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## MEMORANDUM

**DATE:** February 4, 2025

**TO:** Planning Commission

**FROM:** Jason Mozol, Planner II

**SUBJECT:** UDC Text Amendment (PLUTA-2412-0003) related to floodplain map and regulation updates

The current floodplain maps for St Louis County, including Duluth, are the result of a study conducted by the Federal Emergency Management Agency (FEMA) in 1982. To update and modernize this resource, FEMA conducted a new Flood Insurance Study (FIS). This study, and the associated public review process, has been ongoing for the last several years. Through this process, City staff and members of the public have provided FEMA with feedback on the preliminary outputs of the study. As the end of this update process nears, the FIS and new Flood Insurance Rate Maps (FIRMs) are expected to become effective on March 25, 2025. As a requirement for the City of Duluth to remain a participating community in the National Flood Insurance Program (NFIP), FEMA and the Minnesota Department of Natural Resources (DNR) require the City to adopt updated floodplain management measures. In Duluth's regulatory framework, these updates require amendments to the City's Unified Development Code (UDC).

The DNR supports and oversees the local community's update efforts and supplied City staff with model language to incorporate into the UDC. The proposed changes, summarized below, are heavily based off the model language and numerous discussions with DNR staff. These amendments primarily fall under UDC Section 50-18; Natural Resources Overlay, though certain changes also proposed to Section 50-20;, Use Specific Standards for Manufactured Home Park and Recreational Vehicle Park, Sec 50-33.2; Site Design for Plats, Sec 50-37; Administration and Procedures for Special Use Permits, Subdivision Plat Approval and Variances, Sec 50-38.2; Provisions for Non-Conformities in Flood Hazard Areas, and Article 6; Definitions.

Floodplains are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. The he purpose of these amendments is to promote the public health, safety, and general welfare by minimizing these losses and disruptions. Floodplain regulation supports the public interest to promote sound land use practices, and floodplains are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding. Floodplain regulation also intends to preserve the natural characteristics and functions of watercourses in order to moderate flood and stormwater impacts, improve water quality, reduce

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# Attachment 1

soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

## **Sec 50-18, Natural Resources Overlay**

The natural resources overlay is where the bulk of the floodplain related regulations have existed. The proposed changes maintain that format.

- Floodway vs Flood Fringe Districts

A key understanding for floodplain regulation is the difference between floodway and flood fringe. The floodway, often the middle of the channel, is calculated to include the space necessary to allow flood waters to move through an area and is often associated with higher velocity water movement. The flood fringe is the area that water will back up into and occupy but not necessarily flow through. Development is severely limited in the floodway because higher water velocities pose risk to those properties. Additionally, development in the floodway may have impacts on other properties, in or adjacent to the floodplain, as flood waters are diverted elsewhere. Generally, development in the flood fringe is less limited if it is elevated or protected above the regulatory flood protection elevation (RFPE), see below, since risk to the property is primarily due to inundation.

- Regulatory Flood Protection Elevation

A key consideration in floodplain management is the Regulatory Flood Protection Level (RFPE). The RFPE is the level structures in floodplains must be protected at, with some exceptions for uses that are of minimal value or are naturally resistant to flooding, such as small sheds or parking lots. The RFPE is defined as the elevation two feet above the modeled water level of the 1% annual chance flood. The 1% chance flood elevation is calculated based on expected water volumes in an area, downstream constrictions of water flow, local topography, and other associated factors. The additional two feet above that level allows for added protection to structures, life, and property while taking into consideration the inherent unpredictability of floods.

- Coastal Districts

A new addition to the floodplain associated with Lake Superior is the addition of coastal districts. These districts are often applied to ocean shorelines to capture flooding associated with storm surge and wave action. The FIS recognizes that aspects of Lake Superior operate similarly to oceans and models potential flooding impacts from wave action. These floodplains exist along the lake side of Park Point and along the shore north of the ship canal. The coastal floodplain is fairly limited in scope, rarely exceeding beyond the vegetation line of these shores.

- General Districts

These districts are areas where a floodplain has been determined but a detailed study to delineate the associated risk to various areas, such as which areas are floodway or flood fringe, has not been conducted. Several options are outlined for assessing these areas including applying floodway regulations to the entire floodplain, conducting a detailed analysis to delineate the zones of associated risk, or using methods established by the DNR, where applicable.

