs that advertise the sale, lease, or rental of the structure(s) and/or property upon which said signs are temporarily located are permitted on all properties advertised for sale, lease, or rent. Such real estate signs are not to exceed nine square feet in area on one side and 18 square feet in area on all sides in a residential ("R") district, or 32 square feet in area on one side and 64 square feet in area on all sides in other districts. These signs shall be removed within 30 days following sale, lease, or occupancy. Real estate signs may be located not closer than ten feet to any street right-of-way, nor closer than ten feet to a side or rear lot line. Only one such sign is permitted per street frontage and no sign may exceed a height of 20 feet.

B. Property address numbers assigned by the Village and of a design approved by the Village that are required to be placed on every principal structure or as designated by the Village in clear view from the street on which the address is assigned.

C. Signs not readable beyond the boundaries of the lot or parcel upon which they are situated and not readable from any street right-of-way or which are intended solely for providing information to parties on-site.

D. Traffic and other official signs of any public or governmental agency, such as railroad crossing signs, trespassing signs, signs indicating danger, or signs used as aids to service or safety including water dependent informational signs with public health, safety or regulatory information that are no larger than necessary to accommodate the information that needs to be displayed.

E. Any identification or display of any official court or public office, notices thereof, or any flag, emblem, or insignia of a nation, federal, state, county, or other governmental unit or school.

F. Any sign that is located completely within an enclosed building and such sign is not placed in a window facing outward for the purpose of being readable from outside the building.

G. Tablets, grave markers, headstones, statuary, or monuments of persons or events that are noncommercial in nature.

H. Temporary signs, not over four square feet in area and not more than five feet in height, for events sponsored by non-profit organizations or for a non-profit charitable event. Such signs must be located at least five feet from the outer limits of the street right-of-way and ten feet from a side or rear lot line, and may be erected 30 days prior to the event, and must be removed within three days after the event.

I. Works of art with no commercial message.

J. Temporary holiday decorations or displays with no commercial message.

K. Signs on a truck, bus, trailer, or other vehicle incidental to the use of such vehicle while operated in the normal course of a business. (But see s. 35-174, Prohibited Signs.)

L. Recreational, informational, and directional signs within a federal, state, county or Village park or cemetery which are not readable from external streets.

M. On-premises directional signs such as "Enter," "Exit," and "Do Not Enter" signs, when the principal purpose of the sign is traffic control, the sign does not exceed 12 square feet in area on one side and 24 square feet on all sides, the sign height is five feet or less, and the sign is set back at least ten feet from any property line or outer limits of the street right-of-way line. The number of signs on one premises shall be limited to the number necessary to safely direct traffic into the specific site.

N. Temporary private sale signs advertising occasional noncommercial sales of personal property such as "house sales," "garage sales," "rummage sales," and the like.

O. Construction signs erected on the premises where construction is taking place, during the period of such construction, indicating the names of the architects, engineers, landscape architects, contractors, or similar artisans, and the owners, financial supporters, sponsors, and similar individuals or firms having a role or interest with respect to the structure or project. Such signs are subject to the dimensional and locational standards of **subsection C.1.(b) for ground signs**.

P. Memorial Signs, tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of metal and affixed flat against a structure.

35-174 PROHIBITED SIGNS.

The following signs are prohibited in all zoning districts:

A. Specifically prohibited signs include projecting signs, billboards, pole signs, roof signs, pylon signs, flashing or moving signs or beacons, bench signs, trailer signs, banner signs on poles or buildings, balloons, inflatable advertising devices, inflatable signs and pennants. No sign shall contain, include or be illuminated by any flashing light, or moving part or be illuminated by other than white lights or be composed of any animated part. Colored coverings are not permitted.

B. Vehicle Signs. Parking any vehicle, trailer, farm wagon, or equipment to be readable from a street right-of-way, that has attached thereto or located thereon any sign or advertising device for the purpose of providing advertisement of a product or directing people to a business or activity is prohibited. This provision shall not prohibit signs attached to a vehicle, trailer, farm wagon, or equipment if the sign is incidental to the primary use of the vehicle, trailer, farm wagon, or equipment; nor shall this provision prohibit any official signs in the street right-of-way regulated by the federal, state, county, or local government.

C. Interference with Traffic. Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals, or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or devices. No sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window, or fire escape, and no sign shall be attached to a standpipe or fire escape. No sign shall be placed so as to obstruct or interfere with traffic visibility.

35-175 POLITICAL SIGNS.

Political signs may be displayed during an election campaign period if they are located on a zoning lot, behind the outer limits of the street right-of-way line, with the permission of the owner or tenant. Such signs may not interfere with traffic or pedestrian safety.

A. Political signs not exceeding 11 square feet in area and not having an electrical, mechanical or audio component during an election campaign period as provided in Wis. Stat. s. 12.04 are allowed in any zoning district without a permit.

B. Political signs affixed to a permanent structure that do not extend beyond the perimeter of the structure, if the sign does not obstruct a window, door, fire escape, ventilation shaft or other area that is required by an applicable building code to remain unobstructed are allowed in any zoning district without a permit.

C. Other Political Signs. Signs that do not meet the requirements of subsections A or B shall not exceed 16 square feet in sign area on one side and 32 square feet in sign area on all sides, or the maximum size allowed for signs in the applicable zoning district, whichever is greater**. A maximum of four such signs may be placed on a zoning lot**. For traffic and pedestrian safety, such signs must be located at least 50 feet from any street right-of-way intersection. A permit is not required.

D. Signs Having an Electrical, Mechanical or Audio Auxiliary. Political signs having an electrical, mechanical or audio auxiliary are only allowed if in conformance with the provisions of this Chapter. A permit is required.

E. Responsibility. The person or organization responsible for the erection or distribution of political signs, or the owner, owner's agent, tenant or tenant's agent of the property upon which such signs are located shall be responsible for the proper erection or removal of said signs.

35-176 DISTRICT REGULATIONS FOR SIGNS.

The following provisions are specific to the Zoning Districts of the Village.

A. Residential Districts. The following signs are allowed in Residential Districts. All signs not specifically allowed in this Chapter are prohibited in Residential Districts.

1. No Permit Required.

a. Signs not to exceed two square feet located on the premises.

b. Signs over show windows or doors of a nonconforming business establishment announcing without display or elaboration only the name and occupation of the proprietor and not to exceed two feet in height and ten feet in length are allowed.

2. Permit Required.

a. Single-family, two-family, and multi-family permanent residential development signs not to exceed 48 square feet in area on one side and 96 square feet in area on all sides, that are located at entrances to subdivisions or developments or along abutting streets or highways, identifying residential complexes or displaying the property addresses. Said signs must be located on an outlot, permanent easement, or other common area and they must be located not closer than 15 feet to any street right-of-way, nor closer than ten feet to any side or rear lot line. Such signs may not exceed 12 feet in height. No more than two such signs are permitted for any one subdivision or development.

b. Temporary development signs for the purpose of designating a new building or development or for promotion of a subdivision may be permitted for a period up to two years, and extensions may be granted for a period not to exceed five years total. Signs may not exceed 48 square feet in area on one side and 96 square feet in area on all sides; may not exceed 12 feet in height, and must be located not closer than 15 feet from any street right-of-way and 75 feet from any

street right-of-way intersection, nor closer than ten feet to any side or rear lot line. Only one such sign is permitted per street frontage.

B. Business and Industrial Districts. The following signs are allowed in all Business and Industrial Districts, except for Adult Establishments, subject to the conditions specified. All of the signs listed require a permit.

[4]1. Wall Signs placed against the exterior walls of buildings are allowed and shall not extend outside of a building's wall surface, and shall not exceed 500 square feet in area for any one premises.

a. Wall signs placed against the exterior walls of buildings may not extend more than 12 inches outside of a building's wall surface, may not exceed 30 feet in height (measured from the existing grade below the sign to the top of the sign), and may not extend above the roofline of a flat roof, or the eave line of a building with a gambrel, gable, dome, or hip roof, or the deck line of a building with a mansard roof.

b. Total area of all wall signs may not exceed 500 square feet in area for any one premises; except that in multi-tenant shopping centers, the anchor tenant(s) may each have 500 square feet of allowable sign area, and the total area of individual wall signs for non-anchor businesses within such multi-tenant structures shall not exceed 50 square feet per tenant. An anchor tenant is defined as the major store or stores within a shopping center exceeding 40,000 square feet in total floor area.

2. Monument Signs (Ground Signs)[5]. The top of a monument sign shall not exceed ten feet in height from the existing grade at the proposed sign location. The structural base below the sign shall maintain a minimum two feet in height measured from existing yard grade to the bottom of the sign. The structural base shall extend the full width of the sign face. Monument signs shall not be located closer than 15 feet to a street right of way or closer than ten feet to a side or rear lot line. A monument sign shall not exceed 100 square feet on one side nor 200 square feet on all sides for any one premises.

a. Required Landscaping at Base of Monument Sign. All monument signs shall provide a landscaped area with appropriate natural plant material groundcover and other landscape plantings located at the base of the monument sign equal in area to the area of the face of the sign.

b. When earthen berms are used as part of the landscaping, the earthen berms shall maintain a side slope of three to one with a maximum berm height of three feet above the surrounding grade. When earthen berms are used, earthen berms shall count towards the maximum permissible sign height.

3. On-Site Directional Ground Signs. On-site directional signs may be allowed giving directions to areas such as employee or visitor parking and shipping or loading zones. The maximum size of directional ground signs shall not exceed three square feet in area on each side and the maximum height shall be 48 inches. Such signs shall be on the ground floor only and be readable from the public right-of-way.

[4] Ordinance #2016-4 Adopted May 9, 2016
[5] Ordinance #2016-4 Adopted May 9, 2016

4. Window Signs may be placed only on the inside of buildings and first floor windows and doors. No permit is required for window signs that are not readable from the street right-of-way. The total area of all window signs requiring a permit shall not cover more than 20 percent of the total window area to which they are applied, or 100 square feet, whichever is less.

5. Marquee, awning, and canopy signs affixed flat to the surface of a marquee, awning, or canopy are permitted provided that the signs do not extend vertically or horizontally beyond the limits of such marquee, awning, or canopy. A marquee, awning, or canopy for a shopping center may not extend beyond a point one foot back from the vertical plane formed by the curbline in the shopping center. No marquee, awning, or canopy may project into a required street yard, side yard, or rear yard, unless such structure already exists as an existing legal nonconforming structure or was approved by variance and such sign does not increase the dimensional nonconformity. A name sign not exceeding two square feet in area located immediately in front of the entrance to an establishment may be suspended from a marquee, awning, or canopy provided that the bottom of the name sign is at least 12 feet above the sidewalk or 15 feet above a driveway or alley. The total area of all marquee, awning, or canopy signs may not exceed 60 square feet in area for any one premises.

6. Time and/or temperature devices and/or changeable copy signs may be erected as wall signs, ground signs, or canopy signs and must meet the requirements attendant to those sign types. Time and/or temperature devices may change their copy not more than once every four seconds.

7. Signs on any one site are further limited as follows:

   a. Shopping Centers and multi-tenant buildings may provide one ground sign for each street frontage. Such facilities may also provide one wall sign or one canopy sign for each business in the building.

   b. Gasoline stations, service stations, convenience stores with pumps, or any combination thereof may provide one ground sign. Wall signs and canopy signs may also be provided subject to total square footage limitations. Signs advertising incidental products for sale that are window signs or located on the gasoline pumps, and are not readable from the street right-of-way, will not require permits or be regulated in number.

   c. For all other uses, total signs are limited to two signs per street frontage.

C. Conservation and Park Districts. The following signs are allowed in Conservation and Park Districts, subject to the conditions herein specified.

1. No Permit Required.

   a. On-premises or off-premises recreational directory signs not to exceed two in number, indicating the direction and/or distance to a specific cottage, resort, residence, or recreation facility that is located within an agricultural, resource conservation or park district, not to exceed 12 square feet in display area on one side and 24 square feet on all sides, five feet in height and no closer than ten feet to any right-of-way or property line.

   b. Signs over show windows or doors of a nonconforming business establishment not to exceed two in number announcing, without display or elaboration, only the

name and occupation of the proprietor and not to exceed a total of 20 square feet in area for all signs, and 20 feet in height.

c. Name, occupation, and warning signs not to exceed two square feet located on the premises.

d. Bulletin Boards for public, charitable or religious institutions not to exceed 24 square feet in area located on the premises.

2. Permit Required.

a. Public and private institutional and park names signs. Such signs may be erected as wall signs or ground signs and shall meet the requirements set forth for the business and industrial districts.

D. Agricultural and Urban Reserve Districts. The following signs are allowed in the Agricultural and Urban Reserve Districts with a permit:

1. On-premises agricultural homestead signs, where the principal purpose of the sign is to identify the name and address of a farm operation and/or date of establishment, which may not exceed 24 square feet in area on one side and 48 square feet in area on all sides, limited to one sign for any one farm, and such signs are located at least ten feet from the outer limits of the street right-of-way or any property line, and such signs do not exceed ten feet in height. Such signs may be exempt from the aforementioned height limit if painted upon the wall of an accessory structure. The size of such wall signs may exceed 24 square feet if done in an aesthetically pleasing manner that is approved through a site plan review by the Plan Commission.

2. Temporary, non-illuminated, off-premises agricultural directional signs not to exceed four in number, indicating the direction and/or distance to an agricultural roadside stand, not to exceed 12 square feet in display area on one side and 24 square feet in area on all sides, a maximum of five feet in height, at least ten feet from the outer limits of the street right-of-way and five feet from any other property line. Such signs must be removed within ten days of discontinuing operation of a roadside stand. Provided the sign(s) are relocated per the issued permit and the permit holder remains the same, the issued permit continues to be valid for successive years.

3. Agricultural signs pertaining to the sale of products actually grown on the farm or in connection with a roadside stand not to exceed 32 square feet in area on one side and 64 square feet on all sides for no more than two signs on any one farm, such signs are located at least ten feet from the outer limits of the street right-of-way or any property line, such signs do not exceed 15 feet in height, and such signs are located on the same premises as the products for sale.

4. Signs for agricultural businesses that are approved by conditional use shall be treated as commercial/industrial signs are allowed.

35-177. SIGN REGULATIONS.

A. Signs Illuminated By Spotlights. If a sign is illuminated by one or more spotlights specifically directed at it, the spotlights are to be fully shielded so that they are not visible from public streets or adjoining property.

B. Lighting of Signs. Lighting of signs shall be permitted. Lighting of signs shall incorporate cutoff

lighting where the illumination source is not visible from the viewing highway, or from neighboring homes and businesses.

C. Animation of Signs. No signs using animated or flashing messages are allowed unless specifically set forth herein.

D. Existing Signs. Any sign lawfully existing at the time of the adoption or amendment of this Chapter may be continued although the use, size, or location does not conform with the provisions of this Chapter. However, it shall be deemed a nonconforming use or structure; and the provisions of Section 35-200 of this Chapter shall apply.

35-178 SIGN CONSTRUCTION AND MAINTENANCE STANDARDS.

A. Construction.

1. All signs shall be constructed, erected and maintained to support the actual dead load, plus wind loads of not less than 40 pounds per square foot acting upon it, without exceeding the allowable stresses of the material.

   a. The exposed area subject to wind pressure shall be the total area of all parts of the sign, including structural framing projected on a plane perpendicular to the direction of the wind.

   b. In determining the stress in any member, the wind shall be assumed to blow from that horizontal direction and from that inclination from the vertical (but not to exceed 20 degrees above or below the horizontal) which produces the maximum stress in such member. No shielding effect on one element from another shall be considered where the distance between such elements exceeds four times the smaller projected dimension of the windward element.

2. The temporary occupancy of a sidewalk or street or other public property during construction, removal, repair, alteration, or maintenance of a sign is permitted subject to the approval of the jurisdictional authority, provided that the space occupied is roped off, fenced off, or otherwise isolated as directed by said authority.

3. No sign or any part thereof or sign anchor, brace, or guide rod may be attached, fastened, or anchored to any fire escape, fire ladder, or standpipe and no such sign or any part of any such sign or any anchor, brace, or guide rod may be erected, put up, relocated, or maintained so as to hinder or prevent ingress or egress through such door, doorway, fire escape, window, or opening designated by the contracted fire department, or so as to hinder or prevent the raising or placing of ladders against such building by the fire department as necessity may require.

4. Upon request of the Zoning Administrator, it is the responsibility of the applicant to establish by competent evidence that the sign meets any above stated standards or requirements.

B. Sign Maintenance. The owner of a sign shall keep it in good maintenance and repair which includes restoring, repainting, or replacement of a worn or damaged legally existing sign to its original condition; and shall maintain the premises on which the sign is erected in a clean, sanitary, and inoffensive condition, free and clear of obnoxious substances, rubbish and weeds.

35-180 MODIFICATIONS.

A. Height. The district height limitations stipulated elsewhere in this Chapter may be exceeded in accordance with the following:

1. Architectural Projections such as spires, belfries, cupolas, domes, flues and chimneys are exempt from the height limitations of this Chapter.

2. Special Structures, such as fire towers and substations, are exempt from the height limitations of this Chapter, but conditional use permits may be required. See section 35-100.

3. Essential Services, utilities, water towers, electric power and communication transmission lines are exempt from the height limitations of this Chapter.

4. Solar Energy Systems, Wind Energy Systems, and Tower Facilities are regulated under sections 35-130 through 35-151 and must meet the applicable requirements.

5. The height and setback distance limitations for a structure near a public use airport or heliport shall conform to the airport and airport approach protection provisions under Wis. Stat. ss. 114.135 and 114.136 or the wind turbine height and setback distance provisions set by the federal aviation administration obstruction standards in 14 CFR Part 77, whichever applies. The height and setback distance limitations for a structure near a private heliport at a medical facility used for air ambulance service, or a private use airport or heliport, shall conform to the federal aviation administration obstruction standards that apply to public use heliports.

B. Yards. The yard requirements set forth in this Chapter may be modified as follows:

1. Uncovered Stairs, landings, bulkhead doors and fire escapes may project into any yard but not to exceed five feet, may not be closer than three feet to any lot line, and may project into a required court not more than three and one-half feet, provided light and ventilation are not obstructed.

2. Architectural Projections such as chimneys, flues, sills, eaves, belt courses, decorative projections, lighting fixtures, balconies, bay/bow windows and ornaments may project into any required yard; but such projection shall not exceed three feet.

3. Residential Fences and Walls are allowed without a permit on the property lines of residential districts, but shall not in any case exceed a height of six feet in side and rear yards and four feet in street yards; and shall not be closer than one foot to any public right-of-way. No residential fence may be located in a driveway, drainage, utility, or preservation easement.

4. Retaining walls are allowed anywhere in a yard provided, however, that no individual wall shall exceed three feet in height, and a terrace of at least three feet in width shall be provided between any series of such walls and provided further that along a street frontage no such wall shall be closer than three feet to the base setback line. A zoning permit for a retaining wall is required.

5. Security Fences are allowed on the property lines in all districts except residential districts, but shall not exceed ten feet in height and shall be of an open type similar to woven wire or wrought iron fencing.

6. Accessory Uses and detached accessory structures are permitted in the side and rear yard only; they shall not be closer than ten feet to the principal structure, shall not exceed 15 feet in height, shall not occupy more than 20 percent of the rear yard area, and shall not be closer than five feet to any lot line nor ten feet to any alley line. See also section 35-21, which may modify these requirements.

7. Accessory structures other than buildings, *i.e*., windmills, play structures, flag poles, and similar structures, shall not exceed in height their distance from the nearest lot line, provided, however, that if the applicant presents to the Plan Commission a report by a structural engineer licensed by the State of Wisconsin certifying the fall-down radius of the proposed structure to be less than its height, the allowed setback shall be that certified distance.

8. Essential Services, utilities, electric power and communication transmission: See section 35-21.

9. See also s. A.5. of this Section.

10.[6] The Zoning Administrator may issue a zoning permit allowing a projection, such as a wheelchair ramp, into a required yard if such a projection is needed as a reasonable accommodation to allow ingress and egress by a disabled person to the building, if that projection would be nonconforming with the requirements of this Chapter, and:

a. The use of that particular entrance to the building is reasonably necessary, and it would be unreasonable to use an alternate entrance to the building for such ingress and egress;

b. The projection does not encroach on a public right of way or neighboring property unless an easement for the encroachment is obtained by the landowner and recorded with the Racine County Register of Deeds; and

c. Any such addition shall be removed within thirty (30) days from the time that the structure is no longer serving the aforementioned handicapped or disabled person. A deed restriction to this effect shall be recorded with the Racine County Register of Deeds and proof of such recording shall be submitted to the Zoning Administrator before a zoning permit will be issued; and

d. There is a minimal intrusion into an environmental corridor. Minimal intrusions into wetland, shoreland-wetland and floodplain districts are allowed if not prohibited by the specific provisions of Chapters 36 and 37.

C. Average Setback. The required setbacks for new residential structures or additions to existing residential structures may be decreased in any residential district to the average of the existing setbacks of the abutting structures on each side but in no case may be less than 15 feet.

D. Corner Lot. A corner lot is a lot that abuts two or more streets at their intersections, provided that the corner of such intersections has an angle of 135 degrees or less, measured on the lot side. There shall be two street yards, one side yard and one rear yard on a corner lot. The Zoning Administrator may determine the rear and side yards on the lot.

[6] Amended June 8, 2015, Ordinance #2015-1

35-190 ARCHITECTURAL CONTROL.

No zoning permit required by this Municipal Code shall be issued unless it has been approved by the Plan Commission pursuant to the Architectural Control provisions of this Section unless the work to be performed under the zoning permit is exempted from review under this section or this Code, or does not change the exterior facade or character of the structure.

A. Compliance. For the purpose of promoting compatible development, aesthetics, stability of property values, and to prevent impairment or depreciation of property values in the Village of Rochester, no structure shall hereafter be erected, moved, reconstructed, extended, enlarged, or have its exterior altered or changed in such a manner as to violate the principles set forth in subsection B. of this Section.

B. Principles. To implement and define criteria for the purposes set forth in subsection A, the following principles are established:

1. The design or exterior appearance of a building or sign which is of such unorthodox or abnormal character in relation to its surroundings as to be unsightly or offensive to generally accepted taste and community standards is not permitted.

2. The design or exterior appearance of a building or sign which is so identical with those adjoining as to create excessive monotony or drabness is not permitted.

3. Any exposed facade or roof of a building or a sign that is not constructed or faced with a finished material that is aesthetically compatible with the other facades, roofs or signs and presents an attractive appearance to the public and to surrounding properties is not permitted.

4. No building or sign shall be permitted to be sited on a property in a manner which would unnecessarily destroy or substantially damage the natural beauty of the area, particularly insofar as it would adversely affect values incident to ownership of land in that area; or which would unnecessarily have an adverse effect on the beauty and general enjoyment of existing structures on adjoining properties.

C. Administration. The Zoning Administrator shall require that each zoning permit application in any district be accompanied by plans showing the exterior elevations of all existing and proposed structures on the property; a description of the proposed materials to be used; and proposed floor elevations of all structures.

1. The Zoning Administrator shall review permit applications for minor exterior alterations, decks, accessory structures less than 200 square feet in size, and signs pursuant to the standards set forth in Section 35-22 of this Chapter and subsection B. of this Section. If, in the Zoning Administrator's judgment and experience the standards have been met, he may issue the permit according to the requirements of this Code. If, in the Zoning Administrator's judgment and experience the standards have not been met or are in question, or he has a concern regarding the application of the standards, he may, in his discretion, refer the application to the Plan Commission pursuant to subsection C.2 of this Section.

2. The Zoning Administrator shall transmit all zoning permit applications not exempted in subsection C.1. and their accompanying plans to the Village Plan Commission for the Plan Commission's review and determination, with the exception that structures reviewed by the Historic Preservation Committee pursuant to Chapter 38, or reviewed previously

via site plan or developer's agreement; and permits that do not affect the exterior structure may be excluded.

3. See also Section 35-22.

D. Review and Findings. The Plan Commission shall review the referred plans at a subsequent meeting; but not more than 45 days after the original application for a zoning permit. The Plan Commission shall not approve any zoning permits unless it finds, after viewing the application that the structure, as planned, will not violate the principles set forth in Section 35-22 of this Chapter and subsection B. of this Section. If an application is rejected, the Commission shall set forth the reasons for the rejection in writing.

E. Appeals. Any person or persons aggrieved by any decisions of the Plan Commission related to architectural control may appeal the decision to the Zoning Board of Appeals. Such appeal shall be filed with the Village Clerk within 30 days after the filing of the decision with the Zoning Administrator.

35-200 NONCONFORMING USES, STRUCTURES, PROPERTIES AND FIXTURES.

A. Nonconforming Uses. The lawful use of a building, structure, property or fixture that existed at the time this Chapter or an applicable amendment to this Chapter took effect and which is not in conformity with the provisions of the Chapter, including the routine maintenance of such a building, structure or property, may be continued, subject to the following conditions, exceptions and regulations:

1. If a nonconforming use is discontinued for twelve consecutive months, any future use of the building, structure, property or fixture shall conform to this Chapter.

2. Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this Chapter may be continued although such use does not conform with the provisions of the Chapter. However, such nonconforming use may not be extended or enlarged.

3. Total structural repairs or alterations in such a nonconforming building, premises, structure or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure or fixture unless it is permanently changed to conform to the use provision of this Chapter.

4. A file of all non-conforming uses shall be maintained by the Zoning Administrator listing the following: owner's name and address; tax identification number, use of the buildings, premises, structures and fixtures, and the accumulated value of any permitted repairs since becoming a non-conforming use.

B. Nonconforming Structures. A dwelling or other structure that existed lawfully before this Chapter or an applicable amendment to this Chapter took effect and which is not in conformity with the provisions of this Chapter for development regulations such as setbacks, height, lot area, lot width, lot coverage, yards, parking, loading, access, etc. may be continued, subject to the following:

1. A nonconforming structure may be repaired, maintained, renovated or remodeled without regard to the cost of the work.

2. A nonconforming structure may not be extended, enlarged, reconstructed, moved, structurally altered or expanded except when:

   a. Such extension, enlargement, reconstruction, etc. is required by law or so as to comply with the provisions of this Chapter; or

   b. The change does not result in an increase to the nonconforming nature of the structure. No such change may increase the parking requirements for the use unless the on-site parking requirements of this Chapter are met.

