

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Tom Abbott
Councilor Donna Bogan
Councilor Robert Gates

**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

Thursday, September 5, 2019

31 Wakefield Street, Rochester, NH

City Council Chambers

6:00 PM

Agenda

1. **Call to Order**
2. **Public Input**
3. **Acceptance of the Minutes: August 1, 2019 P. 3**
4. **Chapter 28 Animals – Nuisance P. 7**
5. **Proposed definition of “Donation Bin” P. 9**
6. **Rental Inspection Program P. 13**
7. **Waiver to Certain Building Permit Fees, Which Do Not Require an Inspection P. 13**
8. **Fireworks**
9. **Ordinance Enrollment: Chapter 275 P. 21**
10. **Other**
11. **Adjournment**

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City Clerk's Office

CODES AND ORDINANCES COMMITTEE
 Of the Rochester City Council
Thursday, August 1, 2019
31 Wakefield Street, Rochester, NH
 City Council Chambers
6:00 PM

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
 Councilor Elaine Lauterborn, Vice Chair
 Councilor Tom Abbott
 Councilor Donna Bogan
 Councilor Robert Gates

Other Present

Jim Grant, Director of BZLS
 Joe Devine, Compliance Officer
 Jaqueline Rabb, Resident
 Lisa Stanley, Police Commissioner
 Dave Stevens, Police Commissioner

Minutes**1. Call to Order**

Councilor Lachapelle called the Codes and Ordinances Committee Meeting to Order at 6:00 PM. Susan Morris, Clerk Typist II, took a silent roll call. All Committee members were present.

2. Public Input

Jacqueline Raab of East Rochester spoke about fireworks being set off illegally and what the Committee can do about this such as making changes to the Fireworks Ordinance. She stated that in addition to the fireworks being set off illegally, there is not the proper amount of clearances with neighbors, trees, and power lines etc. Ms. Raab questioned whether or not surrounding towns permit the use of fireworks other than at town sponsored events. She spoke further on different scenarios.

Lisa Stanley, Police Commissioner Representing Wards 5 & 6, spoke regarding the issues with fireworks. She stated that the council has made great strides with passing the current ordinance, it is unfortunate that tight areas such as East Rochester are still affected. She suggested creativity in enforcing the ordinance. She stated that she spoke with Code Enforcement informally and was told that the Fire Department could enforce the fireworks ordinance. She questioned if the Fire Department could enforce such an issue.

David Stevens, Police Commissioner Representing Wards 1 & 2, indicated that the current Police Commission is hoping to have the police department at full staff soon. Once the Police Department is fully staffed, then a potential solution might be, to have dedicated patrols specifically assigned to enforce the fireworks ordinance. Commissioner Stevens said he would bring this topic back to the next Police Commissioners meeting and keep the Committee and/or Council updated on the process.

3. Acceptance of the Minutes: June 6, 2019

Councilor Lauterborn **MOVED** to **ACCEPT** the minutes of June 6, 2019. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Ward 2 Polling Location

Kelly Walters, City Clerk, spoke regarding changing the Ward 2 Polling location to Chamberlain Street School. Discussion was held among committee members.

Councilor Gates **MOVED** to send the Ward 2 Polling location change to Chamberlain Street School to full Council. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a majority voice vote.

5. Fireworks Ordinance discussion

Councilor Lauterborn stated that she does not see where there currently can be any changes made to the ordinance to improve it; however, she offered two corrections to the current ordinance.

Councilor Lauterborn **MOVED** to send to full Council the following changes to the Fireworks Ordinance:

75-16 D. (2) No display of permissible fireworks shall be permitted within the City except between the hours of 6:00 p.m. and 11:00 p.m. on the following holiday: Fourth of July (including the evening of July 3 beginning at 6:00 p.m., including from such time until 12:00 midnight on any rain date established for the City –wide fireworks display.) ~~held at the Rochester Fairgrounds.~~

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(7) Display of permissible fireworks shall be permitted on public property the evening of July 3 beginning at 6:00 p.m. including from such time until 12:00 midnight on any rain date established for the annual City-wide fireworks display, ~~held at the Rochester Fairgrounds.~~ provided that such display shall be authorized in a duly issued block party/permit from the City's Licensing Board covering the public property on which the display is to occur.

Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Lachapelle supported Commissioner Stevens's idea about discussing enforcement issues at the next Police Commission meeting. He added that this topic will stay in committee at this time.

6. Rental Inspection Program

Jim Grant, Director of Building, Zoning and Licensing Services, stated that he is looking for direction from the Committee about the idea of a Rental Inspection Program. His staff would like to reach out to the Landlords Association to receive feedback about a potential program. Ultimately, he would come back to the committee with a more defined program for review. He said this program is

going to take some time and resources to develop.

Joe Devine, Compliance Officer, gave an overview of the proposed program.

Councilor Lauterborn stated that the material being present this evening is different than what had been previously discussed. She went through the handout in detail from the prior meeting and stated that she is not prepared to approve the program at this time and would like it kept in committee.

Councilor Abbott stated that he agrees with the concept; he was envisioning a point system similar to the health/food inspections. He suggests creating a separate checklist apart from the Property Maintenance Code and applying a point system to it. He stated that he felt more serious offense should be addressed; the City doesn't want to get into the torn screen, chipped paint debate.

Councilor Lachapelle indicated he supports this idea and moving forward with the program to bring to the Landlords Association.

Councilor Lauterborn stated that Jim Grant is asking the committee to endorse something that is not developed yet and she is not yet ready to endorse this. Jim Grant stated that he is just looking for a consensus of support to move forward.

Councilor Lachapelle asked for a show of hands from the committee if they are in support of the idea of this type of program. Councilors Bogan, Abbot, Gates and Lachapelle raised their hand in support, Councilor Lauterborn said she is neither for nor against this program at this time. She added that there simply is not enough information for her to make a decision at this time. She requested that information be provided in the Committee packet in advance of the Committee meeting in order for members to have ample time to review.

Councilor Lauterborn referenced the minutes from the last set of minutes (page 6 in the packet), it reads *"It was suggested that the Re-development Zone of the City would be a good place to start. This item has been kept in Committee. The City Attorney will work with BZLS to work on a proposed amendment to the Re-development Zone that could potentially tie into a Rental Inspection Program for the Committee to review."* Councilor Lauterborn inquired on the status of this item. Mr. Grant responded that there is not a zone for "Re-development" in the City which fall into the neighborhoods of these problematic areas. Therefore, this proposal is not going to forward. He apologized for not stating that earlier in the meeting.

Councilor Lauterborn asked Mr. Grant if by developing a Rental Development Program the BZLS Department would be requesting more staff to enforce all the new standards. She stated that he may want to think about the potential need for additional staff while setting up this complicated program with inspections and re-inspections. This information may be helpful for the council as to whether or not they will support the program. Mr. Grant stated that he envisioned that once this program gets going and Council sees how the program is working, they may want to see more of this done and at that time his department can move forward with such a request.

7. Ordinance Enrollment: Chapter 275

Councilor Lachapelle stated this item has been postponed, as the materials did not get to the City

Clerk in time for this meeting. This will go forward at the next meeting on September 5, 2019.

8. Other

Councilor Lauterborn addressed Mr. Grant regarding the minutes from the last meeting which reads as follows: *“Mr. Grant agreed with reviewing the higher permit fees and removing the fees for such items that do not require inspection. Councilor Lachapelle requested that the Director of Building, Zoning, and Licensing Services, bring back a proposal for the Committee to review.”* Councilor Lauterborn questioned the status of this request. Mr. Grant said he would have something for the next meeting on September 5, 2019. The Committee briefly discussed the matter.

Councilor Lachapelle stated that he expected something at this meeting relative to a definition of “Donation Bins”. He requested that Kelly Walters, City Clerk, reach out to Attorney O’Rourke regarding this Amendment.

9. Adjournment

Councilor Gates **MOVED** to **ADJOURN** the Committee meeting at 7:04 PM. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully Submitted,

Susan Morris
Clerk Typist II

Chapter 28

ANIMALS

GENERAL REFERENCES

Parks, recreation and Arena — See Ch. 158.

§ 28-1. Animal Control Officer. [Amended 8-5-1997]

The Animal Control Officer shall be appointed by the City Manager in accordance with the provisions of Section 15 of the Rochester City Charter. The Animal Control Officer shall be sworn in by the Chief of Police as the Animal Control Officer. The Animal Control Officer's salary shall be established by the Merit Plan adopted pursuant to Section 60 of the Rochester City Charter.

§ 28-2. Powers and duties of Animal Control Officer. [Amended 11-9-2004]

The Animal Control Officer shall attend to all complaints pertaining to dogs and other animals, shall investigate and report on all damage caused by dogs and other animals, shall enforce the licensing laws, and shall enforce all other statutes which are violations, ordinances, and regulations pertaining to dogs and other animals. The Animal Control Officer shall pick up and dispose of all dead animals found upon public property. The Animal Control Officer shall have the power to issue complaints and make arrests in the performance of the Animal Control Officer's duties.

§ 28-3. Dogs running at large.¹

- A. No person shall permit any dog to run at large within the City of Rochester, except when such dog is engaged in hunting, herding, supervised competition and exhibition or training for such. This section shall apply to all public places and to all private property. Except as provided for herein, no person shall permit any dog to be out of doors off the owner's property unless said dog is on a leash held by a person able to control the dog.
- B. For the purposes of this section, the term "running at large" shall mean running without the property owned or otherwise controlled by the owner, while not on a leash held by a person able to control the dog.

§ 28-4. Nuisances. [Added 4-5-2011]

1. Note: For state statutes relative to control of dogs, see RSA 466, all provisions of which have been adopted by the City of Rochester, effective November 1980.

- A. This section and any penalties established herein are adopted and/or imposed pursuant to the authority granted in RSA 466:39 and 47:17, II and XV.
- B. Under this section, an animal is considered to be a nuisance if:
 - (1) Any animal or bird causes frequent, or long continued, noise which disturbs the comfort or repose of any person in a neighboring premises, not including a dog which is guarding, working, or herding livestock, as defined in RSA 21:34-a, II(a)(4).
- C. A person who is the owner, keeper, or person in control of an animal found to be a nuisance by reason of conduct contrary to the provisions of Subsection B above, and who fails to comply with an order to abate the nuisance caused by such animal, shall be guilty of a violation of this section and, after conviction, such person shall be subject to such penalties as are provided for in this chapter. **[Amended 3-5-2019]**

§ 28-5. Removal of dog excrement. [Amended 3-5-2019]

It shall be unlawful for the owner or person in control of any dog to allow that dog to appear in any public place or upon the property of any other person unless said owner or person in control has in his/her possession a mechanical or other device for the removal of excrement, nor shall said owner or person in control fail to expeditiously remove any such excrement deposited by said dog in any such place. This section shall not apply to a blind person while walking his/her guide dog.

§ 28-6. Violations and penalties. [Added 3-5-2019]

Unless otherwise provided, any person who violates any provision of this chapter shall be punished by a fine of not more than fifty dollars (\$50.)

**Amendment to Chapter 167 of the General Ordinances of the City of Rochester Regarding
Drop-Off Bins**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 167 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows:

ARTICLE V Drop-Off Bins

§ 167-24 DEFINITIONS

CODE OFFICIAL: *The Director of Building, Zoning, and Licensing Services, the Code Compliance Officer or any duly authorized representative who is charged with the administration and enforcement of this chapter.*

DROP-OFF BIN: *Any receptacle or container located outside of an enclosed building and designed, intended or used for collection and temporary storage of donated items or materials including, but not limited to, clothing, shoes, books, toys, furniture, household materials and other like items. Drop-off bins are also known as donation collection bins/boxes, charity bins/boxes, clothing bins/boxes, clothing donation containers, or any combination thereof.*

OWNER: *A person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property.*

PREMISES: *A lot, plot or parcel of land including any structures thereon.*

STRUCTURE: *That which is built or constructed or a portion thereof.*

§167-25 LICENSES AND PERMITS REQUIREMENTS

Whether for the owner of the premises or the person who has obtained the written permission of the owner, the fee to obtain the initial license to own, install, operate, or use a drop-off bin is \$200 that must be tendered at the time of license application. Such license may be annually renewed on or before the anniversary date of the application for an annual renewal fee of \$200. Regardless of the number of drop-off bins owned, installed, operated, or used by a license applicant, the applicant shall only pay one annual license fee. The initial permit fee for a drop-off bin is \$50 per bin payable at the time of application for the license. The annual renewal fee for each drop-off bin permit is \$50 payable on or before the anniversary date of the initial application. Each drop-off bin shall display its current permit at all times.