- Allowed and Special Uses

Like residential or mixed-use zone districts, each floodplain district has allowable uses and special uses. The standards and permit requirements for each is outlined in the associated section. The allowed and special uses are similar to what has previously been allowed with a few additional restrictions to minimize risk and promote sound land use practices. The one major exception is that the standards for coastal districts are new and have not previously applied.

## **Sec 50-20, Use Specific Standards for Manufactured Home Park and Recreational Vehicle Park**

Changes to this section update the development standards to minimize flooding risk or potential damage to manufactured homes and recreational vehicles.

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## **Sec 50-33.2 Site Design for Plats**

Changes to this section clarify the floodplain requirements that apply to plats and direct back to regulations outlined in the natural resources overlay.

## **Sec 50-37 Administration and Procedures for Special Use Permits and Variances**

Changes to this section include:

- Updated criteria to apply to variances and includes additional considerations to guard against risk to adjacent properties associated with development.
- Timelines for the City to notify the DNR of any approved variances, special use permits, or interim use permits in floodplains.
- Minimum application requirements for floodplain permits.

## **Sec 50-38.2 Provisions for Non-Conformities in Flood Hazard Areas**

Updates to non-conformity regulations including language that defines substantial improvements and substantial damage determinations. This section regulates the repairs and modifications allowed to non-conforming structures and will be utilized to determine the scope of allowed work on structures damaged in a flood event.

## **Article 6 Definitions**

Several definitions in this section were added, updated, or removed to align with the intent of the updated DNR regulations and related federal and state laws.

## **Conclusion**

Per Section 50.37.3 of the UDC. Planning commission may review the proposal based on the below criteria,

1. Is consistent with the comprehensive land use plan;
2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use;
3. Is required by public necessity, convenience, or general welfare, or good zoning practice;
4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible;

Staff finds that:

- The amended floodplain regulations support the stated goal in the comprehensive plan to “Improve Duluth’s resiliency to flooding and natural disasters”. The updated mapping provide more accurate depictions of the areas of flood risk and amended regulations provide a higher standard of protection to floodplains.
- Development in floodplains guided by the updated regulations reduces risk, both personal and property, to the community and produces lasting and sustainable development.
- The amended regulations allow the City to remain current and enrolled in the National Flood Insurance Program, which provides additional resources and risk mitigation to citizens of the City.
- While the higher standards for development in floodplains may result in additional burdens for certain affected property owners, these increases are reasonable and the burdens are offset by the benefits- both to property owners and the general public- of development that is subject to lesser risk.