3. A nonconforming structure that is damaged beyond repair or destroyed may only be reconstructed in conformance with the provisions of this chapter, except that such a structure may be restored to the size, location and use that it had immediately before the damage or destruction occurred as follows:

   a. The damage or destruction occurred on or after March 2, 2006; and

   b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

c. If the requirements of a. and b. are met, the size of the structure may be larger than the size it was immediately before the damage or destruction occurred if necessary for the structure to comply with applicable state, federal and Village requirements.

C. Existing Nonconforming (Substandard) Properties.

1. A substandard lot is one which:

a. Does not contain sufficient width, depth or area to conform to the dimensional requirements of this Chapter, and

b. Was a legal lot or parcel of record in the office of the County Register of Deeds prior to the original adoption of this Chapter or any applicable amendment to this Chapter.

2. A substandard lot not abutting property owned by the same owner may be used as a single building site provided that the use is permitted in the district and provided that there is compliance with each of the requirements of this section.

3. All substandard lots abutting property not owned by the same owner, as set forth in s. 4, shall comply with all relevant district and shoreland requirements insofar as is practicable, as determined by the relevant provisions of this Chapter, but in no event shall be less than the following:

Lot	Width	Minimum 30 ft.
	Area	Minimum 4,000 sq. ft.
Building	Height	Maximum 30 ft.
Yard (Setbacks)	Street	Minimum 25 ft., the second street yard on corner lot shall not be less than 10 feet
	Side	16 percent of the lot width, but not less than 5 feet nor greater than the zoning district side yard setback requirement for a standard lot size
	Rear	Minimum 25 ft.

4. For the purposes of this Chapter, lots and property shall be considered owned by the same owner when owned by: the same individual or other legal entity; an individual and another in joint tenancy or as tenants in common, and either of said joint tenants or tenants-in-common owns other abutting lots individually or as joint tenants or tenants in common with another; an individual and other abutting lots are owned by his or her spouse, parents, grandparents, children, grandchildren, or the spouse of any child or grandchild, or a brother or sister or spouse of a brother or sister of such person; and when any of said lots are owned by an individual and other abutting lots are owned by a

corporation or other legal entity in which said individual is an officer or director or controlling stockholder.

5. If both an abutting lot or lands and a substandard lot are owned by the same owner on the effective date of this Chapter, or if an abutting lot or lands and a substandard lot become owned by the same owner subsequent to the effective date of this Chapter, the substandard lot shall not be sold or used without full compliance with the provisions of this Chapter. Such lots shall be combined into one lot by use of a deed restriction, quit claim deed, or similar instrument, which shall be recorded in the office of the County Register of Deeds, unless a habitable principal structure already exists on each lot that meets the applicable minimum requirements of s. 35-15.I. In the A-1 and A-3 agricultural district, a farm owner is permitted to divide off separate parcels for the residences of the parents or children of the farm owner, and such parcels shall be considered as separate lots, must meet A-2 District zoning requirements and shall not be considered substandard lots. The provisions of Chapter 30 apply to these divisions.

6. Where public water supply systems are not available, private well construction shall be required to conform to Wis. Admin. Code ch. NR 812. Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall be governed by Chapter 10, Public and Private Sewage Systems, of this Code. No private waste disposal systems or parts thereof shall be located, installed, moved, reconstructed, extended, enlarged, converted, substantially altered or their use changed without full compliance with Chapter 10. A zoning permit for a principal structure or an addition thereto may not be issued until evidence of such compliance is provided to the Zoning Administrator.

D. Changes and Substitutions. Once a nonconforming use, structure or property has been changed to conform, it shall not revert back to a nonconforming use or structure.

E. Shoreland-Wetland, Shoreland and Floodplain Districts. Nonconforming uses, structures, properties and fixtures in Shoreland-Wetland and Shoreland Districts are subject to the requirements set forth in Chapter 36. Nonconforming uses, structures, properties and fixtures in Floodplain Districts are subject to the requirements set forth in Chapter 37.

35-210 ZONING BOARD OF APPEALS.

A. Establishment. There is hereby established a Zoning Board of Appeals for the Village of Rochester for the purpose of hearing appeals and applications, and granting variances and exceptions to the provisions of this Chapter and other chapters of this Code as may be set forth therein.

B. Membership. The Zoning Board of Appeals shall consist of five members appointed by the Village President and confirmed by the Village Board. The members shall serve for such compensation, if any, as may be fixed by the Village Board. Removal shall be by a two-thirds vote of the Village Board and after public hearing.

1. Terms shall be for staggered three-year periods; for those first appointed, one shall serve for one year, two for two years, and two for three years.

2. The Chair shall be designated by the Village President.

3. Pursuant to Wis. Stat. s. 62.23(7)(e)2, the Village President shall appoint, for staggered terms of three years, two alternate members of such board, in addition to the five members above provided for. Annually, the Village President shall designate one of the alternate members as First Alternate and the other as Second Alternate. The First[t] Alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The Second alternate shall so act only when the First Alternate so refuses or is absent or when more than one member of the board so refuses or is absent.

4. A secretary and other employees may be employed by the Zoning Board of Appeals.

5. The Zoning Administrator shall attend all meetings for the purpose of providing technical assistance, but shall not be secretary of the Board.

6. Official Oaths shall be taken by all members in accordance with Wis. Stat. s. 19.01 within ten days of receiving notice of their appointments.

7. Vacancies shall be filled for the unexpired term of all members, including alternate members, in the same manner as appointments for a full term.

C. Organization. The Zoning Board of Appeals shall organize and adopt rules of procedure for its own government in accordance with the provisions of this Chapter.

1. Meetings shall be held at the call of the Chair and shall be open to the public.

2. Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board's determination, and its finding of facts. These records shall be immediately filed in the office of the Board and shall be public record.

3. The Board of Appeals may take action if a quorum is present, by a majority vote of the members present, to take any action authorized by statute or this Code, unless a greater number of votes is required.

D. Powers.

1. The Zoning Board of Appeals shall have the powers set forth in Wis. Stat. s. 62.23(7)(e) and all other powers provided by statute and Village Code, including but not limited to the following powers:

   a. Errors. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator.

   b. Variances. To hear and grant appeals for variances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of this Code shall be observed and the public safety, welfare, and justice secured. The Zoning Board of Appeals may authorize upon appeal variances where special conditions, such as terrain cover or nearby existing or potential land or water uses prevent applicant from meeting the provisions of this Chapter. The Zoning Board of Appeals may specify expiration dates for variances as set forth in Wis. Stat. s. 62.23(7)(e)7.

   c. Interpretations and Boundary Lines. To hear and decide applications for interpretations of the zoning regulations and the boundaries of the zoning districts after the Village Plan Commission has made a review and recommendation.

   d. Unclassified Uses and Special Exceptions. After the Plan Commission has made a review and recommendation, to hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal uses permitted in the district, and to hear and grant applications for special exceptions provided that the waiver of the zoning regulations are justified under the circumstances.

   f. Temporary Uses. To hear and grant appeals of denied applications for temporary uses permits provided that such uses are of a temporary nature, do not involve the erection of a substantial structure, and are compatible with the neighboring uses and the Village Plan Commission has made a review and denied that application. The permit shall be temporary, revocable, subject to any conditions required by the Zoning Board of Appeals, and shall be issued for a period not to exceed twelve months. Compliance with all other provisions of this Chapter shall be required.

   g. Permits. The Board may reverse, affirm wholly or partly, modify the requirements appealed from, and may issue or direct the issue of a permit.

   h. Other Appeals, Variances, Boundary Disputes, etc. See the applicable chapter.

2. Assistance. The Board may request assistance from other Village officers, departments, commissions, and boards.

3. Oaths. The Chair may administer oaths and compel the attendance of witnesses.

E. Appeals and Applications. Appeals from the decision of the Zoning Administrator or other official concerning the literal enforcement of this Code may be made by any person aggrieved or by any officer, department, board, or other body of the Village. Such appeals shall be filed with the secretary within 30 days after the date of written notice of the decision or order of the official. Applications may be made by the owner or lessee of the structure, land, or water to be affected at

any time and shall be filed with the secretary. Such appeals and applications shall include the following:

1. Name and Address of the appellant or applicant and all abutting and opposite property owners of record.

2. Plat of Survey prepared by a registered land surveyor, or a location sketch drawn to scale, showing all of the information required under Section 35-11 for a Zoning Permit.

3. Additional Information required by the Village Plan Commission, Village Engineer, Zoning Board of Appeals, Zoning Administrator or other official. For regulations set forth in other chapters, see also the appropriate Chapter.

F. Hearings. The Zoning Board of Appeals shall fix a reasonable time and place for the required public hearing, and shall give notice as specified in Section 35-240 of this Chapter unless a different notice is required by the appropriate Chapter. See the appropriate Chapter for DNR hearing notice requirements for shoreland-wetland, shoreland, floodplain, or other areas covered in a specific chapter At the hearing the appellant or applicant may appear in person, by agent, or by attorney. Failure to appear may result in a decision based upon the available information.

G. Findings. No variance to the provisions of this Code shall be granted by the Board unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicates in the minutes of its proceedings.

1. Preservation of Intent. No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted use, accessory use, or conditional use in that particular district.

2. Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties of uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the ordinances should be changed.

3. Economic Hardship and Self-Imposed Hardship Not Grounds for Variance. No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.

4. Absence of Detriment. No variance shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this Chapter or the public interest.

5. Additional Requirements. Additional requirements for a variance may be set forth in the applicable Chapter.

H. Decision. The Zoning Board of Appeals shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Zoning Administrator, Village Plan Commission and/or other official. Conditions may be placed upon any permit ordered or authorized by this Board. Variances, Substitutions, or Use Permits granted by the Board shall expire within **six** months unless substantial work has commenced pursuant to such grant. For decisions regarding floodplain areas, see Chapter 37.

I. Notice of Decision to DNR. See the appropriate Chapter for notice of decision requirements for shoreland-wetland, shoreland, floodplain, or other areas covered in a specific chapter.

J. Review by a Court of Record. Any person or persons aggrieved by any decision of the Zoning Board of Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Zoning Board of Appeals.

35-220 CHANGES AND AMENDMENTS.

A. Authority.

1. Whenever the public necessity, convenience, general welfare or good zoning practice require, the Village Board of Trustees may, by ordinance, change the district boundaries, land uses, or amend, change or supplement the regulations established by this Chapter and other zoning and land use chapters, and amendments thereto.

2. Such change or amendment shall be subject to the review and recommendation of the Village Plan Commission.

3. The provisions of this Chapter shall apply to other zoning and land use chapters where no specific provisions are set forth in those chapters.

B. Initiation. A change or amendment may be initiated by the Village Board, Village Plan Commission, Village Historic Preservation Committee, or by a petition of one or more of the owners or lessees of property within the area proposed to be changed. The petitioner shall pay the fee required prior to any publication or hearing thereon, and no part thereof shall be returned to the applicant regardless of the disposition of the petition.

C. Petitions. Petitions for any change to the district boundaries or amendments to the regulations shall be filed with the Village Clerk, describe the premises to be rezoned or the regulations to be amended, list the reasons justifying the petition, and in case of a change of use, specify the proposed use and have attached the following:

1. Plot plan drawn to scale showing the area proposed to be rezoned, its location, its dimensions, the location and classification of adjacent zoning districts, and the location and existing use of all properties within 300 feet of the area proposed to be rezoned.

2. Owner's names and addresses of all properties lying within 300 feet of the area proposed to be rezoned.

3. Additional information required by the Village Plan Commission or Village Board.

D. Recommendations. The Village Plan Commission shall review all proposed changes and amendments within the corporate limits after signs have been posted and notice has been sent to abutting property owners as set forth in s. 35-240 and the public has been given the opportunity for input, and shall recommend that the petition be granted as requested, modified, or denied. The recommendation shall be made at a meeting subsequent to the meeting at which the petition is first submitted, and shall be made in writing to the Village Board.

E. At the first Village Board meeting subsequent to initial consideration by the Plan Commission, the Village Board shall determine whether to schedule a public hearing for consideration of an ordinance to enact the change or amendment.

F.. Hearings. The Village Board shall hold a public hearing prior to enacting any such ordinance, and shall give notice as required by applicable state statutes**, inclusive of notice to neighboring municipalities, the owner or operator of an airport, or the DNR when applicable.**

G. Village Board Action. Following such hearing and after careful consideration of the Village Plan Commission's recommendation, the Village Board shall vote on the proposed change or amendment.

H. Shoreland, Shoreland-Wetland and Floodplain District Boundary Changes Limited. See the applicable Chapter of this Code.

I. Protest.

1. In the event of a protest against such district change or amendment to the regulations of this Chapter, duly signed and acknowledged by the owners of 20 percent or more of the areas of the land included in such proposed change, or by the owners of 20 percent or more of the land immediately adjacent extending 100 feet from the street frontage of such opposite land such changes or amendments shall not become effective except by the favorable vote of three-fourths of the members of the Village Board voting on the change.

2. If the proposed amendment would make any change in an airport affected area and the owner or operator of the airport bordered by the airport affected area protests against the amendment, the amendment shall not become effective except by the favorable vote of two-thirds of the of the members of the Village Board voting on the proposed change.

3. Notices of such tentative recommendations or proposed changes in the regulations may contain the street names and house or lot numbers for purposes of identification if the commission or board so determines.

J. Comprehensive Plan. All proposed ordinances must be reviewed for compliance with the November 2009 “A Multi-Jurisdictional; Comprehensive Plan for Racine County: 2035” as amended from time to the (the “Village Comprehensive Plan”) adopted by and applicable to the Village of Rochester. No change may be adopted in violation of Wis. Stat. s. 66.1001(3), which requires that zoning ordinances be consistent with the adopted plan.

35-230 PLAN COMMISSION APPROVAL

A. Building Site and Operational Plans. Where required: In the case of certain uses, as determined by the Zoning Administrator, the character of which could have substantial adverse impact on surrounding property values or public highway facilities by reason of the arrangement of structures and related uses on the land including the total appearance of said arrangement or by arrangement of access from public streets to off-street parking and loading facilities, or where specifically directed in this Chapter, it will be required as a qualifying condition to their permissibility to submit for approval by the Plan Commission their proposed building site and operational plans.

B. Use by Right Not Infringed: Such required approval under this Section shall be limited solely to reasonable compliance with design, locational and operational requirements and shall not involve the basic permissibility of the use where such use is permitted as a “permitted use”.

C. Acceptability Criteria. In determining the acceptability of the building, site or operational plans, the Plan Commission shall take into consideration the following factors as well as any others it deems related:

1. The general design and appearance of any structures in terms of generally accepted standards of good taste, particularly in terms of the relationship and effect upon surrounding properties and compliance with this Chapter.

2. The relationship of structures and uses to each other and to the site, with particular consideration of traffic flow, access, screening of parking and storage areas and general appearance.

3. The character of the operation in terms of its impact upon traffic facilities, sewage disposal, water supply and environmental character with particular consideration of the control of any possible noise, dust, odor or other undesirable operating characteristic, including compliance with the Performance Standards of Section 35-250. The Plan Commission shall take into account the recommendations of the Western Racine County Sewerage District related to pre-treatment of sewage, the requirement for testing manholes, and other sewage disposal issues, if those recommendations are received by the Plan Commission.

D. Form of Submittal.

1. Before issuing any applicable permit, the Zoning Administrator shall submit the necessary building, site and operational plans to the Plan Commission for its consideration. Such plans shall be in reasonable detail to enable the Commission to properly evaluate them, and shall specifically include the following:

a. A site plan of the property accurately dimensioned showing the location of all existing and proposed structures and use area.

b. Name of project.

c. Owner's and/or developer's name and address.

d. Architect and/or engineer's name and address.

e. Date of plan submittal.

f. Existing topography shown at a contour interval not less than two feet, (or where not readily available elevations at appropriate locations).

g. Proposed changes in topography.

h. The characteristics of soils related to contemplated uses.

i. The type, size, location and dimensions of all structures including fences and walls.

j. Location and number of parking, loading and storage areas.

k. Primary building materials used in construction of all structures.

l. Height of building(s).

m. Location and size of existing and proposed sanitary sewers, septic tanks and disposal fields, holding tanks, storm sewers and water mains.

n. Location of proposed solid waste (refuse and recycling) storage area.

o. Location of pedestrian sidewalks and walkways.

p. Existing and proposed public right-of-way widths.

q. Location, type, height and intensity of proposed lighting.

r. Location of existing trees, and extent and type of proposed plantings including type and extent of erosion control.

s. A graphic delineation of any planned development staging.

t. Architectural plans, elevations, and perspective drawings and sketches illustrating the design and character of proposed structures.

u. Any other site or use information, such as 100 year interval flood lines, which will assist the Plan Commission in making a determination and recommendation on the proposal.

2. In addition, operations plan data to be submitted with all plan review applications shall include at least the following:

a. Specific use of site and building(s).

b. Hours of operations.

c. Number of full and part time employees.

d. Estimate of daily truck and auto trips to the site.

e. Type of materials and equipment to be stored on site.

f. Method of handling solid and liquid waste disposal, including information required in order to ensure compliance with Chapter 10, Public and Private Sewage Systems, as applicable for commercial and industrial users.

g. Method of exterior maintenance (site and buildings).

h. Method of site and building security other than local law enforcement.

i. Copies of all special use permits issued by state or county agencies.

j. Any other information which will assist the Plan Commission in making a determination and recommendation of the proposal.

E. Time for Submittal; WRCSD Review.

1. Time for Submittal. The information required in this section shall be submitted to the Village Clerk no later than 20 days prior to the Plan Commission meeting at which it will be reviewed.

2. WRCSD Review. Within five days of submittal of a Building Site and Operational Plan, the Clerk shall forward a copy of said Plan to the Western Racine County Sewerage District (WRCSD), and shall inform WRCSD of the date that said Plan will be considered by the Plan Commission. If no recommendation by the WRCSD is received by the date that the Plan Commission reviews the Plan, the Plan Commission may take action without input from the WRCSD.

35-240 NOTIFICATION - PUBLIC HEARINGS.

Notice of any public hearing which the Plan Commission, Village Board or Zoning Board of Appeals is required to hold under the terms of this Ordinance shall specify the date, time and place of said hearing and shall state the matter to be considered at said hearing. Notice shall be provided as required by applicable state statutes**, inclusive of notice to neighboring municipalities, the owner or operator of an airport, or the DNR where applicable.** The following notifications shall be required in addition to the notice required by statute:

A. Posting of Signs.

1. Except as set forth in subsection 2., at least fourteen days prior to initial Plan Commission or Zoning Board of Appeals review, an applicant for a conditional use permit, zoning change or land division review shall post one or more signs, clearly visible from each adjoining road, advising of the pending conditional use, zoning change, or land division review. The signs shall remain in place until the day after final determination by the Plan Commission, Village Board, or Zoning Board of Appeals. The signs shall be provided by the Village and shall be returned by the applicant no later than two days after the public hearing. Improper posting may result in the Plan Commission delaying consideration until a later meeting.

2. In the event that the Village rezones more than 20 parcels of land as part of a Village-initiated rezoning, no signs shall be required, but notice to owners of the property being rezoned shall be provided as set forth in subsection B.2.

B. Written Notice.

1. Except as set forth in subsection 2., fourteen days prior to initial Plan Commission review of an application for conditional use, zoning change, or land division, the Clerk shall send a written notice to the property owner and to the property owners abutting the subject property, including abutting owners on the opposite side of the street, advising of the date of the meeting when the proposal will first be considered.

2. In the event that the Village rezones more than 20 parcels of land as part of a Village-initiated rezoning related to state or federal requirements, or related to the adoption of a Planning and Zoning Ordinance with associated changes to the zoning designations to be reflected on the Zoning Map, written notice to abutting property owners shall not be required. The Clerk shall send a written notice to the owners of the property being rezoned, advising of the date of the public hearing when the rezoning will be considered.

3. No individual notice to property owners is required when the Village makes text changes to the Planning and Zoning Ordinance without changing the zoning designation of individual parcels. The Village shall provide all notices required by Wisconsin Statutes.

4. The Village shall maintain a list of persons who submit a written request to receive notice of any proposed zoning action that affects the allowable use of that person's property and shall send the person notice as required by Wis. Stat. s. 62.23(7)d.4., but the applicable ordinance or amendment may take effect even if the Village fails to send such notice.

35-250 PERFORMANCE STANDARDS.

A. Compliance. The performance standards enumerated below are designated to limit, restrict and prohibit the effects of uses permitted by this Chapter outside their premises. The use of all structures, lands, air and water shall hereafter, in addition to complying with the use, site and sanitary regulations contained in this Chapter, shall comply with the performance standards in this Section.

B. Air Pollution. No activity shall be permitted which emits air pollutants in excess of the standards permitted by all applicable laws, regulations and ordinances.

C. Fire and Explosive Hazards. All activities involving the manufacturing, utilization, processing or storage of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and with fire-fighting and fire-suppression equipment and devices that are required by law and standard in the industry. All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in compliance with state and federal law.

D. Glare and Heat. No activity shall emit glare or heat that is visible or measurable outside the premises, except activities in the industrial district which may emit sky reflected glare which shall not be visible at ground level outside the premises.

E. Water Quality Protection. No activity shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that might run off, seep, percolate or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness or be harmful to human, animal, plant or aquatic life. In addition, no activity shall withdraw water or discharge any liquid, gaseous, or solid materials so as to exceed or contribute toward the exceeding of the standards set by state and federal law.

F. Noise.

1. No activity in an M-1 Industrial District shall produce a sound level outside the property boundary that exceeds the following sound level measured by a sound level meter and associated octave band filter:

Octave Band Frequency (Cycles per second)	***Sound Level Decibels***
0 to ‹75	79
75 to ‹150	74
150 to ‹300	66
300 to ‹600	59
600 to ‹1200	53
1200 to ‹2400	47
2400 to ‹4800	41
4800 and above	39

2. No other activity in any other district shall produce a sound level outside its premises that exceeds the following:

Octave Band Frequency (Cycles per second)	***Sound Level Decibels***
0 to ‹75	72
75 to ‹150	67
150 to ‹300	59
300 to ‹600	52
600 to ‹1200	46
1200 to ‹2400	40
2400 to ‹4800	34
4800 and above	32

3. All noise shall be so muffled or otherwise controlled as not to become objectionable due to intermittence, duration, beat frequency, impulse character, periodic character or shrillness.

G. Odors. No activity shall emit any odorous matter of such nature or quantity as to be offensive, obnoxious or unhealthful outside their premises.

H. Radioactivity and Electrical Disturbances. No activity shall emit radioactivity or electrical disturbances outside its premises that are dangerous or adversely affect the use of neighboring premises including radio and television receiver operation, except as set forth in this Chapter.

I. Vibration. No activity in any district shall emit vibrations which are discernible without instruments outside its premises. No activity in any district shall emit vibrations which exceed the following displacement measured with a three-component measuring system:

Frequency (Cycles per second)	***Outside the Premises***
0 to ‹10	.0020
10 to ‹20	.0010
20 to ‹30	.0006
30 to ‹40	.0004
40 to ‹50	.0003
50 & over	.0002

35-260 LEGAL STATUS PROVISIONS.

A. Abrogation and Greater Restrictions. It is not intended by this Chapter to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, or permits previously issued pursuant to laws. However, wherever this Chapter imposes greater restrictions, the provisions of this Chapter shall govern.

B. Interpretation. In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Village and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

C. Severability. If any section, clause, provision, or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.

C. Repeal. All other ordinances or parts of ordinances of the Village and the previous Town of Rochester inconsistent or conflicting with this Chapter, to the extent of the inconsistency only, are hereby repealed.

35-300 DEFINITIONS.

GENERAL DEFINITIONS.

For the purpose of this Chapter, certain words or phrases shall have meanings that either vary somewhat from their customary dictionary meaning or are intended to be interpreted to have a specific meaning. Words used in the present tense in this Chapter include the future. The word "person" includes a firm, association, partnership, trust, company, or corporation as well as an individual. The word "shall" is mandatory, the word "should" is advisory, and the word "may" is permissive. Any words not defined in this Article shall be presumed to have their customary dictionary definitions, or as defined by statute or in state and village building codes.

SPECIFIC WORDS AND PHRASES

“Accessory Use, Building or Structure” means a use, building or structure which:

A. Is or will be subordinate to, and serves, a principal use, building or structure;

B. Is or will be subordinate in area, extent, or purpose to the principal use, building or structure served;

C. Contributes to the comfort, convenience or necessity or occupants of the principal use, building or structure; and

D. Is or will be located on the same zoning lot as the principal use, building or structure.

An automobile, trailer or other vehicle or part thereof, or other building used as a temporary or permanent dwelling or lodging place shall not be considered an accessory building or use.

“Adult Bath House” means an establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the state and which establishment provides to its patrons an opportunity for engaging in "specified sexual activities."

“Adult Body Painting Studio” means an establishment or business wherein patrons are afforded an opportunity to paint images on a "specified anatomical area." For purposes of this chapter, the adult body painting studio shall not be deemed to include a tattoo parlor.

“Adult Bookstore” means an establishment or business having as a substantial or significant portion of its stock and trade in books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

“Adult Booth” means any area of an adult establishment set off from the remainder of such establishment by one or more walls or other dividers or partitions and used to show, play, or otherwise demonstrate any adult materials or to view any live performance that is distinguished or characterized by an emphasis on the exposure, depiction, or description of "specified anatomical areas" or the conduct or simulation of "specified sexual activities."

“Adult Cabaret” means any nightclub, bar, restaurant, or similar commercial establishment which features:

A. Live performances which are characterized or distinguished by the exposure of "specified anatomical areas" or the removal of articles of clothing; or

B. Films, motion pictures, video cassettes, digital video disks, video reproductions, slides or other visual presentations which are distinguished or characterized by depicting or describing "specified sexual activities" or "specified anatomical areas."

“Adult Establishments” means and includes, but is not limited to: adult bookstores, adult motion picture theaters (indoor or outdoor), adult mini-motion picture theaters, adult video stores, adult bath houses, adult motels, adult theatres, adult novelty shops, adult massage parlors, adult modeling studios, adult body painting studios, and adult cabarets.

“Adult Massage Parlor” means an establishment or business with or without sleeping accommodations which provides services including any method of rubbing, pressing, stroking, kneading, tapping, pounding, vibrating or stimulating a "specified anatomical area" with the hands or with any instruments, heat and light treatments of the body, and all forms and methods of physiotherapy not operated by a medical practitioner or professional physical therapist licensed by the state.