§167-26 COMPANY TYPE AND BIN LABELS

To best inform the public and potential donors, bins shall be labeled according to Company Type as follows:

(a) Shall have a label or appended sign that states "PLEASE REPORT ANY OVERFLOW OF ITEMS, DAMAGE, OR MALFUNCTION TO [PERMIT HOLDER'S NAME] AT [PERMIT HOLDER'S TELEPHONE NUMBER] OR TO THE DIRECTOR OF BUILDING, ZONING, AND LICENSING SERVICES AT [TELEPHONE NUMBER DESIGNATED BY

DIRECTOR]." Such label or appended sign shall be in lettering no less than three inches in height and no less than one-half inch in width, and;

(b) If none of the proceeds from the sale of the items collected in the drop-off bin will be given to a "charitable organization" as that term is defined in RSA 72:23-1, there shall be a label or sign permanently attached to the drop-off bin which identifies the permit holder's name and address and states: "DONATIONS ARE NOT FOR CHARITABLE PURPOSES AND WILL BE SOLD FOR PROFIT. DONATIONS ARE NOT TAX DEDUCTIBLE." Said label or appended sign shall be prominently displayed on the receptacle in the largest lettering on the receptacle or appended sign but said lettering shall be no less than three inches in height and no less than one-half inch in width, or;

(c) If 100% of the items, or the proceeds from the sale of the items, collected in the drop-off bin will be used for the benefit of a "charitable organization" as that term is defined in RSA 72:23-1, there shall be a label or sign permanently attached to the drop-off bin that identifies, at least, the legal name of the charitable organization receiving the benefit of the donated items, as it appears on the certificate of registration issued to the charitable by the New Hampshire Attorney General's Charitable Trust Unit in the largest lettering on the drop-off bin or appended sign but said lettering shall be no less than three inches in height and no less than one-half inch in width, or;

(d) If a professional solicitor owns, installs, operates, or uses a drop-off bin pursuant to a contractual arrangement with a charitable organization whereby the professional solicitor receives either a flat fee or a percentage of the proceeds from the sale of the donated items, have a label or sign permanently attached to the drop-off bin which states: "SOLICITATIONS FOR DONATIONS ARE MADE BY (NAME OF PROFESSIONAL SOLICITOR) ON BEHALF OF (NAME OF CHARITABLE). DONATIONS WILL BE SOLD FOR PROFIT BY (NAME OF PROFESSIONAL SOLICITOR)." Said label or appended sign shall be prominently displayed on the donation drop-off bin in the largest lettering on the thereon but said lettering shall be no less than three inches in height and not less than one-half inch in width, and;

(e) Shall be placed only on premises commercially used by an established business or on church property and drop-off bins shall not be permitted in any Residential Zone or in the Downtown Commercial Zone.

§167-27 APPLICATION REQUIREMENTS – COMPANY LICENSES AND BIN PERMITS

Any party seeking to obtain the requisite license to operate drop-off bins and permits for each drop-off bin shall submit a written application to the Director of BZLS upon a form provided by the Director. The application shall require the following information:

(a) The name, physical address (no P.O. boxes), telephone number, and electronic mail address of the applicant, and;

(b) A photograph of the drop-off bin and the proposed location for which a permit is sought. If the application is for more than one location, the applicant may submit a single application with a list of preferred locations and only one photograph of the type of drop-off bin to be used unless different types of bins will be used at different locations. In the event the applicant is using different types of bins at different locations, a photograph of each type of bin must be submitted, and;

(c) Whether the applicant would prefer to receive notice and orders by regular mail or electronic mail, and;

- (d) The signature of the applicant, and;
- (e) The required license and permit fees, and;
- (f) If placed on property not owned or leased by the operator of the drop-off bin, a written agreement with the owner of each premises where a bin is to be located which evidences the agreement of the owner(s) to the placement of a drop-off bin on the property. The applicant shall also provide a certificate of liability insurance in an amount not less than \$500,000 showing each owner of the premises where a bin is located as an additional insured, and;
- (g) A maintenance agreement on the form provided from the Director wherein the applicant affirms that each drop-off bin location will be monitored on a daily basis, emptied no less than twice every calendar week, except in the event of a declared weather emergency by the National Weather Service or other natural disaster, and no overflow of items from the bin shall remain on the ground for more than 24 hours after actual or constructive notice of said overflow.
- (h) The information supplied pursuant to this subsection shall be used for all notices, correspondence, or communications from the Director.
- (i) Currently operated drop-off bins do not enjoy grandfathered status and must comply with all the requirements of this Article.

§167-28 BIN PLACEMENT

- (a) Drop-off bin(s) shall be located on a hard and durable surface such as asphalt, concrete, aggregate, crushed rock and the like and all ingress and egress from each bin shall also be of a similar surface. In no event shall the placement of a drop-off bin or any means of ingress or egress be composed of sod, dirt, sand, or similar porous material. All drop-off bins shall be located on the designated premises so as not to interfere with sight triangles, on-site circulation of vehicular or pedestrian traffic, required setbacks, parking, landscaping, and all other applicable requirements imposed on the property as part of any governmental approval, including any zoning requirement;
- (b) The placement of drop-off bins shall be restricted to an area within 75 feet from any wall of the largest permanent building on the premises or against a well-lit exterior wall of such building;
- (c) A drop-off bin shall not be within a 1,000 foot radius of any other drop-off bin operated by the same licensee;
- (d) Drop-off bins shall not be larger than six feet high by six feet wide by five feet deep;
- (e) Drop-off bins shall be enclosed and operate by use of a securely locked receiving door so that the contents of the bin may not be accessed by anyone other than those persons authorized by the licensee to collect the contents;

§167-29 BIN MAINTENANCE

- (a) The drop-off bin must be regularly emptied, no less than twice every calendar week, to prevent overflow of clothing or other items that may be strewn about the premises. No overflow of items from a bin shall remain on the ground for more than 24 hours after actual or constructive notice of said overflow;

(b) Any person found illegally dumping at a drop-off bin shall be guilty of a misdemeanor pursuant to RSA 163-B:3 and will be subject to the penalties set forth in RSA 163-B:4.

(c) Any graffiti placed on the drop-off bin must be removed within 72 hours following notice of its existence. However, within the 72 hours, the owner has the option to notify the Director in writing of the owner's intent to replace the drop-off bin within five days and along with said written notice submits a photograph of the new drop-off bin.

(d) If a drop-off bin is damaged to the extent the locking mechanism or receiving door has been compromised or one of its sides has been breached, it shall be repaired, replaced or removed within five days of receipt after notice of such damage from the Director unless the Director determines the damage is such that the drop-off bin constitutes a danger to persons or property in which case it shall be made safe or removed within 24 hours of notice of said condition.

§167-30 VIOLATIONS

Any violation of the provisions of this Article or any order of the Director or the Code Compliance Officer related thereto are subject to citation and the civil penalties set forth in RSA 47:17 and Ordinance §54-3.

The effective date of these amendments shall be upon passage.

8/29/19

From: Kelly Walters
Sent: Thursday, August 29, 2019 12:39 PM
To: Susan Morris
Subject: FW: Rental Inspection Program

From: Joe Devine
Sent: Tuesday, August 27, 2019 2:50 PM
To: Kelly Walters <kelly.walters@rochesternh.net>
Subject: Rental Inspection Program

Afternoon Kelly,

We will not need to present at the September Code and Ordinance Meeting.

We are meeting with the Strafford County Rental Properties Association on October 3rd. The hope is we can solicit the landlord involvement in the process so the program can benefit all parties involved.

Joe
Sent from iPhone

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City Clerk's Office

Current Regulations

City of Rochester - § 40-15 Permits.

A. Permits shall be obtained from the Director of Building, Zoning, and Licensing Services for the construction, alteration, removal, demolition, or repair of any foundation, footing, building or structure or for the installation of plumbing, use of concrete, masonry, metal, iron and wood, and other building material, the installation of electric wiring, and fire protection incident thereto for the prevention of fires, including but not limited to swimming pools, signs, and fences, except that no permit shall be required for painting, papering, laying floors, or upkeep in maintenance of any structure. ...etc.....

State adopted - International Code Council – International Residence Code SECTION R105 PERMITS

R105.1 Required. Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the *building official* and obtain the required *permit*.

R105.2 Work exempt from permit. Exemption from *permit* requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this *jurisdiction*. *Permits* shall not be required for the following:

Building:

1. One-story detached *accessory structures*, provided that the floor area does not exceed 200 square feet (18.58 m²).
2. Fences not over 7 feet (2134 mm) high.
3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.
4. Water tanks supported directly upon *grade* if the capacity does not exceed 5,000 gallons (18 927 L) and the ratio of height to diameter or width does not exceed 2 to 1.
5. Sidewalks and driveways.
6. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
7. Prefabricated swimming pools that are less than 24 inches (610 mm) deep.
8. Swings and other playground equipment.
9. Window awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.
10. Decks not exceeding 200 square feet (18.58 m²) in area, that are not more than 30 inches (762 mm) above *grade* at any point, are not attached to a dwelling do not serve the exit door required by Section R311.4.

Electrical:

1. *Listed* cord-and-plug connected temporary decorative lighting.
2. Reinstallation of attachment plug receptacles but not the outlets therefor.
3. Replacement of branch circuit overcurrent devices of the required capacity in the same location.
4. Electrical wiring, devices, *appliances*, apparatus or *equipment* operating at less than 25 volts and not capable of supplying more than 50 watts of energy.
5. Minor repair work, including the replacement of lamps or the connection of *approved* portable electrical *equipment* to *approved* permanently installed receptacles.

Gas:

1. Portable heating, cooking or clothes drying *appliances*.
2. Replacement of any minor part that does not alter approval of *equipment* or make such *equipment* unsafe.
3. Portable-fuel-cell *appliances* that are not connected to a fixed piping system and are not interconnected to a power grid.

Mechanical:

1. Portable heating *appliances*.
2. Portable ventilation *appliances*.
3. Portable cooling units.
4. Steam, hot- or chilled-water piping within any heating or cooling *equipment* regulated by this code.
5. Replacement of any minor part that does not alter approval of *equipment* or make such *equipment* unsafe.
6. Portable evaporative coolers.
7. Self-contained refrigeration systems containing 10 pounds (4.54 kg) or less of refrigerant or that are actuated by motors of 1 horsepower (746 W) or less.
8. Portable-fuel-cell *appliances* that are not connected to a fixed piping system and are not interconnected to a power grid.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a *permit* shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

Suggested Regulations

□ § 40-15 Permits.

