

## 203 Administration

### 203.010 General Provisions.

(A) Abrogation and Greater Restrictions. It is not intended by this code to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

(B) Applications and Fees.

- (1) Application. An application may only be submitted by the property owner, individual or other entity that has legal interest in the property.
- (2) Forms. Application shall be made on forms provided by the City and shall include all information and data requested. The applicant shall meet with the Community Development Department to receive the proper forms and information.
- (3) Documents. The applicant must provide complete documentation as prescribed by this ordinance or requested by the City Manager. The City Manager shall require a survey of the property, prepared by a registered and licensed surveyor, if necessary to review the application. The City Manager shall determine if the application is complete and then schedule the complete application for the next available Planning Commission meeting.
- (4) Other Agencies. Upon receipt of the completed application, the City Manager shall refer copies to pertinent City staff and other public agencies for review and comment. If within 30 days, any agency fails to submit a report or request an extension, the City may proceed.
- (5) Time. A recommendation/decision must be completed by each of the various reviewing entities within 60 days from the date of receipt. The City must render a final decision within a period not to exceed 6 months.

(C) Lapse and Reapplication.

- (1) Lapse. A permit or approval which has been granted but not used shall become void one year after its effective date. A permit which has become void may be renewed in accordance with the procedures herein established for an original application.
- (2) Reapplication. No application for the same or substantially the same request shall be made within six months of the date of denial.

- (3) Fees. Fees for the various applications shall be as determined by City Council resolution. A copy of the current fee schedule shall be kept on file by the City Manager.
- (D) Enforcement and Penalty. This ordinance shall be administered and enforced by the City Manager. The City Manager may institute, in the name of the City of Shoreview, all appropriate actions or proceedings against violators as provided by law. Any person, firm or corporation, who violates or refuses to comply with any of the provisions of this ordinance shall be guilty of a misdemeanor. Each day that a violation is permitted to exist shall constitute a separate offense.
- (E) Interpretation and Intent. In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements adopted for the promotion of the public health, safety and welfare. To protect the public, among other purposes, such provisions are intended to provide for adequate light, pure air, safety from fire and other danger, prevent undue concentration of population, provide ample parking facilities, regulate the location and operation of businesses, industries, dwellings and buildings for other specified purposes, preserve property values by providing for orderly and compatible development of the various land uses, provide for administration of this ordinance, provide for amendments hereto, and provide for official recording of this ordinance and all amendments hereto.
- (F) Separability. If any part of this ordinance is held to be unconstitutional or otherwise illegal, the remainder of this ordinance shall be deemed and held to be valid and remain in force and effect as if such portion had not been included herein. If this ordinance or any provision herein is held to be inapplicable to any person, property or work, such holding shall not affect the applicability hereof to any other person's property or work.
- (G) Warning and Liability Disclaimer. This ordinance does not imply that areas outside the Flood Plain Districts or land uses permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Shoreview, or any officer or employee thereof, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

### **203.020 Review Process.**

- (A) Public Hearing. Applications that require review via a public hearing shall be processed after receipt of a complete application that contains all the required submittal information. The City Manager shall refer the application to the Planning Commission and establish a date for hearing of the application. The application shall be heard and acted on by the Planning Commission and City Council in accordance with Minnesota Statute 15.99.

- (1) Planning Commission. The Planning Commission shall hold a public hearing, preceded by published and/or mailed notice as required by the terms of Section 203. Upon review of the application in accordance with the requirements of the Development Ordinance, the Planning Commission will forward the application to the City Council with a recommendation of approval or denial and the reasons thereof, or shall table the application for further consideration.
- (2) City Council. The City Council may hold a public hearing in lieu of a public hearing by the Planning Commission. Upon receipt of the Planning Commission report, the City Council shall consider the application. The City Council shall, taking into consideration the advice and recommendations of the Planning Commission, table, grant or deny the application in accordance with the requirements of the Development Ordinance.
- (3) Notice and Hearing Procedure. Public hearings shall be preceded by either published notice and/or mailed notice as required by the terms of Section 203.
  - (a) Publication. Notice of the purpose, time and place of a public hearing shall be published at least 10 days before the date of the hearing in the official newspaper of the City of Shoreview as designated by the City Council. Affidavits of publication shall be made a part of the record of the proceedings.
  - (b) Mailed Notice. Notice of the purpose, time and place of a public hearing shall be mailed at least 10 days before the date of the hearing to each recorded owner of property within 350 feet of the perimeter of the property, which will be the subject matter of the public hearing. An affidavit containing the names of the property owners and the addresses to which the notices were mailed shall be made a part of the record of the proceedings.
  - (c) Failure to Give Notice. Failure to give mailed notice, or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with the mailed notice requirement.
- (4) Issuance and Conditions. If approved, the City Council may impose conditions and safeguards therein to insure that the proposed use will not be detrimental to the health, safety or general welfare of the community and that the use is in harmony with the general purpose and intent of the Development Ordinance and the Comprehensive Guide Plan. If denied, the City Council shall provide the reasons thereof.

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(5) Decision. The City Council has the authority to grant or deny the request in accordance with the requirements of the Development Ordinance upon majority vote of its membership, unless otherwise stated in this ordinance. Requests for text amendments, zoning district map amendments, comprehensive guide plan amendments and planned unit development – development stage require a 4/5 majority vote of the City Council’s entire membership for approval.

(B) Planning Commission/City Council Review. Applications that require review by the Planning Commission and City Council shall be processed after receipt of a complete application that contains all the required submittal information. The City Manager shall refer the application to the Planning Commission and establish a date for hearing of the application. The application shall be heard and acted on by the Planning Commission and City Council in accordance with Minnesota Statute 15.99.

(1) Planning Commission. The Planning Commission shall hold a hearing, preceded by mailed notice as required by Section 203, in consideration of granting the request. The Planning Commission shall review the application in accordance with the requirements of the Development Ordinance. Upon review of the application, the Planning Commission will recommend to the City Council approval and conditions thereof or denial and the reasons thereof, or shall table the application for further consideration.

(2) City Council. Upon receipt of the report from the Planning Commission, the City Council shall consider the application. The City Council shall, taking into consideration the advice and recommendations of the Planning Commission, table, grant or deny the application in accordance with the requirements of the Development Ordinance.

(3) Notice and Hearing Procedure.

(a) Mailed Notice. Notice of the purpose, time and place of a public hearing shall be mailed at least 10 days before the date of the hearing to each recorded owner of property within 350 feet of the perimeter of the property which will be the subject matter of the public hearing. An affidavit containing the names of the property owners and the addresses to which the notices were mailed shall be made a part of the record of the proceedings.

(b) Failure to Give Notice. Failure to give mailed notice or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with the mailed notice requirement.

- (4) Issuance and Conditions. If approved, the Council may impose conditions and safeguards therein to insure that the proposed use will not be detrimental to the health, safety or general welfare of the community and that the use is in harmony with the general purpose and intent of the Development Ordinance and the Comprehensive Guide Plan. If denied, the City Council shall provide the reasons thereof.
- (5) Decision. The City Council has the authority to table, grant or deny the request in accordance with the requirements of the Development Ordinance upon majority vote of its membership, unless otherwise stated in this ordinance.
- (C) Planning Commission Review. Applications that require review by the Planning Commission shall be processed after receipt of a complete application that contains all the required submittal information. The City Manager shall refer the application to the Planning Commission and establish a date for hearing of the application. The application shall be heard and acted on by the Planning Commission in accordance with Minnesota Statute 15.99.
- (1) Hearing. The Planning Commission shall hold a hearing, preceded by mailed notice as required by Section 203, in consideration of granting the request. The Planning Commission shall review the application in accordance with the requirements of the Development Ordinance. Upon review of the application, the Planning Commission shall table the application for further consideration, approve the application with conditions thereof or deny the application and provide reasons thereof.
- (2) Notice and Hearing Procedure.
- (a) Mailed Notice. Notice of the purpose, time and place of a public hearing shall be mailed at least 10 days before the date of the hearing to each recorded owner of property within 150 feet of the perimeter of the property which will be the subject matter of the public hearing. An affidavit containing the names of the property owners and the addresses to which the notices were mailed shall be made a part of the record of the proceedings.
- (b) Failure to Give Notice. Failure to give mailed notice or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with the mailed notice requirement.
- (c) Issuance and Conditions. If approved, the Planning Commission may impose conditions and safeguards therein to insure that the proposed use will not be detrimental to the health, safety or general welfare of the community and that the use is in harmony with the general purpose and intent of the Development Ordinance and the Comprehensive

Guide Plan. If denied, the Planning Commission shall provide the reasons thereof.

(3) Decision and Appeal. The Planning Commission has the authority to table, grant or deny the request in accordance with the requirements of the Development Ordinance upon majority vote of its membership. Decisions of the Planning Commission shall be final unless the applicant or other aggrieved party submits an appeal in accordance with Section 203.020(E), Appeals to Planning Commission Decisions.

(D) Administrative Review. The City Manager shall review the application for compliance with the regulations of the Development Ordinance after receipt of a complete application that contains all required submittal information.

(1) Notice. The City Manager shall provide written notification to property owners in accordance with the requirements of Section 203. Failure to give a mailed notice or defects in the notice shall not invalidate the review process provided that a bona fide attempt has been made to contact the property owners.

(2) Issuance and Conditions. If the City Manager determines that the use is in compliance with the conditions contained in Section 203, then the City Manager shall approve or deny the application. Conditions required by the Development Ordinance shall be applied to the approval. The application may be denied if the City Manager finds that the request proposed does not conform to the Development Ordinance.