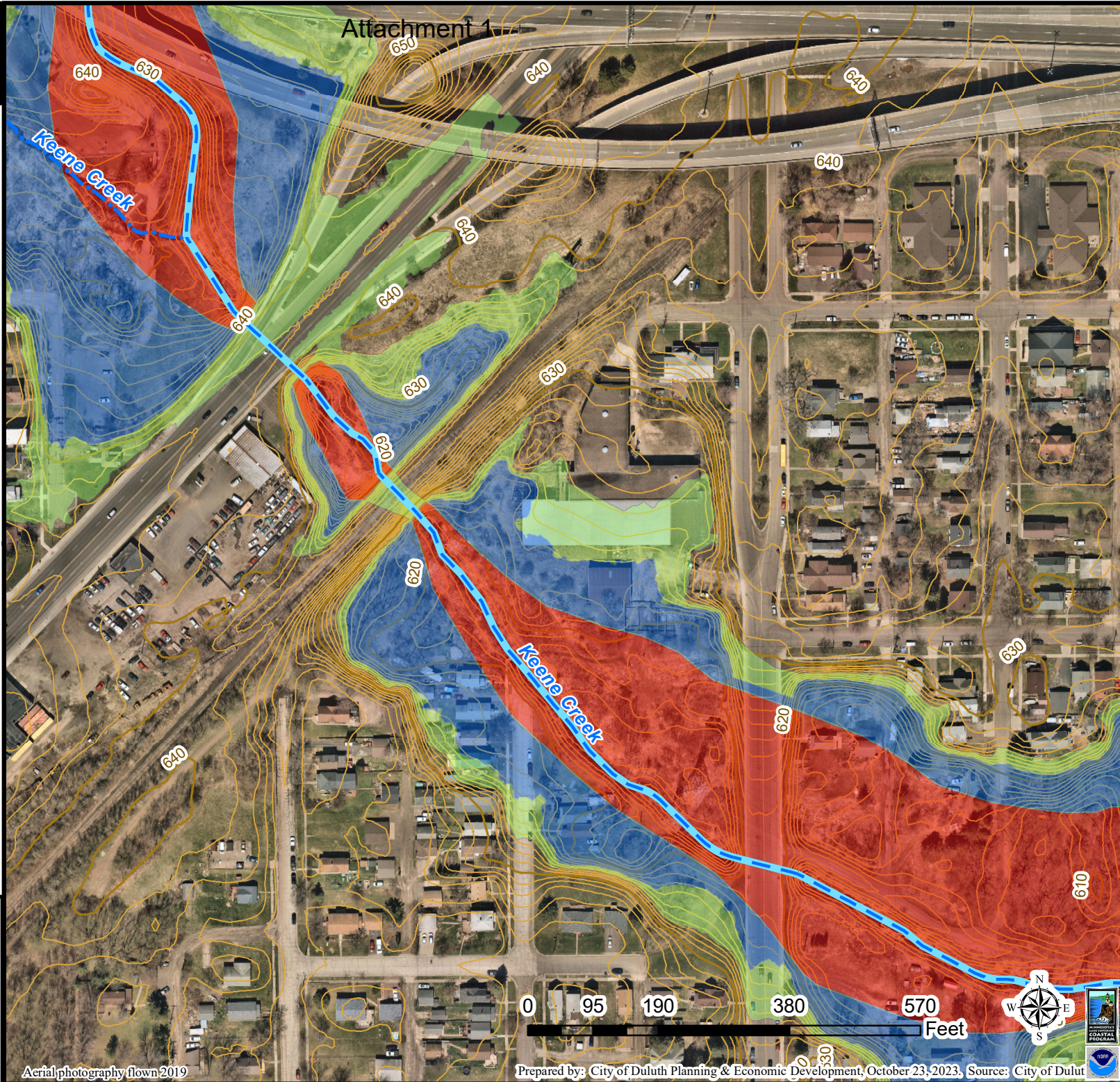
Staff recommends that Planning Commission recommend City Council approve of these changes to the UDC.





# Floodway and Flood Fringe

Attachment 1



## Floodplain Layers

- 1% ANNUAL CHANCE
- FLOODWAY
- 0.2% ANNUAL CHANCE

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Aerial photography flown 2019

Prepared by: City of Duluth Planning & Economic Development, October 23, 2023. Source: City of Duluth





# Coastal Floodplain

Attachment 1



## Floodplain Layers

- AE, COASTAL FLOODPLAIN
- VE, COASTAL FLOODPLAIN
- X, AREA OF MINIMAL HAZARD

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Aerial photography flown 2019

0 50 100 200 300 Feet



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# Breakout Flows

Attachment 1



## Floodplain Layers

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- 0.2% ANNUAL CHANCE

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# Breakout Flows

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**Article 2**  
**50-18.1**

**50-18.1 Natural Resources Overlay (NR-O).**

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**A. General.**

1. Purpose statement.

The purpose of this overlay is to promote, preserve and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development. It is intended to implement the Minnesota Wetland Conservation Act (WCA), federal emergency management agency (FEMA) rules, and the Minnesota department of natural resources (DNR) shoreland and flood plain regulations. In accordance with this regulatory framework, wetlands, flood plains and shorelands are protected by regulating developments that would have an adverse or potentially irreversible impact on unique and fragile land, by minimizing conflicts and encouraging compatibility between environmentally sensitive lands, and by requiring detailed review standards and procedures for developments proposed for such areas, thereby achieving a balance between urban growth and development and protection of natural areas;

2. NR-O map.

The NR-O map contains data from the following sources:

(a) For wetlands, there is no official wetlands map. All lands in the city that meet the definition of wetlands in Article VI are considered wetlands for the purposes of this Section;