“Adult Mini Motion Picture Theater” means an enclosed building with a capacity for less than 50 persons used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

“Adult Modeling Studio” means any establishment or business where a person who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Adult modeling studios shall not include a proprietary school licensed by the State of Wisconsin or a college, technical college, or university; or in a structure:

A. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and

B. Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and

C. Where no more than one nude or semi-nude model is on the premises at any one time.

“Adult Motel” means hotel, motel, or similar commercial establishment which:

A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic or video reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult-type of photographic or video reproductions; or

B. Offers a sleeping room for rent for a period of time that is less than ten hours; or

C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

“Adult Motion Picture Theater” means an enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

“Adult Motion Picture Theater (Outdoor)” means a parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguishably characterized by an emphasis on matter depicting, describing or relating to "specified sexual activity" or "specified anatomical areas.”

“Adult Novelty Shop” means an establishment or business having as a substantial or significant portion of its stock and trade in novelty or other items which are distinguished or characterized by their emphasis on or designed for "specified sexual activity" or stimulating such activity.

“Adult Theater” means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

“Adult Video Store” means an establishment or business having as a substantial or significant portion of its stock and trade for sale or rental of motion pictures or other visual media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

“Advertising Sign” means a sign that pertains to goods sold or manufactured or services rendered on the premises upon which the sign is located.

”Airport Affected Area” means the area of the Village lying within three miles of the boundaries of an airport, as set forth in Wis. Stat. s. 62.23(6)(am)1.b.

“Alley” means a special public right-of-way affording only secondary access to abutting properties.

“Alteration” means an enhancement, upgrade or substantial change or modification, other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.

“Animal Units”: See Chapter 39

“Animated Sign” means any sign or part of a sign that changes physical position or light intensity by any movement or rotation or that gives the visual impression of such movement or rotation.

“Arterial Street” means a public street or highway used or intended to be used primarily for fast or heavy

through traffic. Arterial streets and highways shall include freeways and expressways as well as arterial streets, highways and parkways.

“Asphalt and/or Tar Paving Mix Plant” means a plant wherein asphalt, tar or other petroleum products or byproducts are prepared or mixed, wither alone or with other ingredients, as a material for paving or surfacing.

“Automobile Wrecking Yard” means any premises on which more than one automotive vehicle, not in running or operating condition, is stored in the open.

“Back-to-Back,” “Side-by-side,” “Bottom-to-top,” and “V-Shaped Signs” are signs that are physically contiguous and share a common structure, in whole or in part, or are located not more than 15 feet apart at their nearest point in cases of "back-to-back" or "V-shaped."

“Balcony” means a platform that projects from the wall of a building four feet or less, is surrounded by a railing or balustrade, is open and roofless, and which is suspended or cantilevered from, or supported solely by, the structure to which it is attached.

“Banner” means any sign of lightweight fabric, plastic, coated paper, or similar material not enclosed in a rigid frame that is mounted to a pole or a structure at one or more edges. Flags or pennants are not considered banners.

“Basement” means a story partly or wholly underground. The height of a basement shall be the vertical distance between the surface of the basement floor and the floor next above it.

“Beacon” or “Search Light)” means any light with one or more beams that rotate or move or any light with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source.

“Bed & Breakfast” or “B & B” means a private owner-occupied residence that offers sleeping accommodations to not more than a total of 20 tourists or transients in eight or fewer rooms which provides no meals other than breakfast and provides breakfast only to renters of the place.

“Billboard” means a sign that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located,

“Boarders” are any unrelated persons, other than the owner, living within a single household unit and paying compensation for such service.

“Boarding House” means a building other than a hotel or restaurant where meals or lodging are regularly furnished by prearrangement for compensation for four or more persons not members of a family, but not exceeding 12 persons and not open to transient customers.

“Brew Pub” means a restaurant that manufactures up to 5,000 barrels of fermented malt beverages per year on premises for either consumption on premises or sale in hand-capped or sealed containers in quantities up to one-half barrel or 15½ gallons sold directly to the consumer.

“Building” means any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals, equipment, machinery, or materials.

“Building Area” means the total living areas bounded by the exterior walls of a building at the floor levels, but not including unfinished basement, utility rooms, garages, porches, breezeways, or unfinished attics.

“Building Height” means the vertical distance measured from the mean elevation of the finished lot grade along the street yard face of the structure to the highest point of flat roofs; to the mean height level between the eaves and ridges of gable, gambrel, hip and pitch roofs; or to the deck line of mansard roofs.

“Bus Shelter” means a small, roofed structure, usually having three walls, located near a street and designed primarily for the protection and convenience of bus passengers.

“Campground” means any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by four or more camping units, or which is advertised or represented as a camping area.

“Camping Unit” means any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle.

“Canopy Sign” means any sign that is part of or attached to an awning, canopy, or other fabric, plastic or structural protective cover. A marquee is not a canopy. The overhead protective cover used for fuel pumps is considered a canopy.

“Certificate of Compliance” means a certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this chapter or other land use chapters.

“Changeable Copy Sign” means a sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign not more than once every eight seconds or the minimum standards set by the Federal Highway Administration, whichever is longer. Each change of message shall be accomplished in one second or less. A sign on which the only copy that changes is an electronic or mechanical indication of time, date, or temperature is considered a "time and temperature" portion of a sign and not a changeable copy sign or traveling message sign.

“Clear Cutting” means the removal of an entire stand or area of trees or shrubs. See Chapter 36

“Clothing Repair Shops” means shops where clothing is repaired, such as shoe repair shops, seamstresses, tailor shops, shoe shine shops, clothes pressing shops, but none employing over five persons.

“Clothing Stores” means retail stores where clothing is sold, such as department stores, dry goods, stores, shoe stores, dress shops, hosiery shops and millinery shops.

“Concrete Ready Mix Plant” means a plant where water, gravel, sand, crushed stone, or other aggregate is mixed with cement and placed within a truck or trucks for the purpose of mixing such ingredients and to create and manufacture concrete thereby while said truck is in transit to its ultimate point of delivery.

“Conservation Standards” means guidelines and specifications for soil and water conservation practices and management enumerated in the Technical Guide prepared by the U.S. Department of Agriculture, Soil Conservation Service, for Racine County, adopted by the county soil and water conservation district supervisors, and containing suitable alternatives for the use and treatment of land based upon its capabilities, from which the landowner selects that alternative which best meets his needs in developing his soil and water conservation plan.

“Core Area of Living Space” means that area or space within a dwelling unit, devoted to the principal residential use of the structure, excluding attached garages, porches, sheds, decks, carports, and other appurtenances.

“Corner Lot” means a lot abutting two or more streets at their intersections provided that the corner of such intersection shall have an angle of 135 degrees or less, measured on the lot side.

“Crawlways” and “Crawl Spaces” mean an enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.

“Day Care Center” means a Day Care Center, Child Care Center, or Family Day Care Home establishment providing care and supervision for four or more persons under the age of seven and licensed by the State of Wisconsin pursuant to Wis. Stat. ch. 48.

“Decibel” means a unit for measuring the relative loudness of a sound (abbreviated dB) measured on an "A" weighted decibel scale.

“Deck” means an unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.

“Density Bonus” means the allocation of development rights that allow a parcel to accommodate additional square footage or additional residential units beyond the maximum for which the parcel is zoned or beyond the net density established in the adopted land use plan, usually in exchange for the provision or preservation of an amenity at the same site or at another location.

“Density Net” means the numerical value obtained by dividing the total number of dwelling units in a development by the area of the actual tract of land (in acres) upon which the dwelling units are proposed to be located and including common open space and associated recreational facilities within the area; the result being the number of dwelling units per net residential acres of land. Net density calculations exclude all or a portion of the area occupied by rights-of-way of publicly dedicated streets and private streets, floodplains, wetlands, and water.

“Department” or “DNR” means the Wisconsin Department of Natural Resources.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to construction of or additions or substantial improvements to buildings, or other structures, or accessory uses, the placement of manufactured or mobile homes, mining, dredging, filling, grading, paving, excavation or drilling operations, or deposition of materials.

“Directional Sign” means any auxiliary sign that is limited to directional messages principally for assisting in the flow of pedestrian or vehicular traffic, such as enter, exit, and one way.

“Directory Sign” means a sign listing the tenants or occupants of a building or group of buildings and that may indicate their respective professions or business activities.

“Displaced Threshold” means a horizontal line on a runway, perpendicular to the runway centerline. Departing aircraft must be airborne before crossing the displaced threshold. Incoming aircraft may not touch down before crossing the displaced threshold.

“District, Basic” means a part or parts of the Village for which the regulations of this Chapter governing the use and location of land and buildings are uniform.

“District, Overlay:” Overlay districts provide for the possibility of super-imposing certain additional requirements upon a basic zoning district without disturbing the requirements of the basic district. In the instance of conflicting requirements, the more strict of the conflicting requirements shall apply.

“Dwelling” means a detached building designed or used exclusively as a residence or living place, but does not include boarding or lodging houses, motels, hotels, tents, cabins, or travel trailers.

“Dwelling, Single-Family” means a detached building designed for and occupied exclusively by one family.

“Dwelling, Two-Family” means a detached building containing two separate dwelling units, designed for and/or occupied by not more than two families.

“Dwelling, Multiple-Family” means a residential building containing three or more separate dwelling units designed for and/or occupied by three or more families, with the number of families in residence not to exceed the number of dwelling units provided.

“Efficency” means a dwelling unit consisting of one principal room with no separate sleeping rooms.

“Elevation” means, as appropriate for the context, either:

A. The height in feet above National Geodetic Datum of 1929, also known as mean sea level datum; or

B. A scale drawing of the front, side or rear of a structure.

“Emergency Shelter” means a public or private enclosure designed to protect people from aerial, radiological, biological or chemical warfare, fire, flood, windstorm, riots and/or invasions.

“Essential Services” means services provided by public and private utilities, necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface, or overhead gas, electrical, steam, water, sanitary sewerage, storm water drainage, and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations, and hydrants, but not including buildings.

“Exception” or “Special Exception” means a special or unique situation, excluding a change in use or a use prohibited in a zoning district, which may be authorized by the Zoning Board of Appeals and which may justify the waiver of the regulations applicable thereto and does not necessarily require the demonstration of an unnecessary hardship or practical difficulty.

“Existing Manufactured Home Park or Subdivision” means a parcel of land divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this Chapter. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads

"Expansion of Existing Manufactured Home Park or Subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring if concrete pads.

“Expressway” means a divided arterial street or highway designated by the State as an expressway as set forth in Wis. Stat. s. 84.295.

“FAA” means the Federal Aviation Administration.

“Face” means the surface of a sign upon which the message is displayed. One sign structure may have more than one face.

“Family” means one or more persons occupying the premises and living together as a single housekeeping unit, as distinguished from a group occupying a boardinghouse, lodging house, club fraternity or hotel.

“Fixture” means an article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the real property; that which is fixed or attached to something permanently as an appendage and is not removable. A thing is deemed to be affixed to real property when it is attached to it by roots, imbedded in it, permanently resting upon it, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. Goods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law, e.g., a furnace affixed to a house or other building, counters permanently affixed to the floor of a store, or a sprinkler system installed in a building. A sign permanently affixed to the land or a structure is a fixture.

“Flag” means any fabric or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision, school, or to indicate membership in a non-profit organization.

“Flashing Sign” means any directly or indirectly illuminated sign on which the natural or artificial light is not maintained stationary or constant in intensity and color at all times when such sign is in use. This definition includes parts that move while the light remains constant, giving the impression of changing or flashing lights. Intermittent signs only providing information such as time, date, and temperature and changeable copy signs as defined herein are not considered "flashing signs."

“Floodplain” and all definitions related to floodplains: see Chapter 37.

“Frontage” means the dimension of a lot abutting a public street measured along the street right-of-way line. For lots abutting a lake or stream, the smallest dimension measured along the shoreline.

“Garage, Private” means a structure primarily intended for and used for the enclosed storage or shelter of the private motor vehicles of the residents of the premises.

“Garage, Public or Commercial” means any garage other than a private garage.

“Gift Store” means a retail store where items such as art, antiques, jewelry, books and notions are sold.

“Gravel Pit”, “Sand Pit” means any place where gravel or sand is removed from its natural state of deposit by digging, pushing, or any other method, and sold or held for sale or distribution.

“Greenhouse” means a building or structure constructed chiefly of glass, glasslike or translucent material, cloth or lath, which is devoted to the protection or cultivation of flowers, shrubbery, vegetables, trees and other horticultural and floricultural products.

“Greenhouse (Commercial)” means a greenhouse used for the growing of plants, all or part of which are sold at retail or wholesale.

“Ground Sign” or “Monument Sign” means any permanent free-standing sign, other than a pole sign, in which the entire bottom is in contact with or is close to the ground and which does not exceed 15 feet in height.

“Habitable Structure” means any structure or portion thereof used or designed for human habitation.

“Hardware Store” means a retail store where items such as plumbing, heating and electrical supplies, sporting goods or paints are sold.

"Hearing Notice" means a publication or posting meeting the requirements of Wis. Stat. ch. 985. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Additional requirements set forth in this Chapter and other land uses chapters apply.

"Historic Structure" means any structure that is either:

A. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.

"Hotel" means a building in which lodging, with or without meals, is offered to transient guests for compensation and in which there are more than five sleeping rooms, with no cooking facilities in any room or apartment.

"Household Occupation" means any occupation for gain or support conducted entirely within buildings by resident occupants which is customarily incidental to the principal use of the premises, does not exceed twenty-five percent of the area of any floor, uses only household equipment, and no stock in trade is kept or sold except that made on the premises. A household occupation includes uses such as babysitting, millinery, dressmaking, canning, laundering, and crafts, but does not include the display of any goods nor such occupations as barbering, beauty shops, dance schools, real estate brokerage, or photographic studios.

"Hub Height" (referring to a wind turbine) means the distance measured from ground level to the center of the turbine hub.

"In-law Suite" means a physical arrangement of a dwelling unit in such a fashion that a separate living quarters is created within a dwelling unit for the sole purpose of allowing related persons to live in the secondary living area while that owner and his or her family resides in the principal living area. The secondary living area may contain a bedroom, bathroom and kitchenette which permits a limited degree of independence, but does not create a separate housekeeping entity.

"Junkyard" or "Salvage Yard" means any premises on which there is an accumulation of scrap metal, paper, rags, glass, lumber, inoperable machinery, inoperable vehicles, tires or other materials that are stored or customarily stored for salvage, buying, selling, exchanging , dealing, disassembling, packing, bailing, wrecking, or handling unless such accumulation is housed in a completely enclosed building.

"Kennel": see s. 9-1.L. of this Municipal Code.

"Kitchen" means a place (such as a room) with cooking facilities including kitchen-type counters and/or cabinets, a kitchen sink, or any appliances for the preparation or preservation of food, including but not

limited to, gas or electric ranges, ovens or stovetops, microwave ovens, refrigerators with more than five cubic feet of capacity, or freezers.

“Kitchenette” means a small kitchen or an alcove containing minimal cooking facilities.

“Land Use” means any nonstructural or structural use made of unimproved or improved real estate. (See also “Development.”

“Livestock Facility” and related definitions, see Chapter 39.

“Living Rooms” means all rooms within a dwelling except closets, foyers, storage areas, utility rooms and bathrooms.

“Loading Space” means an off-street space or berth on the same lot with a building, or contiguous to a group of buildings and abutting on or affording direct access to a public street or alley, for the temporary parking of commercial vehicles while loading or unloading cargo.

“Lot” means a parcel of land having frontage on a public street or a private street providing public street access, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area, yard, parking area, and other open space provisions of this Chapter, provided that no such parcel shall be bisected by a public street, and shall not include any portion of a public right-of-way. No lands dedicated to the public or reserved for easements greater than 20 feet or for roadway purposes shall be included in the computation of lot size for the purposes of this Chapter.

“Lot, Corner” means a lot abutting two or more streets at their intersection provided that the corner of such intersection shall have an angle of 135 degrees or less, measured on the lot side.

“Lot, Double Frontage” means a parcel of land, other than a corner lot, with frontage on more than one street or with frontage on a street and a navigable body of water. Double frontage lots, located between two streets for the purpose of this Code, shall be deemed to have two street yards and no rear yard and double frontage lots located between a street and a navigable body of water, for the purpose of this Chapter, shall be deemed to have a street yard and a shore yard and no rear yard.

“Lot Lines and Area” means the peripheral boundaries of a parcel of land and the total area lying within such boundaries.

“Lot Width” means the width of a parcel of land measured at the required minimum street yard setback line.

“Machine Shops” means shops where lathes, presses, grinders, shapers and other wood and metal working machines are used, such as blacksmith, tinsmith, welding and sheet metal shops; plumbing, heating and electrical repair and overhaul shops.

“Maintain,” “Maintenance” or “Routine Maintenance” means the act or process of restoring to original soundness, including redecorating, refinishing, non-structural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.

“Manufactured Home” has the meaning set forth in Wis. Stat. s. 101.91(2), and includes “Mobile Homes” as defined in Wis. Stat. s. 101.91(10). For the purpose of this Chapter, it does not include mobile recreational vehicles or travel trailers.

“Marquee” means any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather. Marquee sign shall mean any sign attached to, in any manner, or made a part of a marquee.

“Mineral Extraction Operation, Quarrying Operation” means a gravel pit, sand pit, or quarry, including washing, crushing or other processing.

“Minor Structure” means any small, movable accessory structure erected or constructed, such as birdhouses, tool houses, pet houses, play equipment and arbors, less than 36 square feet in area.

“Mobile Home”: see Manufactured Home.

"Mobile Recreational Vehicle” means a vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."

“Modular Home” means a structure which is partially pre-assembled at a manufacturing plant and placed on a lot or parcel as a dwelling unit or units. Also called "pre-fabricated" or pre-cut" homes or "double-wide" units. For purposes of this chapter, the term manufactured home shall generally be used to describe this type of structure. It shall be further distinguished from the term manufactured home. (See definitions of manufactured home and mobile home.)

“Motel” means a series of attached, semi-attached, or detached sleeping units for the accommodation of transient guests.

“Municipality” or “Municipal” means the Village of Rochester unless otherwise noted.

“NAVD” or “North American Vertical Datum” means the reference used for elevations to mean sea level datum, 1988 adjustment.

“NGVD" or "National Geodetic Vertical Datum” means the reference used for elevations to mean sea level datum, 1929 adjustment.

“Navigable Waters” shall have the meaning set forth in Wis. Stat. s. 281.31(2)(d).

“Nonconforming Lot; Nonconforming Property” means a lot that existed lawfully before the current zoning or subdivision ordinance was created or amended, but does not meet the current lot width, depth or area requirements for the zoning district.

“Nonconforming Structure” means a dwelling, building, structure or fixture that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current ordinance.

“Nonconforming Use” means the use of a building, premises, structure or fixture that was lawful at the time that a zoning ordinance was adopted or amended, but that does not conform to the use restrictions in the current zoning ordinance.

“Normal Maintenance and Repair, Sign” means cleaning, painting, replacing broken and vandalized non-structural parts; replacing light bulbs; and other like minor routine repairs in a manner that does not change or alter the basic copy area, design, or structure of the sign.

“Obsolete Sign” means any sign that no longer correctly directs or exhorts any person or advertises a business, service, product, tenant, or activity no longer conducted, available, or in

existence on the premises where such sign is displayed.

“Off-Road Trail” means a new or existing trail made for the use of an off road vehicle(s) where a permanent and defined path has been created and/or where the landscape has been manipulated in such a manner as to create a path or ruts that may or may not include jumps, pits, hills, and/or berms.

“Off-Road Vehicle” means a motorized vehicle designed for use on a variety of non-improved surfaces including but not limited to, dune buggies, four-wheel drive vehicles, snowmobiles, all-terrain vehicles (ATVs), dirt bikes, mini bikes, motor bikes, mopeds and trail bikes. Agricultural equipment (such as farm tractors, seeders, combines, cultivators, etc.) used in the operation of a farm, garden tractors and riding lawnmowers are not off-road vehicles.

“Ordinary High Water Mark (OHWM)” means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

“Parking Lot” means a structure or premises containing ten or more parking spaces open to the public. Such spaces may be for rent or a fee.

“Parking Space” means a graded and surfaced area of not less than 180 square feet in area (or a smaller area approved for the district) either enclosed or open for the parking of a motor vehicle, having adequate ingress and egress to a public street or alley.

“Parties of Interest” means all abutting property owners, all property owners within 100 feet, and all property owners of opposite frontages.

“Pennant” means any lightweight plastic, fabric, or other material, whether or not it contains a message of any kind, suspended from a rope, wire, or string, usually in series that typically streams in the wind.

“Person” means an individual, group of individuals, corporation, partnership, association, municipality, state agency or other legal entity.

“Pond” means a natural or artificial (manmade) body of standing water smaller than a lake which generally retains water year round.

“Pole Sign (freestanding sign, self-supporting sign)” means any sign that is mounted on one or more poles so that the bottom of the sign is at least six feet in height.

“Portable Sign” means any sign not permanently attached to the ground or other permanent structure or a sign designed to be transported, including but not limited to signs designed to be transported by means of wheels; signs converted to A-or T-frames; menu and sandwich board signs; umbrellas used for advertising; and signs attached to or painted on vehicles, trailers, or equipment that are parked and readable from the street right-of-way, unless said vehicles, trailers, or equipment are used in the normal day-to-day business operations.

“Principal Structure” means a structure used or intended to be used for the principal use as permitted on such lot by the regulations of the district in which it is located.

“Private Sewage System” means a sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.

"Professional Home Offices" means residence offices of clergymen, doctors, dentists, architects, landscape architects, professional engineers, registered land surveyors, lawyers, real estate agents, accountants, artists, teachers, authors, musicians, or other recognized professions used to conduct their professions where the use meets the requirements set forth in subsection 35-21.J. for home occupations.

"Projecting Sign" means any sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from the side of the building.

"Public Utilities" means those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

"Pyramiding" means the act of obtaining or providing access to public bodies of water across private lots or lands in a manner which increases the number of families which have access to that water to a degree greater than what would occur with individual riparian owners having individual lots fronting on the water. The effect of pyramiding is to funnel backlot development from offshore lots or residences via a narrow parcel of land to provide access to the water. Publicly owned access point shall not fall within this definition.

"Quarry" means any place where material consisting in whole or in part of rock or stone are removed from their natural state by cutting, blasting, digging, pushing, or any other method, and sold or held for sale or distribution.

"Rear Yard" means a yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the rear lot line and a line parallel thereto through the nearer point of the principal structure. This yard shall be opposite the street yard or one of the street yards on a corner lot.

"Recreational Vehicle" – see Mobile Recreational Vehicle

"Recycling" means the transfer, transporting, processing, marketing, and conversion of solid waste into usable materials or products and includes the stockpiling and disposal on non-usable portions of solid wastes, but does not include the collection of solid wastes.

"Recycling Center" means a facility that is not a junkyard and in which recoverable resources, such as newspapers, glassware, and metal cans, are collected, stored, flattened, crushed, or bundled, within a completely enclosed building.

"Recycling Drop-Off Site" means a collection point for recyclable materials. Temporary storage of specific materials is permitted on each site, but no processing of such items is allowed.

"Recycling Plants" means a facility that is not a junk yard and in which recoverable resources are recycled, reprocessed and treated to return such products to a condition in which they may again be used for production.

"Relocatable Structure" means a structure or building which can be moved to its desired location.

"Roadside Stand" means an accessory structure having a ground area of not more than 300 square feet, not closer than 25 feet to any street right-of-way line, not permanently fixed to the ground, readily removable in its entirety, not fully enclosed and to be used solely for the sale of farm products produced on the premises (or adjoining premises).

"Roof Sign" means any sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above any point of a building with a flat roof, the deck line of a building with a mansard roof, or the eave line of a building with a gambrel, gable, dome or hip roof.

"Runway" means any existing or planned rectangular paved surface which is specifically used for the landing and/or taking off of aircraft.

"Screening" means a method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.

"Self-Service Storage Facility" means any structure designed and used for the purpose of renting or leasing individual storage spaces to tenants who are to have access to such space for the purpose of storing and removing personal property; also known as a miniwarehouse.

"Salvage Yard" means an area consisting of buildings, structures or premises where junk waste, discarded or salvage materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including automobile wrecking yards, house wrecking and structural steel materials and equipment yards, but not including the purchase or storage of used furniture and household equipment or used cars in operable condition.

"Shore Protection Structures" means structures which are intended to reduce shoreline erosion and bluff recession by providing an artificial protective barrier against direct wave and ice attacks on the beach and bluff toe, by increasing the extent of the beach available to absorb wave energy before the water reaches the bluff, by dissipating wave energy and/or by stabilizing the bluff slope. Shore protection structures include bulkheads, revetments, seawalls, groins, breakwaters and slope stabilization measures.

"Shore Yard" means a yard extending across the full width or depth of a lot, the depth of which shall be the minimum horizontal distance between a line intersecting both side lot lines at the same angle and containing the ordinary highwater mark of a lake, pond, flowage, river, stream or wetland nearest the principal structure and a line parallel thereto containing the point of the principal structure nearest the ordinary highwater mark.

"Shorelands" means those lands within the following distances from the ordinary highwater mark of navigable waters: 1,000 feet from a lake, pond, or flowage, and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

"Shoreline" means the intersection of the land surfaces abutting lakes, ponds, rivers, streams, flowages, and wetland with the ordinary highwater mark.

"Side Yard" means a yard extending from the street yard to the rear yard of the lot, the width of which shall be the minimum horizontal distance between the side lot line and a line parallel thereto through the nearest point of the principal structure.

"Sign" means any words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is made known and which are used to advertise or promote an individual firm, association, corporation, profession, business, commodity or product and which is visible from any public street or highway.

"Sign (Temporary)" means any sign which pertains to auctions, bazaars, festivals, or other similar events or to any aspect of a political campaign.

"Smoke Unit" means the number obtained when the smoke density in Ringelmann number is multiplied by the time of emission in minutes.

“Stable, Commercial” means a building or land where horses are kept for remuneration, hire, sale, boarding, riding, or show.

"Start of Construction" means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial 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 or 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 an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“Streamer” - see "Pennant."

“Street” means a public or private right-of-way providing primary access to abutting properties.

“Street Yard” means a yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots shall have two such yards.

“Structural Alteration” means any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams or girders.

“Structure” means any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

“Structure (Principal)” means a structure used or intended to be used for the principal use as permitted on such lot by the regulations of the district in which it is located.