(3) Decision and Appeal. Decisions of the City Manager shall be final unless the applicant or other aggrieved party submits an appeal in accordance with Section 203.020(F), Appeals of Administrative Decisions.

(E) Appeals of Planning Commission Decisions.

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(1) Application. Applications to appeal a Planning Commission decision shall be made on forms provided by the City Manager, who shall forward completed applications to the City Council for review.

(2) Deadline for Application. Appeals must be made in writing and be submitted to the City Manager within five business days of the Planning Commission's decision.

(3) Review Process. The City Manager shall refer the application to the City Council and establish a date for hearing of the application. The application shall be processed in accordance with Minnesota Statute 15.99.

(4) Notice and Hearing Procedure.

- (a) Mailed Notice. Notice of the purpose, time and place of the appeal shall be mailed at least 10 days before the date of the hearing to the appellant and those property owners notified during the review process. An affidavit containing the names of the property owners and the addresses to which the notices were mailed shall be made a part of the record of the proceedings.
  - (b) Failure to Give Notice. Failure to give mailed notice, or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with the mailed notice requirement.
  - (5) Criteria for Review. Any appeal must be based on the application's compliance or noncompliance with the requirements of the Development Ordinance.
  - (6) Decision. The decision of the City Council to table, grant or deny the appeal requires a majority vote of members present.
- (F) Appeals of Administrative Decisions.
- (1) Application. Applications to appeal an administrative decision shall be made on forms provided by the City Manager, who shall forward completed applications that include the required information to the Planning Commission, which shall act as the Board of Appeals and Adjustments for review.
  - (2) Deadline for Application. Appeals must be made in writing and be submitted to the City Manager within five business days of the administrative decision.
  - (3) Review Process. The City Manager shall refer the application to the Planning Commission and establish a date for hearing of the application. The application shall be processed in accordance with Minnesota Statute 15.99.
  - (4) Notice and Hearing Procedure.
    - (a) Mailed Notice. Notice of the purpose, time and place of a hearing shall be mailed at least 10 days before the date of the hearing to the appellant and those property owners notified during the permit review process. An affidavit containing the names of the property owners and the addresses to which the notices were mailed shall be made a part of the record of the proceedings.

(b) Failure to give mailed notice, or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with the mailed notice requirement.

(5) Criteria for Review. Any appeal must be based on the application's compliance or noncompliance with the requirements of the Development Ordinance.

(6) Decision and Appeal. The decision of the Board of Adjustment and Appeals to grant or deny the appeal requires a majority vote of members present. Decisions of the Board of Appeals and Adjustments on appeals shall be final unless an appeal is filed in accordance with Section 203.020(E).

**203.030** Permits. Unless otherwise stated in Section 203, the following regulations shall apply to all permits.

(A) Expiration of Permit. Unless otherwise stated in Section 203, an approved permit shall expire and be considered null and void one year after it has been issued if the use has not been established or no construction has taken place, except that, upon written application of the owner of the affected land prior to the end of such year, the authorizing body may extend the expiration date of such permit for an additional period not to exceed one year.

(B) Revocation. If the permittee is not in compliance with the terms of the permit, a hearing shall be scheduled before the City Council for the purpose of determining whether to revoke the permit. The hearing shall be preceded by ten (10) days mailed notice to permittee and those occupants of property within applicable notification radius of the process under which the permit was issued.

(C) Renewal. In general, renewal requirements shall be as provided for in each permit process. The authorizing body may require periodic renewal as a condition of approval.

(D) Reapplication. No application for a permit with a same or similar request shall be submitted for a period of 12 months from the date of denial of the previous application.

(E) Amended Permits. Amended permits shall be requested for changes in the use or conditions of the existing permit. A request to amend the permit shall be administered in a manner similar to that required for a new permit.

(F) Other Permits and Approvals. The applicant shall obtain other permits and approvals from other governmental agencies as required.



**203.031 Accessory Apartment Permit.**

- (A) Application. Applications for an accessory apartment within RE or R-1 zoning districts shall be allowed subject to review by the City Manager. Applications shall be made on forms provided by the City and shall include the submittal information indicated on the form.
- (B) Notice. The City Manager shall provide written notification to property owners within 150 feet of the property that a permit has been approved upon issuance of the permit.
- (C) Review Process. Applications for accessory apartments shall be reviewed administratively by the City Manager in accordance with Section 203.020 (D).
- (D) Criteria for Review. The City Manager shall review the completed application in consultation with the Building Inspector and Fire Chief, and shall determine whether the application complies with the regulations of the Development Ordinance and meets the standards in Section 207.010.
- (E) Length of Permit. Upon the sale of a home having an accessory apartment permit, the buyer must renew the permit.
- (F) Record of Permit. The City shall require the owner to place restrictive covenants on the property controlling the use of the accessory apartment. The City Attorney must approve said covenants. Said covenants shall be filed with the Ramsey County Recorder or Registrar of Titles.

**203.032 Conditional Use Permit (Non-Floodplain).**

- (A) General. Certain uses, while generally not suitable in a particular zoning district, may under some circumstances be suitable if conditions are attached. In those circumstances, conditions may be imposed to protect the health, safety and welfare of the community and to insure harmony with the Comprehensive Guide Plan. The permit shall be granted for a particular use and not a particular person or firm.
- (B) Applications. The property owner, individual or other entity that has legal interest in the property may submit applications for a Conditional Use Permit. This application shall be filed with the City Manager on the application form provided by the City and include the required information.
- (C) Review Process. Conditional use permit applications shall require a public hearing and shall be processed in accordance with Section 203.020(A).
- (D) Criteria for Review. The Conditional Use Permit may be granted provided the proposed use is listed as a conditional use for the district in which it is located

and upon showing that the standards and criteria of the Development Ordinance will be satisfied in addition to the following:

- (1) The use is in harmony with the general purposes and intent of the Development Ordinance.
  - (2) The use is in harmony with the policies of the Comprehensive Guide Plan.
  - (3) Certain conditions as detailed in the Development Ordinance exist.
  - (4) The structure and/or land use conform to the Land Use Chapter of the Comprehensive Guide Plan and are compatible with the existing neighborhood.
- (E) Length of Conditional Use Permit. Any use permitted under the terms of a conditional use permit shall be established and conducted in conformity to the terms of such permit and of any conditions designated in connection therewith. The Conditional Use Permits shall remain in effect for as long as the conditions agreed upon are observed, provided that nothing in this section shall prevent the City Council from action or amending the Development Ordinance to change the status of conditional uses.
- (F) Record of Permit. A certified copy of any conditional use permit shall be filed with the Ramsey County Recorder or Registrar of Titles.

### **203.033 Conditional Use Permits (Floodplain)**

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Application. Certain uses may be permitted in the FW, FF, GF Districts with a Conditional Use Permit provided the criteria of Section 205.091 are met so as to promote the public, health, safety and general welfare.

- (A) Application. Certain uses may be permitted in the Floodplain District with a Conditional Use Permit provided the standards of Section 205.091 are met so as to promote the public, health, safety and general welfare. Applications for a conditional use permit in a floodplain shall be made on forms provided by the City Manager and include the required information.
- (B) Review Process. Conditional use permit applications in floodplains shall require a public hearing and shall be processed in accordance with Section 203.020(A).
- (C) Notice and Hearing Procedure. In addition to the notice and hearing requirements in Section 203.020(A), the City Manager shall submit by mail to the Commissioner of Natural Resources a copy of the application for proposed Conditional Use sufficiently in advance so that the Commissioner will receive at least ten days notice of the hearing.

(D) Issuance and Conditions. The City Council may prescribe such conditions and safeguards, in addition to those specified below, when granting a Conditional Use Permit as it deems necessary to satisfy the intent and requirements of Section 205.091, the Floodplain Management Ordinance. Such conditions may include, but are not limited to, the following:

- (1) Modification of waste treatment and water supply facilities.
- (2) Limitations on period of use, occupancy, and operation.
- (3) Imposition of operational controls, sureties, and deed restrictions.
- (4) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures.
- (5) Flood-proofing measures, in accordance with the State Building Code and this ordinance. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood-proofing measures are consistent with the Regulatory Flood Protection Elevation and associated flood factors for the particular area.

(E) Criteria for Review. The City Council shall consider all relevant factors specified in the Development Ordinance, and

- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments.
- (2) The danger that materials may be swept onto other lands or downstream to the injury of others or they may block bridges, culverts or other hydraulic structures.
- (3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the owner.
- (5) The importance of the services provided by the proposed facility to the community.
- (6) The requirements of the facility for a water front location.
- (7) The availability of alternative locations not subject to flooding for the proposed use.

- (8) The compatibility of the proposed use with existing development and the planned use of the property.
  - (9) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
  - (10) The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - (11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
  - (12) Such other factors which are relevant to the purposes of this ordinance.
- (F) Notification of Decision. In addition to Section 203.020(A)(5), the City Manager shall forward a copy of all decisions granting Conditional Use Permits to the Commissioner of Natural Resources within ten (10) days of the Council's action.

**203.034 Design Review for Substandard Lots.**

(A) Administrative Review.