A. Permits shall be obtained from the Director of Building, Zoning, and Licensing Services for the construction, alteration, removal, demolition, or repair of any foundation, footing, building or structure or for the installation of plumbing, use of concrete, masonry, metal, iron and wood, and other building material, the installation of electric wiring, and fire protection incident thereto for the prevention of fires, including but not limited to swimming pools, signs, and fences, except that no permit shall be required for painting, papering, laying floors, or upkeep in maintenance of any structure. Separate permits shall be required for building, electrical, plumbing, mechanical, fire protection, and demolition. Prior to the issuance of a foundation or building permit by the Director of Building, Zoning, and Licensing Services, the applicant for such permit shall file with the Department of the Building, Zoning, and Licensing Services a foundation certification plan bearing the stamp of a New Hampshire licensed land surveyor and containing a statement from such surveyor to the effect that the proposed building or structure complies with all applicable building or structure setback requirements and that no portion of the new building or structure is located within any of the setback areas required by law. The requirement for a foundation certification plan may be waived, in writing, by the Director of Building, Zoning, and Licensing Services if, in the discretion of the Director of Building, Zoning, and Licensing Services there are reasonable grounds to conclude that the preparation and submission of a foundation certification plan is unnecessary to ensure that the new building or structure does not violate any required setback.

(1) The following fees shall be charged for said permits, based upon the estimated cost of construction as presented to the Director of Building, Zoning, and Licensing Services upon application forms provided by him: on proposed work, the fee of nine dollars (\$9.) per one thousand dollars (\$1,000.) of estimated cost of work, or any portion thereof, with a minimum fee of ten dollars (\$10.), in addition to an application fee of ten dollars (\$10.) for each permit. The following permits shall be a charged only the minimum permit fee of ten dollars (\$10.), in addition to an application fee of ten dollars (\$10.) for each permit.

- (a) Fences
- (b) Roofing (Re-shingling only)
- (c) Siding
- (d) Sheds under 200 square feet

(2) Each building permit shall expire 12 months from the date of issuance unless renewed by the Director of Building, Zoning, and Licensing Services prior to the expiration date. Any renewal shall require reapplication and payment of required fees based on the remaining work to be done. The Director of Building, Zoning, and Licensing Services may issue no building permit until such other permits or approvals as may be required by any code, other ordinances, or state statutes have been acquired.

(3) A separate permit shall be required for staging, scaffolding, platforms, or other similar equipment to be erected on private property that is to be erected for a period exceeding 30 days. Said permit shall expire 12 months from the date of issue and all equipment shall be removed upon said expiration or upon completion of the work, whichever comes first. The fee for said

permit shall be five dollars (\$5.). The City reserves the right to revoke, deny, or not reissue said permit if work required is not being actively pursued in a timely or otherwise reasonable manner.

(4) Fees for building permits shall be waived for an honorably discharged veteran or an active duty, National Guard or reserve member of the United States Armed Forces who plans to construct or have constructed for himself/herself a home or appurtenance to a home already owned by him/her for exclusive occupancy by himself/herself and his/her immediate family.

(5) Permits issued to or for the City of Rochester are exempt from the above fees.

B. The estimated cost of construction for purposes of Subsection [A](#) of this section shall be calculated on the following basis:

(1) For contract work, new buildings and newly constructed additions, the building permit fee shall be based on the greater of all contract/construction costs associated with the total construction project or the cost of construction as determined using the latest "Building Valuation Data" as published periodically by the International Code Council. When construction costs are determined using the "Building Valuation Data" as published by the International Code Council, such costs shall be multiplied by a modification factor of 0.60. Construction costs shall include, but not be limited to, pile driving, foundations, structural and nonstructural framing, interior finish (as regulated by this chapter), fire protection systems and any other work which would render the building complete and ready for occupancy.

(2) For non-contract work, not covered under Subsection [B\(1\)](#), such as when a homeowner furnishes his/her own or has furnished free labor but purchases the materials, the fee shall be based on the actual cost of all materials with a multiplier of two applied. For example, total materials of five thousand dollars (\$5,000.): $\$5,000 \times 2 = \$10,000$. The permit fee would therefore be ninety dollars (\$90.) (or $10.0 \times \$9$). If, in the opinion of the Building Official, the cost of construction is underestimated on the application, the permit shall be denied, unless the applicant can show detailed documentation to meet the approval of the Building Official. Final building permit cost of construction shall be approved by the Building Official.

(3) Any person who is found to have demolished, constructed, altered, removed, or changed the use of a building or structure without the benefit of a building, electrical, plumbing, mechanical, fire protection or demolition permit shall, upon application for said permit(s), be assessed a permit fee of twice the normal rate outlined in Subsection [A](#) of this section or twenty-five dollars (\$25.), whichever is greater. Example: Cost of materials = \$15,392; Labor = Self; Permit Fee = $16.0 \times \$9 \times 2$ (self-labor) $\times 2$ (added fee) = \$576.

(4) In the case of a revocation of a permit or abandonment or discontinuance of a building project, the portion of the work actually completed shall be computed and any excess fee for the uncompleted work shall be returned to the permit holder upon written request. All plan examination and permit processing fees and all penalties that have been imposed on the permit holder under the requirements of this chapter shall first be collected. The permit processing fee shall be 10% of the building permit application fee with a minimum fee of ten dollars (\$10.).

Based on FY 19		Current Fees		Proposed Flat Fee			
		\$9 per \$1000		\$20		\$10	
		Const Cost	Fee	New Fees	Deficiency	New Fees	Deficiency
Fences	56	\$199,959	\$2,571	\$1,120	\$1,451	\$560	\$2,011
Roofing	131	\$1,137,481	\$12,499	\$2,620	\$9,879	\$1,310	\$11,189
Sheds	52	\$179,858	\$2,301	\$1,040	\$1,261	\$520	\$1,781
Siding	19	\$225,829	\$2,911	\$380	\$2,531	\$190	\$2,721
Totals	258	\$1,743,127	\$20,282	\$5,160	\$15,122	\$2,580	\$12,542

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City Clerk's Office

GENERAL CODE**INSTRUCTIONS****City of Rochester Code Supplement No. 2**

The enclosed new and/or replacement pages should be placed in your Code volume immediately! The dateline, on the bottom of the page, does not indicate the adoption date of the Code changes, but rather identifies the pages printed with this supplement. This instruction page should be placed in the front of your Code volume.

REMOVE

275:29 – 275:30

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275:117 – 275:124

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OFFICE, MEDICAL (or HEALTH CLINIC or MEDICAL FACILITY) — A building, portion of a building, or leasable space in which on-site mental and physical health care on an outpatient basis is provided. Practitioners may include physicians, surgeons, nurses, dentists, chiropractors, psychologists, mental health counselors, and other such similar health care professionals. (Also see "hospital.")

OFFICE, PROFESSIONAL — A building, portion of a building, or leasable space housing professionals such as lawyers, architects, engineers, surveyors, designers, teachers, accountants or others who through training are qualified to perform services of a professional nature and where no storage or sale of merchandise (other than limited incidental merchandise) exists. "Office, professional" excludes "office," "office, medical" and "retail services" (see those definitions).

OPEN SPACE — A separate lot ("open space lot") or portion of a buildable lot (also called "green space") designated as protected, undeveloped land. (Also see "buildable lot" and "green space" in this section and open space requirements in Article 19, Dimensional Regulations.)

PARCEL (or TRACT or LAND UNIT) — A lot, a portion of a lot, or multiple lots (or portions thereof) on which development may occur.

PARKING FACILITY, COMMERCIAL — A parking lot or parking garage used as an independent business venture for the short-term parking of automobiles on an hourly, daily, weekly, or monthly basis for a fee. **[Added 5-7-2019]**

PARKING FACILITY, PUBLIC — A parking lot or parking garage, owned by a municipal or public entity, used for the short-term parking of automobiles on an hourly, daily, weekly, or monthly basis, and which may require permitting or usage fees. **[Added 5-7-2019]**

PARKING GARAGE — A multilevel structure used for the storage of automobiles.

PARKING LOT — An off-street, ground-level open area that provides storage for motor vehicles.

PERMANENT FOUNDATION — A continuous perimeter foundation of masonry constructed underneath a building in accordance with the City of Rochester Building Codes.

PERMITTED USE — Any use allowed in a zoning district "by right" in contrast to a conditional use, a use permitted by special exception, or an accessory use. Nonetheless, there are numerous requirements which may apply and there is a significant review process involved for most permitted uses in accordance with the requirements of this chapter and the Site Plan Regulations and Subdivision Regulations. (Also see "accessory use," "conditional use," and "special exception" in this section and Article 20, Standards for Specific Permitted Uses.)

PERSONAL SERVICES ESTABLISHMENTS — Establishments serving individual necessities, including but not limited to barbershops, beauty salons and spas, massage services by masseurs/masseuses, personal laundry/dry-cleaning services, tattoo parlors, and travel agencies.

PHARMACY — See "retail establishments."

PLANNED UNIT DEVELOPMENT (or PUD) — A special zoning designation that allows the owner of a large parcel of land to propose his/her own development project largely independent of current land use requirements.

PLANNING BOARD — The Planning Board of the City of Rochester.

PLANT NURSERY — Land and associated structures, including greenhouses, used to raise trees, shrubs, flowers, and other plants for sale on site or at another location. Limited related landscaping and decorative items are frequently sold on site as well.

PLAT — A map of a subdivision showing surveyed lot lines with bearings and dimensions.

PORCH — A roofed projecting structure connected to a building that may be enclosed by screen, latticework, broad windows, or other light frame walls extending from the main structure. A front porch is elevated above the surface of the ground, has front steps, a railing, and porch posts or columns. It provides direct access to the building but is not habitable year round.

PORKCHOP SUBDIVISION — A special subdivision that allows a limited number of flag lots in order to help preserve scenic roads and discourage development of new culs-de-sac on back lots. (See "porkchop subdivisions" in Article 21, Conditional Uses.)

PRESITE BUILT HOUSING — See "modular housing."

PRINCIPAL BUILDING — A building in which the principal use is conducted (in contrast to an accessory structure). (Also see "accessory structure.")

PRINCIPAL USE — The primary activity that occurs on a lot, i.e., that activity which is the most prominent and visible, engages the most people, and has the most significant impacts. (Also see "accessory use" and "secondary use.")

PRINTING FACILITY — A large-scale establishment (over 3,000 square feet) for printing services. It is oriented toward commercial customers rather than walk-in retail customers. (See also "retail services" which encompasses photocopying.)

PRIVATE ROAD — A private travel way, providing access to two or more lots, which has its own platted right-of-way, separate from any of those lots. (Does not include "shared driveway.")

PROFESSIONAL OFFICE — See "office, professional."

PROHIBITED USE — A use which is not specifically permitted by right, by conditional use, or by special exception and which is not an accessory use.

RECREATION, INDOOR — A commercial facility within a building devoted to active sports and recreation. "Indoor recreation" may include billiard parlors, pinball/video arcades, health clubs, fitness centers, paintball, bowling alleys, indoor sports arenas, swimming pools, and gymnasiums.

RECREATION, OUTDOOR — An open air commercial facility, including open air roofed structures, devoted to active sports and recreation. "Outdoor recreation" may include ball fields, miniature golf, driving ranges, archery ranges, outdoor paintball, sports arenas, amusement parks, skating rinks, swimming pools, tennis courts, cross-country ski centers, and

water slides. "Outdoor recreation" does not include shooting ranges or facilities with individual motorized vehicles such as go-carts, race cars, or motorcycles.

RECREATION, PARK — A noncommercial outdoor passive or active recreational facility serving the general public or residents of a particular neighborhood. It is owned or managed by the government, a land developer, a homeowners' association, or similar entity.

RECREATIONAL VEHICLE (or RV) — A vehicular-type portable structure without permanent foundation that can be towed, hauled, or driven and is primarily designed as a temporary living accommodation for recreational and camping purposes. An RV is not considered a dwelling unit.

(2) Setbacks.

- (a) Build-to zone. There is a build-to zone between zero and 20 feet. This zone may be altered by conditional use where appropriate for civic uses, where not practical, or for other design considerations.
- (b) Side/rear setbacks. There are no minimum side setbacks except for spacing between buildings as specified in the Building/Fire Code. The Planning Board may alter the rear setbacks by conditional use, where appropriate, such as to accommodate rear decks for dining, to accommodate pedestrian-oriented facilities, or to allow for optimal uses of lots consistent with the intent of this section, provided that any reduction does not interfere with or negatively impact abutting properties, particularly residential properties.