(b) For flood plains:

(i) The following maps together with all attached material are a part of the NR-O map. The attached material includes the Flood Insurance Study for St. Louis County, Minnesota, and Incorporated Areas, dated March 25, 2025, and the Flood Insurance Rate Map panel numbers 27137C3525E, 27137C3545E, 27137C3550E, 27137C3754E, 27137C3755E, 27137C3756E, 27137C3757E, 27137C3758E, 27137C3759E, 27137C3764E, 27137C3766E, 27137C3767E, 27137C3768E, 27137C3769E, 27137C3776E, 27137C3777E, 27137C3778E, 27137C3779E, 27137C3781E, 27137C3782E, 27137C3783E, 27137C3784E, 27137C3786E, 27137C3788E, 27137C3790E, 27137C3795E, 27137C3805E, 27137C3810E, 27137C3842E, 27137C3845E, 27137C3850E, 27137C3851E, 27137C3852E, 27137C3853E, 27137C3854E, 27137C3856E, 27137C3857E, 27137C3860E, 27137C3861E, 27137C3862E, 27137C3865E, 27137C3870E, 27137C3880E, 27137C3885E, all dated March 25, 2025, all prepared by the Federal Emergency Management Agency. These materials are on file in the Planning and Economic Development Department at City Hall.

~~(ii) Flood Boundary and Floodway Map panels for the City of Duluth Minnesota, dated February 1, 1980, and numbered:~~

~~— (1) — 270421 0015 C~~

~~— (2) — 270421 0025 C~~

~~— (3) — 270421 0030 C~~

~~— (4) — 270421 0035 C~~

~~— (5) — 270421 0040 C~~

~~— (6) — 270421 0045 C~~

~~(iii) Flood Insurance Rate Map panels for the City of Duluth, Minnesota, dated April 2, 1982, and numbered:~~

~~— (7) — 270421 0015 C~~

~~— (8) — 270421 0025 C~~

~~— (9) — 270421 0030 C~~

~~— (10) — 270421 0035 C~~

~~— (11) — 270421 0045 C~~

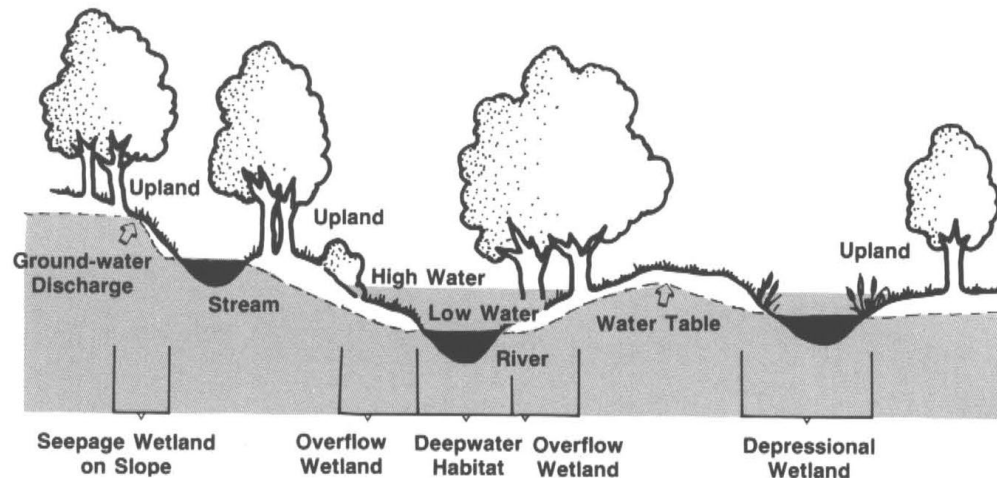
~~(iv) Flood Insurance Rate Map panel for the City of Duluth, Minnesota, numbered 270421 0040 D and dated November 4, 1992;~~