“Structure (Temporary)” means a movable structure.

“Subdivision” - See Chapter 30.

“Substantial Construction” means a considerable amount of work done towards completing the project that received approval, that may include obtaining necessary plot plans, surveys, engineering data, easements, deed restrictions, approvals, permits, and physically starting the project. For typical building construction projects, the site work must progress beyond grading and completion of structural foundations, and construction must be occurring above grade to be considered substantial work.

“Substantial Improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the present equalized assessment value of the structure either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. The term does not include either, 1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or 2) any alteration of a structure or site documented as deserving preservation by the Wisconsin State Historical Society or listed on the National Register of Historical places. Ordinary maintenance does not include structural repairs, modifications or additions;

such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other non-structural component.

“Temporary Sign” means any sign intended for a limited or intermittent period of display.

“Temporary Structure” means a movable structure.

“Turning Lane” means an existing or proposed connecting roadway or lane between two arterial streets or between an arterial street and any other street. Turning lanes include grade separated interchange ramps.

“Unnecessary Hardship” means special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the section.

“Utilities” means public and private facilities such as water wells, water and sewage pumping stations, water storage tanks, power and communication transmission lines, electrical, power substations, static transformer stations, telephone and telegraph exchanges, microwave radio relays, and gas regulations stations but not including sewage disposal plants, municipal incinerators, warehouses, ships, and storage yards.

“Variance” means an authorization by the Zoning Board of Appeals for a use which is not allowed under the zoning district or for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards within this Chapter. See also the other land use chapters of this Municipal Code.

“Violation” means the failure of a person, structure or other development to be fully compliant with the land use chapters.

“Wall Sign” means any sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for or forms the background surface of the sign and which does not project more than 12 inches from such building or structure.

“Watershed” means the entire region contributing runoff or surface water to a watercourse or body of water.

“Well” means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

“Wetlands” means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

“Wind Energy” and related items: see section 35-140.

“Window Sign” means any sign that is placed inside a window or upon the windowpanes or glass and is readable from the street or highway.

“Yard” means an open space on the same lot with a structure, unoccupied and unobstructed from the ground upward except for vegetation. The street and rear yards extend the full width of the lot.

“Yard (Rear)” means a yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the rear lot line and a line parallel thereto through the nearest point of the principal structure. This yard shall be opposite the street yard or one of the street yards on a corner lot.

"Yard (Street)" means a yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots shall have two such yards.

"Yard (Side)" means a yard extending from the street yard to the rear yard of the lot, the width of which shall be the minimum horizontal distance between the side lot line and a line parallel thereto through the nearest point of the principal street.

"Zoning Administrator" means a person appointed by the Village President and confirmed by the Village Board of Trustees to administer and enforce this Chapter and the other land use chapters. Reference to the Zoning Administrator shall be construed to include duly appointed Deputy Administrators.

35-500 ENFORCEMENT AND PENALTIES.

A. Enforcement.

1. Double Fee. A double fee shall be charged by the Zoning Administrator if work is started before a permit is applied for and issued. Such double fee shall not release the applicant from full compliance with this Chapter nor from prosecution for violation of this Chapter.

2. Stop Work Order. The Zoning Administrator may issue a stop work order for a project to prevent further non-complying work. No person may continue construction or use after a stop work order has been issued. The person who receives such a stop work order may contest the validity of the same by requesting a hearing before the Zoning Board of Appeals. The Zoning Board of Appeals shall affirm the stop work order unless the appellant shows that the Zoning Administrator erred in determining that the construction or use violated a provision or provisions of this Chapter.

B. Penalties.

1. Any building or structure hereinafter erected, moved, placed, or structurally altered or any use established in violation of the provisions of this Chapter or other land use chapter by any person, including building contractors or their agents, shall be deemed an unlawful structure or use. In case of any violation, the Village Board, Village Plan Commission, the Zoning Administrator or any property owner who would be specifically damaged by such violation may institute an action to enjoin, remove or vacate any use, erection, moving, alteration, or placement of any building or use in violation of this Chapter.

2. Any person who fails to comply with the provisions of this Chapter or any order of the Zoning Administrator issued in accordance with this Chapter or who resists enforcement shall, upon conviction thereof, forfeit not less than $10.00 nor more than $200.00 and all applicable costs for each violation and in default of payment of such forfeiture and costs may be imprisoned in the County Jail, until payment thereof, but not exceeding 30 days. Each day a violation exists or continues shall constitute a separate offense. See also Chapter 50.

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CHAPTER 36 SHORELAND-WETLAND AND SHORELAND ZONING DISTRICTS

ARTICLE 1 GENERAL

36-1. STATUTORY AUTHORIZATION

This Chapter is adopted pursuant to the authorization in Wis. Stat. ss. 61.35, 61.351, 61.353, 87.30 and 281.31.

36-2. FINDINGS OF FACT AND PURPOSE

A. Uncontrolled use of the shoreland-wetlands, the shorelands, and pollution of the navigable waters of the Village would adversely affect the public health, safety, convenience, and general welfare and impair the tax base.

B. The Legislature of Wisconsin has delegated responsibility to all municipalities, as to shoreland-wetlands and shorelands, to:

1. Promote the public health, safety, convenience and general welfare;

2. Maintain the storm and flood water storage capacity of wetlands;

3. Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;

4. Protect fish, their spawning grounds, other aquatic life and wildlife by preserving wetlands and other aquatic habitat;

5. Prohibit certain uses detrimental to the shoreland-wetland area;

6. Preserve shore cover and natural beauty by restricting the removal of natural shoreland cover and controlling shoreland-wetland excavation, filling and other earth moving activities;

7. Further the maintenance of safe and healthful conditions through regulating building setbacks from waterways and preventing shoreline encroachment by structures; and

8. Allowing Villages to regulate the shorelands through the zoning and subdivision control powers.

36-3. COMPLIANCE

A. The regulations set forth in this Chapter are in addition to, not instead of, the regulations set forth in the other chapters of this Municipal Code. The zoning regulations present in other chapters for the land are referred to as the “underlying zoning” in this Chapter. If a particular zoning procedure is not included in this chapter, the applicable procedures in the other zoning chapters will apply.

B. Shoreland-Wetland Zoning District. The use of wetlands and the alteration of wetlands within the shoreland area of the Village, the Shoreland-Wetland Zoning District, shall be in full compliance with the terms of this Chapter and other applicable local, state or federal regulations. (See s. 36-15 of this Chapter for the standards applicable to nonconforming uses and structures.) All

permitted and conditional uses and development shall require the issuance of a Zoning Permit unless otherwise expressly excluded by a provision of this Chapter.

C. Shoreland Zoning District. The use of any land or water, the size, shape and placement of lots, the use, size, type and location of structures on lots, the installation and maintenance of water supply and waste disposal facilities, the filling, grading, lagooning, dredging of any lands, the cutting of shoreland vegetation, and the subdivision of lots in the Shoreland District shall be in full compliance with the terms of this Chapter, this Code, and other applicable local, state or federal regulations. (See s. 36-15 for standards applicable to nonconforming uses and structures.) Uses, buildings, signs and other structures require a Zoning Permit, and may require a conditional use permit.

D. Property owners are responsible for compliance with the terms of this Chapter.

36-4 MUNICIPALITIES AND STATE AGENCIES REGULATED

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this Chapter and obtain all necessary permits. State agencies are required to comply if Wis. Stat. s. 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when Wis. Stat. s. 30.2022 applies.

36-5 ABROGATION AND GREATER RESTRICTIONS

A. This Chapter supersedes all the provisions of any zoning ordinance enacted under Wis. Stat. ss. 59.692, 61.35, 62.23 or 87.30 which relate to shorelands or shoreland-wetlands, except that where another Village zoning ordinance is more restrictive than this Chapter, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

B. This Chapter is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this Chapter imposes greater restrictions, the provisions of this Chapter shall prevail.

36-6. INTERPRETATION

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Village and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this Chapter is required by a standard in Wis. Admin. Code ch. NR 117, and where the Chapter provision is unclear, the provision shall be interpreted in light of the applicable Wisconsin Administrative Code chapter NR 117 standards in effect on the date of the adoption of this Chapter or in effect on the date of the most recent text amendment to this Chapter. Where a provision of this Chapter is required by a standard in Wis. Stat. s. 61.353, and where the Chapter provision is unclear, the provision shall be interpreted in light of the applicable statutory standards in effect on the date of the application for a permit hereunder.

36-7. SEVERABILITY

Should any portion of this Chapter be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this Chapter shall not be affected.

36-8. MAPS ADOPTED

The following maps are hereby adopted and made part of this Chapter and are on file in the office of the Village Clerk:

A. Wisconsin Wetland maps shown on the Wisconsin Department of Natural Resources (DNR) Surface Water Data Viewer at http://dnr.wi.gov/topic/surfacewater/swdv/ (as may be amended from time to time) in effect on the date of the application for a permit under this Chapter.

B. United States Geological Survey (USGS) 7.5-minute quadrangle maps that cover the Village of Rochester, i.e., Rochester, Burlington, Mukwonago and Waterford, in effect on the date of the application for a permit hereunder. The 2013 maps are on file in the office of the Village Clerk.

C. Zoning Map titled "Zoning Map Village of Rochester, Wisconsin" in effect on the date of application for a permit hereunder.

D. All of the Floodplain Maps adopted in Chapter 37, s. 37-1.E.2.

E. Chapter 36 Appendix A, Lands Subject to Shoreland Zoning District Regulations.

ARTICLE 2 SHORELAND-WETLAND DISTRICT.

36-21. APPLICABILITY OF REGULATIONS

The Shoreland-Wetland Zoning regulations in this Chapter are applicable to the entirety of the Village of Rochester.

36-22. SHORELAND-WETLAND DISTRICT BOUNDARIES.

The Shoreland-Wetland Zoning District includes all wetlands and portions of wetlands in the Village which are five acres or more and are shown on the Wisconsin Department of Natural Resources (DNR) Surface Water Data Viewer that has been adopted and made a part of this Chapter and which are:

A. Within 1,000 feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the Village shall be presumed to be navigable if they are shown on the United States Geological Survey quadrangle maps or other zoning base maps that have been incorporated by reference and made a part of this Chapter.

B. Within 300 feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other maps which have been incorporated by reference and made a part of this Chapter. Floodplain zoning maps adopted in Chapter 37 shall be used to determine the extent of floodplain areas.

C. Determinations of navigability and ordinary high-water mark location shall initially be made by the land owner. When questions arise, the land owner shall contact the appropriate district office of the DNR for a final determination of navigability or ordinary high-water mark.

D. When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official maps and actual field conditions, the Zoning Administrator shall contact the appropriate district office of the Department to determine if the shoreland-wetland district boundary, as mapped, is in error. If Department staff concur in writing with the Zoning

Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall have the authority to immediately grant or deny a Zoning Permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors or acknowledge exempted wetlands designated in subsections E. and F. of this section, the land owner shall be responsible for initiating a map amendment within a reasonable period.

E. Filled Wetlands. Wetlands which were filled prior to July 26, 1988 in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland, are not subject to this Chapter.

F. Wetlands Landward of a Bulkhead Line. Wetlands located between the original ordinary high water mark and a bulkhead line established prior to May 7, 1982 under Wis. Stat. s. 30.11 are not subject to this Chapter.

36-23. USES.

A. Permitted Uses. The following uses are permitted in the Shoreland-Wetland District subject to the provisions of Wis. Stat. chs. 30 and 31, and the provisions of other local, state and federal laws, if applicable. These activities and uses do not require the issuance of a Conditional Use Permit, provided that the use is allowed in the underlying zoning district:

1. Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;

2. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating;

3. The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required for:

   a. Temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected; or

   b. The construction and maintenance of roads necessary to conduct silvicultural activities, unless allowed as a conditional use under section. B.

4. The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done, except limited filling and excavating necessary for the construction and maintenance of fences.

5. The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding, or artificial drainage of the wetland through ditching, tiling, dredging or excavating except for:

   a. Flooding, dike and dam construction, and ditching for the purpose of growing and harvesting cranberries;

   b. The maintenance and repair of existing farm drainage ditches, where permissible under Wis. Stat. s. 30.20, or of other existing agricultural drainage systems (such as tiling) to restore the functional drainage of existing agricultural lands, including the minimum amount of filling necessary to dispose of dredged spoil, provided

that the filling is permissible under Wis. Stat. ch. 30., and that dredged spoil is placed on existing spoil banks where possible; or

c. The construction and maintenance of roads necessary for agricultural cultivation, if permitted as a conditional use under section B.

6. The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

7. The construction and maintenance of piers, docks, walkways, observation decks and trail bridges, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done, except limited filling and excavating necessary for the installation of pilings.

8. The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the shoreland-wetland listed under s. 36-59.

9. The maintenance, repair, replacement, and reconstruction of existing county, city and village highways and bridges.

10. Note: Activities affecting certain waters of the state which are carried out under the direction and supervision of the department of transportation in connection with highway and bridge design, location, construction, reconstruction, maintenance and repair are not subject to the prohibitions or approval requirements specified under Wis. Stat. s.61.351 if they are carried out in accordance with interdepartmental liaison procedures established by the department of natural resources and the department of transportation for the purpose of minimizing the adverse environmental impact, if any, of the activity. However, at the earliest practical time prior to the commencement of these activities, the department of transportation is required to notify the department of natural resources of the location, nature and extent of the proposed work that may affect the waters of the state. See Wis. Admin. Code s. NR 117.05(2)(n).

B. Conditional Uses. These uses are allowed upon the issuance of a Conditional Use permit:

1. The construction and maintenance of nonresidential buildings provided that:

a. The building is used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation;

b. The building cannot as a practical matter be located outside the wetland;

c. The building does not exceed 500 square feet in size; and

d No filling, flooding, draining, dredging, ditching, tiling or excavating is done, except limited filling and excavating necessary to provide structural support for the building.

2. The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game farms and wildlife preserves, and public boat launching ramps, provided that:

a. No filling or excavating is done except for limited filling and excavating necessary for the development of boat launching ramps, swimming beaches or the construction of park shelters or similar structures.

b. Any private development allowed under this paragraph shall be used exclusively for the permitted purpose.

c. The construction and maintenance of roads necessary for the uses permitted under this paragraph may be permitted if the requirements of section B.4. are met.

d. Ditching, excavating, dredging, dike and dam construction may be allowed in game refuges and closed areas, fish and wildlife habitat improvement projects, game farms, and wildlife areas provided that they are done for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

3. The construction and maintenance of electric and telephone transmission lines and water, gas and sewer distribution lines, and related facilities, provided that:

a. Such lines cannot as a practical matter be located outside the wetland; and

b. Any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a matter designed to minimize the adverse impact upon the natural functions of the wetland listed under section 36-59.

c. Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under Wis, Stat. s. 196.491 are not subject to the requirements of this Chapter.

4. The construction and maintenance of roads which are necessary for the continuity of the Village street system, necessary for the provision of essential utility and emergency services, or necessary to provide access to uses permitted under sections A. and B., provided that:

a. The road cannot, as a practical matter, be located outside of the wetland;

b. The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland listed under section 36-59;

c. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;

d. Road construction activities are carried out in the immediate area of the roadbed only; and

e. Any filling, flooding, draining, dredging, ditching, tiling or excavating that is done must be necessary for the construction or maintenance of the road.

5. The construction and maintenance of railroad lines provided that:

a. Such lines cannot as a practical matter be located outside the wetland; and

b. Any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed under s. 36-59.

6. The maintenance and repair of existing non-agricultural drainage ditches, where permissible under Wis. Stat. s. 30.20, or of other existing non-agricultural drainage systems (such as tiling) to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is permissible under Wis. Stat. ch. 30, and that dredged spoil is placed on existing spoil banks where possible.

C. Prohibited Uses.

1. Any use not listed in this Section is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this Chapter in accordance with section 36-59.

2. The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.

ARTICLE 3 SHORELAND ZONING DISTRICT.

36-31. APPLICABILITY OF SHORELAND DISTRICT REGULATIONS

The Shoreland Zoning District regulations do not apply to the lands lying within the corporate boundaries of the Village of Rochester as it existed on May 7, 1982 which are excluded from the Shoreland Zoning regulations of this Chapter and are shown in Appendix A to this Chapter. The remainder of the Village is subject to the Shoreland regulations set forth in this Chapter.

36-32. DISTRICT BOUNDARIES

District Boundaries. The Shoreland District areas regulated by this ordinance shall include all the lands (referred to herein as shorelands) in the Village of Rochester which are not located in the area of land shown in Appendix A, and legally described as the Corporate Limits of the Village of Rochester as the Village existed on December 12, 1977 on file with the Village Clerk and the State of Wisconsin Secretary of State, and are:

A. Within 1,000 feet of the ordinary highwater mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources Surface Water Data viewer available on the DNR website, or are shown on United States Geological Survey quadrangle maps or other zoning base maps.

B. Within 300 feet of the ordinary highwater mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as continuous waterways or intermittent waterways on United States Geological Survey quadrangle maps. Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.

C. Determinations of navigability and ordinary highwater mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Department for a final determination of navigability or ordinary highwater mark.

D. Pursuant to Wis. Stat. s. 61.353(7), this Shoreland Zoning District does not apply to lands adjacent to an artificially constructed drainage ditch, pond, or retention basin if the drainage ditch, pond or retention basin is not hydrologically connected to a natural navigable water body.

36-33. EFFECT OF EXISTING LAND DIVISION, SANITARY, ZONING AND OTHER REGULATIONS.

The lands within the Shoreland Zoning District are subject to all applicable provisions of this Municipal Code. If the provisions of this Chapter are more restrictive than other regulations in the Code, the provisions of this Chapter shall apply. If land subject to this Chapter is also regulated by Chapter 37, Floodplain Zoning, the more restrictive uses, area and other regulations of Chapter 37 apply.

36-34. SETBACKS FROM THE WATER; LOT COVERAGE.

A. Principal Building Setbacks.

1. All principal buildings shall be set back at least 50 feet from the ordinary high-water mark.

2. Adjustment of Shore Yards. A setback less than that required by subsection A.1. may be allowed if all of the following apply:

a. The principal building is constructed or placed on a lot or parcel of land that is immediately adjacent on each side to a lot or parcel of land containing a principal building; and

b. The principal building is constructed or placed within a distance equal to the average setback of the principal building on the adjacent lots or 35 feet from the ordinary high-water mark, whichever distance is greater.

B. Boathouses. Boathouses accessory to permitted and conditional uses may be located within a shoreyard, but:

1. Boathouses shall not be closer than 20 feet to the average annual high water elevation of a stream, lake, river, pond or wetland; shall not exceed one boathouse per shoreyard lot; shall not exceed 15 feet in height above the ordinary high water mark; shall not exceed 250 square feet in horizontal area covered; and shall not be closer than 15 feet to any side lot line. In no case, however, shall boathouses be allowed to project beyond the shoreline. Boathouses shall be constructed in such a manner as to orient the main opening of the boat house toward the body of water and shall be used strictly for the storage of boats and water-related recreational accessories. The use of a boat house for human habitation is prohibited. No plumbing, heating or cooking faculties may be provided in or for a boathouse.

2. Boathouses shall not be located in the vegetative buffer zone required in s. 36-35.

C. Other Accessory Buildings. One accessory building may be placed in each shoreyard, but:

1. Shall not be placed in the vegetative buffer zone required in s. 36-35;

2. Shall not be placed closer than 35 feet to the average annual high water mark;

3. Shall be limited in size to 200 square feet or less in area (except uncovered pools), must be at least ten feet from the principal structure, must be at least three feet from any side lot line, may not be used for human habitation or animal shelter, and may not be greater than fifteen feet in height;

D. Accessory structures meeting the size requirements of the underlying zoning district and the provisions for accessory structures in Chapter 35 may be placed in side and street yards provided that the setbacks for those yards are met.

E. Lot Coverage. Lots should be configured to minimize the amount of impervious surfaces. Maximum lot coverage equals 30 percent (includes buildings and other impervious surfaces).

F. Pyramiding. No pyramiding is allowed on any lands fronting a public body of water except as may be specifically permitted accessory to a marina or resort or which may be allowed under the terms of a conditional use permit or which may be approved as part of a subdivisions plat review.

36-35. VEGETATIVE BUFFER ZONE.

Pursuant to Wis. Stat. s. 61.353(3), the landowner must maintain a vegetative buffer zone, as follows:

A. A person who owns shoreland property that contains vegetation must maintain that vegetation in a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high-water mark of the navigable water, except as provided in subsection B.

B. If the vegetation in a vegetative buffer zone contains invasive species or dead or diseased vegetation, the owner of the shoreland property may remove the vegetation, except that if the owner removes all of the vegetation in the vegetative buffer zone, the owner shall establish a vegetative buffer zone with new vegetation.

C. A person who is required to maintain or establish a vegetative buffer zone under subsection. A. may remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no greater than 30 feet wide for every 100 feet of shoreline frontage.

36-36. ACTIVITIES AND USES REQUIRING A SHORELAND CONTRACT OR SHORELAND CONDITIONAL USE PERMIT.

A. Zoning Administrator Review of Application. The uses and/or activities set forth in this section may be conditional uses requiring review, public hearing, and approval by the Plan Commission, or may be permitted by the Zoning Administrator with a Shoreland Contract, subject to the provisions of this section.

1. The Zoning Administrator may approve shoreland conditional use permit applications under this section without a public hearing provided that the applicant agrees to sign a contract setting forth the methods for eliminating erosion, sedimentation, and pollution.

2. The Zoning Administrator may request technical assistance from the Village Engineer, Department of Public Works, or other Village officers, departments, Commissions or Boards in reviewing a shoreland conditional use permit application prior to setting forth the contractual provisions. Such contractual provisions shall be in compliance with the standards set forth in this section.

3. The applicant may request a public hearing if he or she does not agree with the provisions of the contract or feels the public hearing is in the applicant's best interest.

4. The Zoning Administrator may require a formal conditional use public hearing where it is deemed that the subject land may be susceptible to flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low bearing strength, erosion or any other feature likely to be harmful to the sensitive environment of the shoreland areas, or to the public interest of the Village.

B. Earth Moving Activities. Earth movements and soil disturbance activities such as grading, topsoil removal, filling, road cutting, construction, altering, or enlargement of waterways, removal of stream or lakebed material, excavation, channel clearing, ditching, dredging, lagooning, and soil and water conservation structures may be conditional uses requiring review, public hearing and approval by the Plan Commission or may be subject to review and approval by the Zoning Administrator and entry into a Shoreland Contract in accordance with subsection A. of this section in addition to the permit required from the state agency having jurisdiction under Wis. Stat. ch. 30.

1. Only filling, grading, lagooning, dredging, ditching or excavating that is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat may be permitted in the shoreland area.

2. A state or federal permit may be required, in addition to a permit under this chapter, if state or federal laws are applicable to the filling, grading, lagooning, dredging, ditching or excavating that is proposed.

3. Earth movements such as grading, topsoil removal, stream course changing, road cutting, waterway construction or enlargement, removal of stream or lake bed materials, excavation, channel clearing, ditching, dredging, lagooning, and soil and water conservation structures, may be permitted provided that such uses are so regulated as to prevent erosion and sedimentation and to least disturb the natural fauna, flora, watercourse, water regimen, and topography.

4. The Plan Commission or the Zoning Administrator shall request a review of such earth movement by the state district fish and game managers and a review of each such cutting and clearing from the state district forester and await their recommendations before taking final action, but not to exceed 60 days.

5. A copy of the Plan Commission's or the Zoning Administrator's decision on such application shall be forwarded to the department of natural resources within ten days of such decision.

6. General Standards. Filling, grading, lagooning, dredging, ditching or excavating which does not require a conditional use permit under subsection 7 may be permitted in the shoreland area provided that:

   a. It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.

   b. All applicable federal, state and local authority is obtained in addition to a conditional use permit or contract under this Chapter.

   c. Any fill placed in the shoreland area is protected against erosion by the use of riprap, vegetative cover or a bulkhead.

7. Conditional use Permit Required. Except as provided in subsection 8, a conditional use permit is required:

   a. For any filling or grading of any area which is within 300 feet landward of the ordinary highwater mark of navigable water and which has surface drainage toward the water and on which there is either:

      (1) Any filling or grading on slopes of more than 20%.

      (2) Filling or grading of more than 1,000 sq. ft. on slopes of 12%-20%.

      (3) Filling or grading of more than 2,000 sq. ft. on slopes less than 12%.

   b. For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within 300 feet landward of the ordinary highwater mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.

8. Soil Conservation Practices and Agricultural Drainage Maintenance.

   a. Soil conservation practices such as tiled terraces, runoff diversions and grassed waterways used for erosion control shall not require a Conditional use Permit under subsection 7. when designed and constructed to Soil Conservation Service technical standards.

b. The maintenance of existing agricultural drainage systems shall be permitted in conformity with the following construction standards:

1. The maintenance dredging of farm drainage ditches is limited to reestablishing the original ditch cross section unless a conditional use permit under subsection 7. is obtained.

2. Ditch banks shall be constructed at a slope of 2 horizontal to 1 vertical (50% grade) or flatter.

3. Ditch banks shall be maintained in a sod cover and free of woody vegetation.

4. A ten foot wide buffer strip of untilled, ungrazed sod cover shall be maintained adjacent to the ditch bank.

9. Conditional Use Permit Conditions. In granting a conditional use permit under subsection 7., the Plan Commission shall attach the following conditions, where appropriate, in addition to those provisions specified in other sections.

a. The smallest amount of bare ground shall be exposed for as short a time as feasible.

b. Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.

c. Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.

d. Lagoons shall be constructed to avoid fish trap conditions.

e. Fill shall be stabilized according to accepted engineering standards.

f. Filling shall comply with Chapter 37, Floodplain Zoning, and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.

g. Channels or artificial watercourses shall be constructed with side slopes of two units horizontal distance to one unit vertical or flatter which shall be promptly vegetated, unless bulkheads or riprap are provided.

ARTICLE 4 NONCONFORMING USES AND STRUCTURES

36-41. NONCONFORMING USES

Nonconforming Uses in Shoreland-Wetland and Shoreland Districts. The lawful use of a building, structure or property which existed at the time this Chapter or an applicable amendment to this Chapter took effect and which is not in conformity with the provisions of the Chapter, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions, exceptions and regulations:

A. If a nonconforming use is discontinued for twelve consecutive months, any future use of the building, structure or property shall conform to this Chapter.