- (1) Eligible Projects. Design review for the following projects shall be reviewed administratively by the City Manager in accordance with Section 203.020(D):
  - (a) Projects on lots that exceed 80% of the minimum required lot width, depth, and area.
  - (b) Driveways, sidewalks, patios, and other at-grade structures.
  - (c) All detached accessory structures including sheds, garages, and water-oriented structures.
  - (d) Attached decks and unenclosed porches.
  - (e) Enclosed porches, dwelling additions, and additions to an attached garage, provided said porch or addition is 150 square feet or less.
- (2) Application. Administrative design review will be performed as part of the Building Permit process. In addition to information required for Building Permit review, the applicant must provide any and all information requested by the City Manager for the purpose of determining compliance with the applicable design standards of the Development Ordinance.

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- (3) Criteria for Review. The City Manager may grant approval of the design review only when the proposed improvements comply with the applicable design standards of the Development Ordinance. Any variances to the design standards require review and approval by the Planning Commission.
- (4) Expiration. Design review approval shall become void within one year from the date of approval unless a building permit has been obtained and construction began or unless the City Manager grants a written extension.

(B) Design Review by the Planning Commission.

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- (1) Review. The Planning Commission must approve any construction, reconstruction or expansion of a structure on a substandard lot except for those projects eligible for administrative review as described in Section 203.034(A). The Planning Commission review shall be in accordance with Section 203.020(C).
- (2) Application. Applications for residential design review shall be made on forms provided by the City Manager and include the required information. The City Manager shall forward completed applications to the Planning Commission.
- (3) Criteria for Review. Unless a variance is approved, the Planning Commission may grant approval of the design review only when the proposed improvements comply with the applicable design standards of the Development Ordinance.
- (4) Expiration. Design review approval shall become void within one year from the date of approval unless a building permit has been obtained and construction began or unless the Planning Commission grants an extension.

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**203.035 Grading Permit.**

- (A) Grading means any land disturbance activity and includes construction, landscaping, clearing and grubbing, excavating, transporting soil and earth material, and filling of land.
- (B) Permit Required. A grading permit or a building permit must be obtained from the City before commencing any of the following activities:
  - (1) Any grading in a wetland area.

- (2) Grading within any Buff or Shore Impact Zone or on any Steep Slope which will involve the movement of more than five (5) cubic yards of soil material, or disturb an area of more than 500 square feet.
  - (3) Grading elsewhere in the City which will involve the movement of more than ten (10) cubic yards of soil material or disturb an area of more than 1,000 square feet.
  - (4) Grading in association with detached single family residential construction does not require a separate grading permit; however, all of the requirements of this section are to be requirements of the building permit.
  - (5) In Short Impact Zones, Bluff Impact Zones and on Steep Slopes, a Grading Permit is required to construct, maintain, repair or reconstruct a retaining wall, as specified in Sec. 209.080(G)(1)(b) and (c).
  - (6) Any grading that modifies the historic or approved drainage pattern in a significant manner, as determined by the Public Works Director.
- (C) Timing. A grading permit may not be issued until after the City Council has granted the applicant a preliminary plat, site and building plan, or equivalent approval if required by Section 203.
- (D) Applications. Applications for a grading permit shall be made on forms provided by the City Manager and include the required information.
- (E) Review Process.
- (1) Administrative Review. Applications for grading permits may be reviewed administratively by the City Manager in accordance with Section 203.020(D) (Administrative Review) if the proposed grading activities will involve no more than 2,000 cubic yards of soil or disturb an area no larger than 30,000 square feet.
  - (2) Planning Commission/City Council Review. All other grading permit applications shall require Planning Commission review and City Council action in accordance with Section 203.020(B) (Planning Commission/City Council Review).
- (F) Criteria for Review. The City shall review the application in accordance with the standards in Section 209.040 (Soils, Slopes, Grading and Erosion and Sediment Control) and evaluate possible soil erosion, water quality, and view degradation impacts. When deemed by the City to be necessary, conditions may be attached to the permit issuance to minimize the stated impacts.

- (G) Erosion Control Agreement. The City shall require an applicant for a grading permit to enter into an Erosion and Sediment Control Agreement per Section 203.080(B) (Erosion and Sediment Control Agreements).
- (H) Grading Certification. An as-built survey, prepared by a surveyor licensed and registered by the State of Minnesota, shall be submitted upon completion of the permitted work for the following:
- (1) All new principal structures.
  - (2) Any development requiring construction, enlargement and/or alteration of stormwater management infrastructure, including, but not limited to, ponds, pipes or infiltration basins.
  - (3) Substantial addition or alteration of an existing principal building. A substantial addition is defined as an improvement valued in excess of 50% of the Market Value of the building, as determined by the real estate tax statement for the parcel exclusive of the value of the land, or an expansion of the foundation area of the existing principal building by more than 50%.
  - (4) Any addition or land alteration that modifies the site drainage pattern in a manner that significantly alters the historic or approved site drainage, as determined by the Public Works Director.

The Grading Certification shall include such detail as required by the City Manager and shall be submitted prior to issuance of a Certificate of Occupancy for the structure.

- (I) Erosion and Sediment Control and Grading Certification Escrows. An Erosion and Sediment Control Escrow shall be submitted that is sufficient to insure the installation, completion, and maintenance of the erosion and sediment control plan and practices and to insure the site is revegetated and landscaped in compliance with the approved grading plan. A Grading Certification Escrow shall be submitted that is sufficient to insure that the required location and elevation information for the site is collected and submitted to the City for review. The method for determining the amount of the Erosion and Sediment Control and Grading Certification Escrows shall be ordained from time to time by the City Council.
- (J) Administrative of Escrow. The escrow may be administratively reduced, upon written request by the poster of the escrow, as phases of the project are completed. Upon project completion, the escrow may be administratively returned.

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- (1) The City may, at its discretion, use the erosion and sediment control and grading certification escrow monies to bring the grading into conformance with the permit, erosion control plan, or any standards set forth in Section 209.040 (Soils, Slopes, Grading and Erosion and Sediment Control), including, but not limited to, surveying, street sweeping, silt fence repair, turf establishment, and silt fence removal, in the event that the applicant does not correct deficiencies after 24-hour notice by the City.
  - (2) If it becomes necessary for the City to utilize all or a portion of the surety, Developer shall immediately deposit cash in an amount sufficient to re-establish the original surety amount and, until Developer makes such a deposit, no further development may occur on the Property.
- (K) Expiration. Grading permits issued by the City shall expire by limitation and become null and void if the work authorized by such permit is not commenced within ninety (90) days from the date of issuance or if the authorization is suspended or abandoned at any time after the work has commenced for a period of one hundred and eighty (180) days. In any case, all permits expire within one year of issuance.
- (L) Other Permits and Approvals. The applicant shall obtain all required permits from agencies having jurisdictional authority, including, but not limited to the Department of Natural Resources, the Army Corps of Engineers, Grass Lake Watershed Management Organization, Vadnais Lake Watershed Management Organization, Rice Creek Watershed District, and/or Ramsey County.

### **203.036 Home Occupation Permit.**

- (A) Permit Required. Except as provided herein, no person shall conduct a home occupation without obtaining a permit.
- (B) Waiver. The City Manager is authorized to waive the permit requirement if the home occupation can be conducted subject to the following restrictions:
- (1) No services shall be provided to customers on the premises.
  - (2) Only vehicles routinely associated with single-family dwelling uses (including conventional automobiles, vans, minivans, sport utility vehicles and pickup trucks but excluding step vans or similar sized delivery vehicles) may pick up or deliver home occupation materials to the premises.
  - (3) Compliance with the standards contained in Section 207.020 (Home Occupations).



- (C) Application. An application for a home occupation permit shall be made on forms provided by the City Manager and include the required information.
- (D) Review Process and Criteria. The City Manager shall review the application in accordance with Section 203.020(D) and the standards stated in Section 207.020 (Home Occupations).
- (E) Notice. The City Manager shall provide written notification to property owners within 150 feet of the property that a permit has been issued upon issuance of the permit. Failure to give a mailed notice or defects in the notice shall not invalidate the review process provided that a bona fide attempt has been made to contact the property owners.

**203.037 Mining Permit.**

- (A) Permit Required. No individual shall mine nor operate an excavation operation of any type without securing a permit. A Conditional Use Permit, in accordance with the procedures of Section 203.032 (Conditional Use Permit [Non-Floodplain]) or Section 203.033 (Conditional Use Permit [Floodplain]) shall be required in order to conduct a mining operation in any district.
- (B) Application. Applications for a mining permit shall be made on forms provided by the City Manager and include the required information.
- (C) Conditions. Terms of the permit shall include provisions which:
- (1) Provide for a two-year review and renewal process to ensure compliance with these regulations.
  - (2) Requires processing machinery to be located consistent with the structure setback requirements from ordinary high water elevations of public waters and from bluffs.

- 203.038 Relocated Structure Permit.** The relocation of a structure, excluding accessory buildings of less than 120 square feet or other temporary structures, from one location to another location in the City or from a location outside the City to a location in the City shall require a Conditional Use Permit in accordance with Section 203.032 (Conditional Use Permit).

<p><b>Rev. Date</b>  <b>4/18/05</b>  <b>Ord. #774</b></p>
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**203.039 Riparian Lot – Detached Accessory Structure Permit.**

- (A) Permit Required. A permit is required to place any detached accessory structure in the front yard of a riparian lot within the RE or R-1 zoning districts.