(3) Parking areas.

- (a) Rear setbacks. Within the NMU District parking is allowed in rear yards but may be permitted in side yards by conditional use. Parking is not allowed in front yards.

(4) Architectural standards.

- (a) The building footprint for any individual nonresidential building shall not exceed 4,000 square feet. The maximum length of building frontage is 75 feet. The Planning Board may waive either of these requirements by conditional use where it determines that the intent of providing for smaller-scale buildings in the NMU Zone is met through special design approaches.
- (b) The architectural regulations under the Site Plan Regulations should be strictly applied to ensure that new buildings and renovations are harmonious with the character of nearby residential neighborhoods.

ARTICLE 6

Commercial Zoning Districts
[Amended 1-12-2016]

§ 275-6.1. Introduction.

The Downtown Master Plan provides guidance in revitalizing the downtown. It is hoped that downtown Rochester remains the heart of the City, as an active place that is densely populated and used by all citizens, in different ways and at different times. It is emphasized that carefully crafted laws, pertaining to driveway access, parking, signage, lighting, and building layout and design, are necessary to ensure that the Downtown Commercial District remains vibrant.

- A. Pedestrian orientation. The DC, NMU and OC Zoning Districts have a strong pedestrian orientation. The districts are structured to accommodate the automobile as well, but not at the expense of pedestrian character.
- B. Automobile orientation. The HC, and some areas of the OC, Districts have a strong automobile orientation. Nonetheless, quality of design and attention to pedestrian

character is still important in these zones as people will still be walking to and within the sites.

§ 275-6.2. General terms.

Uses which are permitted by right, conditionally, or by special exception are listed in Article 18, Use Regulations. Dimensional regulations are presented in Article 19, Dimensional Regulations. Other applicable requirements for development within commercial zoning districts are presented throughout this chapter.

§ 275-6.3. Downtown Commercial District (DC).

- A. District location. The most intensive pedestrian-oriented commercial area in the City is the DC District where there is the strongest sense of enclosure. Buildings are predominantly multistory, of masonry construction, and built right to the sidewalk, with a clear, consistent, relatively uninterrupted street wall (with the side walls of buildings butting up to each other).
- B. Objectives.
 - (1) Provide for a mix of uses within the zone.
 - (2) Preserve existing historic architectural structures and designs.
 - (3) Provide for the adaptive reuse of existing historic and non-historic structures.
 - (4) Encourage commercial and City-wide redevelopment.
 - (5) Provide for safe pedestrian and non-automotive travel within the district.
 - (6) Provide for minimum to no restrictions on hours of operations.
 - (7) Encourage both rental and ownership opportunities for residential housing in the district.
- C. Development standards.
 - (1) Uses.
 - (a) (Reserved)⁵
 - (b) Drive-through facilities. Drive-through facilities are permitted in the DC District by conditional use only. Where permitted, they must be situated in the rear of the building or in the side of the building only if location at the rear is not practical.
 - (c) Outdoor uses. Outdoor uses, such as dining, cafes, seating (all of which shall be accessory to an allowed primary approved use) and sidewalk vendors, may be established within the public right-of-way or on other City property by approval of the City Council.

5. Editor's Note: Former Subsection C(1)(a), First floor, was repealed 5-7-2019.

(2) Setbacks.

(a) Front build-to line/zone.

- [1] In the DC District a build-to line of five feet is established for all commercial buildings and for additions to such buildings fronting on the street (it is preferred that the building be built right up to the sidewalk with no setback).
- [2] In the DC District a build-to zone between five feet and 10 feet is established for all noncommercial buildings and for additions to such buildings fronting on the street.
- [3] The build-to line and build-to zone may be altered by conditional use where appropriate, such as for churches and civic-type buildings, which may warrant a larger front setback and landscaped or hardscaped yard, or to create pedestrian-oriented amenities such as pocket parks or plazas or upon a finding that the build-to line or zone is not practical or to conform to prevailing existing setbacks.

(b) Side/rear setbacks.

- [1] There are no minimum side setbacks except for spacing between buildings as specified in the Building and Fire Codes. Also see special setbacks in Note 1 on Table 19-B.⁶ **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- [2] The Planning Board may alter the rear setbacks by conditional use, where appropriate, such as to accommodate rear decks for dining, to accommodate pedestrian-oriented facilities, or to allow for optimal uses of lots consistent with the intent of this section. The Planning Board must determine that any reduction does not measurably interfere with or negatively impact abutting properties, particularly residential properties.

(3) Parking requirements. **[Amended 5-7-2019]**

(a) See site plan regulations.

(4) Parking areas. Within the DC District parking is not allowed in front yards and is allowed in rear and side yards by conditional use.

§ 275-6.4. Office Commercial District (OC).

A. District location. This district is located in transitional areas as well as along the major nodes and corridors. The OC District includes some older structures that have been converted to commercial uses and also includes some larger, undeveloped sites.

B. Objectives.

6. Editor's Note: Table 19-B is included as an attachment to this chapter.

- (1) The purpose of the district is to preserve the wood-frame architecture, as much as feasible, with a mix of residential and low-impact nonresidential uses (office, institutional, bed-and-breakfasts, and limited retail up to 2,500 square feet).
- (2) Allows for large-scale office, institutional, hospitality, and civic uses and is ideally oriented toward campus-type settings.
- (3) Oriented toward open, suburban-type corridors. The district is distinctly automobile oriented.
- (4) Orientation. See Figure 4-D - Recommended Site Design in OC District, below.

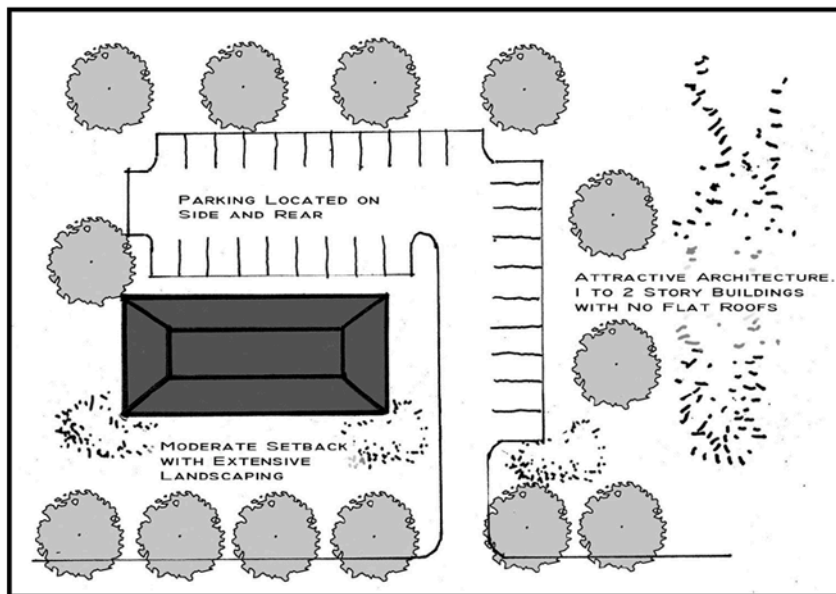


Figure 4-D - Recommended Site Design in OC District

- (5) Mixed use within the district and within individual buildings is encouraged.
- C. Development standards.
- (1) Uses.
 - (a) Nonresidential uses are permitted by right in existing buildings and new construction.
 - (b) Drive-through facilities are not permitted in this district.
 - (2) Build-to zone. There is a build-to zone between 10 and 20 feet. This zone may be altered by conditional use where appropriate for civic uses, where not practical, or for other design considerations.
 - (3) Parking areas.
 - (a) Screening. Any on-site parking must be fully screened from the street (except for driveway and pedestrian passageways).

- E. Density rings. The density rings are shown on the Official City of Rochester Zoning Map that is adopted as part of this chapter and only apply to multifamily dwellings/developments. The rings are defined as follows: **[Amended 2-6-2018; 5-7-2019]**
- (1) There is no minimum lot area per dwelling unit applicable within the Downtown Commercial (DC) Zone District. For areas outside of the DC Zone District, the minimum lot area per dwelling unit within a one-mile radius of the center of Rochester shall be 5,000 square feet. The minimum lot are per dwelling unit outside of the one-mile radius of the center of Rochester shall be 7,500 square feet.
 - (2) The minimum lot area per dwelling unit within a one-half-mile radius of the center of Gonic and East Rochester shall be 5,000 square feet. The minimum lot are per dwelling unit outside of the one-half-mile radius of the center of Gonic and East Rochester, shall be 7,500 square feet.
 - (3) Any lot that is partially within the radius of a density ring shall be treated as if it were entirely within the radius of the density ring.
- F. Double frontage lots. On double frontage lots, for the purpose of setbacks, there shall be established a front, two sides, and a rear. The ordinary front setback shall apply to that section of the lot which is deemed the front, as determined by the Director of Building, Zoning, and Licensing Services (based upon the locations of the front entrance, street address, path to the front, and driveway; E911 standards; the prevailing pattern of the other buildings on both blocks; impact upon the streetscapes; and other appropriate factors). The regular rear setback shall apply to that section of the lot opposite the front.
- G. Exempt structures. Nonhabitable utilities and utility-type structures erected by a governmental, public utility or nonprofit agency which customarily are built within the road right-of-way, on undersized lots, or close to property lines, and which cannot reasonably be made to conform to the requirements of the dimensional tables, are exempt from those requirements.
- H. Frontage and access. Access to lots shall be taken from the same road where the lot frontage is located unless waived by conditional use.
- I. Frontage. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- (1) Continuous. An area used to meet frontage requirements must be continuous and unbroken. Two or more discrete areas may not be added together to meet frontage requirements.
 - (2) Culs-de-sac. The Planning Board may reduce the required frontage on the curved end portion of a cul-de-sac by up to 20% by conditional use (due to the narrower frontage relative to lot width that naturally occurs along a cul-de-sac).
 - (3) Depth. The front portion of every lot must be at least the width of the required frontage from the front property line extending back at least the depth of the setback from the front property line.

- J. Lot area; usable area. No lot shall be approved unless a rectangle measuring at least 3,000 square feet can be fit inside the lot beyond any required setbacks, wetlands, wetland buffers, or slopes greater than 25%. The rectangle must be located in an accessible part of the lot and its width must measure at least 30 feet.
- K. Lot coverage. All of the following elements are considered part of lot coverage: buildings, roofed structures, or impervious surfaces.
- L. Multiple principal uses. Where there are multiple principal uses on one lot or parcel, minimum required lot sizes are not aggregated except where there are multiple residential uses; i.e., it is necessary only that the lot size meet the minimum requirement for any use proposed for the lot. (Example: A certain zoning district stipulates a minimum lot size of 40,000 square feet for all permitted uses, including single-family and commercial both of which are allowed. To accommodate a single-family house and a commercial use on the same lot, a lot 40,000 square feet would be required, rather than a lot 80,000 square feet. However, to establish duplexes, townhouses, and apartments on the same lot, the minimum lot size would be based on the total number of dwelling units.) Nonetheless, as part of site plan review, the Planning Board may stipulate appropriate conditions to ensure compatibility of the multiple uses.
- M. Nonconformities, creation of. Except for open space lots and conservation land, lots and sites may not be created or modified in any manner that would make them nonconforming in terms of any dimensional requirements of this chapter.
- N. Open space lots; frontage. It is not necessary for open space lots and conservation land to be in compliance with any requirements of the dimensional tables. Minimum frontage of 12 feet is required in order to ensure access.
- O. Right-of-way encroachments. Within commercial districts where there is no minimum front setback, encroachments may occur within the public right-of-way as follows:
 - (1) Footings below grade may encroach as needed subject to approval of the Director of Building, Zoning, and Licensing Services and Public Works Department.
 - (2) Awnings over the sidewalk provided there is a vertical clearance of at least seven feet.
 - (3) Architectural elements, such as balconies, bay windows, and cornices, on upper floors provided the encroachment does not exceed two feet and provided there is a vertical clearance of at least 10 feet.
- P. Rounding off. In any calculation, where the final number results in a fraction of a unit, the number of units shall be rounded up to the next whole number where the fraction is $\frac{1}{2}$ or greater. It shall be rounded down to the next whole number where the fraction is less than $\frac{1}{2}$.
- Q. Setbacks for accessory uses. Setback requirements apply to buildings and roofed structures accommodating accessory uses in similar fashion as those accommodating principal uses except where otherwise specified.
- R. Setback application.