B. Any legal nonconforming use of property that does not involve the use of a structure which existed at the time of the adoption or subsequent amendment of this Chapter may be continued although such use does not conform with the provisions of the Chapter, however, such nonconforming use may not be extended.

C. The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with Wis. Stat. s. 30.121.

D. Uses which are nuisances shall not be permitted to continue as nonconforming uses.

E. Except as otherwise set forth by law, as set forth in Wis. Stat. s. 62.23(7)(h), the total structural repairs or alterations in a building, premises, structure, or fixture that does not conform to the use provisions of this Chapter shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to this Chapter.

36-42. NONCONFORMING STRUCTURES IN THE SHORELAND-WETLAND DISTRICT.

Repair and expansion of existing structures are permitted. Notwithstanding Wis. Stat. s. 62.23(7)(h), the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of this Chapter or any environmental control facility in existence on the effective date of this Chapter is permitted. The provisions of Chapter 37, Floodplain Zoning are applicable and additional restrictions may apply.

36-43 NONCONFORMING STRUCTURES IN THE SHORELAND DISTRICT.

A. Maintenance and Repair.

1. The maintenance and repair of nonconforming boathouses that extend waterward beyond the ordinary highwater mark of any navigable waters shall comply with the requirements of Wis. Stat. s. 30.121

2. Maintenance and repair of nonconforming principal structure. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under s. 36-34 may be maintained and repaired within its existing building envelope. Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roof.

B. Vertical expansion of nonconforming principal structure. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under s. 36-34 may be expanded vertically, provided that all of the following requirements are met:

1. The use of the structure is a permitted or conditional use in the underlying district.

2. The existing principal structure is at least 35 feet from the ordinary high-water mark.

3. Vertical expansion is limited to the height of 35 feet, provided that a vertical expansion will not be permitted if it will block sunlight to a neighboring property. See s. 35-3.

C. Expansion of nonconforming principal structure beyond setback. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under s. 36-34 may be expanded horizontally or landward provided that the expanded area meets the building setback requirements in s. 36-34 and that all other provisions of the shoreland requirements ordinance are met

D. Replacement or relocation of nonconforming principal structure. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under s. 36-34 may be replaced or relocated on the property provided all of the following requirements are met:

1. The use of the structure is a permitted or conditional use in the underlying district.

2. The existing principal structure is at least 35 feet from the ordinary high-water mark.

3. No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.

4. The Village determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in s. 36-34.

36-44. CERTAIN STRUCTURES MAY BE REPLACED, REPAIRED AND MAINTAINED.

A. Pursuant to Wis. Stat. s. 62.23(7)(hc), nonconforming structures that are destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation on or after March 2, 2006 may be restored to the size (or a larger size if necessary to comply with state or federal regulations), location and use that it had immediately before the damage or destruction occurred.

B. Repair and maintenance of certain nonconforming structures.

1. In this paragraph:

"Development regulations" means the part of this chapter that applies to elements including setback, height, lot coverage, and side yard.

"Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in this Chapter.

2. Pursuant to Wis. Stat. s. 62.23(7)(hb), this Chapter does not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

ARTICLE 5 ADMINISTRATION

36-50. ZONING ADMINISTRATOR

The appointed Zoning Administrator shall administer and enforce this Chapter. Where a statute or administrative code referenced in this Chapter sets forth duties to be performed by a county, the Village Zoning Administrator shall be responsible for undertaking those duties. The Zoning Administrator shall have the following duties and powers:

A. Advise applicants as to the provisions of this Chapter and assist them in preparing permit applications and appeal forms.

B. Issue permits and certificates of compliance and inspect properties for compliance with this Chapter.

C. Keep records of all permits issued, inspections made, work approved and other official actions. The Zoning Administrator, together with the Village Clerk, shall ensure that there is a record of all proceedings before the Plan Commission and Zoning Board of Appeals, copies of all exhibits, and records of all official actions.

D. Have access to any structure or premises between the hours of 8 a.m. and 6 p.m. for the purpose of performing the duties set forth in this Chapter.

E. Together with the Village Clerk, send written notice to the appropriate office of the DNR at least ten days prior to hearings on conditional use permits, variances, appeals for map or text interpretations of the provisions of this Chapter, and map or text amendments to the shoreland-wetland zoning regulations.

F. Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within 10 days after they are granted or denied, to the appropriate district office of the Department.

G. Together with the Village Engineer and landowner, ensure that zoning district boundary amendments are appropriately mapped.

H. Investigate and report violations of this Chapter to the Plan Commission, law enforcement agency, and Village attorney.

36-51. ZONING PERMITS.

A. When Required. Unless another section of this Chapter specifically exempts certain types of development from this requirement, a Zoning Permit shall be obtained from the Zoning Administrator before any new development, as defined in s. 36-60 of this Chapter, or any change in the use of an existing building or structure is initiated. Also see Chapter 35.

B. Application. An application for a Zoning Permit shall be made to the Zoning Administrator upon forms furnished by the Village and shall include, for the purpose of proper enforcement of these regulations, the following information:

1. General Information.

a. Name, address, and telephone number of applicant, property owner and contractor, where applicable.

b. Legal description of the property and a general description of the proposed use or development.

c. Whether or not a private water supply or sewage system is to be installed.

2. Site Development Plan. The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:

a. Dimensions and area of the lot;

b. Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;

c. Description of any existing or proposed on-site sewage systems or private water supply systems;

d. Location of the ordinary high-water mark of any abutting navigable waterways;

e. Boundaries of all wetlands;

f. Existing and proposed topographic and drainage features and vegetative cover;

g. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps;

h. Location of existing or future access roads; and

i. Specifications and dimensions for areas of proposed wetland alteration.

B. Expiration. All permits issued under the authority of this Chapter shall expire at the same time as the building permit issued by the Building Inspector under Chapter 11. Certificates of Compliance, and Zoning Permits for uses that do not involve building permits, shall not expire but shall be automatically void if a change is made without application for an amended or new Certificate or Zoning Permit.

C. Regular Inspections. The Zoning Administrator shall inspect the permitted work as the work progresses to ensure conformity of the finished building, structure or other development with the terms of this Chapter and the permit issued.

36-52. CERTIFICATES OF COMPLIANCE

A. Except where no Zoning Permit or Conditional Use Permit is required under this Chapter or any other Chapter of this Municipal Code, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the Zoning Administrator subject to the following provisions:

1. The certificate of compliance shall show that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this Chapter.

2. Application for such certificate shall be concurrent with the application for a zoning or conditional use permit.

3. The certificate of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning or conditional use permit, providing the building or premises and proposed use thereof conform with all the provisions of this Chapter.

B. The Zoning Administrator may issue a temporary certificate of compliance for a building, premises or part thereof pursuant to rules and regulations established by the Village Board.

C. Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of Chapter adoption, certifying after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this Chapter.

D. The Zoning Administrator may require the submission of an as-built survey prior to the issuance of the certificate of compliance.

36-53. CONDITIONAL USE PERMITS

A. Application. Any use listed as a conditional use in this Chapter shall be permitted only after an application has been submitted to the Zoning Administrator and a Conditional Use Permit has been granted by the Village Board after recommendation received by the Plan Commission following the procedures in this Chapter and in Chapter 35 of this Municipal Code.

B. Conditions. Upon consideration of the permit application and the standards applicable to the conditional uses designated in this Chapter, the Village Board shall attach such conditions to a Conditional Use Permit, in addition to those required elsewhere in this Chapter, as are necessary to further the purposes of this Chapter as listed in s. 36-2. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion controls; increased setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction. To secure information upon which to base its determination, the Plan Commission and Village Board may require the applicant to furnish, in addition to the information required for a Zoning Permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this Chapter.

36-54. FEES

The Village Board may, by resolution, adopt fees for permits required under this Chapter. See s. 35-6. All of the fees adopted in Chapter 35 shall be applicable hereunder.

36-55. RECORDING

Where a Zoning Permit or Conditional Use Permit is approved, an appropriate record shall be made by the Zoning Administrator of the land use and structures permitted.

36-56. PLAN COMMISSION AND VILLAGE BOARD

A. The Plan Commission appointed by the Village pursuant to Wis. Stat. s. 62.23(1) shall consider applications for Conditional Use Permits and forward its recommendations to the Village Board for hearing and decision.

B. Notice and Public Hearings.

1. Before making a decision on an application for a Conditional Use Permit, the Village Board shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a class 1 notice under Wis. Stat. ch. 985 specifying the date, time and place of the hearing and the matters to come before the Board. At the public hearing, any party may present testimony in person, by agent or by attorney.

2. A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least 10 days prior to all public hearings on issues involving Shoreland-Wetland Zoning or Shoreland Zoning.

3. The additional provisions for notice to neighbors set forth in Chapter 35 shall apply.

C. Decisions.

1. The final disposition of an application for a Conditional Use Permit before the Village Board shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the Village President.

2. Such decision shall state the specific facts which are the basis of the Board's determination and shall either grant or deny the Conditional Use Permit.

3. A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department within 10 days after the decision is issued.

4. If the Board grants the Conditional Use Permit, it shall direct the Zoning Administrator to issue the Permit, inclusive of the conditions thereto.

36-57. BOARD OF APPEALS

The Zoning Board of Appeals appointed by the Village pursuant to Wis. Stat. s. 62.23(7)(e):

A. Shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this Chapter and may perform any other act authorized under Wis. Stat. s. 62.23(7)(e) pursuant to the provisions of s. 35-210.

B. May authorize upon appeal a variance from the dimensional standards of this Chapter where an applicant convincingly demonstrates:

1. That literal enforcement of the terms of the Chapter will result in unnecessary hardship for the applicant.

2. That the hardship is due to special conditions unique to the property; and is not self-created or based solely on economic gain or loss;

3. That such variance is not contrary to the public interest as expressed by the purpose of this Chapter; and

4. That such variance will not grant or increase any use of property which is prohibited in the zoning district.

C. Appeals to the Board. Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the community affected by any order, requirement, decision, or determination of the Zoning Administrator or other administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board by filing with the official whose decision is in question, and with the Board of Appeals, a notice of appeal specifying the reasons for the appeal. The Zoning Administrator or other official whose decision is in question shall transmit to the Board all the papers constituting the record on the matter appealed.

D. Public Hearings.

1. Before making a decision on an appeal, the Board of Appeals shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a class 2 notice under Wis. Stat. ch. 985 specifying the date, time and place of the hearing and the matters to come before the Board. At the public hearing, any party may present testimony in person, by agent or by attorney.

2. A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least 10 days prior to all public hearings on issues involving shoreland-wetland zoning.

E. Decisions.

1. The final disposition of an appeal before the Board of Appeals shall be in the form of a written decision, made within a reasonable time after the public hearing and signed by the Board chairperson. Such decision shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse, or modify the order, requirement, decision or determination appealed, in whole or in part, or dismiss the appeal for lack of jurisdiction or prosecution.

2. A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department within 10 days after the decision is issued.

36-58. AMENDING SHORELAND-WETLAND ZONING REGULATIONS

The Village Board may alter, supplement or change the district boundaries and the regulations contained in this Chapter in accordance with the requirements of Wis. Stat. s. 62.23(7)(d)2., Wis. Admin. Code s. NR 117.05(4), and the following

A. A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within five days of the submission of the proposed amendment to the Village Plan Commission;

B. All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the Village Plan Commission, and a public hearing shall be held before the Village Board after class 2 notice as required by Wis. Stat. s. 62.23(7)(d)2. The appropriate district office of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

C. In order to ensure that this Chapter will remain consistent with the shoreland protection objectives of Wis. Stat. s. 281.31, the Village Board may not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a significant adverse impact upon any of the following wetland functions:

1. Storm and floodwater storage capacity;

2. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;

3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;

4. Shoreline protection against erosion;

5. Fish spawning, breeding, nursery or feeding grounds;

6. Wildlife habitat; or

7. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.

D. Where the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in subsection C, the Department shall so notify the Village of its determination either prior to or during the public hearing held on the proposed amendment.

E. The appropriate district office of the Department shall be provided with:

1. A copy of the recommendation and report, if any, of the Plan Commission on a proposed text or map amendment within ten days after the submission of those recommendations to the Village Board.

2. Written notice of the action on the proposed text or map amendment within ten days after the action is taken.

F. If the Department notifies the Plan Commission in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subsection C, the proposed amendment, if approved by the Village Board, shall not become effective until more than 30 days have elapsed since written notice of the Village approval was mailed to the Department, as required by this Chapter. If within the 30 day period the Department notifies the Village that the Department intends to adopt a superseding shoreland-wetland zoning ordinance for the Village as provided by Wis. Stat. s. 61.351(6), the proposed amendment shall not become effective until the ordinance adoption procedure under Wis. Stat. s. 61.351(6) is completed or otherwise terminated.

ARTICLE 6 DEFINITIONS

36-60. DEFINITIONS.

For the purpose of this Chapter, certain words or phrases shall have meanings that either vary somewhat from their customary dictionary meaning or are intended to be interpreted to have a specific meaning. Words used in the present tense in this Chapter include the future. The word "person" includes a firm, association, partnership, trust, company, or corporation as well as an individual. The word "shall" is mandatory, the word "should" is advisory, and the word "may" is permissive. Any words not defined in this section shall be presumed to have their customary dictionary definitions, or as defined by statute or administrative code. All distances, unless otherwise specified, shall be measured horizontally.

SPECIFIC WORDS AND PHRASES:

“Accessory Structure or Use" means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.

"Boathouse" as defined in Wis. Stat. s. 30.01 means a structure used for the storage of watercraft and associated materials and has one or more walls or sides.

"Class 1 Public Notice" means publication of a public hearing notice under Wis. Stat. ch. 985 in a newspaper of circulation in the affected area. Publication is required at least seven days prior to the hearing.

"Class 2 Public Notice" means publication of a public hearing notice under Wis. Stat. ch. 985 in a newspaper of circulation in the affected area. Publication is required on two consecutive weeks, the last at least seven days prior to the hearing.

"Conditional use" means a use which is permitted by this Chapter provided that certain conditions specified in the Chapter are met and that a permit is granted by the Plan Commission.

"Department" means the Wisconsin Department of Natural Resources.

"Development" means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.

"Drainage system" means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

"Environmental control facility" means any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

"Fixed houseboat" as defined in Wis. Stat. s. 30.01 means a structure not actually used for navigation which extends beyond the ordinary high−water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

"Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under Wis. Stat. s. 281.31(2)(d), not withstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under Wis. Stat. ss. 61.351 do not apply to lands adjacent to farm drainage ditches if;

A. Such lands are not adjacent to a natural navigable stream or river;

B. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and

C. Such lands are maintained in nonstructural agricultural use.

The Wisconsin Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGaynor and Co., Inc., v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]. For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons."

"Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

"Plan Commission" means the Village plan commission created under Wis. Stat. s. 62.23(1).

“Principal Building” means the main building or structure on a single lot or parcel of land and includes any attached garage or attached porch.

“Pyramiding” means the act of obtaining or providing access to public bodies of water across private lots or lands in a manner that increases the number of families that have access to that water to a degree greater than what would occur with individual riparian owners having individual lots fronting on the water. The effect of pyramiding is to funnel backlot development from offshore lots or residences via a narrow parcel of land to provide access to the water. Publicly owned access points or publicly owned easements do not fall withing this definition.

"Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

"Shoreland-Wetland District" means the zoning district, created in this Chapter, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this Chapter.

"Unnecessary hardship" means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage height or density unnecessarily burdensome or unreasonable in light of the purposes of this Chapter.

"Variance" means an authorization granted by the Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this Chapter.

"Wetlands" means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

"Wetland alteration" means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

ARTICLE 50 ENFORCEMENT

36-500. VIOLATIONS AND PENALTIES.

A. Violations. Any development, building or structure or accessory building or structure constructed, altered, added to, modified, rebuilt or replaced or any use or accessory use established after the effective date of this Chapter in violation of the provisions of this Chapter, by any person, including building contractors or their agents, shall be deemed a violation.

B. Enforcement. The Zoning Administrator shall enforce the provisions of this Chapter pursuant to the provisions of s. 35-10 of this Municipal Code. The Village Attorney shall prosecute such violations.

C. Penalties.

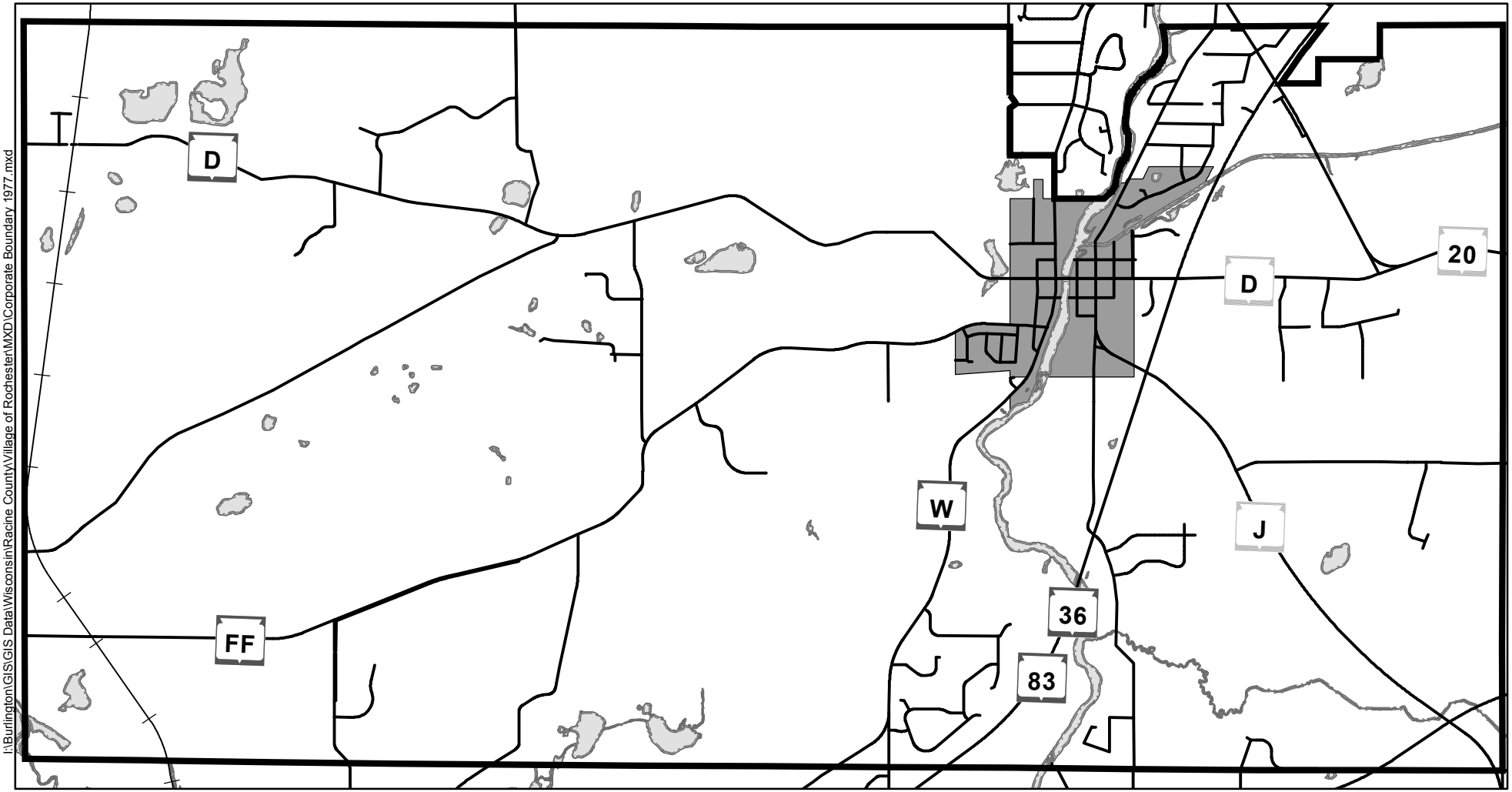
1. Citations. Any person failing to comply with this Chapter shall be subject to a penalty as provided in Chapter 50 of this Municipal Code. Each day of continued violation shall constitute a separate offense.

2. Double Fees, Injunctions and Suspension or Revocation. In addition to the penalties set forth in subsection 1., the penalties for commencing work without a permit, for violation of this Chapter or the violation of a Zoning Permit or Conditional Use Permit set forth in s. 35-100.I. of this Municipal Code shall apply, including double fees, injunctions and suspension or revocation of zoning and conditional use permits.

D. Every violation of this Chapter is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated by action at suit of the Village, the state, or any citizen thereof pursuant to Wis. Stat. s. 87.30(2).

E. Adjacent or neighboring property owners who would be specially damaged by a violation of this Chapter may enforce this Chapter by the use of injunctions to prevent or abate violations, as provided in Wis. Stat. s. 62.23(7)(f)2.

Chapter 36 - Appendix A
Lands Subject to Shoreland Zoning District Regulations



Village Boundary

Lands Subject to Shoreland Zoning District Regulations

Lands Not Subject to Shoreland Zoning District Regulations

(See s. 36-32)

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CHAPTER 37 FLOODPLAIN ZONING

37-1. STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND GENERAL PROVISIONS

A. Statutory Authorization. This ordinance is adopted pursuant to the authorization in Wis. Stat. ss. 61.35 and 62.23, for villages and cities; 59.69, 59.692, and 59.694 for counties; and the requirements in Wis. Stat. s. 87.30.

B. Finding of Fact. Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare and tax base.

C. Statement of Purpose. This ordinance is intended to regulate floodplain development to:

1. Protect life, health and property;

2. Minimize expenditures of public funds for flood control projects;

3. Minimize rescue and relief efforts undertaken at the expense of the taxpayers;

4. Minimize business interruptions and other economic disruptions;

5. Minimize damage to public facilities in the floodplain;

6. Minimize the occurrence of future flood blight areas in the floodplain;

7. Discourage the victimization of unwary land and homebuyers;

8. Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and

9. Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

D. Title. This ordinance shall be known as the Floodplain Zoning Ordinance for the Village of Rochester, Wisconsin.

E. General Provisions.

1. Areas to be Regulated. This ordinance regulates all areas that would be covered by the regional flood or base flood as shown on the Flood Insurance Rate Map (FIRM) or other maps approved by DNR. Base flood elevations are derived from the flood profiles in the Flood Insurance Study (FIS) and are shown as AE, A1-30, and AH Zones on the FIRM. Other regulatory zones are displayed as A and AO zones. Regional Flood Elevations (RFE) may be derived from other studies. If more than one map or revision is referenced, the most restrictive information shall apply.

2. Official Maps and Revisions. The boundaries of all floodplain districts are designated as A, AE, AH, AO or A1-30 on the maps based on the Flood Insurance Study (FIS) listed below. Any change to the base flood elevations (BFE) or any changes to the boundaries of the floodplain or floodway in the FIS or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA through the Letter of Map Change process (see s. 37-8, Amendments) before it is effective. No changes to RFEs on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the Village Clerk of the Village of Rochester. If more than one map or revision is referenced, the most restrictive information shall apply.

a. Official Maps: Based on the FIS.

(1) Flood Insurance Rate Map (FIRM), panel numbers:

55101C0018D dated May 2, 2012
55101C0038D dated May 2, 2012
55101C0039D dated May 2, 2012
55101C0132D dated May 2, 2012
55101C0133D dated May 2, 2012
55101C0134D dated May 2, 2012
55101C0151D dated May 2, 2012
55101C0152D dated May 2, 2012
55101C0153D dated May 2, 2012
55101C0154D dated May 2, 2012

with corresponding profiles that are based on the Flood Insurance Study (FIS) dated May 2, 2012, Volume Nos. 55101CV001A and 55101CV002A;

Approved by: The DNR and FEMA

(2) (Reserved.)

b. Official Maps: Based on other studies. Any maps referenced in this section must be approved by the DNR and be more restrictive than those based on the FIS at the site of the proposed development.

(1) Letter of Map Revision:

LOMA, Case No. 09-05-5914A, Issued November 24, 2009, reaffirmed May 3, 2012 (Panel No. 55101C0151D).

Approved by: The DNR and FEMA

(2) Waterford Dam (100-Year) Dam Failure Floodplain Map (titled “Hydraulic Shadow Map Waterford Dam”), dated January 29, 2013. Map prepared by GRAEF-USA, Inc. for Racine County, Wisconsin. Dam Failure Analysis (DFA) prepared by GRAEF-USA, Inc. dated February, 2013. DNR approval of DFA dated March 7, 2013.

3. Establishment of Floodplain Zoning Districts. The regional floodplain areas are divided into three districts as follows:

a. The Floodway District (FW), is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters and are contained within AE Zones as shown on the FIRM.

b. The Floodfringe District (FF) is that portion between the regional flood limits and the floodway and displayed as AE Zones on the FIRM.

c. The General Floodplain District (GFP) is those areas that may be covered by floodwater during the regional flood and do not have a BFE or floodway boundary determined, including A, AH and AO zones on the FIRM.

4. Locating Floodplain Boundaries. Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved using the criteria in subsection a. or b. below. If a significant difference exists, the map shall be amended according to s. 37-8, Amendments. The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to s. 37-7.C.3. and the criteria in a. and b. below. Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must approve any map amendment or revision pursuant to s. 37-8, Amendments.

    a. If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.

    b. Where flood profiles do not exist for projects, the location of the boundary shall be determined by the map scale.

5. Removal of Lands from Floodplain. Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to s. 37-8, Amendments.

6. Compliance. Any development or use within the areas regulated by this ordinance shall be in compliance with the terms of this ordinance, and other applicable local, state, and federal regulations.

7. Municipalities and State Agencies Regulated. Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if Wis. Stat. s. 13.48(13) applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when Wis. Stat. s. 30.2022 applies.

8. Abrogation and Greater Restrictions.

    a. This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under Wis. Stat. ss. 59.69, 59.692 or 59.694 for counties; s. 62.23 for cities; s. 61.35 for villages; or Wis. Stat. s. 87.30, which relates to floodplains. A more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

    b. This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

9. Interpretation. In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by Wis. Admin. Code ch. NR 116 is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

10. Warning and Disclaimer of Liability. The flood protection standards in this ordinance are based on engineering experience and research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-

floodplain areas or permitted floodplain uses will be free from flooding and flood damages. This ordinance does not create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

11. Severability. Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

12. Annexed Areas for Cities and Villages. The Racine County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of Wis. Admin. Code ch. NR 116 and 44 CFR 59-72, National Flood Insurance Program (NFIP). These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the floodway location.