- (B) Application. An application for a riparian lot detached accessory structure permit shall be made on forms provided by the City Manager and submitted with the required information.
- (C) Review Process. Applications for riparian lot detached accessory structure permit shall be reviewed in accordance with Section 203.020(D) (Administrative Review).
- (D) Notice. The City Manager shall provide written notification to property owners within 150 feet of the subject property upon issuance of the permit. Failure to give a mailed notice or defects in the notice shall not invalidate the review process provided that a bona fide attempt has been made to contact the property owners.
- (E) Criteria for Review. The City Manager shall review the completed application in consultation with City Department Heads to make the following determinations:
- (1) That the request is in general character with surrounding properties.
  - (2) The request will not cause a traffic sight problem or endanger public health or safety.
  - (3) The request will not encroach upon a public right-of-way, easement or utilities.
  - (4) A minimum front setback of 30 feet is maintained, unless the characteristics of the subject property (topography, drainage, utility locations, lot coverage limitations) require this setback to be reduced and the proposed setback is generally consistent with neighboring properties. In no case shall the front setback be less than 20 feet unless the Planning Commission approves a variance in accordance with Section 203.070 (Variances).

#### **203.040 Sign Permit.**

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- (A) Permit Required. A permit shall be obtained prior to the installation, alteration or display of any sign for which a permit is required, including the installation or alteration of illumination of a sign whether direct or indirect, internal or external. No sign permits shall be approved unless the City Manager finds that the proposed sign meets the standards of Section 208, Signs, or is consistent with a Comprehensive Sign Plan approved for the property.

- (1) Application. Application for a sign permit shall be made on a form provided by the City Manager and shall be submitted with the required information.
  - (2) Review Process. The City Manager shall administratively review the application in accordance with Section 203.020(D) (Administrative Review) and for compliance with the Development Ordinance and the standards in Section 208 (Signs).
  - (3) Expiration. Sign permits shall become null and void if the sign is not installed within 180 days after the issuance of a permit.
- (B) Permit Exemptions. No permit will be required under this article for the following types of signs, subject to the limitations specified in Section 208:
- (1) Window.
  - (2) Address.
  - (3) Temporary real estate, except off-site direction sites for residential developments, as regulated in Section 208.040(B)(13)(b).
  - (4) Political opinion.
  - (5) Civic event.
  - (6) Public traffic control.
  - (7) Construction.
  - (8) Garage sale.
  - (9) Traffic directional signs.
  - (10) Public notices or any sign relating to an emergency.
- (C) Comprehensive Sign Plan
- (1) Administrative Review.
    - (a) Eligible Projects. Comprehensive Sign Plan review for multiple signs for a building or property may be reviewed administratively by the City Manager, in accordance with Section 203.020(D), provided any deviations proposed are minor, not to exceed the following:
      - (i) Free-standing Signs
        - i. The area of the free-standing sign exceeds the maximum area permitted by no more than 5%.
        - ii. The height of the free-standing sign exceeds the maximum height permitted by no more than 2 feet.
      - (ii) Wall Signs

- i. The number of wall signs exceeds the maximum number permitted by one.
    - ii. The length of the wall sign exceeds the maximum length permitted by no more than 5%.
    - iii. The allowable area of the wall sign exceeds the maximum area permitted by no more than 5%.
  - (b) Application. Applications for Comprehensive Sign Plan review shall be made on forms provided by the City Manager and be accompanied by detailed drawings to show the dimensions, design, structure and location for the sign. The applicant must provide any and all information requested by the City Manager for the purpose of determining compliance with the standards of Section 208 of the Development Ordinance.
  - (c) Criteria for Review. The City Manager may grant approval of the Comprehensive Sign Plan only when the proposed signs comply with the other provisions of Section 208 of the Development Ordinance.
- (2) Comprehensive Sign Plan Review by the Planning Commission/City Council.
  - (a) Review. Comprehensive Sign Plan applications not eligible for administrative review shall be processed in accordance with Section 203.020(B).
  - (b) Application. Applications for Comprehensive Sign Plan shall be made on forms provided by the City Manager and be accompanied by detailed drawings to show the dimensions, design, structure and location for each sign. The City Manager shall forward completed applications to the Planning Commission.
  - (c) Criteria for Review. Approval of the Comprehensive Sign Plan may be granted only when the proposed signs comply with the standards of Section 208 of the Development Ordinance. When a deviation is proposed, approval shall be based on findings that:
    - i. The plan proposes signs consistent in color, size and materials throughout the site.
    - ii. Approving the deviation is necessary to relieve a practical difficulty existing on the property.
    - iii. The proposed deviations from the standards of Section 208 result in a more unified sign package and greater aesthetic appeal between signs on the site.

- iv. Approving the deviation will not confer a special privilege on the applicant that would normally be denied under the Ordinance.
- v. The resulting sign plan is effective, functional, attractive and compatible with community standards.

(3) Length of Comprehensive Sign Plan Approval. Any signs permitted under the terms of Comprehensive Sign Plan approval shall be installed and maintained in conformity to the terms of such plan and any conditions designated in connection therewith. The approval shall remain in effect for so long as the conditions agreed upon are observed, provided that nothing in this section shall prevent the City Council from action or amending the Development Ordinance.

### **203.041 Site and Building Plan Review.**

- (A) Permit Required. Approval is required for all site and building plans for the improvement, development, alteration, or expanded use of any property in any district except property utilized or proposed for utilization in connection with single-family detached dwellings.
- (B) Application. An application for site and building plan review shall be made on forms provided by the City Manager and shall be submitted with the required information.
- (C) Review Process. Site and Building Plan Review applications shall be processed in accordance with Section 203.020(B) (Planning Commission/City Council Review).
- (D) Criteria for Review. The Site and Building Plan review may be granted provided the proposed use is listed as a permitted use for the district in which it is located and upon showing that the standards and criteria of the Development Ordinance will be satisfied and that the use is in harmony with the general purposes and intent of the Development Ordinance and the Comprehensive Guide Plan.
- (E) Length of Site and Building Plan Approval. Any use permitted under the terms of Site and Building Plan approval shall be established and conducted in conformity to the terms of such permit and any conditions designated in connection therewith. The approval shall remain in effect for so long as the conditions agreed upon are observed, provided that nothing in this section shall prevent the City Council from action or amending the Development Ordinance to change the status of said approval.
- (F) Agreement. The applicant may be required to enter into a Development Contract in accordance with Section 203.080(A).

**203.042 Special Purpose Fences.** Fences for special purposes and fences differing in construction, height, or length, may be permitted in any district in the City by the issuance of a special fence permit approved by the City Council. Before issuing such a permit the City Council may require the applicant to secure in writing the consent of the adjoining property owners to the issuance of such a permit. The City Council may also submit the matter to the Planning Commission for its recommendation.

**203.043 Temporary Sale/Event Permit.**

(A) Permit Required. Except as provided here, no person shall conduct a temporary sale or event without first obtaining a permit to do so. Temporary sales and events include, but are not limited to, sale of merchandise by temporary vendors, temporary promotional sales by merchants, seasonal residential sales, seasonal sales of seasonal merchandise, sale of flowers or produces, fairs, carnivals and arts and craft sales.

(B) Exceptions. The following temporary sales and events do not require a permit:

(1) Temporary promotional sales within fully enclosed buildings.

(2) Up to two (2) seasonal residential sales per residential address per calendar year provided each sale does not exceed four (4) consecutive days.

(3) Art and craft sales conducted by non-profit organizations within a fully enclosed public or quasi-public building such as a school, church, or community center.

(4) Produce of farms or gardens provided the produce is grown by the person conducting the sale.

(C) Application. An application for a temporary sales/event permit shall be made on forms provided by the City Manager and shall be submitted with the required information.

(D) Criteria for Review. All temporary sales and events must comply with the standards in Section 207.030 (Temporary Sales/Events).

(E) Review Process. The City Manager shall review the application administratively in accordance with Section 203.020(D).

(F) Mailed Notice. For seasonal residential sales, the City Manager shall provide written notice of the City's decision to issue the permit to property owners within 150 feet of the perimeter of the subject property. Failure to give mailed

notice, or defects in the notice shall not invalidate the proceedings provided a bona fide attempt has been made to comply with the mailed notice requirement.

- (G) Exceptions to Standards. Any proposed temporary sale or event that does not comply with the standards in Section 207.030 (Temporary Sales and Events) may be approved upon review and recommendation by the Planning Commission and approval by the City Council in accordance with Section 203.020(B). The City Council may attach reasonable conditions to ensure that the proposed temporary sale or event is compatible with surrounding land uses and to protect the public health, safety, or welfare.

#### **203.044 Tower/Antenna Permits.**

(A) Private Antenna/Tower Permit.