- (1) Required setbacks apply to buildings, roofed structures, open air decks, porches, ground-mounted mechanical equipment, ground-mounted satellite dishes, fuel tanks, and bulkheads. The setback requirement applies whether the element is a principal or an accessory use. [See extensions beyond setbacks (i.e., into setback areas) below; special exception provisions for porches; and several other specific exceptions and special provisions regarding setbacks in this chapter.]
 - (2) Setbacks are measured to the building foundation, except where a portion of the building containing usable floor area extends beyond the foundation (such as on the upper floors in a garrison-style house). Where a building foundation is not present or not applicable, setbacks are measured to the most appropriate vertical fascia, eave board, or header joist for that part of the structure. For ground-mounted mechanical equipment, ground-mounted satellite dishes, fuel tanks, and bulkheads, setbacks are measured to the nearest part of the structure.
- S. Extensions beyond setbacks (i.e., into setback areas).
- (1) Appurtenant elements to buildings or structures which do not contribute to usable floor area and do not have a foundation and which are not specifically included in Subsection R above may extend into the setback areas but may not extend beyond any property line. This includes, but is not limited to, architectural trim, awnings, bay windows, chimneys, decorative architectural elements, downspouts, window air-conditioning units, exterior steps, fire escapes, gutters, place of refuge decks, building-mounted satellite dishes, roof eaves, siding materials, and vents.
 - (2) In cases where any landing serving exterior steps exceeds 24 square feet in area, that landing (but not the steps) must meet all required setbacks.
- T. Triangular lots. Triangular lots shall contain one front lot line and two side lot lines.
- U. Triple frontage lots. On triple frontage lots, for the purpose of setbacks, there shall be established a front, two sides, and a rear. The ordinary front setback shall apply to that section of the lot which is deemed the front, as determined by the Director of Building, Zoning, and Licensing Services (based upon the locations of the front entrance, street address, path to the front, and driveway; E911 standards; the prevailing pattern of the other buildings on both blocks; impact upon the streetscapes; and other appropriate factors). For any side which faces a street the setback shall be the ordinary side setback in that district. The ordinary rear setback shall apply.

ARTICLE 20

Standards for Specific Permitted Uses [Amended 2-3-2015; 7-7-2015]

§ 275-20.1. General provisions.

For certain permitted uses that could impact surrounding neighborhoods, conflict with adjacent uses, or have other significant impacts, specific standards are provided below. These standards apply only to those uses which are permitted by right shown as "P" in Tables 18-A through 18-E except where specifically noted otherwise. Other particular standards applicable to conditional uses, special exceptions, and accessory uses are articulated in separate articles.

§ 275-20.2. Conditions for particular uses.

For each individual use listed below, all of the specific conditions attached to that use must be met along with any other requirements of this chapter.

- A. Contractor's storage yard. Minimum setbacks from all property lines shall be 25 feet or as specified in the dimensional regulations table, whichever is greater. No structures or stockpiled materials related to the storage yard operation shall be situated within these setbacks. Heavy vehicles or equipment in working order may be parked within the setbacks provided that none is parked within 15 feet of a property line. A contractor's storage yard shall not be established in a floodplain.
- B. Day care-2 (day care - family). This use is not considered a home occupation. However, the review process for this use, where it is permitted by right, shall be the same as for home occupations where no special exception is involved. See § 275-24.5.
- C. Earth excavation.
 - (1) Regulations. No person shall perform earth excavation except in compliance with the provisions of RSA 155-E, as amended, this chapter, and the Site Plan Regulations applicable to earth excavation.
 - (2) Existing operation. Any existing excavation activity operating under a permit issued prior to the date of adoption of this chapter may continue until the expiration of the permit, except that any expansion or change in operation not covered by that permit shall be in compliance with the provisions of this section.
 - (3) Buffers. Buffers/setbacks are established as set forth in RSA 155-E and in Article 12, Conservation Overlay District. No excavation, processing, or removal of vegetation may occur within the buffers/setbacks specified. Where the buffer/setback has been removed or is not adequate, the Planning Board may stipulate reestablishment of the buffer/setback, as appropriate.
 - (4) Water table. For excavation of sand, gravel, or other subsurface materials (also see RSA 155-E), the seasonal high water table must be determined prior to Planning Board approval and it must be demonstrated that no ground disturbance or excavation will occur within four feet of that seasonal high water table except as provided below.
 - (a) Applicants shall submit the following as part of any review:
 - [1] Information about any types of fill material that may be deposited on the site.
 - [2] Recognizing that sand and gravel pits sometimes become unlawful dumps (due to no fault of the property owner or operator) posing potential harm to the underlying groundwater, the applicant shall submit a plan to discourage use of the site as a dump during and after excavation.
 - (b) The excavation of gravel materials below four feet above the stated seasonal high water table may be allowed by special exception if the applicant can clearly demonstrate that such excavation will not adversely

affect groundwater quality (in addition to other general conditions listed in Article 22, Special Exceptions). The Zoning Board of Adjustment and the Planning Board shall be required to review the reports provided and may require additional information, experts or studies to assist it in its review and approval of its issuance of any special exception and permit allowing such excavation.

(c) See Article 10, Aquifer Protection Overlay District, for other provisions within that district.

- (5) Abandoned sites. In the event the Director of Building, Zoning, and Licensing Services determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing before the Planning Board, to comply with any timetable and bonding requirements to be established by the Planning Board to complete reclamation. Should reclamation not be completed, the Board may request the City to authorize reclamation at the City's expense. The City's costs shall then constitute an assessment against the owner and shall create a lien against the property on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

D. Farm; farm, crop.

- (1) Lot size. The minimum lot size is five gross acres for a farm and five gross acres for a crop farm.
- (2) Housing. The Planning Board is empowered to consider and approve special on-site housing arrangements to accommodate farm workers, such as cluster housing or temporary/seasonal housing, under site plan review.
- (3) Retail sales. Any farm goods produced on site along with limited related products, such as baked goods, non-alcoholic cider, etc., may be sold on site.
- (4) Livestock. Housing for any livestock for a farm shall be set back at least 100 feet from any side or rear lot lines. Housing for fowl, fur-bearing animals, and swine shall be set back at least 150 feet from any side or rear lot lines. The ZBA may reduce or waive this requirement by special exception. There is no setback for open pens and fencing provided animals are not left in such pens overnight.
- (5) Manure. Any significant storage areas for manure shall be set back at least 200 feet from any lot lines. Best management practices shall be followed in the handling of manure.
- (6) Performance standards. The general provisions of Article 28 of this chapter and RSA 432:33 shall apply.

E. Gas station.

- (1) The minimum lot area shall be 30,000 square feet.
- (2) Lot frontage shall be at least 150 feet.

- (3) Pumps, lubricating and other outdoor service devices shall be located at least 30 feet from any lot lines.
 - (4) All automobile parts and dismantled vehicles are to be stored within a building, and no repair work is to be performed outside a building.
 - (5) The minimum setback for all portions of canopies shall be 20 feet from all lot lines or the required district setbacks, whichever is greater.
 - (6) Limited light maintenance activity is an accessory use and includes engine tune-ups, lubrication, brake repairs, tire changing, battery charging, car washing, detailing, polishing, and carburetor cleaning. Such activities as engine overhaul, vehicle painting, welding, and body or fender work would not be an accessory use.
- F. Junkyard. All materials shall be fully screened from the road and from all abutting property by a solid wall or fence at least eight feet in height. The Planning Board may stipulate a taller wall or fence, as appropriate.
- G. Lodging facility. For a lodging facility, the minimum lot size shall be 30,000 square feet plus 1,000 square feet per unit. Minimum lot size for a bed-and-breakfast shall be the minimum lot size for a single-family home according to the applicable zone district. The minimum lot size for a hotel in the Downtown Commercial (DC) Zone District shall be 7,500 square feet. **[Amended 5-7-2019]**
- H. Mini-warehouse. The front setback for all storage structures shall be 100 feet. Side and rear setbacks from any residential property shall be 75 feet.
- I. Manufactured housing subdivision, not part of an existing mobile home park. See Chapter 135 of the City Code for existing mobile home parks.
- (1) Overall development. **[Amended 9-6-2016]**
 - (a) All requirements otherwise applicable to subdivision of lots for conventional houses within a conservation subdivision shall apply.
 - (b) Additions to manufactured housing units (or "homes"). There shall be no additions constructed onto manufactured homes with the exception of garages, skirting, carports, cabanas, awnings, canopies, porches, decks, and steps. All must be approved by the Director of Building, Zoning, and Licensing Services.
- J. Manufactured housing unit, not part of an existing mobile home park. See Chapter 135 of the City Code for existing mobile home parks. **[Amended 9-6-2016]**
- (1) Manufactured homes are allowed only:
 - (a) On individual lots in the AG District;
 - (b) Within manufactured housing subdivisions located in the AG District; and
 - (c) Within established mobile home parks on approved pads/lots.

- (2) Additions to manufactured homes. There shall be no additions constructed onto manufactured homes with the exception of garages, skirting, carports, cabanas, awnings, canopies, porches, decks, and steps. All must be approved by the Director of Building, Zoning, and Licensing Services.
- K. Multifamily dwellings/development. The following requirements shall apply to multifamily dwellings/developments of three or more dwelling units: **[Amended 5-7-2019]**
- (1) Buffers from roads. Except for parcels within the Downtown Commercial (DC) Zone District, a fifty-foot buffer shall be established from all neighboring roads, including roads from which access is taken. The Planning Board shall determine treatment of the buffer area, whether it is to be left undisturbed, to have supplemental plantings installed, to be designated part of the overall open space plan for the development, and/or to be part of an individual lot but protected from construction. No roofed structures may be erected in the buffer area. This buffer shall not be required for parcels in the DC Zone District.
 - (2) Access. Any new multifamily development must take access from an existing collector or arterial road rather than an existing local road. The Planning Board may waive this requirement by conditional use upon a finding that it is preferable to take access from a local rather than a collector road and that taking access from the local road will have no significant adverse impact upon residents or property owners located on the local road.
 - (3) Commercial districts. Within any commercial districts, multifamily is allowed only as a secondary use.
 - (a) It must be situated on the second floor or on higher floors of a commercial building or in a separate building behind the commercial building; and
 - (b) At no time may the area of the multifamily dwellings exceed 80% of the square footage of the on-site commercial space.
 - (4) Downtown Commercial District. Within the Downtown Commercial (DC) District, multifamily is allowed with the following restrictions:
 - (a) Multifamily units are prohibited on the ground floor and only permitted nonresidential uses within the Downtown Commercial District shall be located on the ground floor. However, parking shall be allowed on the ground floor except for parcels fronting any of the following streets:
 - [1] Union Street.
 - [2] North Main Street south of the North Main Street Bridge.
 - [3] South Main Street.
 - [4] Wakefield Street south of Columbus Avenue.
 - [5] Hanson Street.
 - [6] Museum Way.