- (v) ~~Flood Insurance Rate Map panels for St. Louis County, Minnesota, unincorporated areas, numbered 270416-1475-C, 270416-1500-C, and 270416-1650-C, all dated February 19, 1992;~~
- (vi) ~~The Letter of Map Revision issued by the Federal Emergency Management Agency, Case No. 07-05-3554P, with an effective date of October 17, 2008, including all attached maps, tables and flood profiles; and~~
- (vii) ~~The Letter of Map Revision issued by the Federal Emergency Management Agency, Case No. 12-05-3211P, with an effective date of November 26, 2012, including all attached maps, tables and flood profiles.~~
- (ii) Copies of the above-listed documents are hereby adopted by reference and declared to be a part of this section. All documents shall be kept on file in the land use supervisor's office;
- (c) For shorelands, boundaries shall be based on (i) waters shown as protected on the map and inventory of protected waters in Duluth prepared by the DNR commissioner pursuant to Chapter 199, Laws of Minnesota, 1979, and (ii) selected waters that the city has added to the commissioner's survey as being worthy of shoreland protection. All of these waters are shown on the NR-O map as currently revised as of November 19, 2010;
- (d) Where interpretation is needed as to the exact location of any boundary as shown on an official map, the city engineer shall make the necessary interpretation based on available technical data, and, in the case of flood plains, based particularly on elevations on the regional flood profile or hydraulic modeling data;
- (e) The NR-O map may be amended in the future, and any revisions shall become effective upon adoption of the revised NR-O map as an amendment to this Chapter;

## B. Wetlands.

This Section 50-18 shall apply to all wetlands within the city. All development in the city shall comply with state statutes and regulations. In addition, any development impacting wetlands requires formal approval by the designated city wetland representative.



**Figure 50-18.1-1: Typical Inland Wetland.** Graphic taken from *Floodplain Management in the United States: An Assessment Report*, prepared for the Federal Interagency Floodplain Management Task Force 1992.

1. The building official shall require each permit applicant to specify on the permit application whether or not the proposed site contains wetlands. Regardless of the answer given, if the building official has reasonable grounds to believe the site contains wetlands, the official shall make a determination as to the existence of wetlands. In making that determination, the building official may require any of the following:

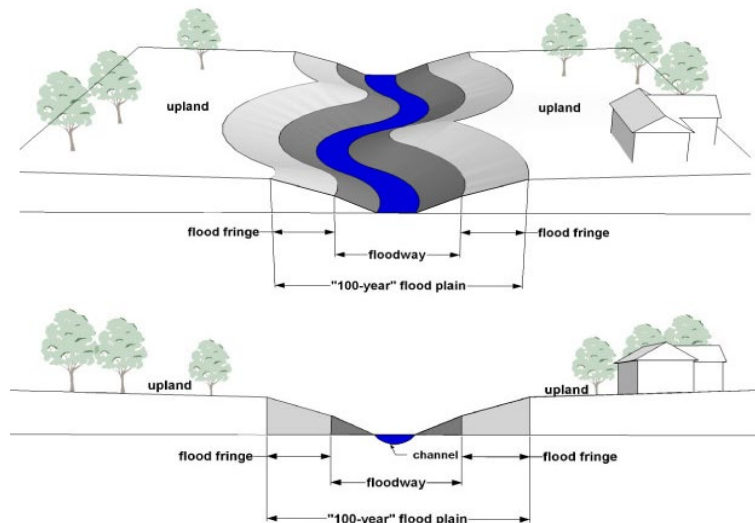
- (a) Require the applicant to submit a complete wetland delineation as outlined in WCA and performed by a professional wetland delineator, including information such as soil analysis, surveys of vegetation and engineering or hydrological data, to aid in the determination;
- (b) Conduct a site inspection and evaluation;
- (c) Consult with the city engineer, St. Louis County Soil and Water Conservation District, Board of Water and Soil Resources, and other available wetland experts;
- (d) Use any other reasonable method to determine if the site contains wetlands;

### C. Flood plains.

~~This Section shall apply to all lands within the city that are shown as floodplains on the NR-O map. For purposes of relating these districts to plats and lots within the city, the NR-O map shall be used as a working map in the administration of the flood plain controls unless it is clearly shown that there is an inconsistency between the flood insurance rate map, or the flood boundary and floodway map and said NR-O map, in which case the flood insurance rate map or flood boundary and floodway map, as applicable, shall control.~~

~~All lands within flood plains shall be divided into floodway districts, flood fringe districts, or general flood plain districts:~~