- (1) Purpose. The City's private antenna/tower permit regulations are adopted to:
- (a) Provide the minimum practical regulation to address the aesthetic, health, safety, and welfare concerns associated with private antennas and towers.
  - (b) Reasonably accommodate private antennas and towers.
- (2) Permit Required. Private antenna/tower permits shall be required in accordance with Section 207.040(A).
- (3) Application. An application for a private antenna/tower permit shall be made on forms provided by the City Manager and shall be submitted with the required information.
- (a) A site plan drawn to scale showing the proposed location of the antenna/tower and the dimensions relative to property lines, structures on the site, and structures on adjacent properties. The City Planner may require that this site plan be prepared by a licensed and registered surveyor to ensure its accuracy.
- (4) Review Process. Applications for private antenna/tower permits shall be reviewed in accordance with Section 203.020(B) (Planning Commission/City Council Review).
- (5) Review Criteria. The Planning Commission and City Council shall review the application for conformance to the standards in Section 207.040(A) (Private Antennas/Towers) as well as the following:

- (a) The reasonable necessity for the private antenna/tower.
  - (b) The appropriateness of the facility design.
  - (c) If the request is for an amateur radio facility greater than 55 feet in height, the recommended hours of operation for those times when the facility will be extended to more than 55 feet above grade.
  - (d) The appropriateness of construction materials and assembly.
  - (e) Maintenance requirements.
  - (f) The distance of the private antenna/tower from adjoining property lines.
  - (g) Other conditions as necessary to prevent the private antenna/tower or its use from becoming a nuisance to surrounding property owners.
- (6) Agreement. The permittee shall be required to enter into a Private Antenna/Tower Agreement in accordance with Section 203.080(D).
- (7) Review and Revocation. The City Manager shall periodically inspect the property for compliance with the provisions of the private antenna/tower agreement. If the permittee is not in compliance with the terms of the agreement, a hearing shall be scheduled before the City Council for the purpose of determining whether to terminate the agreement. The hearing shall be preceded by ten (10) days mailed notice to property owners of record within 350 feet of the property on which the private antenna/tower is located.
- (8) Removal. Use of the private antenna/tower shall be discontinued upon termination of the private antenna/tower agreement and prior to the transfer of title for the property on which the facility is located. The property owner shall, at his or her cost, disassemble and remove the private antenna/tower within thirty (30) days of termination of the private antenna/tower agreement, or the purchaser of the property shall apply for a new permit within thirty (30) days of transfer of title.
- (B) Broadcast Tower Permit. Broadcast towers are allowed in the (T) Tower District only and must obtain a Conditional Use Permit pursuant to Section 203.032.
- (1) Required Documentation. The following shall be submitted at the time of application for a Conditional Use Permit pursuant hereto:



- (a) Site Plan. A plan or plans drawn to scale and acceptable to the City Manager including the following information and detail:
- (i) A boundary survey of the property.
  - (ii) A two-foot contour map of the property.
  - (iii) Locations of existing and proposed public utilities and easements, each Broadcast Tower, Accessory Equipment and Structures, Broadcast Buildings, Related Broadcast Uses and Other Uses.
  - (iv) Ground elevations for Broadcast Towers and/or Accessory Equipment and Structures.
- (b) Tower Diagram. A detailed drawing of the Broadcast Tower structure clearly describing the height of the structure and all equipment located on the structure drawn to a scale acceptable to the City Manager.
- (c) Structural Integrity Report. A report prepared by a registered engineer stating that the configuration of the tower structure complies with applicable Federal or State of Minnesota safety regulations, or, in the case of the addition or replacement of a Broadcast Tower and a tower 1200 feet or less in height AMSL as such towers are described in the original Conditional Use Permit issued hereunder to the property owner, a report prepared by a registered engineer stating that the design and proposed method of constructing such added or replaced tower complies with applicable Federal and State of Minnesota safety regulations.
- (d) Health Study. A report of an independent consultant acceptable to the City and the property owner indicating that Broadcast Tower operations of the applicant together with operations or reasonably foreseeable operations of all other Broadcast Towers shall not violate any Federal or State of Minnesota health standards established for radio frequency transmission and shall not result in any known risk to public health.
- (e) Operating Agreement. An agreement with the City and each property owner which shall describe the property owners' obligation with respect to (a) control of ice build-up on a Broadcast Tower and Accessory Equipment and Structures; (b) responding to complaints by individuals residing within the City regarding interference to consumer electronic equipment; (c) designation of an operator representative to deal with complaints associated with operation of a Broadcast Tower; (d) lighting of a Broadcast Tower; (e) financial consideration; and (f)

cooperation with a citizens committee regarding matters relating to the conditional uses.

(C) Wireless Telecommunication Facility (WTF) Permit.

- (1) Purpose. The City's WTF permit regulations are adopted to:
  - (a) Minimize negative impacts of WTFs through careful siting and design standards.
  - (b) Protect the public health and welfare through appropriate safety standards.
  - (c) Ensure development of these facilities at a scale compatible with and proportionate to existing development.
  - (d) Facilitate the provision of wireless telecommunication services to residents and businesses of the City.
- (2) Permit Required. No person shall install a new WTF without first obtaining a WTF permit.
- (3) Preapplication Conference. The applicant shall present a sketch and basic supporting data of the proposed WTF to the City Manager who shall review the sketch and the City's WTF standards with the applicant at a preapplication conference. The City Manager may, at his or her discretion, forward the sketch to the Planning Commission, the City Council, another appropriate citizen committee or commission, or to neighboring property owners for review and comment.
- (4) Application. Applications for a WTF Permit shall be made on forms provided by the City Manager and shall be submitted with all of the required information. A completed application shall include an application fee and escrow deposit in an amount prescribed by City Council, and a signed WTF Escrow Deposit Agreement (see Section 203.080).
- (5) Complete Application. The City Manager shall review the submitted application form and other materials specified in Section 203.044(C)(4) to determine whether the application is complete. The City Manager may waive, in writing, certain application requirements when determined unnecessary for review of the application. All items deemed necessary by the City Manager must be submitted for the WTF application to be complete and for review of the application to proceed. Applications found to contain material errors shall not be deemed complete until such errors are corrected.

(6) Review Process.

(a) Planning Commission/City Council Review. In accordance with Section 203.020 (B), applications for a WTF permit shall be reviewed by the Planning Commission and City Council.

(i) Planning Commission Review. Upon receipt of a completed application, the City Manager shall schedule a hearing before the Planning Commission which shall be preceded by ten days mailed notice to the property owners of record located within 350 feet of the parcel on which the WTF will be located. The Planning Commission shall make findings based upon the standards in Section 207.040(B)(3) and shall submit its recommendations to the City Council.

(ii) City Council Review. Upon receipt of the Planning Commission recommendation, the City Council shall review the application. The City Council may approve the application subject to conditions, table its review until a date certain, or deny the application for a WTF permit. The decision of the City Council shall be based the WTF standards specified in Section 207.040(B)(3) and on the information provided in the written record. Notice of the Council's decision shall be provided to the applicant in writing. If the application is approved by the City Council, a WTF Permit shall be issued upon the execution of a WTF Agreement in accordance with Section 203.080(E), compliance with the conditions of approval, and demonstration that the WTF complies with all applicable building, fire, and safety codes.

(7) Recovery of City Costs. At the time of application for a WTF permit, an escrow deposit shall be posted in an amount determined by the City Council. The City may charge against this deposit to recover its costs for reviewing the WTF application. These costs may include, but are not limited to, City staff time over and above that covered by the application fee, consultant fees, and fees for third-party review. If a WTF permit is approved, as a condition of approval, deposit of additional escrow funds may be required. The City will charge against this deposit to offset the City's costs to monitor construction and ensure compliance with the conditions of approval and standards in this ordinance. These charges may include, but are not limited to, City staff time, consultant fees, and fees for third-party review, monitoring, and inspection. Once construction has been completed and the permittee has complied with all conditions of approval, any remaining deposit funds shall be refunded to the party or entity that posted the escrow deposit. Refund of the deposit shall not be construed to limit the City's ability to recover future costs associated with

review or monitoring on-going operation of the WTF or future modifications, amendments, or transfer of the facility.

- (8) Review and Revocation. The City Manager shall periodically inspect the WTF and the property where it is located for compliance with the provisions of the WTF agreement. If the permittee is not in compliance with the terms of the agreement, a hearing shall be scheduled before the City Council for the purpose of determining whether to terminate the agreement.
- (9) Criteria for Review. The WTF Permit may be granted provided the proposed use is listed as a permitted use for the district in which it is located and upon showing that the standards and criteria of the Development Ordinance will be satisfied and that the use is in harmony with the general purposes and intent of the Development Ordinance and the Comprehensive Guide Plan.
- (10) Length of Approval. Any use permitted under the terms of the WTF Permit approval shall be established and conducted in conformity to the terms of such permit and any conditions designated in connection therewith. The approval shall remain in effect for so long as the conditions agreed upon are observed, provided that nothing in this section shall prevent the City Council from acting or amending the Development Ordinance that changes the status of an approved WTF to a legal non-confirming use.
- (11) Agreement. If the City Council approves the application, a WTF Permit may be issued upon the execution of a Wireless Telecommunication Tower/Antenna Agreement. The agreement or a summary of the agreement approved by the City Manager in recordable form, shall be signed by the applicant and property owner and the terms of the agreement shall include those identified in Section 203.080(E).

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**203.050 Amendments****203.051 Development Ordinance Text Amendment.**

- (A) Application. Requests for amendments to the text of the Development Ordinance may be initiated by the City Council, the Planning Commission or an affected property owner. An application for a text amendment shall be made on a form available from the City Manager and shall be submitted with the required information.
- (B) Review Process. Applications for amendments to the Development Ordinance text shall be reviewed via the public hearing process in accordance with Section 203.020(A), except that no mailed notice shall be required.
- (1) If the request is to rezone a parcel to the Telecommunications Overlay District, the Planning Commission must also make the following additional findings:
- (a) That the new site is necessary and that useable sites already appropriately zoned are not located within a ½-mile radius of the proposed new site; and
  - (b) That the proposed site will further the City's objective that all antennas and towers be designed to blend into the surrounding environment; and
  - (c) That there are site features such as trees, topography, buildings, or utility poles that reduce or eliminate the visual impact of the proposed tower;
  - (d) That there are no public health or safety issues with the proposed site.
  - (e) That the proposed site can comply with the standards in Section 207.
  - (f) That the proposed site would provide new opportunities for collocation.
  - (g) That the proposed site is necessary to reasonably accommodate a wireless telecommunications service.

- (C) Decision. The City Council has the authority to grant or deny the amendment based on a 4/5-majority vote of its entire membership.