- (b) Ancillary ground floor multifamily use, such as entryways, lobbies, utility areas and similar functional spaces shall be minimized to the extent practical. Remaining ground floor space within the first 50 feet of building depth shall be reserved for nonresidential uses, as permitted in the DC Zone District, unless otherwise required to comply with the state building code and/or fire codes.
 - (c) DC Zone District parcels not fronting on the above-listed streets may contain multifamily use and units on all floors without restriction.
- (5) Sewer and water. Any new multifamily dwellings/developments must connect to the City of Rochester's public sewer and water systems.
- L. Nursing home. The minimum lot size for the zone shall be increased by 1,000 square feet for each patient bed. The permitted density shall be 1 1/4 times that otherwise permitted for residential uses in the district.
- M. Outdoor wood-fired hydronic heater or outdoor wood boiler.
 - (1) "Outdoor wood-fired hydronic heater" or "outdoor wood boiler" means a fuel-burning device as defined by RSA 125-R.
 - (2) The installation and/or operation of outdoor wood-fired hydronic heaters is permitted in the Agricultural District only. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
 - (3) The outdoor wood-fired hydronic heater shall be set back 25 feet from the nearest structure it serves.
 - (4) The outdoor wood-fired hydronic heater shall be set back 100 feet from any lot line.
- N. Parking facility, public. For a public parking facility, the following standards shall apply: **[Added 5-7-2019^o]**
 - (1) Sizing and capacity of the facility shall be based on current and forecasted use patterns and demand for publicly accessible parking.
 - (2) Frontages along a primary commercial street shall, to the extent practicable, incorporate commercial business as a means of minimizing extended expanses of blank walls.
 - (3) An operations plan shall define the basic functions of the facility including signage, offsite wayfinding, hours of operation, access and control points, payment systems, and lighting and landscape installation.
 - (4) Rate schedules shall be subject to establishment and change by the City of Rochester and shall not be required for approval or conditioned by the Notice of Decision.
- O. Small wind energy systems.

19. Editor's Note: This ordinance also redesignated former Subsections N through U as Subsections O through V.

- (1) Authority and purpose. This Subsection N is enacted in accordance with RSA 672:1, III-a, and 674:62 to 674:66. The purpose of this subsection is to accommodate the installation of small wind energy systems in the City of Rochester, while protecting the public's health, safety and welfare.
- (2) Accessory use. A small wind energy system and meteorological tower are allowed as accessory uses to on-site principal residential or nonresidential uses that are legally established, including grandfathered nonconforming uses.
- (3) Building permit. No small wind energy system or meteorological tower may be erected, constructed, or installed without a building permit issued by the Director of Building, Zoning, and Licensing Services. A building permit shall also be required for any physical modification to an existing small wind energy system.
- (4) Meteorological towers. Meteorological towers shall be permitted on a temporary basis and must be removed within three years from the date the building permit for the tower is issued.
- (5) Total capacity. The total capacity for one or more small wind energy systems situated on one site or lot may not exceed a rated capacity of 100 kilowatts.
- (6) Application. An application for a building permit shall be submitted to the Director of Building, Zoning, and Licensing Services and shall include a site plan and documentation providing all of the following:
 - (a) Property lines and physical dimensions of the applicant's property. A survey may be required at the reasonable discretion of the Director of Building, Zoning, and Licensing Services if necessary to confirm compliance with the setback and other requirements of this subsection.
 - (b) Locations, dimensions, and types of buildings on the property and on adjacent properties within 50 feet of the property lines.
 - (c) Locations of the proposed small wind energy system(s), foundations, guy anchors and associated equipment.
 - (d) Tower foundation blueprints or drawings.
 - (e) Tower blueprints or drawings.
 - (f) Height of proposed tower and setback requirements as outlined in this subsection.
 - (g) A plan showing the height of the overall prevailing canopy of trees within 300 feet of the tower.
 - (h) Any public road that is contiguous with the subject property.
 - (i) Any overhead utility lines.
 - (j) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower type, and nameplate generation capacity.

METEOROLOGICAL TOWER — A temporary structure erected to collect environmental information for the purpose of assessing the potential for a small wind energy system. The meteorological tower includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

MODIFICATION — Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Nonstructural maintenance and repair is not considered to be a modification.

NET METERING — The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

POWER GRID — The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

SHADOW FLICKER — The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and on nearby structures causing a repeating pattern of light and shadow.

SMALL WIND ENERGY SYSTEM — A wind energy conversion system consisting of a wind generator, tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and which is used primarily for on-site consumption.

SYSTEM HEIGHT — The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

TOWER — The monopole, guyed monopole or lattice structure that supports a wind generator.

TOWER HEIGHT — The height above grade of the fixed portion of the tower, excluding the wind generator.

WIND GENERATOR — The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

- P. Solid waste facility. Solid waste facilities shall be subject to the following requirements:
- (1) Lot size. The minimum lot size for solid waste facility uses shall be five acres.
 - (2) Coverage. Solid waste facility uses shall not occupy more than 75% of the land area of the lot on which they are located or occur.

- (3) Zoning lines. Solid waste facilities shall be set back at least 100 feet from adjoining zoning boundary lines except where the adjoining district is an industrial district.
- (4) Setbacks from rivers. Solid waste facilities shall be set back a minimum of 100 feet from the landward extent of the five-hundred-year floodplain and shall be screened from the river with a vegetative or other natural barrier to minimize visual impact unless otherwise specified in RSA 483:9. The following accessory structures or uses associated with a solid waste facility may also be located in the aforementioned setback areas if approved by NHDES and the Rochester Planning Board, with a recommendation from the Conservation Commission, as part of the site review process:
 - (a) Access roads;
 - (b) Drainage ditches and stormwater structures;
 - (c) Fencing, screening and earthen berms;
 - (d) Groundwater monitoring wells, piezometers, and other environmental monitoring devices;
 - (e) Piping and tanks and appurtenant systems;
 - (f) Sedimentation basins; and
 - (g) Utility lines.
- (5) Other setbacks. Solid waste facilities shall be set back at least 50 feet from City-owned rights-of-way, provided that the setback for certain solid waste facilities shall be as specified below:
 - (a) Recycling and materials recovery facility. Setback for the front foundation face of any buildings and/or permanent vehicle storage or materials storage facilities at recycling and material recovery facilities shall be 100 feet from City-owned rights-of-way. Normal parking entrances and accesses are permitted within this setback, but permanent overnight truck or equipment parking is prohibited. In the event an alternative screen or buffer is approved by the Planning Board, this setback may be reduced.
 - (b) Transfer station or composting facility. Setback for the face of buildings or other physical structures used as transfer station or composting facilities shall be 50 feet or composting facilities shall be 100 feet from City-owned rights-of-way. Permanent parking of trucks or equipment within the setback is prohibited. Normal customer access and parking is permitted within the setback. In the event an alternative screen or buffer is approved by the Planning Board, this setback may be reduced.
- (6) Entering property. The City shall have the right to enter the solid waste facility during all operating hours and at other reasonable times to administer and enforce the provisions of this subsection.

- (7) Operational standards. Operational standards for and the operation of any solid waste facility shall be governed by and subject to the New Hampshire laws regarding solid waste management and regulations promulgated thereunder by the New Hampshire Department of Environmental Services and other state or federal agencies having jurisdiction over the operation of such facilities.

Q. Stable, commercial.

- (1) The minimum lot size required shall be five acres.
- (2) The side and rear setbacks for structures housing horses shall be 100 feet from any property line.
- (3) Any storage areas for manure shall be set back at least 200 feet from any lot lines. Manure must be handled according to best management practices.

R. Temporary structure. Temporary structures are subject to the following requirements. However, temporary structures erected for 15 or fewer days are exempt from this subsection herein.

- (1) A permit is required for temporary structures. An application must be submitted to the Director of Building, Zoning, and Licensing Services specifying the proposed location for the structure and its purpose. A fee will be charged in an amount determined by the City Council.
- (2) Temporary structures are subject to all zoning setbacks.
- (3) Temporary structures may not be placed forward of the front facade of the primary building on the lot (on corner lots, this applies only to the main entry facade, though other corner lot setbacks, as specified in this chapter, still apply).
- (4) Temporary structures that were in place prior to the adoption of this subsection must be brought into compliance with this subsection within six months of its adoption.

S. Vehicle sales. No vehicles or other equipment or materials may be stored or displayed within the road right-of-way. The City of Rochester shall take all appropriate steps to enforce this requirement. See enforcement provisions under Article 3, Administration.

T. Veterinary clinic.

- (1) Veterinary clinics shall set back 100 feet from any residential property, restaurant or lodging establishment.
- (2) All animals housed overnight shall be in completely enclosed buildings.
- (3) The Planning Board may stipulate that appropriate sound mitigation devices be installed and that fences, walls, and/or vegetation be installed to screen the site where animals will be maintained out of doors.

U. Warehouse.

- (1) All goods must be stored within a completely enclosed building or located in rear setbacks.

- (2) If the warehouse or storage area constitutes less than 50% of the gross interior floor area of the building it shall be considered an accessory use.

V. Yard sale, commercial.

- (1) A secondhand dealer license must be obtained from the City Council.²⁰
- (2) Items may be displayed outside on the lawn or driveway or in a garage or other structure. The items must be displayed neatly and may not be left outdoors overnight.

ARTICLE 21

Conditional Uses

§ 275-21.1. General provisions.

- A. Granting authority. Wherever a conditional use is authorized under this chapter, the authority to administer or grant conditional use approval is vested in the Planning Board. Conditional use approval may be granted only for those conditional uses referred to in Subsection C below.
- B. Purpose. Certain uses, structures, or conditions possess special characteristics such that if developed in certain locations or in certain ways may have significant adverse impacts. In order to safeguard the public interest and the interest of neighboring property owners, some uses, structures, and conditions require the Zoning Board of Adjustment to grant a special exception and others are designated as conditional uses to provide an opportunity for the Planning Board to review and evaluate these applications on an individual basis in contrast to uses which are simply permitted by right.
- C. Types of conditional uses.
 - (1) There are two types of conditional uses covered under this chapter:
 - (a) Uses. Conditional uses for actual "uses" as listed in the Tables of Uses in Article 18 (e.g., townhouse or trade shop) and discussed in § 275-18.4.
 - (b) Departures from standards. Conditional uses to allow for certain departures from standards otherwise applicable, detailed all throughout this chapter (e.g., allowing for parking in a side setback or for buildings to exceed a certain height).
 - (2) The process is the same for both types of conditional uses. The term "conditional uses" is used throughout this chapter for both situations.
- D. Criteria and conditions.
 - (1) The base criteria in § 275-21.3 below shall apply to all conditional uses. In addition, certain particular uses have specific criteria and/or conditions which must also be met in order for those uses to be approved as listed below in § 275-

²⁰. Editor's Note: See Ch. 110, Junk and Secondhand Dealers.

21.4, Conditions for particular uses. For those uses which are not specifically discussed below, it is necessary only that the base criteria be satisfied.