37-2. GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS

The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with flood-resistant materials; be constructed to minimize flood damages and to ensure that utility and mechanical equipment is designed and/or located so as to prevent water from entering or accumulating within the equipment during conditions of flooding.

Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this ordinance and all other requirements in s. 37-7.A.2. Adequate drainage shall be provided to reduce exposure to flood hazards and all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damages.

A. Hydraulic and Hydrologic Analyses.

1. No floodplain development shall:

a. Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, causing any increase in the regional flood height; or

b. Cause any increase in the regional flood height due to floodplain storage area lost.

2. The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of s. 37-8, Amendments are met.

B. Watercourse Alterations. No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices, and required the applicant to secure all necessary state and federal permits. The standards of s. 37-2.A must be met and the flood carrying capacity of any altered or relocated watercourse shall be maintained.

As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation and pursuant to s. 37-8, Amendments, the community shall apply for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.

C. Wis. Stat. Chapters 30, 31 Development. Development which requires a permit from the Department, under Wis. Stat. chs. 30 and 31, such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodplain zoning ordinance are made according to s. 37-8, Amendments.

D. Public or Private Campgrounds. Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

1. The campground is approved by the Department of Health Services;

2. A land use permit for the campground is issued by the zoning administrator;

3. The character of the river system and the campground elevation are such that a 72-hour warning of an impending flood can be given to all campground occupants;

4. There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation;

5. This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated by the officials identified in subsection 4. to remain in compliance with all applicable regulations, including those of the state Department of Health Services and all other applicable regulations;

6. Only camping units that are fully licensed, if required, and ready for highway use are allowed;

7. The camping units shall not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours;

8. All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section;

9. The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section;

10. All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either s. 37-3, 37-4 or 37-5 for the floodplain district in which the structure is located;

11. The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued; and

12. All service facilities, including but not limited to refuse collection, electrical service, gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

37-3. FLOODWAY DISTRICT (FW)

A. Applicability. This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to s. 37-5.D.

B. Permitted Uses. The following open space uses are allowed in the Floodway District and the floodway areas of the General Floodplain District, if:

-they are not prohibited by any other ordinance;
-they meet the standards in ss. 37-3.C and 37-3.D; and
-all permits or certificates have been issued according to s. 37-7.A.

1. Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.

2. Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.

3. Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of s. 37-3.C.4.

4. Uses or structures accessory to open space uses, or classified as historic structures that comply with ss. 37-3.C and 37-3.D.

5. Extraction of sand, gravel or other materials that comply with s. 37-3C.4.

6. Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with Wis. Stat. chs. 30 and 31.

7. Public utilities, streets and bridges that comply with s. 37-3C.3.

C. Standards for Developments in the Floodway.

1. General.

a. Any development in the floodway shall comply with s. 37-2 and have a low flood damage potential.

b. Applicants shall provide the following data to determine the effects of the proposal according to s. 37-2.A:

(1) A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or

(2) An analysis calculating the effects of this proposal on regional flood height.

c. The zoning administrator shall deny the permit application if the project will cause any increase in the flood elevations upstream or downstream, based on the data submitted for subsection b. above.

2. Structures. Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

a. Not designed for human habitation, does not have a high flood damage potential and is constructed to minimize flood damage;

b. Shall have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings shall be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

c. Must be anchored to resist flotation, collapse, and lateral movement;

d. Mechanical and utility equipment must be elevated or flood proofed to or above the flood protection elevation; and

e. It must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.

3. Public Utilities, Streets and Bridges. Public utilities, streets and bridges may be allowed by permit, if:

a. Adequate floodproofing measures are provided to the flood protection elevation; and

b. Construction meets the development standards of s. 37-2.A.

4. Fills or Deposition of Materials. Fills or deposition of materials may be allowed by permit, if:

a. The requirements of s. 37-2.A are met;

b. No material is deposited in navigable waters unless a permit is issued by the Department pursuant to Wis. Stat. ch. 30, and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and all other requirements have been met;

c. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and

d. The fill is not classified as a solid or hazardous material.

D. Prohibited Uses. All uses not listed as permitted uses in s. 37-3.B are prohibited, including the following uses:

1. Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;

2. Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;

3. Uses not in harmony with or detrimental to uses permitted in the adjoining districts;

4. Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and Wis. Admin. Code ch. SPS 383;

5. Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and Wis. Admin. Code chs. NR 811 and NR 812;

6. Any solid or hazardous waste disposal sites;

7. Any wastewater treatment ponds or facilities, except those permitted under Wis. Admin. Code s. NR 110.15(3)(b); and

8. Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

37-4. FLOODFRINGE DISTRICT (FF)

A. Applicability. This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to s. 37-5.D.

B. Permitted Uses. Any structure, land use, or development is allowed in the Floodfringe District if the standards in s. 37-4.C are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in s. 37-7.A have been issued.

C. Standards for Development in the Floodfringe. Section 37-2.A shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of s. 37-6, Nonconforming Uses;

1. Residential Uses. Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe, shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of s. 37-6, Nonconforming Uses;

a. The elevation of the lowest floor shall be at or above the flood protection elevation on fill unless the requirements of s 37-4.C.1.b. can be met. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure.

b. The basement or crawlway floor may be placed at the regional flood elevation if it is dry floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation;

c. Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in subsection d.

d. In developments where existing street or sewer line elevations make compliance with subsection c. impractical, the municipality may permit new development and substantial improvements where roads are below the regional flood elevation, if:

(1) The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or

(2) The municipality has a DNR-approved emergency evacuation plan.

2. Accessory Structures or Uses. Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

3. Commercial Uses. Any commercial structure which is erected, altered or moved into the floodfringe shall meet the requirements of s. 37-4.C.1. Subject to the requirements of s. 37-4C.5., storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

4. Manufacturing and Industrial Uses. Any manufacturing or industrial structure which is erected, altered or moved into the floodfringe shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in s 37-7.E. Subject to the requirements of s. 37-4.C.5., storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

5. Storage of Materials. Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with s. 37-7.E. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

6. Public Utilities, Streets and Bridges. All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and

   a. When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction or repair of such facilities shall only be permitted if they are designed to comply with s. 37-7.E.

   b. Minor roads or non-essential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

7. Sewage Systems. All sewage disposal systems shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to s. 37-7.E.3., to the flood protection elevation and meet the provisions of all local ordinances and Wis. Admin. Code ch. SPS 383.

8. Wells. All wells shall be designed to minimize or eliminate infiltration of flood waters into the system, pursuant to s. 37-7.E.3., to the flood protection elevation and shall meet the provisions of Wis. Admin. Code chs. NR 811 and NR 812.

9. Solid Waste Disposal Sites. Disposal of solid or hazardous waste is prohibited in floodfringe areas.

10. Deposition of Materials. Any deposited material must meet all the provisions of this ordinance.

11. Manufactured Homes.

   a. Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.

   b. In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:

      (1) have the lowest floor elevated to the flood protection elevation; and

      (2) be anchored so they do not float, collapse or move laterally during a flood.

   c. Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in s. 37-4.C.1.

12. Mobile Recreational Vehicles. All mobile recreational vehicles that are on site for 180 consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and

anchoring requirements in ss. 37-4.C.11.b. and c. A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

37-5. GENERAL FLOODPLAIN DISTRICT (GFP)

A. Applicability. The provisions for this district shall apply to all floodplains mapped as A, AO or AH zones.

B. Permitted Uses. Pursuant to s. 37-5.D, it shall be determined whether the proposed use is located within the floodway or floodfringe.

Those uses permitted in the Floodway (s. 37-3.B) and Floodfringe (s. 37-4.B) Districts are allowed within the General Floodplain District, according to the standards of s. 37-5C, provided that all permits or certificates required under s. 37-7.A have been issued.

C. Standards for Development in the General Floodplain District. Section 37-3 applies to floodway areas, s. 37-4 applies to floodfringe areas. The rest of this ordinance applies to either district.

1. In AO/AH Zones the structure's lowest floor must meet one of the conditions listed below, whichever is higher:

   a. at or above the flood protection elevation; or

   b. two feet above the highest adjacent grade around the structure; or

   c. the depth as shown on the FIRM.

2. In AO/AH zones, provide plans showing adequate drainage paths to guide floodwaters around structures.

D. Determining Floodway and Floodfringe Limits. Upon receiving an application for development within the general floodplain district, the zoning administrator shall:

1. Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures; and the flood zone as shown on the FIRM.

2. Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries.

   a. A Hydrologic and Hydraulic Study as specified in s. 37-7.A.2.c.

   b. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;

   c. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

37-6. NONCONFORMING USES.

A. General.

1. Applicability. If these standards conform with Wis. Stat. s. 59.69(10), for counties or s. 62.23(7)(h), for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.

2. The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:

a. No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.

The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

b. If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;

c. The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;

d. No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 37-4.C.1. The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;

e. No maintenance to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 37-4.C.1.

f. If on a per event basis the total value of the work being done under d. and e. equals or exceeds 50% of the present equalized assessed value the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a

conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 37-4.C.1.

g. Except as provided in subsection h., if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.

h. For nonconforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the minimum federal code requirements below are met and all required permits have been granted prior to the start of construction.

(1) Residential Structures

(a) Shall have the lowest floor, including basement, elevated to or above the base flood elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of s. 37-7.E.2.

(b) Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with methods and materials resistant to flood damage.

(c) Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.

(d) In A Zones, obtain, review and utilize any flood data available from a federal, state or other source.

(e) In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in s. 37-5.C.1.

(f) in AO Zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.

(2) Nonresidential Structures

(a) Shall meet the requirements of ss. 37-6.A.2.h.(1)(a)-(b) and (e)-(f).

(b) Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in s. 37-7.E.1.or 2.

(c) In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in s. 37-5.C.1.

3. A nonconforming historic structure may be altered if the alteration will not preclude the structure's continued designation as a historic structure, the alteration will comply with s. 37-3.C.1, flood resistant materials are used, and construction practices and floodproofing methods that comply

with s. 37-7.E are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of s. 37-6.A.2.h(1) if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.

B. Floodway District.

1. No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the Floodway District, unless such modification or addition:

a. Has been granted a permit or variance which meets all ordinance requirements;

b. Meets the requirements of s. 37-6.A;

c. Shall not increase the obstruction to flood flows or regional flood height;

d. Any addition to the existing structure shall be floodproofed, pursuant to s. 37-7.E, by means other than the use of fill, to the flood protection elevation; and

e. If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:

(1) The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;

(2) The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;

(3) Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and

(4) The use must be limited to parking, building access or limited storage.

2. No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances, s. 37-7.E.3. and Wis. Admin. Code ch. SPS 383.

3. No new well or modification to an existing well used to obtain potable water shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing well in the Floodway District shall meet the applicable requirements of all municipal ordinances, s. 37-7.E.3. and Wis. Admin. Code chs. NR 811 and NR 812.

C. Floodfringe District.

1. No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality, and meets the requirements of s. 37-4.C except where s. 37-6.C.2. is applicable.

2. Where compliance with the provisions of subsection 1. would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Zoning Board of Appeals, using the procedures established in s. 37-7.C, may grant a variance from those provisions of subsection 1. for modifications or additions using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:

    a. No floor is allowed below the regional flood elevation for residential or commercial structures;

    b. Human lives are not endangered;

    c. Public facilities, such as water or sewer, shall not be installed;

    d. Flood depths shall not exceed two feet;

    e. Flood velocities shall not exceed two feet per second; and

    f. The structure shall not be used for storage of materials as described in s. 37-4.C.5.

3. All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances, s. 37-7.E.3. and Wis. Admin. Code ch. SPS 383.

4. All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this ordinance, s. 37-7.E.3. and Wis. Admin. Code chs. NR 811 and NR 812.

37-7. ADMINISTRATION.

Where a zoning administrator, planning agency or a board of adjustment/appeals has already been appointed to administer a zoning ordinance adopted under Wis. Stat. ss. 59.69, 59.692 or 62.23(7), these officials shall also administer this ordinance.

A. Zoning Administrator.

1. Duties and Powers. The zoning administrator is authorized to administer this ordinance and shall have the following duties and powers:

    a. Advise applicants of the ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.

    b. Issue permits and inspect properties for compliance with provisions of this ordinance and issue certificates of compliance where appropriate.

    c. Inspect and assess all damaged floodplain structures to determine if substantial damage to the structures has occurred.

    d. Keep records of all official actions such as:

        (1) All permits issued, inspections made, and work approved;

        (2) Documentation of certified lowest floor and regional flood elevations;

        (3) Floodproofing certificates.

(4) Water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.

(5) All substantial damage assessment reports for floodplain structures.

(6) List of nonconforming structures and uses.

e. Submit copies of the following items to the Department Regional office:

(1) Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;

(2) Copies of case-by-case analyses and other required information including an annual summary of floodplain zoning actions taken.

(3) Copies of substantial damage assessments performed and all related correspondence concerning the assessments.

f. Investigate, prepare reports, and report violations of this ordinance to the municipal Plan Commission and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.

g. Submit copies of amendments and biennial reports to the FEMA Regional office.

2. Land Use Permit. A land use permit shall be obtained before any new development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated. Application to the zoning administrator shall include:

a. General Information.

(1) Name and address of the applicant, property owner and contractor;

(2) Legal description, proposed use, and whether it is new construction or a modification;

b. Site Development Plan. A site plan drawn to scale shall be submitted with the permit application form and shall contain:

(1) Location, dimensions, area and elevation of the lot;

(2) Location of the ordinary highwater mark of any abutting navigable waterways;

(3) Location of any structures with distances measured from the lot lines and street center lines;

(4) Location of any existing or proposed on-site sewage systems or private water supply systems;

(5) Location and elevation of existing or future access roads;

(6) Location of floodplain and floodway limits as determined from the official floodplain zoning maps;

(7) The elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study – either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);

(8) Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of s. 37-3 or s. 37-4 are met; and

(9) Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to s. 37-2.A. This may include any of the information noted in s. 37-3.C.1.

c. Hydraulic and Hydrologic Studies to Analyze Development. All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the State. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the Department.

(1) Zone A floodplains:

(a) Hydrology. The appropriate method shall be based on the standards in Wis. Admin. Code s. NR 116.07(3), Hydrologic Analysis: Determination of Regional Flood Discharge.

(b) Hydraulic modeling. The regional flood elevation shall be based on the standards in Wis. Admin. Code s. NR 116.07(4), Hydraulic Analysis: Determination of Regional Flood Elevation, and the following:

[1] determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.

[2] channel sections must be surveyed.

[3] minimum four foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.

[4] a maximum distance of 500 feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.

[5] the most current version of HEC-RAS shall be used.

[6] a survey of bridge and culvert openings and the top of road is required at each structure.

[7] additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.

[8] standard accepted engineering practices shall be used when assigning parameters for the base model such as flow, Manning's N values, expansion and contraction coefficients or

effective flow limits. The base model shall be calibrated to past flooding data such as high water marks to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.

[9] the model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.

(c) Mapping. A work map of the reach studied shall be provided, showing all cross section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development and whether the proposed development is located in the floodway.

[1] If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.

[2] If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.

(2) Zone AE Floodplains.

(a) Hydrology. If the proposed hydrology will change the existing study, the appropriate method to be used shall be based on Wis. Admin. Code s. NR 116.07(3), Hydrologic Analysis: Determination of Regional Flood Discharge.

(b) Hydraulic model. The regional flood elevation shall be based on the standards in Wis. Admin. Code s. NR 116.07(4), Hydraulic Analysis: Determination of Regional Flood Elevation, and the following:

[1] Duplicate Effective Model. The effective model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the effective model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.

[2] Corrected Effective Model. The Corrected Effective Model shall not include any man-made physical changes since the effective model date, but shall import the model into the most current version of HEC-RAS for Department review.

[3] Existing (Pre-Project Conditions) Model. The Existing Model shall be required to support conclusions about the actual impacts

of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.

[4] Revised (Post-Project Conditions) Model. The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.

[5] All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.

[6] Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the effective model and result in water surface elevations and topwidths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.

(c) Mapping. Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:

[1] Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.

[2] Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.

[3] Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.

[4] If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plane Coordinate System in accordance with FEMA mapping specifications.

[5] The revised floodplain boundaries shall tie into the effective floodplain boundaries.

[6] All cross sections from the effective model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.

[7] Both the current and proposed floodways shall be shown on the map.

[8] The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.

d. Expiration. All permits issued under the authority of this ordinance shall expire no more than 180 days after issuance. The permit may be extended for a maximum of 180 days for good and sufficient cause.

3. Certificate of Compliance. No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:

a. The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;

b. Application for such certificate shall be concurrent with the application for a permit;

c. If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;

d. The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that the requirements of s. 37-7.E are met.

4. Other Permits. Prior to obtaining a floodplain development permit the applicant must secure all necessary permits from federal, state, and local agencies, including but not limited to those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

B. Plan Commission.

1. The Plan Commission shall:

a. oversee the functions of the office of the zoning administrator; and

b. review and advise the governing body on all proposed amendments to this ordinance, maps and text.

2. The Plan Commission shall not:

a. grant variances to the terms of the ordinance in place of action by the Zoning Board of Appeals; or

b. amend the text or zoning maps in place of official action by the governing body.

C. Zoning Board of Appeals. The Zoning Board of Appeals, created under Wis. Stat. s. 59.694 for counties or s. 62.23(7)(e) for cities or villages, is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Zoning Board of Appeals shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The zoning administrator shall not be the secretary of the Zoning Board of Appeals.

1. Powers and Duties. The Zoning Board of Appeals shall:

a. Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance;

b. Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map; and

c. Variances - Hear and decide, upon appeal, variances from the ordinance standards.

2. Appeals to the Zoning Board of Appeals.

a. Appeals to the Zoning Board of Appeals may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the Zoning Board of Appeals, by filing with the official whose decision is in question, and with the Zoning Board of Appeals, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Zoning Board of Appeals all records regarding the matter appealed.

b. Notice and Hearing for Appeals Including Variances.

(1) Notice - The Zoning Board of Appeals shall:

(a) Fix a reasonable time for the hearing;

(b) Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing; and

(c) Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.

(2) Hearing - Any party may appear in person or by agent. The Zoning Board of Appeals shall:

(a) Resolve boundary disputes according to s. 37-7.C.3.;

(b) Decide variance applications according to s. 37-7.C.4.; and

(c) Decide appeals of permit denials according to s. 37-7.D.

c. Decision. The final decision regarding the appeal or variance application shall:

(1) Be made within a reasonable time;

(2) Be sent to the Department Regional office within 10 days of the decision;

(3) Be a written determination signed by the chairman or secretary of the Zoning Board of Appeals;

(4) State the specific facts which are the basis for the Zoning Board of Appeals' decision;

(5) Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application; and

(6) Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Zoning Board of Appeals proceedings.

3. Boundary Disputes. The following procedure shall be used by the Zoning Board of Appeals in hearing disputes concerning floodplain district boundaries:

a. If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined;

b. The person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Zoning Board of Appeals; and

c. If the boundary is incorrectly mapped, the Zoning Board of Appeals should inform the Plan Commission or the person contesting the boundary location to petition the governing body for a map amendment according to s. 37-8, Amendments.

4. Variance.

a. The Zoning Board of Appeals may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:

(1) Literal enforcement of the ordinance will cause unnecessary hardship;

(2) The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;

(3) The variance is not contrary to the public interest; and

(4) The variance is consistent with the purpose of this ordinance in s. 37-1.C.

b. In addition to the criteria in subsection a., to qualify for a variance under FEMA regulations, the following criteria must be met:

(1) The variance shall not cause any increase in the regional flood elevation;

(2) Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE; and

(3) Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.

c. A variance shall not:

(1) Grant, extend or increase any use prohibited in the zoning district;

(2) Be granted for a hardship based solely on an economic gain or loss;

(3) Be granted for a hardship which is self-created;

(4) Damage the rights or property values of other persons in the area;

(5) Allow actions without the amendments to this ordinance or map(s) required in s. 37-8, Amendments; and

(6) Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

d. When a floodplain variance is granted the Zoning Board of Appeals shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to $25.00 per $100.00 of coverage. A copy shall be maintained with the variance record.

D. To Review Appeals of Permit Denials.

1. The Plan Commission (s. 37-7.B) or Zoning Board of Appeals shall review all data related to the appeal. This may include:

a. Permit application data listed in s. 37-7.A.2.;

b. Floodway/floodfringe determination data in s. 37-5.D;

c. Data listed in s. 37-3.C.1.b. where the applicant has not submitted this information to the zoning administrator; and

d. Other data submitted with the application, or submitted to the Zoning Board of Appeals with the appeal.

2. For appeals of all denied permits the Zoning Board of Appeals shall:

a. Follow the procedures of s. 37-7.C;

b. Consider Plan Commission recommendations; and

c. Either uphold the denial or grant the appeal.

3. For appeals concerning increases in regional flood elevation the Zoning Board of Appeals shall:

a. Uphold the denial where the Zoning Board of Appeals agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per the requirements of s. 37-8, Amendments; and

b. Grant the appeal where the Zoning Board of Appeals agrees that the data properly demonstrates that the project does not cause an increase provided no other reasons for denial exist.

E. Floodproofing Standards for Noncomforming Structures or Uses.

1. No permit or variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation and submits a FEMA Floodproofing Certificate.

2. For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:

a. certified by a registered professional engineer or architect; or

b. meets or exceeds the following standards:

(1) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(2) the bottom of all openings shall be no higher than one foot above grade; and

(3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

3. Floodproofing measures shall be designed, as appropriate, to:

a. Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;

b. Protect structures to the flood protection elevation;

c. Anchor structures to foundations to resist flotation and lateral movement; and

d. Minimize or eliminate infiltration of flood waters.

e. Minimize or eliminate discharges into flood waters.

F. Public Information.

1. Place marks on structures to show the depth of inundation during the regional flood.

2. All maps, engineering data and regulations shall be available and widely distributed.

3. Real estate transfers should show what floodplain district any real property is in.

37-8. AMENDMENTS.

Obstructions or increases may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 37-8.A.

In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 37-8.A. Any such alterations must be reviewed and approved by FEMA and the DNR.

In A Zones increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain maps, floodway lines, and water surface profiles, in accordance with s. 37-8.A.

A. General. The governing body shall change or supplement the floodplain zoning district boundaries and this ordinance in the manner outlined in s. 37-8.B below. Actions which require an amendment to the ordinance and/ or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:

1. Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height;

2. Any change to the floodplain boundaries and/or watercourse alterations on the FIRM;

3. Any changes to any other officially adopted floodplain maps listed in 37-1.E.2.b.;

4. Any floodplain fill which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;

5. Correction of discrepancies between the water surface profiles and floodplain maps;

6. Any upgrade to a floodplain zoning ordinance text required by Wis. Admin. Code s. NR 116.05, or otherwise required by law, or for changes by the municipality; and

7. All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

B. Procedures. Ordinance amendments may be made upon petition of any party according to the provisions of Wis. Stat. s. 62.23 for cities and villages, or s. 59.69 for counties. The petitions shall include all data required by ss. 37-5.D and 37-7.A.2. The Land Use Permit shall not be issued until a Letter of Map Revision is issued by FEMA for the proposed changes.

1. The proposed amendment shall be referred to the Plan Commission for a public hearing and recommendation to the governing body. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of Wis. Stat. s. 62.23 for cities and villages or s. 59.69 for counties.

2. No amendments shall become effective until reviewed and approved by the Department.

3. All persons petitioning for a map amendment that obstructs flow causing any increase in the regional flood height, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.

37-20. DEFINITIONS

Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.

“A Zones” means those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

“AH Zone” – See “Area of Shallow Flooding.”

“AO ZONE” – See “Area of Shallow Flooding”.

“Accessory Structure or Use” means a facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.

“Alteration” means an enhancement, upgrading or substantial change or modifications other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.

“Area of Shallow Flooding” means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community’s Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3

feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

“Base Flood” means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of an FIS and depicted on a FIRM.

“Basement” means any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.

“Building” – See “Structure.”

“Bulkhead Line” means a geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to Wis. Stat. s. 30.11, and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.

“Campground” means any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by four or more camping units, or which is advertised or represented as a camping area.

“Camping Unit” means any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, or tent that is fully licensed, if required, and ready for highway use.

“Certificate of Compliance” means a certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.

“Channel” means a natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

“Crawlways” or "Crawl Space" means an enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.

“Deck” means an unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.

“Department” means the Wisconsin Department of Natural Resources.

“Development” means any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

“Dryland Access” means a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

“Encroachment” means any fill, structure, equipment, use or development in the floodway.

“Federal Emergency Management Agency” or “FEMA” means the federal agency that administers the National Flood Insurance Program.

"Flood Insurance Rate Map" or "FIRM" means a map of a community on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:

A. The overflow or rise of inland waters;

B. The rapid accumulation or runoff of surface waters from any source;

C. The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or

D. The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

"Flood Frequency" means the probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent (%) chance of occurring in any given year.

"Floodfringe" means that portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.

"Flood Hazard Boundary Map" means a map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.

"Flood Insurance Study" means a technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

"Floodplain" means land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes.

"Floodplain Island" means a natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

"Floodplain Management" means policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

"Flood Profile" means a graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

"Floodproofing" means any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.

"Flood Protection Elevation" means an elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see: "Freeboard.")

"Flood Storage" means those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

"Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

"Freeboard" means a safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.

"Habitable Structure" means any structure or portion thereof used or designed for human habitation.

"Hearing Notice" means publication or posting meeting the requirements of Wis. Stat. ch. 985. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.

"High Flood Damage Potential" means damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is either:

A. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.

"Increase in Regional Flood Height" means a calculated upward rise in the regional flood elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

"Land Use" means any nonstructural use made of unimproved or improved real estate. (Also see "Development".)

"Lowest Adjacent Grade" means the elevation of the lowest ground surface that touches any of the exterior walls of a building.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable 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 CFR 60.3.

“Maintenance” means the act or process of restoring to original soundness, including redecorating, refinishing, non-structural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.

“Manufactured Home” means a structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."

“Mobile/Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.

“Mobile/Manufactured Home Park or Subdivision, Existing” means a parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

“Mobile/Manufactured Home Park, Expansion to Existing” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring if concrete pads.

“Mobile Recreational Vehicle” means a vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."

“Model, Corrected Effective” means a hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.

“Model, Duplicate Effective” means a copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.

“Model, Effective” means the hydraulic engineering model that was used to produce the current effective Flood Insurance Study.

“Model, Existing (Pre-Project)” means a modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.

“Model, Revised (Post-Project)” means a modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.