**203.052 Zoning District Boundary Amendment.**

- (A) Application. Requests for the rezoning of property may be initiated by the City Council, the Planning Commission or an affected property owner. An application for a zoning district boundary map amendment shall be made on a form provided by the City Planner and shall be submitted with the required information.

- (B) Review Process. Applications for amendments to the Zoning District Map boundaries shall be reviewed via the public hearing process in accordance with Section 203.020(A).

- (C) Criteria for Review. The Planning Commission and City Council shall consider the following when making recommendation or decision regarding the zoning district amendment:

- (1) That the proposed rezoning is consistent with the policies of the Comprehensive Guide Plan and with the general purpose and intent of the development regulations.
- (2) That the development facilitated by the proposed rezoning will not significantly and adversely impact the planned use of the surrounding property.
  - (a) Rezoning proposals are exempt from this finding:
    - (i) When only one zoning district option is available for the site on the current Land Use Plan Map designation; or
    - (ii) When the proposed zoning district option is not the most intensive option identified for the site by the Land Use Plan Map designation.
  - (b) When more than one zoning district option exists, the base line from which to measure any significant adverse impact relative to the planned use of surrounding property shall be:
    - (i) The current zoning if such zoning is not planned unit development (PUD);
    - (ii) The underlying or assigned zoning if the current zoning is planned unit development (PUD); or

(iii) When rezoning from Urban Underdeveloped (UND), the most restrictive zoning district option permitted by the current Land Use Plan Map designation for the site.

(3) That the applicant is willing to enter into a development agreement with the City as a condition of rezoning approval.

(D) Decision. The City Council has the authority to grant or deny the amendment based on a 4/5-majority vote of its entire membership.

### **203.053 Comprehensive Guide Plan Amendment.**

(A) Application. Amendments to the Comprehensive Plan may be initiated by the City Council or Planning Commission, a resident of the City or property owner within the City. An application for an amendment shall be made on a form provided by the City Manager and shall be submitted with the required information.

(B) Metropolitan Council. All proposed amendments, except housekeeping amendments and amendments to the Capital Improvements Program, must be submitted by the City Manager to the Metropolitan Council and affected governmental units for comment. No amendment may be put into effect until accepted by the Metropolitan Council.

(C) Review. The Planning Commission shall hold at least one public hearing and a notice of the time, place and purpose of the hearing shall be published at least ten (10) days before the hearing. The Planning Commission shall make a recommendation to the City Council.

(D) Criteria for Review. The Planning Commission and City Council shall consider the following elements when making recommendation or decision regarding the Comprehensive Plan amendment:

- (1) The site and the characteristics of adjoining planned land uses;
- (2) Probable building mass differences;
- (3) Traffic generation;
- (4) Separation to dissimilar land uses;
- (5) Carrying capacity of the site (sewer, water, access, topography, etc.), and
- (6) Buffering potential of dissimilar but adjoining land uses.

(E) Decision. The City Council has the authority to grant or deny the amendment based on a 4/5-majority vote of its entire membership and the adoption of a resolution.

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**203.060 Planned Unit Development (PUD) Procedures.**

(A) Preapplication Conference. The developer shall contact the City Manager to establish a preapplication conference for the purpose of acquainting the City with the developer's plans and the developer with the City's procedures, standards and concerns.

(B) Concept Stage PUD (Optional).

(1) Purpose. Concept Stage PUD review is optional and designed to address the appropriateness of a proposal from the perspective of general land use compatibility. Concept Stage PUD review provides an opportunity for the applicant to submit a plan to the City showing the basic intent and the general nature of the entire development without incurring substantial cost. The Concept Stage PUD is a public review process that allows the applicant to receive comments from the City and nearby property owners regarding the proposed development. The process is also intended to allow the City and general public a forum to identify more specific development issues and potential concerns that may require the applicant to provide further information and additional analysis at the Development Stage.

(2) Application. A Concept Stage PUD application shall be made on a form provided by the City Manager and shall be submitted with the required information.

(3) Review Process. The City Manager shall forward the Concept Stage application to the Planning Commission and City Council for review. The Planning Commission will offer comments and suggestions regarding the Concept Plan to the applicant. These comments and suggestions will be forwarded to the City Council, who shall also review the proposal and provide feedback to the applicant. The Council will not take any formal action to approve or deny the application. No comments, remarks or observations made by the City Council, Planning Commission or City Staff on the Concept Plan are binding on the City for subsequent stages.

(4) Notice and Hearing Procedure.

(a) Mailed Notice. Notice of the proposal, time and place of the hearing shall be mailed at least 10 days before the date of the hearing to each recorded owner of property within 350 feet of the perimeter of the property which is the subject of the review.

(b) Failure to Give Notice. Failure to give mailed notice or defects in the notice shall not invalidate the proceedings provided a bonafide attempt has been made to comply with the mailed notice requirement.

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(C) Development Stage PUD.

- (1) Purpose. The Development Stage PUD application is intended to provide the City with detailed site and subdivision plans. Development Stage PUD approval, in particular for multiple-phase developments, must establish a scheme or guidelines for the building design, lighting, landscaping, surface water, parking, access and signage aspects of the development. For multi-phase developments, development stage plans consist of a general plan for the entire development and separate detailed plans for each of the phases.
- (2) Application Requirements. An application for a Development Stage PUD shall be made on a form provided by the City Manager and shall be submitted with the required information.
- (3) Review Process. After receipt of a complete application that contains all the required information, the City Manager shall process the application with Planning Commission/City Council review in accordance with Section 203.020(A)(Public Hearing). A 4/5 majority vote by the City Council is required for approval.
- (4) Site and Building Elevation Plans. In cases where the applicant chooses to submit detailed site, landscaping, signage, lighting, surface water management, and building elevation plans as part of the Development Stage PUD approval, a separate Site and Building Elevation plan application may be waived by the City Council for all or part of a PUD.
- (5) Criteria for Review. Development Stage PUD Plan approval shall not be granted unless the City Council makes the following findings:
  - (a) That the proposal complies with the Shoreview Comprehensive Guide Plan.
  - (b) That in those cases where the plan does not comply with the minimum standards of this ordinance, the deviation is to permit a development that provides a benefit to the city as a whole which include but are not limited to the following:
    - (i) Use of architectural enhancements to the overall building design that exceed building design standards found in a typical development by including the use of high quality building materials, decorative features and accents.
    - (ii) Enhancement of public infrastructure including but not limited to streetscaping, street design, sidewalks, open space and trails.

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- (iii) Use of innovative materials and techniques to minimize stormwater run-off from the site and enhance water quality.
  - (iv) Incorporation of sustainable building practices such as green building standards and or Leadership in Energy and Environment Design (LEED) practices into the overall site design and building plans.
  - (v) Includes a specified percentage of affordable housing in accordance with the income and housing costs guidelines for the Twin Cities metropolitan area.
  - (vi) Provides housing that entails a range of housing options to meet resident preferences and circumstances at all life stages (life-cycle housing) that supports the City's life-cycle housing goal as identified in the Comprehensive Plan.
  - (vii) Incorporates the historic preservation of private or public structures, places or parks.
  - (viii) Eliminates blighted structures or incompatible uses through redevelopment or rehabilitation.
  - (ix) Incorporates transportation demand management or public transit.
  - (x) Preserves and concentrates open space by providing common open areas or reserving specific amounts of open space on each parcel.
- (c) In those instances where a site is to be redeveloped or where the site is adjoined by developed property, that development via a PUD is desirable to insure compatibility with the adjoining land use(s).
- (d) That there is no significant adverse impact of the proposed development on surrounding properties.
- (e) That the plan evidences a direction toward preservation, enhancement, and protection of natural features existing on the property or if the property does not contain natural features worthy of protection, the plan is designed to minimize land alteration and incorporates native plant materials into the landscaping theme.
- (f) That the plan does not occupy a designated Flood Plain area or areas consisting of soils with severe building limitations, or that the applicant has demonstrated that said plan will not cause significant alteration of existing topography or natural drainage.

- (6) Expiration. Approval of a Development Stage PUD shall become void two months after the Council approval date if the applicant has not submitted the Final Stage PUD request, unless a phasing plan or other timeframe has been approved by the Council or a written request for a time extension has been approved by the Council.

(D) Final Stage PUD.

- (1) Application. A Final Stage PUD application shall be made on a form provided by the City Manager and shall be submitted with the required information.
- (2) Review Process. The City Council shall determine whether the Final Stage PUD is in compliance with the approved Development Stage PUD. If the City Council determines that a substantial change to the plans or conditions of approval is necessary due to unforeseen circumstances or is otherwise required by the developer, the City Council shall refer the Final Stage PUD to the Planning Commission for review in accordance with the Development Stage PUD procedures. Otherwise, if the Final Stage PUD is in compliance with the Development Stage PUD and with all conditions of approval, the City Council shall approve the Final Stage PUD. An affirmative vote of at least three Council members is required for approval of the Final Stage PUD. Upon approval, the City Council shall also act on the documents as required including plats, development contracts, erosion control, and public recreational use dedication fees.

(E) Amendments to Approved PUDs. Revisions to approved Planned Unit Developments shall be processed as follows:

- (1) Minor changes in location, siting, height of buildings and structures and minor changes to street, and easement locations may be authorized by the City Manager without additional public hearings, if required by engineering or other circumstances not foreseen at the time the Development Stage PUD was approved.
- (2) All substantial changes shall require amendments of the Development Stage PUD. All such amendments shall be processed according to the Development Stage PUD review rules. Substantial changes shall be defined as, but not limited to:
- (a) A change in the use or character of the development.
  - (b) An increase in the overall lot coverage of structures and other improvements that has a considerable affect on the development plan.
  - (c) A major change in traffic circulation.