- (2) It is not essential that the Planning Board specifically and outwardly articulate compliance with each criterion and condition. At its option, the Board may simply state that all of the criteria and conditions have been met, provided it is duly diligent and thorough in its consideration.
- E. Burden of persuasion. The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence as may be required by this chapter or by the Planning Board in its reasonable discretion, that the development, if completed as proposed, will comply with this article and will satisfy the specific requirements for the use or standard contained in this chapter.
- F. Pertinent information. In reviewing an application for a conditional use approval, the Planning Board shall consider the following information, as applicable to the case:
- (1) Compliance with the applicable requirements contained in this chapter;
 - (2) The results of any special investigative or scientific studies prepared in association with the proposed development;
 - (3) Special reports or analysis of the project or its impacts, prepared by the City or consultants;
 - (4) The findings, goals and objectives of the City's Master Plan;
 - (5) The relationship of the development to the timing, location and cost of public improvements scheduled in the Capital Improvements Program and improvements necessitated by the development;
 - (6) Testimony and evidence introduced at the public hearing on the application; and
 - (7) Any other appropriate information or documentation.
- G. Terms of approval.
- (1) The Planning Board may also impose, in addition to any applicable conditions specified in this chapter, such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this chapter, including but not limited to the following:
 - (a) Increasing front, side, and rear setbacks in excess of the minimum requirements of this chapter;
 - (b) Screening of the premises from the street or adjacent property in excess of any minimum requirements of this chapter;
 - (c) Landscaping in excess of any minimum requirements of this chapter or the Site Plan Regulations;
 - (d) Modification of the exterior features of buildings or other structures;
 - (e) Limitations on the size of buildings and other structures more stringent than the requirements of this chapter;

- (f) Footprint or lot coverage less than the allowed maximum of this chapter;
 - (g) Limitations on the number of occupants and methods and times of operation;
 - (h) Regulation of design of access drives, sidewalks, crosswalks, and other traffic features;
 - (i) Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this chapter or the Site Plan Regulations; and
 - (j) Other performance standards as appropriate.
- (2) Such conditions shall be imposed in writing, and the applicant may be required to post bond or other security for compliance with these conditions in an amount satisfactory to the City. The Planning Board may require that such conditions be annotated on a site plan or subdivision plat, or otherwise recorded at the Strafford County Registry of Deeds.
- H. Existing uses and structures. Any use that was lawfully established prior to the adoption of this chapter and which is allowed as a conditional use, but for which a conditional use approval was never issued, is now permitted and may continue in the same manner and to the same extent as conducted prior to the adoption of this chapter. However, a conditional use approval shall be secured from the Planning Board before the use or structure or building in which the use is conducted may be intensified, enlarged, expanded, moved or significantly altered.

§ 275-21.2. Procedures.

- A. Application. Conditional uses authorized under this article may be granted only after application to and a public hearing by the Planning Board and subject to the provisions of RSA 674:16, as amended. The Planning Board may establish special procedures and fees for conditional use applications consistent with RSA 674:16, as it sees fit.
- B. Site plans and subdivisions. Where a conditional use application is related to a specific subdivision or site plan application, the application and review procedure for both shall be conducted concurrently.
- C. Appeals. Any persons aggrieved by a Planning Board decision on a conditional use application may appeal that decision to the Superior Court, as provided for in RSA 677:15.
- D. Expiration of conditional use approvals. Any conditional use approval shall expire or become null and void upon the expiration, lapse, nullification, withdrawal, or repeal of any site or subdivision plan to which the conditional use is attached.

§ 275-21.3. Base criteria.

The Planning Board shall grant a conditional use approval if, and only if, it reasonably determines that all of the following criteria are met (in addition to those criteria/conditions

articulated for particular uses in § 275-21.4 below, or in addition to those articulated elsewhere in this chapter for departures from standards):

- A. Allowed use or departure. The use or departure from standards is specifically authorized under the Tables of Uses in Article 18 as a conditional use or is otherwise specifically authorized in this chapter;
- B. Intent of chapter. The proposal is consistent with the purpose and intent of this chapter;
- C. Intent of Master Plan. The proposal is consistent with the purpose and intent of the Master Plan;
- D. Compatibility. The proposal is compatible with general dimensional, use, and design characteristics of the neighborhood and surrounding area;
- E. Streetscape. The proposal will not adversely impact the quality of the streetscape;
- F. Resources. The use or departure will not have a significantly adverse impact upon natural, scenic, historic, or cultural resources and can be designed with sensitivity to environmental constraints; and
- G. Public facilities. The use does not place an undue burden upon the City's resources, including the effect on the City's water supply and distribution system, sanitary and storm sewage collection and treatment systems, fire protection, police protection, streets and schools.

§ 275-21.4. Conditions for particular uses.

For each individual use listed below, all of the specific conditions attached to that use must be met along with the base criteria articulated in § 275-21.3 above.

- A. Assisted living facility. The permitted density shall be 1 1/4 times that otherwise permitted for residential uses in the district.
- B. Conservation subdivision. See Article 33, Conservation Subdivisions.
- C. Convenience store. The following standards apply in the R2 Zone:
 - (1) The Planning Board shall determine hours of operation.
 - (2) Illumination of the store shall be limited to hours of operation, except for purposes of security.
- D. Flag lots. As part of any major subdivision (involving a new road) the Planning Board may approve the creation of one or more flag lots as a conditional use. Flag lots are allowed subject to the following terms/findings:
 - (1) Allowing the flag lot(s) accommodates a superior layout than what would otherwise be allowed;
 - (2) A tangible public benefit is gained such as the creation of additional or higher quality open space, preservation of important resources, or creating a trail network;

- (3) The total number of flag lots shall not exceed 15% of the total number of lots in the subdivision (being created at that time);
- (4) The total number of lots, including the flag lots, shall not exceed the number otherwise allowable based on frontage and lot size;
- (5) The width of the frontage and the entire "flagpole" leading to the main lot area is at least 25 feet; and
- (6) The Planning Board may stipulate shared driveways at its discretion, including for access to the flag lot, to reduce access points.

E. Gas station.

- (1) The minimum lot area shall be at least 30,000 square feet.
- (2) Lot frontage shall be at least 150 feet.
- (3) Pumps, lubricating and other outdoor service devices shall be located at least 30 feet from the front, side and rear lot lines.
- (4) All automobile parts and dismantled vehicles are to be stored within a building, and no repair work is to be performed outside a building.
- (5) The minimum setback for all portions of canopies shall be 20 feet from the front, side and rear lot lines or those setbacks established for the district, whichever is greater.
- (6) Limited light maintenance activity is an accessory use and includes engine tune-ups, lubrication, brake repairs, tire changing, battery charging, car washing, detailing, polishing, and carburetor cleaning. Such heavy maintenance activities as engine overhaul, vehicle painting, welding, and body or fender work is not an accessory use.

F. House of worship. Within residential zones all parking shall be located beyond the rear facade; provided, however, that the Planning Board may approve parking to the side of the building, but situated no further forward than the front facade by conditional use subject to adequate screening from the road.

G. Lodging facility. For a lodging facility, the minimum lot size shall be 30,000 square feet plus 1,000 square feet per unit. Minimum lot size for a bed-and-breakfast shall be the minimum lot size for a single-family home according to the applicable zone district. The minimum lot size for a hotel in the Downtown Commercial (DC) Zone District shall be 7,500 square feet. **[Amended 5-7-2019]**

H. Mini-warehouse. The front setback for all storage structures shall be 100 feet. Side and rear setbacks from any residential property shall be 75 feet.

I. Nursing home. The minimum lot size for the zone shall be increased by 1,000 square feet for each patient bed. The permitted density shall be 1 1/4 times that otherwise permitted for residential uses in the district.

- J. Parking lot. For properties within the Downtown Commercial (DC) Zone District, Parking lots shall be limited to 20 parking spaces for any single tenant unless otherwise approved by the Planning Board pursuant to the standards below: **[Added 5-7-2019²¹]**
- (1) The applicant demonstrates a unique commercial or market-based need for additional parking.
 - (2) There is a lack of publicly accessible parking in the immediate vicinity.
 - (3) Sharing parking with an adjacent use or property is impractical or not possible.
 - (4) Negative visual effects of a large parking lot are minimized to the extent practicable through site design, breaking up large expanses of paving, shielding parking from direct public view, or placing parking to the side or behind buildings. Where possible, buildings in the DC District should front a primary street with parking placed to the side or rear.
 - (5) The Planning Board may impose operational parameters regarding signage, limiting access points, and may require specific lighting and landscaping installation.
- K. Parking facility, commercial. The Planning Board may approve a commercial parking facility based on the following standards: **[Added 5-7-2019]**
- (1) Sizing and capacity of the facility is based on current and forecasted use patterns and demand for publicly accessible parking.
 - (2) Frontages along a primary commercial street, to the extent practicable, incorporate commercial business on the ground floor as a means of providing pedestrian interest and minimizing extended expanses of blank walls.
 - (3) An acceptable operations plan defines the basic functions of the facility including signage, offsite wayfinding, hours of operation, access and control points, payment systems, and lighting and landscape installation.
 - (4) Rate schedules and changes thereto shall remain the prerogative of the owner and shall not be required for approval or conditioned by the notice of decision.
- L. Porkchop subdivision. The purpose of a porkchop subdivision (see definition in Article 2) is to help preserve the scenic character of neighborhoods by encouraging owners of parcels along existing roads and streets to concentrate subdivision to one side of the parcel and retain the remainder as open space and allowing some minimal level of development on parcels with significant acreage in the rear in order to avoid inducing property owners to develop culs-de-sac at a higher level of development. Porkchop subdivisions are allowed subject to the following requirements:
- (1) Quality of project. A finding by the Planning Board that the proposed development is superior to development that would likely occur otherwise.
 - (2) Parcel size. The development parcel shall have a minimum size of six gross acres and minimum frontage of 150 feet on an existing public way.

21. Editor's Note: This ordinance also redesignated former Subsections J through N as Subsections L through P.

- (3) Three lots. There shall be a maximum of three lots created from any one lot.
 - (4) Minimum lot size. The minimum lot size for each new lot shall be 40,000 square feet or the minimum lot size for the district, whichever is greater.
 - (5) Average lot size. The average lot size for new lots in the porkchop subdivision shall be at least 120,000 square feet or 1.5 times the minimum lot size for the district, whichever is greater.
 - (6) Frontage. The minimum frontage for each new porkchop lot shall be 50 feet.
 - (7) Common access. All lots shall be entered from a common access point.
 - (8) Separate driveway. Each porkchop subdivision shall have a common driveway independent from any other subdivision.
 - (9) No further subdivision. There shall be no further subdivision of any of the porkchop lots other than lot line adjustments.
 - (10) Single-family. The porkchop lots shall be used for single-family use only.
 - (11) Width. The all-season passable width of any shared driveway shall be 20 feet when serving two or more lots.
 - (12) Easement width. The width of the common driveway access easement shall be 30 feet. Additional width may be required to accommodate slope and drainage easements.
 - (13) Turnaround. An acceptable turnaround for the fire trucks may be required.
 - (14) Recording. A document satisfactory to the City Attorney shall be recorded establishing the conditions of use of any common driveway, providing for indemnification for the City for emergency services, and including suitable language to ensure that the private way will not become a City road or street.
- M. School, K-12; school, other. Within residential zones all parking shall be located beyond the rear facade; provided, however, that the Planning Board may approve parking to the side of the building, but situated no further forward than the front facade, by conditional use subject to adequate screening from the road.
- N. Senior housing.
- (1) The minimum development parcel shall be five gross acres.
 - (2) The project must provide special facilities and/or programs oriented toward seniors.
 - (3) The applicant must explain how he/she will meet the definition for senior housing in this chapter (see Article 2, Definitions).
 - (4) The developer/manager must provide documentation to the Planning Board demonstrating that the development meets the definition for senior housing in this chapter.

§ 275-21.4

ZONING

§ 275-22.1

- O. Vehicle sales. No vehicles or other equipment or materials may be stored or displayed within the road right-of-way. The City of Rochester shall take all appropriate steps to enforce this requirement. See enforcement provisions under Article 3, Administration.
- P. Warehouse.
 - (1) All goods must be stored within a completely enclosed building or located in a fenced-in area.
 - (2) If the warehouse or storage area constitutes less than 50% of the gross interior floor area of the building it shall be considered an accessory use.