“Municipality or Municipal” means the county, city or village governmental units enacting, administering and enforcing this zoning ordinance.

“NAVD or North American Vertical Datum” means elevations referenced to mean sea level datum, 1988 adjustment.

“NGVD or National Geodetic Vertical Datum” means elevations referenced to mean sea level datum, 1929 adjustment.

"New Construction," for floodplain management purposes, means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

"Nonconforming Structure" means an existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)

"Nonconforming Use" means an existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies (such as a residence in the floodway).

"Obstruction to Flow" means any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.

"Official Floodplain Zoning Map" means that map, adopted and made part of this ordinance, as described in s. 37-1.E.2., which has been approved by the Department and FEMA.

"Open Space Use" means those uses having a relatively low flood damage potential and not involving structures.

"Ordinary Highwater Mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

"Person" means an individual, or group of individuals, corporation, partnership, association, municipality or state agency.

"Private Sewage System" means a sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.

"Public Utilities" means those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

"Reasonably Safe from Flooding" means base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Regional Flood" means a flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.

"Start of Construction" means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial 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 or 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 an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.

"Subdivision" has the meaning given in Wis. Stat. s. 236.02(12).

"Substantial Damage" means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.

"Substantial Improvement" means any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not, however, include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

"Unnecessary Hardship" means where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.

"Variance" means an authorization by the Zoning Board of Appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

"Watershed" means the entire region contributing runoff or surface water to a watercourse or body of water.

"Water Surface Profile" means a graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

"Well" means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

37-50. FEES, ENFORCEMENT AND PENALTIES.

A. Fees. All applications for permits or review or action by the Village under this ordinance shall be accompanied by a fee in an amount determined by the Village Board and set forth in the Fee Schedule.

B. Enforcement and Violations. Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators.

1. Any person failing to comply with this Chapter shall be subject to a penalty as provided in Chapter 50 of this Municipal Code. Each day of continued violation shall constitute a separate offense.

2. A violator shall, upon conviction, forfeit to the municipality a penalty of $50.00, together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to Wis. Stat. s. 87.30 and Chapter 50.

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CHAPTER 38 HISTORIC PRESERVATION

38-1 PURPOSE AND INTENT.

It is hereby declared a matter of public policy that the protection, enhancement, perpetuation and use of improvements or sites of special character or special architectural, archeological or historic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this section is to:

A. Effect and accomplish the protection, enhancement, and preservation of such improvements, sites and districts which represent or reflect elements of the Village of Rochester's cultural, social, economic, political and architectural history.

B. Safeguard the Village of Rochester's historic, prehistoric and cultural heritage, as embodied and reflected in such historic structures, sites and districts.

C. Stabilize and improve property values, and enhance the visual and aesthetic character of the Village of Rochester.

D. Protect and enhance the Village of Rochester's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.

38-2 DEFINITIONS

The terms used in this chapter shall have the following definitions:

“Certificate of Appropriateness” means the certificate issued by the commission approving alteration, rehabilitation, construction, reconstruction or demolition of a historic structure, historic site or any improvement in a historic district.

“Commission” or “Committee” means the Historic Preservation Committee created under this Chapter.

“Historic Preservation Overlay District” means an area designated by the Village Board on recommendation of the Committee and the Plan Commission that contains two or more historic improvements or sites.

“Historic Site” means any parcel of land of historic significance due to a substantial value in tracing the history or prehistory of man, or upon which a historic event has occurred, and which has been designated as a historic site under this Chapter, or a parcel of land, of part thereof, on which is situated a historic structure and any abutting parcel, or part thereof, used as and constituting part of the premises on which the historic structure is situated.

“Historic Structure” means any improvement which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the village, state or nation and which has been designated as a historic structure pursuant to the provisions of this Chapter.

“Improvement” means any building structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment, including streets, alleys, sidewalks, curbs, lighting fixtures, signs and the like.

38-3 HISTORIC PRESERVATION COMMITTEE COMPOSITION

A Historic Preservation Committee is hereby created, consisting of at least four members. Of the membership, if available in the community, one shall be a historian, one a member of the Rochester Village Board, and all shall be Village of Rochester residents or property owners. Each member shall

have, to the highest extent practicable, a known interest in historic preservation. The President shall appoint the Committee members subject to confirmation by the Rochester Village Board.

38-4 HISTORIC STRUCTURE, HISTORIC SITE AND HISTORIC PRESERVATION OVERLAY DISTRICT DESIGNATION.

A. For purposes of this Chapter, a historic structure, historic site, or historic preservation overlay district designation may be placed on any site, natural or improved, including any building, improvement or structure located thereon, or any area of particular historic, architectural, archeological or cultural significance to the Village of Rochester such as historic structures, sites, or districts which:

1. Exemplify or reflect the broad cultural, political, economic or social history of the nation, state or community; or

2. Are identified with historic personages or with important events in national, state or local history; or

3. Embody the distinguishing characteristics of an architectural type or specimen inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship; or

4. Are representative of the notable work of a master builder, designer or architect who influenced his age; or

5. Have yielded, or may be likely to yield, information important to prehistory or history.

B. The Committee shall adopt specific operating guidelines for historic structure, historic site and historic preservation overlay district designations providing such are in conformance with the provisions of this Chapter.

38-5 POWERS AND DUTIES.

A. Designation. The Committee shall have the power to designate historic structures and historic sites and, subject to Chapter 35, to recommend designation of historic districts within the Village of Rochester limits. Such designation shall be made based on the criteria found in section 38-4. Historic Preservation Overlay Districts shall be zoning districts, approved by the Committee and reviewed by the Plan Commission, and approved by the Village Board, as set forth in Chapter 35. Once designated, such historic structures, sites and districts shall be subject to all the provisions of this Chapter.

B. Regulation of Construction, Reconstruction, Alteration and Demolition.

1. No owner or person in charge of a historic structure, historic site, or structure or site within a historic preservation overlay district shall reconstruct, alter or demolish all or any part of the exterior of such structure or construct any improvement upon such designated property or properties or cause or permit any such work to be performed upon such property or demolish such structure unless a Certificate of Appropriateness has been granted by the Historic Preservation Committee. Unless such certificate has been granted by the Committee, the Building Inspector and Zoning Administrator shall not issue permits for any such work.

2. Upon filing of any application for a Certificate of Appropriateness with the Committee, the Committee shall approve the application unless:

a. In the case of a designated historic structure or historic site, the proposed work would detrimentally change, destroy or adversely affect any exterior feature of the improvement or site upon which said work is to be done;

b. In the case of the construction of a new improvement upon a historic site, or within a historic preservation overlay district, the exterior of such improvement would adversely affect or not harmonize with the external appearance of other neighboring improvements on such site or within the district.

c. In the case of any property located in a historic preservation overlay district, the proposed construction, reconstruction, exterior alteration or demolition does not conform to the purpose and intent of this section and the objectives and design criteria of the historic preservation plan for said district;

d. The building or structure is of such architectural or historical significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the Village of Rochester and state;

e. In the case of a request for the demolition of a deteriorated building or structure, any economic hardship or difficulty claimed by the owner is self-created or is the result of any failure to maintain the property in good repair.

3. If the Committee determines that the application for a Certificate of Appropriateness and the proposed changes are consistent with the character and features of the property or district, it shall issue the Certificate of Appropriateness. The Committee shall make this decision within 45 days of the filing of the application.

4. The issuance of a Certificate of Appropriateness shall not relieve the applicant from obtaining other permits and approvals required by the Village of Rochester. A building permit, zoning permit or other municipal permit shall be invalid if it is obtained without the presentation of the Certificate of Appropriateness required for the proposed work.

5. Ordinary maintenance and repairs may be undertaken without a Certificate of Appropriateness provided that the work involves repairs to existing features of a historic structure or site or the replacement of elements of a structure with pieces identical in appearance and provided that the work does not change the exterior appearance of the structure or site and does not require the issuance of a building permit.

C. Appeals. Should the Committee fail to issue a Certificate of Appropriateness due to the failure of the proposal to conform to the guidelines, the applicant may appeal such decision to the Village Board within 30 days of the Committee's written decision. In addition, if the Committee fails to issue a Certificate of Appropriateness, the Committee shall, with the cooperation of the applicant, work with the applicant in an attempt to obtain a Certificate of Appropriateness within the guidelines of this Chapter.

D. Recognition of Historic Structures, Sites and Districts. At such time as a historic structure, site or district has been properly designated, the Committee, in cooperation with the property owner, may cause to be prepared and erected on such property at the Village of Rochester's' expense, a suitable plaque declaring that such property is a historic structure, site or district.

38-6 PROCEDURES.

A. Designation of Historic Structures and Historic Sites.

1. The Committee may, after notice and public hearing, designate historic structures and historic sites, or rescind such designation or recommendation, after application of the

criteria in s. 38-4 above. At least ten days prior to such hearing, the Committee shall notify the owners of record, as listed in the office of the Village of Rochester assessor, who are owners of property and the owners of property in whole or in part situated within 200 feet of the boundaries of the property affected.

2. The Committee shall then conduct such public hearing and, in addition to the notified persons, may hear expert witnesses and shall have the power to subpoena such witnesses and records as it deems necessary. The Committee may conduct an independent investigation into the proposed designation or rescission. Within ten days after the close of the public hearing, the Committee may designate the property as either a historic structure, or a historic site, or rescind the designation. After the designation or rescission has been made, notification shall be sent to the property owner or owners of the site. Notification shall also be given to the Village Clerk, Building Inspector, Plan Commission, Zoning Administrator, and the Village Assessor. The Committee shall cause the designation or rescission to be recorded, at the Village of Rochester's expense, in the Racine County Register of Deeds' office.

B. Creation of Historic Preservation Overlay District.

1. For preservation purposes, the Historic Preservation Committee shall select geographically defined areas within the Village of Rochester to be designated as Historic Preservation Overlay Districts and shall prepare a historic preservation plan for each area. A Historic Preservation Overlay District may be designated for any geographic area of particular historic, architectural or cultural significance to the Village of Rochester, after application of the criteria in Section 38-4 above. Each Historic Preservation Plan prepared for or by the Historic Preservation Committee shall include a cultural and architectural analysis supporting the historic significance of the area, the specific guidelines for development, and a statement of preservation objectives.

2. Review and Adoption Procedure.

a. Historic Preservation Committee. The Historic Preservation Committee, together with the Plan Commission, shall hold a public hearing when considering the plan for a Historic District. Notice of the time, place and purpose of the public hearing shall be sent by the Village Clerk to the owners of record, as listed in the office of the Village Assessor, who are owners of the property within the proposed Historic Preservation Overlay District or are situated in whole or in part within 200 feet of the boundaries of the proposed District. Said notice is to be sent at least ten days prior to the date of the public hearing. Following the public hearing, the Historic Preservation Committee and the Plan Commission shall vote to recommend, reject or withhold action on the plan. A Historic Preservation Overlay District is a zoning classification and is subject to the provisions of Chapter 35 of this Municipal Code.

b. The Village of Rochester Board. The Village Board, upon receipt of the recommendations from the Historic Preservation Committee and the Plan Commission, shall hold a public hearing as required by Chapter 35 and either designate or reject the Historic Preservation Overlay District. Designation of the Historic Preservation Overlay District shall constitute adoption of the plan prepared for that district and direct the implementation of said plan.

38-7 INTERIM CONTROL

No building permit or zoning permit shall be issued for alteration, construction, demolition, or removal of a nominated historic structure, historic site, or any property or structure within a nominated historic preservation overlay district from the date of the meeting of the Historic Preservation Committee at which

a nomination form is first presented until the final disposition of the nomination by the Historic Preservation Committee, Plan Commission and the Village Board unless such alteration, removal or demolition is authorized by formal resolution of the Village Board as necessary for public health, welfare or safety. In no event shall the delay be for more than 180 days.

38-50 PENALTIES FOR VIOLATIONS.

Any person or persons violating any provision of this Chapter shall be subject to a penalty as set forth in Chapter 50. Each and every day during which a violation continues shall be deemed to be a separate offense. Notice of violations shall be issued by the Zoning Administrator.

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CHAPTER 39 LIVESTOCK FACILITIES

39-1. AUTHORITY.

This Chapter is adopted pursuant to the powers granted under the Wisconsin Constitution and Wisconsin Statutes, including but not limited to Wis. Stat. ss. 92.15 and 93.90. Further this ordinance is adopted pursuant to the powers granted to the Village Board pursuant to Wis. Stat. s. 61.34, 61.35 and 62.23 for the protection of public health and safety.

39-2. PURPOSE.

The purpose of this chapter is to comply with requirements of Wis. Stat. s. 93.90 and Wis. Admin. Code ch. ATCP 51, and to establish standards and authority to protect the public health and safety of the people of the Village of Rochester. This ordinance sets forth the procedures for obtaining a license for the siting of new and expanded livestock facilities in the Village of Rochester.

39-3. DEFINITIONS.

The definitions found in Wis. Admin. Code ch. ATCP 51 are hereby incorporated by reference as though fully set forth herein. The following definitions from Wis. Admin. Code ch. ATCP 51 on the date of the adoption of this chapter are included for convenience, but in the event of a conflict, the definitions in the most current version of Wis. Admin. Code ch. ATCP 51 shall prevail.

“Adjacent” means located on land parcels that touch each other, or on land parcels that are separated only by a river, stream, or transportation or utility right–of–way.

“Affected Neighbor” means, for purposes of the odor score calculation under Wis. Admin. Code s. ATCP 51.14, a residence or high-use building located within 2,500 feet of any livestock structure at a proposed livestock facility. "Affected neighbor" does not include a residence or high-use building owned by any of the following:

A. The livestock facility operator.

B. A person who affirmatively agrees to have the residence or high-use building excluded from the odor score calculation under Wis. Admin. Code s. ATCP 51.14. Note: The odor score calculation under Wis. Admin. Code s. ATCP 51.14 is based, in part, on the proximity and density of "affected neighbors."

“Animal Lot” means a feedlot, barnyard or other outdoor facility where livestock are concentrated for feeding or other purposes. "Animal lot" does not include a pasture or winter grazing area. Two or more animal lots at the same livestock facility constitute a single animal lot, for purposes of this chapter, if runoff from the animal lots drains to the same treatment area under Wis. Admin. Code s. ATCP 51.20(2) or if runoff from the animal lot treatment areas converges or reaches the same surface water within 200 feet of any of those treatment areas.

“Animal Unit” has the meaning given in Wis. Admin. Code s. NR 243.03(3), i.e., a unit of measure used to determine the total number of single animal types or combination of animal types, as specified in Wis. Admin. Code s. NR 243.11, that are at an animal feeding operation.

“Certified Agricultural Engineering Practitioner” means an agricultural engineering practitioner who is certified under Wis. Admin Code s. ATCP 50.46 with a rating under Wis. Admin. Code s. ATCP 50.46(5) that authorizes the practitioner to certify every matter that the practitioner certifies under this chapter.

“Complete Application for Local Approval” means an application that contains everything required under Wis. Admin. Code ss. ATCP 51.30 (1) to (4).

“Expanded Livestock Facility” means the entire livestock facility that is created by the expansion, after the date of the adoption of this chapter, of an existing livestock facility. "Expanded livestock facility" includes all livestock structures in the expanded facility, regardless of whether those structures are new, existing or altered.

“Expansion” means an increase in the largest number of animal units kept at a livestock facility on at least 90 days in any 12-month period. The acquisition of an existing livestock facility, by the operator of an adjacent livestock facility, does not constitute an "expansion" unless that operator increases the largest number of animal units kept at the combined livestock facilities on at least 90 days in any 12-month period.

“High-Use Building” means any of the following buildings:

A. A residential building that has at least six distinct dwelling units.

B. A restaurant, hotel, motel or tourist rooming house that holds a permit under Wis. Stat. s. 254.64.

C. A school classroom building.

D. A hospital or licensed care facility.

E. A non-farm business or workplace that is normally occupied, during at least 40 hours of each week of the year, by customers or employed workers.

“Livestock” means domestic animals traditionally used in this state in the production of food, fiber or other animal products. "Livestock" includes cattle, swine, poultry, sheep and goats. "Livestock" does not include equine animals, bison, farm-raised deer, fish, captive game birds, ratites (e.g., ostriches and emus), camelids (e.g., camels, alpacas and llamas) or mink.

“Livestock Facility” means a feedlot, dairy farm or other operation where livestock are or will be fed, confined, maintained or stabled for a total of 45 days or more in any twelve–month period. A "livestock facility" includes all of the tax parcels of land on which the facility is located, but does not include a pasture or winter grazing area. Related livestock facilities are collectively treated as a single "livestock facility" for purposes of this chapter, except that an operator may elect to treat a separate species facility as a separate "livestock facility."

“Livestock Structure” means a building or other structure used to house or feed livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to store livestock feed, or to collect or store waste generated at a livestock facility. "Livestock structure" includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or waste storage facility. "Livestock structure" does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing area, a livestock watering or feeding facility in a pasture or winter grazing area, or a machine shed or like facility that is not used for livestock.

“Manure” means excreta from livestock kept at a livestock facility. "Manure" includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.

“New Livestock Facility” means a livestock facility that will be used as a livestock facility for the first time, or for the first time in at least five years. "New livestock facility" does not include an expanded livestock facility if any portion of that facility has been used as a livestock facility in the preceding five years.

“Operator” means a person who applies for or holds a local approval for a livestock facility.

“Pasture” means land on which livestock graze or otherwise seek feed in a manner that maintains the vegetative cover over all of the grazing or feeding area.

“Person” means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

“Populate” means to add animal units for which local approval is required.

“Property Line” means a line that separates parcels of land owned by different persons.

“Qualified Nutrient Management Planner” means a person qualified under Wis. Admin. Code s. ATCP 50.48.

“Registered Professional Engineer” means a professional engineer registered under Wis. Stat. ch. 443.

“Related Livestock Facilities” means livestock facilities that are owned or managed by the same person, and related to each other in at least one of the following ways:

A. They are located on the same tax parcel or adjacent tax parcels of land. Note: A mere acquisition of a neighboring livestock facility does not constitute an "expansion" unless more animal units are added to the combined facilities.

B. They use one or more of the same livestock structures to collect or store manure.

C. At least a portion of their manure is applied to the same land-spreading acreage.

“Runoff” means storm water or precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

“Separate Species Facility” means a livestock facility that meets all of the following criteria:

A. It has only one of the following types of livestock, and that type of livestock is not kept on any other livestock facility to which the separate species facility is related under the definition of Related Livestock Facilities:

1. Cattle.

2. Swine.

3. Poultry.

4. Sheep.

5. Goats.

Note: For purposes of subsection A., cattle and poultry are different "types" of livestock, but dairy and beef cattle are livestock of the same "type" ("cattle"). Milking cows, heifers, calves and steers (all "cattle") are livestock of the same "type." Turkeys, ducks, geese and chickens are livestock of the same "type" ("poultry").

B. It has no more than 500 animal units.

C. Its livestock housing and manure storage structures, if any, are separate from the livestock housing and manure storage structures used by livestock facilities to which it is related under the definition of Related Livestock Facilities.

D. It meets one of the following criteria:

1. Its livestock housing and manure storage structures, if any, are located at least 750 feet from the nearest livestock housing or manure storage structure used by a livestock facility to which it is related under the definition of Related Livestock Facilities.

2. It and the other livestock facilities to which it is related under the definition of Related Livestock Facility have a combined total of fewer than 1,000 animal units.

"Site that is Susceptible to Groundwater Contamination" means any of the following:

A. An area within 250 feet of a private well.

B. An area within 1,000 feet of a municipal well.

C. An area within 300 feet upslope or 100 feet downslope of a karst feature.

D. A channel with a cross-sectional area equal to or greater than three square feet that flows to a karst feature.

E. An area where the soil depth to groundwater or bedrock is less than two feet.

F. An area where none of the following separates the ground surface from groundwater and bedrock:

1. A soil layer at least two feet deep that has at least 40% fine soil particles.

2. A soil layer at least three feet deep that has at least 20% fine soil particles.

3. A soil layer at least five feet deep that has at least 10% fine soil particles.

Note: See Wis. Admin. Code s. NR 151.015(18).

"Unconfined Manure Pile" means a quantity of manure at least 175 cubic feet in volume that covers the ground surface to a depth of at least two inches, but does not include any of the following:

A. Manure that is confined within a manure storage facility, livestock housing structure or barnyard runoff control facility.

B. Manure that is covered or contained in a manner that prevents storm water access and direct runoff to surface water or leaching of pollutants to groundwater.

"Waste" means manure, milking center waste and other organic waste generated by a livestock facility.

"Waste Storage Facility" means one or more waste storage structures. "Waste storage facility" includes stationary equipment and piping used to load or unload a waste storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. "Waste storage facility" does not include equipment used to apply waste to land.

"Waste Storage Structure" means a waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. "Waste storage structure" does not include equipment used to apply waste to land. For purposes of Wis. Admin. Code ss. ATCP 51.12(2), Manure Storage Structure; Setback, and 51.14, Odor and Air Emissions, and the provisions of s. 39-6C of this Chapter, waste storage structure setbacks, "waste storage structure" does not include any of the following:

A. A structure used to collect and store waste under a livestock housing facility.

B. A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.

“Winter Grazing Area” means cropland or pasture where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period October 1 to April 30. "Winter grazing area" does not include any of the following:

A. An area, other than a pasture, where livestock are kept during the period from May 1 to September 30.

B. An area which at any time has an average of more than four livestock animal units per acre.

C. An area from which livestock have unrestricted access to navigable waters of the state, such that the livestock access prevents adequate vegetative cover on banks adjoining the water.

D. An area in which manure deposited by livestock causes nutrient levels to exceed standards in Wis. Admin. Code s. ATCP 51.16.

“WPDES Permit” means a Wisconsin pollutant discharge elimination system permit issued by the DNR under Wis. Admin. Code ch. NR 243.

39-4. LICENSE REQUIRED.

A. Generally. A license issued by the Village of Rochester is required for new or expanded livestock facilities that will have 500 or more animal units.

1. Licenses for Existing Livestock Facilities.

a. A license is required for the expansion of a pre-existing or previously approved livestock facility if the number of animal units kept at the expanded livestock facility will exceed all of the following:

(1) The applicable size threshold for a license.

(2) The maximum number previously approved by Racine County or, if no maximum number was previously approved, a number that is 20% higher than the number kept on the effective date of this chapter.

2. Except as provided in subsection 1., a license is not required for a livestock facility that existed before the effective date of this chapter.

3. Except as provided in subsection 1., a license is not required for livestock facility that was previously issued a conditional use permit, license or other local approval. A prior approval for the construction of a livestock facility implies approval for the maximum number of animal units that the approved livestock facility was reasonably designed to house, except as otherwise clearly provided in the approval. Prior approval of a single livestock structure, such as a waste storage structure, does not constitute prior approval of an entire livestock facility.

39-5. LICENSING ADMINISTRATION.

The Zoning Administrator shall have the primary responsibility of administering this chapter and related matters thereto. The Zoning Administrator may refer the application for a license to the Racine County Land Conservation Office, the Village Engineer, DATCP, and/or another consultant for assistance in reviewing the application.

39-6. LICENSING STANDARDS.

The standards for issuing a license are as follows:

A. State Standards Adopted. The state livestock facility siting standards adopted under Wis. Admin. Code ch. ATCP 51, inclusive of all appendices and worksheets and any future amendments to the chapter, are incorporated by reference in this chapter, without reproducing them in full.

B. Zoning Districts Where Livestock Facilities Are Allowed. Four distinct agricultural zoning districts exist in the Village which share a variety of common regulations with respect to livestock operations based on the passage of Wis. Admin. Code s. ATCP 51. A new or expanded livestock facility housing 500 or more animal units is allowed in the zoning districts listed in this subsection. A new or expanded livestock facility is not allowed in any other district of the Village.

1. A-1 General Farming District I

2. A-2 General Farming and Residential District II

3. A-3 General Farming District III – Holding District

4. A-4 Truck Farming District

C. Location on Property. In addition to the setback requirements of the underlying zoning district and any applicable floodplain, shoreland/wetland or shoreland zoning requirements, the following setbacks shall apply to livestock structures:

1. Property lines.

a. Except as provided for waste storage structures, livestock structures must be located a minimum of 100 feet from the property line if the livestock facility will have fewer than 1,000 animal units, and 200 feet from the property line if the livestock facility will have 1,000 or more animal units.

b. The setback requirement does not prevent the use or expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the property line.

2. Public road right-of-way.

a. Except as provided for waste storage structures, livestock structures must be located a minimum of 100 feet from public road right-of-way if the livestock facility will have fewer than 1,000 animal units, and 150 feet from a public road right-of-way if the livestock facility will have 1,000 or more animal units.

b. The setback requirement does not prevent the use or expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the public road right-of-way.

3. Waste Storage Structure.

a. A new waste storage structure may not be located within 350 feet of a property line, or within 350 feet of the nearest point of any public road right-of-way.

b. A single new waste storage structure may be constructed closer to the property line or public road if the new structure is:

(1) Located on the same tax parcel as a waste storage structure in existence before the date of the adoption of this chapter; and

(2) No larger than the existing structure; and

(3) No further than 50 feet from the existing structure; and

(4) No closer to the road or property line than the existing structure.

c. This setback requirement does not apply to existing waste storage structures, except that an existing structure within 350 feet of a property line or road may not expand toward that property line or road.

39-7. LICENSE APPLICATION.

A. A livestock operator must complete the application form and worksheets prescribed by Wis. Admin. Code ch. ATCP 51. The application form and worksheets demonstrate compliance with standards in Wis. Admin. Code ch. ATCP 51 and this chapter.

B. The operator must file four duplicate copies of the application form, including worksheets, maps and documents (other than engineering design specifications) included in the application.

39-8. LICENSE APPLICATION FEE.

A non-refundable application fee in an amount determined by the Village Board and set forth in the fee schedule, payable to the Village of Rochester, shall accompany an application for the purpose of offsetting the Village's costs to review and process the application. The fee shall bear a reasonable relationship to the service for which the fee is imposed, and take into account the costs of any published notices; mailings; meeting costs including special meetings; contracted services of consultants to assist in reviewing the application and any other reasonable costs that may be attributed to the costs to review and process the application.

39-9. APPLICATION PROCEDURE.