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- (d) A reduction of open space or green areas that has a considerable affect on the development plan.
- (e) A reduction of off-street parking or loading areas.
- (f) A reduction in the effectiveness or extent of surface water management plan as determined by the City Engineer.

### **203.070 Variances.**

- (A) Application. An application for a variance or variances (herein collectively “variance”) from the provisions of Chapter 204, 205, 206, 207.050(D), 209 (“Shoreview Development Regulations”) shall be made on forms provided by the City Manager. Completed applications shall be forwarded to the Planning Commission.
- (B) Review Process. The Planning Commission shall review completed variance applications pursuant to Shoreview City Code Section 203.020(C) and Minnesota Statute §15.99. Modifications shall not be made to the variance application during the review process.
- (C) Criteria for Review. The following criteria shall be applied to the City’s review of a variance application:
  - (1) Purpose and Intent. The variance request shall comply with the purpose and intent provisions of City Code Section 201.010 and with the policies of the City’s Comprehensive Plan.
  - (2) Practical Difficulties. The application for a variance shall establish that there are practical difficulties in complying with the provisions of the Shoreview Development Regulations. The term “Practical Difficulties” as used in the granting of a variance means:
    - (a) Reasonable Manner. The property owner proposes to use the property in a reasonable manner not permitted by the Shoreview Development Regulations.
    - (b) Unique Circumstances. The plight of the property owner is due to circumstances unique to the property not created by the property owner.
    - (c) Character of Neighborhood. The variance, if granted, will not alter the essential character of the neighborhood.
  - (3) Economic Consideration. Economic consideration alone does not constitute practical difficulties.

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- (4) Access to Sunlight. Inadequate access to direct sunlight for solar energy systems shall be considered a practical difficulty.
  - (5) Earth Sheltered Housing. Earth sheltered construction, as defined in Minnesota Statutes §216(C)06, Subd. 14, shall be considered a practical difficulty if the property is otherwise in compliance with the Shoreview Development Regulations.
  - (6) Non-Permitted Use. A variance shall not be granted if it would allow a use which is not otherwise permitted in the zoning district where the property is located.
- (D) Conditional Approval. The Board of Adjustments may impose conditions in granting a variance. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
- (E) Expiration. An approved variance, which is not implemented within one year from the date of approval, shall become void.
- (F) Decision and Appeal. Decisions of the Planning Commission shall be final unless the applicant or other aggrieved party appeals to the City Council. Appeals shall be processed in accordance with Section 203.020(E).

#### **203.080 Development Agreements.**

##### **(A) Development Contract.**

- (1) Contract Required. A Developer Contract will be required and executed prior to issuance of all building permits, installation of public or private infrastructure, recording of a final plat, and final construction plan approval for multiple-family residential, commercial, office or industrial developments. The Developer shall enter into a written contract and submit required financial securities to the City. The Development Contract will require the Developer to furnish and construct said public and private infrastructure improvements at his/her sole cost and in accordance with City approved construction plans and specifications, City Standards, City Ordinances, City Policies and the Development Contract.
- (2) Inspection.
  - (a) The Development Contract may include provisions for one or more full-time City personnel or its representative at the City Manager's discretion. The Developer shall pay all costs incurred by the City in conjunction with the development of the plat. The Developer shall

also provide a qualified and experienced engineer to inspect the installation of Public Infrastructure.

- (b) The Developer shall also instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved City standards as a condition of City acceptance. All documentation that relates to the installation and design of the Public Infrastructure shall be made available to the City for their records and files.
  - (c) The City's role as an inspector for the project is to inspect only the Public Infrastructure and not to be a manager of the project.
- (3) Supervision. This contract shall include provision for supervision of details of construction by City Manager and grant to the City Manager authority to correlate the work to be done under said contract by any subcontractor authorized to proceed there under and with any other work being done or contracted by the City in the vicinity.
- (4) Reimbursable Costs. All costs, which accrue by the City during the inspection or review of the public infrastructure, shall be reimbursed by the Developer to the City. The City will invoice the developer for the time spent on the project.
- (5) Security.
- (a) Required Public Improvements. The developer shall provide a certified check, a cash deposit, or an irrevocable letter of credit of a sufficient amount to assure the City that such public improvement and utilities will be constructed and installed according to approved specifications. The financial guarantee shall be approved as to form by the City Attorney and filed with the City. The City Attorney may permit other forms of financial guarantees upon approval.
  - (b) Private Improvements. The developer shall provide a certified check, a cash deposit, or an irrevocable letter of credit of a sufficient amount to assure the City that landscaping, screening or other improvements will be completed by a specific date and in accordance with approved plans. The financial guarantee shall be approved as to form by the City Attorney and filed with the City. Other forms of financial guarantees may be permitted upon approval by the City Attorney.
- (6) Amount of Financial Guarantee.

- (a) Required Public Improvements. The amount of the financial guarantee shall be 125% of the City Manager's estimate of the total cost of the construction and installation of the public improvements and utilities required above and administrative overhead fees, including costs of inspection by the City. The City shall be entitled to draw upon said financial guarantee to reimburse itself for any cost and expense incurred by the City for completion of the work in the event of default by the developer and for any damages sustained on account of said default. Upon completion of the work and the termination of any liability, the balance of the financial guarantee that remains, if any, shall be refunded to the developer.
- (b) Private Improvements. The amount of the financial guarantee shall be 125% total cost for completion of landscaping, screening or other improvements by a specific date and in accordance with approved plans. The City shall be entitled to draw upon said financial guarantee to reimburse itself for any cost and expense incurred by the City for completion of the work in the event of default by the developer and for any damages sustained on account of said default. Upon completion of the work and the termination of any liability, the balance of the financial guarantee that remains, if any, shall be refunded to the developer.
- (7) Partial Completion. On written request of the developer, the contract may provide for completion of part of the improvements covered thereby prior to acceptance of the improvements. In such event the amount of the financial guarantee may be reduced in a sum equal to the estimated cost of the improvements to a minimum of 10% of the total security. The City will retain the minimum 10% until the warranty period expires or other acceptable securities are provided to the City in the amount of 10% of the total project cost. The financial guarantee at any time could be used to ensure the City's development fees charged to the project. The City may also withhold additional securities to cover any outstanding or past due City Development fees.
- (8) Time for Completion. The time for completion of the work and the several parts thereof shall be determined by the City Council upon recommendation of the City Manager after consultation with the developer. This time for completion shall be reasonable with relation to the work to be done, the season of the year, and proper correlation with construction activities in the plat and subdivision. The developer may request the time for completion be extended provided a request is submitted to the City Manager a minimum of 60 days prior to the expiration of the completion date.



- (9) Warranties. All public infrastructure projects will require a warranty against poor material and faulty workmanship. The warranty period for all underground public utility work is a minimum of two years. The one year warranty period for streets, grading and other public infrastructure shall commence after the final wear course has been completed and acceptance by City Council resolution. The warranty period on underground utilities shall commence following their completion and acceptance in writing by the City Manager.

(B) Erosion and Sediment Control Agreement.

- (1) Agreement Required. Prior to issuance of a grading or building permit, prior to the construction of the public improvements required by the City, or prior to release of the final plat by the City, whichever event occurs first, the City Manager or City Council requires the developer to enter into an Erosion and Sediment Control Agreement with the City.
- (2) Escrow. The developer agrees to deposit with the City an amount that shall be ordained from time to time by the City Council. These funds may be utilized by the City to maintain all erosion and sediment control devices on the development site, including the cleaning of all road and storm sewer systems, until the City Manager has determined that erosion control has been satisfied. The security may also be utilized for clean-up or restoration of areas off of the development site that are directly or indirectly impacted by conditions on the site. Interest shall not accrue on these funds. If it becomes necessary for the City to utilize all or a portion of the surety, Developer shall immediately deposit cash in an amount sufficient to re-establish the original surety amount and, until Developer makes such a deposit, no further development may occur on the Property. Any funds not utilized by the City shall be returned to the developer after the improvements and the development of the subject property have been completed and any erosion control permits with other governing agencies that have jurisdictional authority have been closed out. This deposit shall be in addition to any other required financial guarantees.

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(3) Corrective Action:

- (a) Notice of Correction. The City will conduct inspections of the property from time to time, and will notify the developer of any required correction by phone, fax, letter, email or posting a correction notice on-site.
- (b) Corrective Action Required. The developer agrees, upon notification from the City Manager that proper erosion control methods are not being taken, to remedy the problem identified within 24 hours. In the event the remedy is not satisfactorily in place within that time period, the City may utilize the surety to complete the necessary work.

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(C) Rezoning Agreements.

- (1) Agreement Required. Upon a request for rezoning, the City Council may require the applicant to enter into a rezoning agreement with the City.
- (2) Terms. Rezoning agreements shall include the following:
  - (a) Legal description of subject property.
  - (b) Current and proposed zoning districts.
  - (c) A clear reference to the development plans reviewed in conjunction with the rezoning request.
  - (d) A statement that the agreement shall expire and the property shall revert to its original zoning if substantial construction has not taken place within one year of approval of the rezoning agreement. Substantial construction shall be defined in the agreement. The agreement may include a clause, which permits the City Council to grant a non-renewable extension for a period of time not to exceed one year.
  - (e) An ordinance approving the rezoning and directing the City Manager to make the change on the Zoning Map upon completion of substantial construction.