ARTICLE 22

Special Exceptions**§ 275-22.1. General provisions.**

- A. Granting authority. Wherever a special exception is authorized under this chapter, the authority to administer or grant special exception approval is vested in the Zoning Board of Adjustment.
- B. Purpose. Certain uses, structures, or conditions possess special characteristics such that if developed in certain locations or in certain ways may have significant adverse impacts. In order to safeguard the public interest and the interest of neighboring property owners, these uses, structures, and conditions are designated as uses allowed by special exception.
- C. Types of special exceptions.
 - (1) There are two types of special exceptions included in this chapter:
 - (a) Uses. Special exceptions for actual "uses" as defined in this chapter and as listed in the Uses Tables (e.g., contractor's storage yard).
 - (b) Departures from standards. Special exceptions to allow for certain departures from standards otherwise applicable, articulated throughout this chapter (e.g., allowing for reduced setbacks for garages).
 - (2) The process is the same for both types of special exceptions. The term "special exception" is used throughout this chapter for both situations.
- D. Criteria and conditions. The base criteria in § 275-22.2 apply to all special exceptions. In addition, certain particular uses have specific criteria and/or conditions which must also be met in order for those uses to be approved as listed below in § 275-22.3,

275 Attachment 1

City of Rochester

Table 18-A Residential Uses
[Amended 4-4-2017; 3-5-2019; 5-7-2019]

LEGEND

P = Permitted Use

C = Conditional Use

E = Use Allowed by Special Exception

Residential Uses	Residential Districts				Commercial Districts			Industrial Districts		Special		Criteria/Conditions
	R1	R2	AG	NMU	DC	OC	HC	GI	RI	HS	AS	Reference
Apartment, accessory (accessory use)	E	P	P	P	P	P	P	—	—	E	—	Article 21 and 23
Apartment, in-law	P	P	P	P	P	P	P	—	—	—	—	
Apartment, security	—	P	—	P	P	P	P	P	P	P	P	Articles 2 and 23
Assisted living facility	—	C	C	C	C	C	C	—	—	C	—	Article 21
Boardinghouse	—	—	—	—	E	—	—	—	—	—	—	
Community residence-1	—	E	E	—	E	E	E	—	E	E	—	Article 22
Community residence-2	—	—	E	—	—	E	—	—	E	E	—	Article 22
Conservation subdivision	C	C	C	—	—	C	C	—	—	—	—	Articles 21 and 33
Dwelling, apartments (apartment/mixed-use building)	—	—	—	P	P	C	P	—	—	—	—	Article 21
Dwelling, multifamily development	—	P	—	—	P	—	P	—	—	—	—	Articles 20 and 22
Dwelling, multifamily	—	P	—	—	P	—	P	—	—	—	—	
Dwelling, single-family	P	P	P	P	—	P	P	—	—	P	—	
Dwelling, two-family	—	P	P	P	C	P	P	—	—	—	—	Articles 21 and 33
Flag lots	—	C	C	—	—	—	—	—	—	C	—	Article 21
Home occupation-1 (accessory use)	P	P	P	P	P	P	P	—	—	P	—	Article 24
Home occupation-2 (accessory use)	P	P	P	P	P	P	P	—	—	P	—	Articles 22 and 24

Residential Uses	Residential Districts				Commercial Districts			Industrial Districts		Special		Criteria/Conditions
	R1	R2	AG	NMU	DC	OC	HC	GI	RI	HS	AS	Reference
Home occupation-3 (accessory use)	—	E	E	P	P	P	P	—	—	E	—	Articles 22 and 24
Manufactured housing unit on own lot	—	—	P	—	—	—	—	—	—	—	—	Articles 20 and 21
Nursing home	—	—	C	—	—	C	—	—	—	P	—	Articles 20 and 21
Outdoor wood-fired hydronic heater	—	—	P	—	—	—	—	—	—	—	—	Article 20
Porkchop subdivision	—	—	C	—	—	—	—	—	—	—	—	Article 21
Residential facility	—	—	E	—	—	E	—	—	E	E	—	Article 22
Senior housing	—	P	C	C	C	C	—	—	—	—	—	Article 21
Temporary structure	P	P	P	P	P	P	P	P	P	P	P	Article 20
Zero lot line development	C	C	C	—	—	C	C	—	—	—	—	Article 33

275 Attachment 3

City of Rochester

Table 18-C Food-Lodging-Public Recreation Uses
[Amended 5-7-2019]

LEGEND

P = Permitted Use

C = Conditional Use

E = Use Allowed by Special Exception

Food-Lodging-Public Recreation Uses	Residential Districts				Commercial Districts				Industrial Districts		Special		Criteria/Conditions
	R1	R2	NMU	AG	DC	OC	GR	HC	GI	RI	HS	AS	Reference
Cafe	—	—	P	C	P	P	P	P	—	—	—	P	Article 21
Campground	—	—	—	E	—	—	—	—	—	E	—	—	Article 22
Caterer	—	—	P	—	P	P	—	P	P	P	—	—	
Club	—	—	C	—	P	P	—	P	—	—	—	—	Article 21
Community center	—	—	P	—	P	P	P	P	—	—	—	—	
Conference center	—	—	C	—	P	P	P	P	—	—	P	P	Article 21
Country club	—	—	—	C	—	—	P	E	—	C	—	—	Article 21
Food stand	—	—	E	—	E	E	P	E	E	E	E	E	Article 22
Function hall	—	—	—	—	P	P	P	P	—	—	—	—	
Golf course	—	—	—	P	—	—	P	—	—	P	—	—	Article 22
Health club	—	—	C	C	P	P	P	P	—	—	—	—	Article 21
Lodging, bed-and-breakfast	—	C	P	—	P	P	—	P	—	—	—	—	Article 21
Lodging, hotel	—	—	C	—	P	C	P	P	—	—	C	C	Article 21
Lodging, motel	—	—	—	—	—	—	P	P	—	—	—	C	Articles 20 and 21
Nightclub	—	—	—	—	P	—	P	P	—	—	—	—	
Recreation, indoor	—	—	C	—	P	C	P	P	—	C	—	—	Article 21
Recreation, outdoor	—	—	—	C	—	C	P	P	—	C	—	—	Article 21
Recreation, park	P	P	P	P	P	P	—	P		C	—	—	Article 21
Restaurant	—	—	P	—	P	C	P	P	—	—	—	P	Article 21
Restaurant, drive-through	—	—	—	—	P	—	P	P	—	—	—	—	
Tavern	—	—	C	—	P	—	P	P	—	—	—	P	Article 21
Theater/cinema (5,000 square feet or less)	—	—	P	—	P	P	P	P	—	—	—	—	Article 21
Theater/cinema (over 5,000 square feet)	—	—	—	—	C	—	P	P		—	—	—	Article 21

275 Attachment 4

City of Rochester

Table 18-D Industrial-Storage-Transport-Utility Uses
[Amended 5-7-2019]

LEGEND

P = Permitted Use

C = Conditional Use

E = Use Allowed by Special Exception

Industrial-Storage- Transport-Utility-Uses	Residential Districts				Commercial Districts				Industrial Districts		Special		Criteria/Conditions
	R1	R2	NMU	AG	DC	OC	GR	HC	GI	RI	HS	AS	Reference
Airport	—	—	—	E	—	—	—	—	—	—	—	P	Article 21
Commercial parking facility	—	—	—	—	C	—	—	—	—	—	—	—	
Contractor's storage yard	—	—	—	E	—	—	—	E	P	P	—	—	Articles 20 and 22
Distribution center	—	—	—	—	—	—	P	C	P	—	—	—	Article 21
Emergency services facility	—	—	—	—	C	C	—	C	C	—	P	—	Article 21
Fuel storage	—	—	—	—	—	—	P	E	E	—	—	—	Article 21
Helipad (accessory use)	—	—	—	E	—	E	P	E	P	P	P	P	Article 21
Industry, heavy	—	—	—	—	C	—	P	E	P	E	—	—	Article 21
Industry, light	—	—	—	—	—	—	P	P	P	—	—	—	Article 21
Industry, recycling	—	—	—	—	—	—	—	—	—	P	—	—	Articles 20 and 22
Junkyard	—	—	—	—	—	—	—	E	E	P	—	—	Articles 20 and 22
Laundry establishment-3	—	—	—	—	—	—	—	P	P	—	—	—	
Mini-warehouse	—	—	—	—	—	—	P	C	P	—	—	—	Articles 20 and 21
Monument production	—	—	C	—	—	C	—	P	P	P	—	—	Article 21
Parking lot	—	C	C	C	C	C	—	P	C	P	C	P	Article 21
Printing facility	—	—	C	—	—	P	P	P	P	—	—	—	
Public parking facility	—	—	—	—	P	—	—	—	—	—	—	—	
Recycling facility	—	—	—	—	—	—	—	E	E	P	—	—	Articles 20 and 22
Research and development	—	—	—	—	E	P	P	P	P	—	—	—	Article 21
Sawmill	—	—	—	—	—	—	—	—	E	—	—	—	Article 21
Sawmill, temporary (accessory use)	—	—	—	P	—	P	—	P	P	P	—	P	Article 23

Industrial-Storage- Transport-Utility-Uses	Residential Districts				Commercial Districts				Industrial Districts		Special		Criteria/Conditions
	R1	R2	NMU	AG	DC	OC	GR	HC	GI	RI	HS	AS	Reference
Solid waste facility	—	—	—	—	—	—	—	—	—	P	—	—	Articles 20 and 22
Tank farm	—	—	—	—	—	—	P	C	P	—	—	—	
Trade shop	—	—	C	—	C	C	P	P	P	P	—	—	Article 21
Transportation service	—	—	C	—	C	—	P	P	C	C	—	—	Article 21
Truck terminal	—	—	—	—	—	—	P	—	C	C	—	—	Article 21
Utility - substation	E	E	E	E	E	C	E	P	P	P	E	E	Article 21
Utility - power generation	—	—	—	—	E	—	E	—	E	E	—	—	Article 21
Warehouse	—	—	C	—	C	C	P	P	P	C	—	C	Articles 20, 21 and 23
Wireless communications facility	—	—	—	E	E	E	P	E	P	P	E	E	Articles 20 and 22

Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of legislation of the City of Rochester adopted since June 2016, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).]

§ DL-1. Disposition of legislation.

Adoption Date	Subject	Disposition
6-7-2016	Vehicles and Traffic Amendment	Ch. 254
9-6-2016	Zoning Amendment	Ch. 275
9-6-2016	Administrative Code Amendment	Ch. 7
10-4-2016	Administrative Code Amendment	Ch. 7
11-1-2016	Administrative Code Amendment	Ch. 7
11-1-2016	Water Use Regulations and Rates Amendment	Ch. 260, Art. I
11-1-2016	Sewers Amendment	Ch. 200
2-14-2017	Sewers Amendment	Ch. 200
2-14-2017	Fire Prevention Amendment	Ch. 75, Art. II
3-7-2017	Zoning Map Amendment	NCM
4-4-2017	Zoning Amendment	Ch. 275
5-2-2017	Fire Prevention Amendment	Ch. 75, Art. II
6-6-2017	Sewers Amendment	Ch. 200
6-6-2017	Sewers Amendment	Ch. 200
6-6-2017	Zoning Amendment	Ch. 275
12-5-2017	Solid Waste Amendment	Ch. 210
12-5-2017	Zoning Amendment	Ch. 275
2-6-2018	Sewers Amendment	Ch. 200
2-6-2018	Water Use Regulations and Rates Amendment	Ch. 260, Art. I

Adoption Date	Subject	Disposition
2-6-2018	Zoning Amendment	Ch. 275
3-6-2018	Solid Waste Amendment	Ch. 210
3-6-2018	Vehicles and Traffic Amendment	Ch. 254
3-6-2018	Peace and Good Order Amendment	Ch. 167
7-10-2018	Water Use Regulations and Rates Amendment	Ch. 260, Art. I
8-7-2018	Fire Department Amendment	Ch. 75, Art. I
9-4-2018	Zoning Amendment	Ch. 275
9-4-2018	Zoning Amendment	Ch. 275
3-5-2019	General Provisions: Adoption of Code	Ch. 1, Art. II
3-5-2019	Zoning Amendment	Ch. 275
3-5-2019	Zoning Amendment	Ch. 275
5-7-2019	Zoning Amendment	Ch. 275

DEFINITIONS NOTE: For the convenience of the Code user, all terms defined in this Code are included in the Index under the heading "Definitions and Abbreviations."

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