A. Pursuant to Wis. Admin. Code s. ATCP 51.30(5), within 45 days after the Village receives an application, it shall notify the applicant whether the application is complete. If the application is not complete, the notice shall describe the additional information needed. Within 14 days after the applicant provides all of the required information, the Village shall notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

B. Pursuant to Wis. Admin. Code s. ATCP 51.30(6), within 14 days after the Village notifies an applicant that the application is complete, the Village shall notify adjacent landowners of the application. The Village shall use the approved notice form in Wis. Admin. Code ch. ATCP 51, and mail by first class mail a written notice to each adjacent landowner.

C. Upon determination of completeness the Village Clerk shall give notice of a public hearing to receive information from the applicant and receive public input on the application. Public notice shall be a class 2 notice the last of which is at least a week before the date of the public hearing. The public hearing may be continued, but final decision shall be made within the time limits described in the next subsection.

D. Grant or Denial; Extension.

1. Pursuant to Wis. Admin. Code s. ATCP 51.32, the Village shall grant or deny an application within 90 days after the Village gives notice that the application is complete under subsection B above. The Village may extend this time limit for good cause, including any of the following:

   a. The Village needs additional information to act on the application.

   b. The applicant materially modifies the application or agrees to an extension.

2. The Village shall give written notice of any extension. The notice shall specify the reason for the extension, and the extended deadline date by which the Village will act on the application.

39-10. CRITERIA FOR ISSUANCE OF A LICENSE.

A. A license shall be issued if the application for the proposed livestock facility:

1. Complies with this Chapter, and

2. Is complete, and

3. Contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets the standards specified in this chapter, specifically Section 39-6 above.

Note: If the application and worksheets prescribed by Wis. Admin. Code ch. ATCP 51 are properly completed, there is a rebuttable presumption that the applicant has met the application requirements.

B. A license shall be denied if any of the following apply:

1. The application, on its face, fails to meet the standard for approval in subsection A.

2. The Village finds, based on other clear and convincing information in the record that the proposed livestock facility does not comply with applicable standards in this Chapter.

3. The Village finds other grounds authorized by Wis. Stat. s. 93.90 that warrant disapproving the proposed livestock facility.

39-11. RECORD OF DECISION.

A. The Village shall issue its decision in writing. The decision must be based on written findings of fact supported by evidence in the record. Findings may be based in part on the presumptions created by Wis. Admin. Code ch. ATCP 51.

B. If the Village approves the application, it shall give the applicant a duplicate copy of the approved application, marked “approved.” The duplicate copy must include worksheets, maps and other documents (other than engineering specifications) included in the application.

C. The Village Clerk, as required by Wis. Admin. Code s. ATCP 51.36 shall do all of the following within 30 days of the Village decision on the application:

1. Give the Department of Agriculture, Trade and Consumer Protection written notice of the Village decision.

2. File with the Department a copy of the final application granted or denied, if the Village has granted or denied an application under this chapter. The copy shall include all of the worksheets, maps and other attachments included in the application, except that it is not required to include the engineering design specifications.

3. If the Village has withdrawn a local approval under this chapter, file with the department a copy of the Village's final notice or order withdrawing the local approval.

Note: The information in this paragraph may shall be submitted to the Department of Agriculture, Trade and Consumer Protection at the following address:

Wisconsin DATCP – Agricultural Resource Management Division
Bureau of Land and Water Resources
P.O. Box 8911
Madison, Wis. 53708-8911

39-12. TRANSFERABILITY OF LICENSE.

A license and the privileges granted by the license run with the land approved under the license and remain in effect, despite a change in ownership of the livestock facility, as long as the new operator does not violate the terms of the Village approval. An applicant may record with the register of deeds, at the applicant's expense, the duplicate copy of the approved application. The Village requires that upon change of ownership of the livestock facility, the new owner of the facility shall file information with the Village Clerk providing pertinent information, including but not limited to such information as the name and address of the new owner and date of transfer of ownership.

39-13. EXPIRATION OF LICENSE

A license remains in effect regardless of the amount of time that elapses before the livestock operator exercises the authority granted under license, and regardless of whether the livestock operator exercises the full authority granted by the approval. However, the Village may treat a license as lapsed and withdraw the license if the license holder fails to do all of the following within two years after issuance of license:

A. Begin populating the new or expanded livestock facility; and

B. Begin constructing all of the new or expanded livestock housing or waste storage structures proposed in the application for local approval.

39-14. LICENSE TERMS AND MODIFICATIONS.

A license and the privileges granted by a license issued under this chapter is conditioned on the livestock operator's compliance with the standards in this chapter, and with commitments made in the application for a license. The operator may make reasonable changes that maintain compliance with the standards in this chapter, and the Village shall not withhold authorization for those changes. A violation of the license or a failure to comply with the commitments made in the application may result in a stop work order, suspension and/or termination of the license or the imposition of penalties as provided in ss. 39-13, 39-15, 39-16 and 39-50 of this chapter.

39-15. COMPLIANCE MONITORING.

The Village shall monitor compliance with the chapter as follows:

A. Upon notice to the livestock facility owner, request the right of the Village Zoning Administrator to personally view the licensed premises at a reasonable time and date to ensure that all commitments of the application as approved are being complied with.

B. If the livestock facility owner refuses the Village Zoning Administrator the right to view the licensed premises, the Zoning Administrator may obtain a special inspection warrant to inspect the licensed premises for the purpose of protection of the public health and safety under Wis. Stat. s. 66.0119.

C. If a licensed premises is found not to be in compliance with the commitments made in the approved application, the Zoning Administrator shall issue a written notice to the livestock facility owner stating the conditions of non-compliance and directing that the commitments of the approved application and license be complied with in a reasonable amount of time stated in the written notice.

D. If non-compliance of the license conditions as described in the written notice given by the Zoning Administrator continue past the stated reasonable time to comply, the Zoning Administrator may take further action as provided in this chapter, including but not limited to issuance of a stop work order, citation or seeking of injunctive relief. The Zoning Administrator will charge a fee for any re-inspection that is made after the first inspection to determine whether the licensed premises are in compliance with the notice, provided that no fee shall be charged for the re-inspection if the property is found to be in compliance.

E. If the livestock facility owner disputes that the conditions of the license have not been complied with, the livestock facility owner may request a hearing in writing within five days of receipt of the notice of noncompliance. The Village Board shall schedule a hearing within five days to determine if the conditions of the license have been complied with or whether non-compliance with the commitments of the approved application and local approval exists.

39-16. ENFORCEMENT AUTHORITY.

A. The Zoning Administrator is authorized to issue Stop Work Orders. The Zoning Administrator is authorized to post an order stopping work upon land that has had a permit suspended or revoked or on land currently undergoing activity in violation of this chapter. Notice is given by both: posting upon the land where the violation occurred one or more copies of a notice and order stating the violation, and by mailing a copy of the notice and order by certified mail to the person whose activity is in violation of this chapter. The notice and order shall specify that the activity must cease immediately or be brought into compliance within five calendar days. The Zoning Administrator shall provide written notification as to the reason(s) for the Stop Work Order.

B. Any order stopping work shall remain in effect unless retracted by the Village Board or by a court of general jurisdiction; or until the activity is brought into compliance with this chapter and the terms of the license.

C. The Zoning Administrator is authorized to refer any violation of this chapter or of any stop work order issued pursuant to this chapter to the village attorney or district attorney for commencement of further legal proceedings.

D. The issuance of a stop work order by the Zoning Administrator under this section may be appealed to the Village Board within 30 days of the issuance of the order.

39-17. APPEALS.

A. In addition to other appeal rights provided by law, Wis. Stat. s. 93.90(5) provides that any "aggrieved person" may request review by the Wisconsin Livestock Facility Siting Review Board of any decision by the Village in connection with a permit application. An "aggrieved person" may challenge the decision on the grounds that the Village incorrectly applied the standards under this chapter or violated Wis. Stat. s. 93.30.

B. An "aggrieved person" under this section as defined in Wis. Stat. s. 93.90(5) means a person who applied to a political subdivision for approval of a livestock siting or expansion, a person who lives within two miles of the livestock facility that is proposed to be sited or expanded, or a person who owns land within two miles of a livestock facility that is proposed to be sited or expanded.

C. An "aggrieved person" may request review of any decision of the Zoning Administrator or action by the Village Board.

D. Any appeal brought under this section must be requested with 30 days of the Village Board's approval or disapproval of the license.

E. Any appeal to the State Livestock Facility Siting Review Board shall comply with Wis. Stat. s. 93.90 and the administrative rules of said board.

39-18. SEVERABILITY.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to that end, the provisions of this chapter are severable.

39-50. PENALTIES.

A. Any person who violates any of the provisions of this chapter, or who fails, neglects or refuses to comply with the provisions of this chapter, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be subject to the penalties set forth in Chapter 50 of this Municipal Code, and to any of the following penalties:

1. Upon conviction, pay a forfeiture in an amount set by the Village Board and set forth in the Deposit Schedule, plus the applicable surcharges, assessments and costs for each violation. Each day a violation exists or continues shall be considered a separate offense under this chapter.

2. The Village Board may seek injunctive relief from a court of record to enjoin further violations.

3. The Village Board may suspend or revoke its approval of a license under this chapter after due notice to the livestock facility owner and a public hearing to determine whether the license should be suspended or revoked.

B. The Village shall exercise sound judgment in deciding whether to suspend or revoke a license. The Village shall consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply.

C. In addition to any other penalty imposed by this chapter, the cost of abatement of any public nuisance on the licensed premises by the Village may be collected under this chapter or Wis. Stat. s. 823.06 against the owner of the real estate upon which the public nuisance exists. Such

costs of abatement may also be recovered against the real estate as a special charge under Wis. Stat. s. 66.0627 unless paid earlier.

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CHAPTER 50 CONSTRUCTION AND EFFECT OF ORDINANCES

50-1. ADOPTION OF CODE

Pursuant to Wis. Stat. s. 66.0103, this Code of Ordinances of the Village of Rochester of a general and permanent nature, consisting of Chapters 1 through 50, are hereby approved, adopted, ordained and enacted as the "Municipal Code of the Village of Rochester," and may be referred to herein as the "Municipal Code" or the "Code." This Code may be amended from time to time by adoption of ordinances showing that they are intended to be made a part of this Code.

50-2. EFFECTIVE DATE

This Municipal Code shall first take effect on July 1, 2014, upon public hearing, passage and publication as provided by Wis. Stat. s. 66.0103 and the adoption ordinance, and may be amended by subsequent ordinances as provided by law.

50-3. CODE SUPERSEDES PRIOR ORDINANCES.

The Village of Rochester and the Town of Rochester were consolidated on December 16, 2008. This Code supersedes both the Municipal Code of the Village of Rochester and the Town of Rochester Code of Ordinances in effect on the date of the consolidation, and all other general and permanent ordinances enacted prior to the enactment of this Code, except those ordinances that are expressly saved from repeal or continued in force as set forth in this Chapter.

50-4. REPEALER; LEGISLATION SAVED FROM REPEAL.

A. Repealer. All ordinances or parts of ordinances of a general and permanent nature adopted and in force on the date of adoption of this Code and not contained in the Code are hereby repealed as of the effective date of the adoption of this Code, except as set forth in this Chapter.

B. Ordinances and Legislative Acts Saved from Repeal. The adoption of this Code and the repeal of ordinances provided for in section A. shall not affect the following ordinances, legislative acts, rights and obligations, which are hereby expressly saved from repeal when not in conflict with the provisions of the Code:

1. Village of Rochester Ordinance No. 3-2008, and Town of Rochester Ordinance No. 2-2008, both entitled "An Ordinance Providing for the Consolidation of The Village of Rochester and the Town of Rochester Pursuant to Sec. 66.0229, Wis. Stats., provided, however, that the provisions of such ordinances in conflict with this Code are superseded as set forth in s. 50-3.

2. Any ordinance adopted by the Village subsequent to December 16, 2008 and made effective for the consolidated Village by its terms provided, however, that the provisions of such ordinance in conflict with this Code are superseded as set forth in s. 50-3.

3. Any right or liability established, accrued or incurred under any legislative provision by the Village of Rochester or the Town of Rochester prior to the effective date of this Code or any action or proceeding brought for the enforcement of such right or liability, including but not limited to:

   a. The issuance of corporate bonds and notes of the Village of Rochester or the Town of Rochester of whatever name or description, including sewerage mortgage revenue bonds.

   b. Rights, licenses, franchises, easements or privileges or the creation of any contract with the Village or Town of Rochester.

c. Appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any instrument or evidence of indebtedness

d. Authorizing the sale, lease or transfer of property or any lawful contract or obligation.

e. Release of persons or other entities from liability.

4. Any ordinance or resolution providing for the planning, locating, dedicating, opening, closing, altering, widening, relocating, straightening, establishing grade, curb lines and/or width, paving, naming, renaming, improvement, acceptance or vacation of any right-of-way, easement, street, road, alley, highway, park or other public place or any portion thereof.

5. Currently effective legislative acts providing for the fixing of salaries and other compensation of public officials and employees.

6. The lighting of streets and alleys.

7. The annexation or dedication of property or approval of preliminary or final subdivision plats.

8. Legislative acts providing for local improvements or assessing taxes or special assessments therefor.

9. The levying of taxes, assessments, charges or other levies by legislative act.

10. Any legislation establishing a specific fee amount for any license, permit or service obtained from the Village.

11. The establishment of wards, ward boundaries and election precincts.

12. Construction of any public works or the letting of contracts.

13. Sewer rates, rules and regulations and sewer main construction.

14. Budget ordinances, resolutions and actions.

15. Any offense or act committed or done before the effective date of this Code in violation of any legislative provision or any penalty, punishment or forfeiture which may result therefrom.

16. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered brought pursuant to any legislative provision.

17. The administrative resolutions of the Village not in conflict or inconsistent with the provisions of the Code;

18. Any resolution regulating the erection, alteration, repair, demolition, moving or removal of buildings or other structures, except as may have been amended as part of this recodification;

19. Ordinances zoning or rezoning specific parcels, including regulations, liabilities and responsibilities set forth therein, especially ordinances creating Planned Unit

Developments, except as specific zoning designations may have been amended as part of this recodification;

20. Charter ordinances;

21. Sewer and Storm Water Utility rates, rules and regulations and sewer and storm water utility construction, except as may be modified as part of the adoption of the Fee Schedule along with the recodification.

C. Successor in Interest. The Village of Rochester is the successor in interest to all valid rights, privileges and liabilities of the Town of Rochester, which ceased to exist as a separate entity of December 16, 2008.

50-5. EFFECT OF REPEALS.

The repeal or amendment of any section or provision of this Code or of any other ordinance or resolution of the Board shall not:

A. By implication be deemed to revive any ordinance not in force or existing at the time at which such repeal or amendment takes effect.

B. Affect any vested right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed or amended, unless the privilege of repealing such obligation or privilege has been reserved by the Village.

C. Affect any offense committed or penalty or forfeiture incurred previous to the time when any ordinance is repealed or amended; except when any forfeiture or penalty is mitigated by the provisions of any ordinance, such provisions shall apply to and control any judgment to be pronounced after such ordinance takes effect for any offense committed before that time.

D. Affect any prosecution for any offense or the levy of any penalty or forfeiture pending at the time when any ordinance aforesaid is repealed or amended; but the right of action shall continue and the offender shall be subject to the penalty as provided in such ordinance, and such prosecution shall proceed, in all respects, as if such ordinance or ordinances had not been repealed, except all such proceedings had after the time this Code takes effect shall be conducted according to the provisions of this Code.

50-6. CHANGES IN PREVIOUSLY ADOPTED ORDINANCES.

In compiling and preparing the Municipal Code of the Village of Rochester, the ordinances previously adopted by the Village of Rochester and the Town of Rochester were reviewed and, where appropriate, merged, replaced, or included in this Code; provided, however, the previous ordinances may have been substantively changed and entirely new ordinances included. While reference to the previous ordinances may be appropriate in some cases, any changes reflect the intent of the Village Board to proceed under the terms of the Code adopted herein.

50-10. RULES OF CONSTRUCTION.

In the construction of this Code of Ordinances, the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the ordinance:

A. Wisconsin Statutes. All references to "Wisconsin Statutes" or "Wis. Stat." wherever used in this Code, shall mean the Wisconsin Statutes as of the adoption of this Code, and references to the “Wisconsin Administrative Code” or “Wis. Admin. Code” wherever used in this Code, shall mean the Wisconsin Administrative Code as of the adoption of this Code, as the statutes and administrative code may be amended or renumbered from time to time. When State or federal

statutes and Codes conflict or are more restrictive than this Municipal Code, the stricter provisions shall prevail.

B. Gender, Singular and Plural. Every word in this Code and in any ordinance imparting the masculine gender may extend and be applied to females as well as males, and vice versa, and every word imparting the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided these rules of construction shall not be applied to any provision which contains any express language excluding such construction or when the subject matter or context of such provisions may be repugnant thereto.

C. Person. The word “person” extends and applies to natural persons, firms, corporations, limited liability companies, associations, partnerships, bodies politic, and all entities of any kind capable of being sued unless plainly inapplicable.

D. Acts of Agents. When a provision requires an act to be done which may by law as well be done by an agent as by the principal, such requirements shall be construed to include all such acts when done by an authorized agent.

50-11. CONFLICT AND SEPARABILITY.

A. Conflict of Provisions. If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter. In the event that any ordinance or part of an ordinance or regulation or part of regulation is in conflict with the provision of a specific chapter, the stricter and more specific provision shall prevail.

B. Severability of Code and Ordinance Provisions. If any section, subsection, sentence, clause or phrase of the Code or any Ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof which can be given effect without such invalid part or parts The Board hereby declares that it would have passed this Code, and subsequent Ordinances amending this Code, and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion thereof may be declared invalid or unconstitutional.

50-12. CLERK TO FILE DOCUMENTS INCORPORATED BY REFERENCE.

Whenever in this Code any standard, code, rule, regulation or other written or printed matter is adopted by reference, it shall be deemed incorporated in this Code as if fully set forth herein and the Clerk or his or her designee shall file, deposit and keep in the Clerk’s office a copy of the code, standard, rule, regulation or other written or printed matter as adopted; provided however that statutory, administrative code, and similar materials available from an outside source are not required to be filed. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the Clerk’s office hours, subject to such orders or regulations which the Clerk may prescribe for their preservation.

50-13. KEEPING CODE CURRENT.

It shall be the duty of the Village Clerk or his or her designee to keep the certified copy of the Code book up to date. After ordinances affecting the Municipal Code become effective, the Village Clerk shall incorporate them into the Municipal Code on a regular basis. The Clerk shall make no substantive changes to such ordinances but may renumber, rearrange and edit them without first submitting them to the Village Board; and such rearranging, renumbering and editing shall not affect the validity of such ordinances and resolutions or the provisions of this Municipal Code affected thereby.

50-20. GENERAL PENALTY

Unless another penalty is specifically provided therein, any person who violates any provision of this Code shall, upon conviction of such violation, be subject to a penalty, which shall be as follows:

A. First offense: penalty. Any person who violates any provision of this Code shall, upon conviction thereof, forfeit not less than $20 nor more than $200, together with all applicable fees, surcharges, costs and restitution. In default of payment thereof, the person shall be subject to Subsection C.

B. Second offense: penalty. Any person found guilty of violating any provision or part of a provision of this Code who was previously convicted of a violation of the same ordinance within one year shall, upon conviction thereof, forfeit not less than $40 nor more than $400 for each such offense, together with all applicable fees, surcharges, costs and restitution. In default of payment thereof, the person shall be subject to Subsection C.

C. Default of payment. In default of payment of any forfeiture, fee, surcharge, cost or restitution, the Court may order any remedy allowed pursuant to Wis. Stat. ss. 66.0114 and 800.095, including but not limited to imprisonment in the County Jail until such forfeiture, fees, surcharge and costs are paid, but not exceeding 90 days for any one judgment. The person shall receive a credit for each day of imprisonment as set forth in Wis. Stat. s. 800.095(1)(b). This section shall not apply to restitution orders or to cases where service of the summons and complaint or citation is made by mail.

50-21. JUVENILE PENALTIES.

A. Court authority to impose alternative juvenile dispositions and sanctions. For a juvenile adjudged to have violated an ordinance, the court is authorized to impose any of the dispositions listed in Wis. Stat. ss. 938.342, 938.343 and 938.344, in accordance with the provisions of those statutes.

B. For a juvenile adjudged to have violated an ordinance who violates a condition of a dispositional order of the court under Wis. Stat. ss. 938.342, 938.343 or 938.344, the court is authorized to impose any of the sanctions listed in Wis. Stats. s. 938.355(6)(d), in accordance with the provisions of those statutes.

50-22 CONTINUED VIOLATIONS

Each violation and each day a violation continues or occurs is a separate offense. Nothing in this Code shall preclude the Village from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.

50-23 RESTITUTION.

The Court may order the defendant to pay restitution pursuant to Wis. Stat. ss. 66.0114 and 800.093.

50-24 ENFORCEMENT.

A. Statutory Authority. Pursuant to the authority granted by Wis. Stat. ss. 66.0113 and 66.0114, the use of a citation to be issued for violations of ordinances, including those for which a statutory counterpart exists, is hereby authorized.

B. Officials Authorized to Issue Citations. Citations authorized in Subsection A above may be issued by law enforcement officers. Where Village officials, with respect to sections of the Code which are directly related to the official's area of responsibility, have cause for the issuance of a citation, those officials shall contact the Police Department, and the Police Department shall record a

complaint and, if appropriate, issue a citation upon said complaint; provided, however, that the Health Officer may issue citations pursuant to Chapter 25.

C. Prosecution. The Village Attorney shall prosecute ordinance violations in the Racine County Circuit Court.

D. Citation Form. Uniform Traffic Citation Forms and Municipal Citation forms conforming to the provisions of Wis. Stat. ss. 66.0113 and 66.0114 shall be used for violations of traffic ordinances and for violations of other ordinances, and shall serve as the initial pleading, provided, however, that a summons and complaint shall be used for commencement of an action if required by statute, ordinance or court order.

E. Service. Unless otherwise provided by this Code or by other law, service of a citation may be by personal delivery, by leaving a copy of the citation at the person's place of residence, or by mailing a copy by first class mail to the person's last known address.

F. Schedule of cash deposits.

1. Traffic Violations. Any forfeiture for violation of the state statutes adopted by reference in this Code shall conform to the forfeiture permitted to be imposed for violation of such statutes as set forth in the “Revised Uniform State Traffic Deposit Schedule and Alcohol Beverages, Harassment, Safety, Tobacco, UW Rule, and Drug Paraphernalia and Rental Unit Energy Efficiency Violations Deposit Schedule and Uniform Misdemeanor Bail Schedule and Trespass to Land Deposit Schedule,” adopted by the Wisconsin Judicial Conference, also referenced herein as the “Uniform Deposit Schedule,” as may be amended from time to time, in effect on the date of the violation, including any variations or increases for subsequent offenses, which schedule and all revisions thereto is adopted by reference, unless otherwise specified in this section or in this chapter.

2. The schedule of cash deposits for the various non-traffic ordinances for which a citation may be issued are as established on the deposit schedule approved and adopted by the Village Board, a copy of which is on file with the Clerk, and which may be amended from time to time by ordinance. In addition to the deposit amount listed, the deposit must include court costs and all surcharges, assessments and costs imposed by Wisconsin Statutes.

3. In the event that a deposit amount for a non-traffic ordinance violation is not found in the Village schedule adopted in Subsection F.2., a deposit in the amount set forth in the Uniform Deposit Schedule in effect on the date of the violation for the offense, including any variations or increases for subsequent offenses, may be used to establish the cash deposit allowed.

4. If the violation is not listed on either of the above schedules, the cash deposit shall be the maximum allowable forfeiture set forth for the violation as listed in the specific ordinance or, if no specific amount is set forth, 50% of the maximum applicable penalty set forth in section 50-20. of this Municipal Code, to which shall be added all of the required surcharges, fees, assessments and costs listed above. See also the penalty sections present in each chapter of this Code. If the violation is listed in the Village schedule and it is noted that no deposit is allowed and an appearance is required, the Court shall determine the cash deposit amount.

G. Court Actions.

1. Pursuant to Wis. Stat. ss. 66.0113 and 66.0114, except where a court appearance is specifically required by statute or ordinance, an alleged violator may either appear in court at the time and on the date specified, and/or may make a cash deposit in the

amount specified. If the alleged violator makes the cash deposit, he or she may appear in court to enter a plea. If the alleged violator makes the cash deposit and fails to appear in court, he or she shall be considered to have tendered a plea of no contest and submitted to the applicable forfeiture, assessments and costs. The court may accept or reject the plea, and may summon the alleged violator to determine whether restitution should be ordered.

2. If an alleged violator fails to make a cash deposit and fails to appear in court at the time specified, the court may issue a summons or warrant for the person's arrest, or consider the nonappearance to be a plea of no contest and enter judgment accordingly if service was made personally or pursuant to Wis. Stat. s. 968.04(3)(b)2, or the Village may commence an action pursuant to Wis. Stat. s. 66.0114.

3. Except as provided in subsection H, cash deposits, forfeitures, fees, costs and assessments shall be made to the Racine County Clerk of Court, which shall issue receipts therefore. The Racine County Clerk of Court shall thereafter remit such receipts to the Village of Rochester Treasurer after making such deductions therefrom and disbursements as required by statute.

4. All other procedures shall be as provided in Wis. Stat. Chapter 66 and as otherwise provided by law.

H. Parking Citations. A person who wishes to plead no contest to a parking citation may do so by tendering the plea and the payment of the forfeiture to the Village Clerk-Treasurer within 7 days of the citation. All citations not paid within 7 days of issuance shall be forwarded to the circuit court, and the applicable court costs shall be added to the amount of the cash deposit required.

I. Remedies not exclusive.

1. Adoption of this section does not preclude the Village Board from adopting any other ordinance providing for the enforcement of any other law or ordinance relating to the same or other matters, nor does it limit the method of enforcement by any legal means.

2. The issuance of a citation hereunder shall not preclude the Village or any authorized officer from proceeding under any other ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.

J. Liaison with Village Board. In an effort to keep the Village Board informed as to the costs and revenues associated with ordinance enforcement, it is suggested that the Treasurer report quarterly to the Board.

50-50. ALTERING OR TAMPERING WITH CODE; PENALTIES FOR VIOLATION

No person may improperly change, alter, amend or tamper with any portion of this Code in a manner that would cause the Municipal Code of the Village of Rochester to be misrepresented. Any person who violates this section is subject to, upon conviction, a forfeiture of not more than $400, plus all applicable costs.

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