(D) Private Antenna/Tower Agreement. Upon approval of a private antenna/tower permit and before installation of any improvements, the permittee shall enter into a Private Antenna/Tower Agreement. The agreement shall be signed by the applicant and the terms of the agreement shall include the following:

- (1) A list of the conditions of approval of the private antenna/tower permit.
- (2) A statement indicating that failure to comply with the conditions of approval shall result in the removal of the private antenna and/or tower.
- (3) A statement indicating that the expenses incurred by the City to enforce the provisions of the private antenna/tower agreement shall be reimbursed by the applicant.
- (4) A statement which requires the applicant to utilize the procedures established by the FCC to resolve any complaints received relating to interference allegedly caused by the private antenna/tower.

(5) A statement indicating that the private antenna/tower shall be valid during the term of the private antenna/tower agreement and only while the applicant resides on the property. The applicant shall agree to notify the City if he/she no longer resides on the property or of a transfer of title.

(E) Wireless Telecommunication Facility (WTF) Agreement. Upon approval of a WTF permit and prior to installation of any improvements, the permittee shall enter into a WTF agreement. The agreement shall be signed by the applicant and property owner and the terms of the agreement shall include the following:

- (1) A list of the conditions of approval to the WTF Permit.
- (2) A statement indicating that failure to comply with the conditions of approval shall result in the revocation of the permit and removal of the facility.
- (3) A statement indicating that the expenses incurred by the City to enforce the provisions of the WTF agreement shall be reimbursed by the applicant.
- (4) A statement which requires the applicant to utilize the procedures established by the FCC to resolve any complaints received relating to interference allegedly caused by the facility.
- (5) A statement indicating the permittee will cooperate in good faith and fair dealing in collocating wireless telecommunication facilities.
- (6) A statement indicating that the WTF shall be maintained in good and safe condition and to preserve its original appearance and concealment, disguise or camouflage elements incorporated into the design at the time of approval. Such maintenance shall include, but is not limited to, painting, repair of equipment, and maintenance of landscaping.
- (7) A statement authorizing the City to enter the property for the purpose of periodic inspections to determine that the site complies with conditions of approval and all safety and building codes. This statement shall give the City the right to conduct such inspections at any time upon reasonable notice to the property owner(s), and that all expenses related to such inspection shall be borne by the permittee.
- (8) A statement indicating that a WTF which has not been used for twelve (12) successive months shall be deemed abandoned and may, at the sole discretion of the City, be required to be removed in the same manner and pursuant to the same procedures as for dangerous or unsafe structures established by Minnesota State Statutes, Section 463.16.

- (9) A statement indicating that the removal of any unused or abandoned tower or portions of towers shall be the responsibility of the property owner.
- (10) A statement requiring the permittee to notify the City that the WTF continues to be in operation. The notice of continuing operation shall be sent to the City Planner annually by certified mail during the last two weeks of the month of December.
- (F) Wireless Telecommunication Facility (WTF) Escrow Deposit Agreement. At the time of application for a WTF permit, the applicant shall enter into a WTF Escrow Deposit Agreement with the City. The applicant shall submit a deposit in an amount determined from time to time by resolution of the City Council. The agreement shall indicate that the funds deposited may be utilized by the City to offset its costs from review of the WTF permit application and, if the application is approved, to monitor construction and ensure compliance with conditions of approval. Interest shall not accrue on these funds. Any funds not so utilized by the City shall be returned to the applicant after the installation of the WTF has been completed and the City has determined compliance with the conditions of approval and the standards in the Development Ordinance. This escrow deposit shall be in addition to any other required financial guarantees.

#### **203.090 Administrative Citations**

- (A) Purpose and Findings. The City Council finds that there is a need for alternative methods of enforcing the provisions of Section 211. While criminal fines and penalties have been the most frequent enforcement mechanism, there are certain negative consequences for both the City and the accused. The delay inherent in that system does not ensure prompt resolution. Citizens resent being labeled as criminals for violations of administrative regulations. The higher burden of proof and the potential of incarceration do not appear appropriate for most administrative violations. The criminal process does not always regard City Code violations as being important. Accordingly, the City Council finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. This method of enforcement is in addition to any other legal remedy that may be pursued for City Code violations.
- (B) Administrative Citations and Civil Penalties. This Section governs administrative citations and civil penalties for violations of Section 211.
- (C) General provisions. A violation of Section 211 may be subject to an administrative citation and civil penalties. Each day a violation exists constitutes a separate offense.

(D) **Administrative Citation.** The City Manager and his/her designee may issue an administrative citation upon the finding that a Code violation has occurred. The citation must be issued in person or by mail to the property owner and/or person responsible for the violation offense. The citation must state the date, time, and nature of the offense, the name of the issuing officer, the amount of the scheduled civil penalty, and the manner for paying the civil penalty or appealing the citation.

(1) **Response to Citation.** A recipient shall respond to the citation within 4 days of receipt. The recipient may:

- (a) Admit the violation stated in the citation and agree to pay the fine. Payment of the civil penalty constitutes admission of the violation.
- (b) Deny the violation stated in the citation and request a hearing within fourteen (14) calendar days after issuance.

(E) **Administrative Hearing.**

(1) **Hearing Officers.** The City shall maintain a list of hearing officers Available to conduct hearings on the merits of an administrative citation, if requested by a recipient. Hearing officers shall have executed a contract to provide hearing officer services with the City of Shoreview. The hearing officer is not a judicial officer but is a public officer as defined by Minn. Stat. § 609.415. The hearing officer must not be a City employee. The City Manager must establish a procedure for evaluating the competency of the hearing officers, including comments from accused violators and City staff. These reports must be provided to the City Council.

(a) **Removal of Hearing Officer.** The accused will have the right to request, no later than five (5) calendar days before the date of the hearing, that the assigned hearing officer be removed from the case. One request for each case will be granted automatically by the City Clerk. A subsequent request must be directed to the assigned hearing officer who will decide whether he or she can fairly and objectively review the case. The City Clerk may remove a hearing officer only by requesting that the assigned hearing officer find that he or she cannot fairly and objectively review the case. If such a finding is made, the officer shall remove himself or herself from the case, and the City Clerk will assign another hearing officer.

(2) **Request For Hearing.** If the recipient responds by requesting a hearing, the City Manager shall assign the case to a hearing officer on the list. The Manager shall notify the hearing officer, the recipient and the issuing officer of the assignment in writing. The hearing officer shall schedule a hearing within a reasonable date of receiving the

notice. Any delays in holding the hearing shall be reported to the City Manager by the hearing officer.

- (3) **Citation Materials.** At assignment, the City Manager shall transmit a copy of the citation to the hearing officer. Within five days of assignment, the issuing officer or the officer's department shall transmit copies of all materials relating to the citation to the hearing officer. The hearing officer shall transmit a copy of any materials received to the recipient at the earliest opportunity but at least three days in advance of the hearing.
  - (4) **Notice of Hearing.** Notice of the hearing must be served on the person responsible for the violation at least fourteen (14) calendar days in advance, unless a shorter time is accepted by all parties. Service of the Notice will be by first class mail and will be complete upon mailing.
  - (5) **Hearing.** At the hearing, the hearing officer shall receive the testimony of any witnesses, witness statements, and comments presented by the person cited. The hearing officer will consider these items alongside the materials submitted by the issuing officer, and may weigh the evidence and make credibility determinations to the best of the hearing officer's ability. The hearing officer is not required to apply the rules of evidence in making determinations about the evidence presented. The issuing officer is not required to attend the hearing.
  - (6) **Decision/Findings.** After considering all of the evidence submitted, the hearing officer shall determine, by a preponderance of the evidence, whether the person cited did or did not violate the statute or statutes identified in the citation. The hearing officer shall make written findings supporting the determination and transmit them to the cited person and the City Manager within five days of closing the hearing. The decision of the hearing officer is final without any further right of administrative appeal.
  - (7) Failure to attend the hearing constitutes a waiver of the violator's rights to an administrative hearing and an admission of the violation. A hearing officer may waive this result upon good cause shown. Examples of "good cause" are: death or incapacitating illness of the accused; a court order requiring the accused to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. "Good cause" does not include: forgetfulness and intentional delay.
- (F) **Payment Following Finding Of Violation.** If the hearing officer finds a violation, the fine for the Code Violation is due within 30 days of the date the

findings are sent to the recipient. The hearing officer may not alter or reduce the fine for any offense or combine multiple offenses into a single fine. Payment of fines due shall be made to the City Manager.

- (G) **Recovery of Civil Penalties.** If a civil penalty is not paid within the time specified, the City has the authority to take the following actions:
- (1) A lien may be assessed against the property and collected in the same manner as taxes.
  - (2) A personal obligation may be collected by appropriate legal means.
  - (3) A late payment fee of 10 percent of the civil penalty may be assessed for each 30-day period, or part thereof, that the fine remains unpaid after the due date.
- (H) **Criminal Penalties.** The following are misdemeanors, punishable in accordance with State Law: (i) failure, without good cause, to appear at a hearing that was scheduled under Code Section 203.090 (E)(4); (ii) failure to pay a civil penalty imposed by a hearing officer within 30 days after it was imposed, or such other time as may be established by the hearing officer. If the final adjudication in the administrative penalty procedure is a finding of no violation, then the City may not prosecute a criminal violation in district court based on the same set of facts. This does not preclude the City from pursuing a criminal conviction for a violation of the same provision based on a different set of facts. A different date of violation will constitute a different set of facts.