- ~~a) The floodway district shall include those areas designated as floodway on the flood boundary and floodway map identified in Section 50-18.A.2.b;~~
- ~~b) The flood fringe district shall include those areas designated as flood fringe on the flood boundary and floodway map;~~
- ~~c) The general flood plain district shall include those areas designated as Zone A on the flood insurance rate maps identified in Section 50-18.A.2.b., and those areas designated Zone A1-A30 on the flood insurance rate maps that do not have a corresponding floodway/flood fringe delineation on the flood boundary and floodway map;~~



**Figure 50-18.1-2: Flood plain, floodway, and flood fringe**—Graphic taken from *Floodplain Management in the United States: An Assessment Report*, prepared for the Federal Interagency Floodplain Management Task Force 1992.

### 2. Compliance.

~~Within the flood plain districts, no new structure or land shall be used and no structure shall be constructed, located, extended, converted or structurally altered without full compliance with the terms~~



of this Section 50-18.1.C. Within the floodway, flood fringe and general flood plain districts, all uses not listed as permitted uses or special uses are prohibited;

3. ~~Uses and special use permits — floodway.~~

(a) ~~Permitted uses in floodway.~~

~~Only the following uses shall be permitted within the floodway, and only if the land use supervisor determines that (a) the use is shown as a permitted use in the underlying zone district in Table 50-19.8, (b) the use has a low flood damage potential, (c) the use will not obstruct flood flows or increase flood elevations, and (d) the use does not involve structures, fill, obstructions, excavations or storage of materials or equipment:~~

- ~~(i) Agriculture;~~
- ~~(ii) Industrial, commercial and mixed use loading areas, parking areas and airport landing strips;~~
- ~~(iii) Outdoor open space, recreation, and entertainment facilities and structures;~~
- ~~(iv) Residential lawns, gardens, parking areas and play areas;~~

(b) ~~Special uses in floodway.~~

~~The following uses involving accessory structures or fill or storage of materials or equipment may be permitted only after the issuance of a special use permit pursuant to Article V:~~

- ~~(i) Structures accessory to a permitted use as listed in 50-18.1.C.2.a;~~
- ~~(ii) Mining, extraction and storage of sand, gravel and other materials;~~
- ~~(iii) Marina or yacht club or accessory residential boat dock;~~
- ~~(iv) Railroad yard or shipyard and related facilities, electric power transmission lines, major utilities or wireless communication towers and minor utilities and accessory wireless antennas attached to existing structures;~~
- ~~(v) Bulk storage not listed elsewhere;~~
- ~~(vi) Placement of fill or construction of fences;~~
- ~~(vii) Road-ready recreational vehicles either on individual lots of record or in existing or new subdivisions or commercial or condominium type campgrounds, subject to the exemptions and provisions of Section 50-20;~~
- ~~(viii) Structural works for flood control such as levees, dikes, and floodwalls constructed to any height where the intent is to protect individual structures;~~

(c) ~~Standards for special use permits in floodway.~~

~~A special use permit for uses and structures listed in subsection (b) above shall only be issued if the following standards are met:~~

- ~~(i) The proposed use or structure will not cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected;~~
- ~~(ii) Any fill deposited in the floodway shall be no more than the minimum amount necessary to grade or landscape, shall not in any way obstruct the flow of flood waters and shall be protected from erosion by the planting of vegetative ground cover, the use of rip rap or other method approved by the city;~~
- ~~(iii) Accessory structures:~~
  - ~~● Shall not be designed for human habitation;~~
  - ~~● Shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters;~~
  - ~~● Shall be constructed whenever possible with the longitudinal axis parallel to the direction of flood flow;~~
  - ~~● Shall be placed approximately on the same flood flow lines as those of adjoining structures; and~~
  - ~~● Shall be elevated on fill or floodproofed to the flood protection elevation in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code;~~
- ~~(iv) All floodproofed accessory structures must meet the following additional standards, if the building official determines that compliance is necessary to carry out the stated purposes of this Section 50-18.1.c:~~

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50-18 Overlay Districts

- ~~• The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;~~
- ~~• Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed;~~

~~As an alternative, an accessory structure may be internally or wet floodproofed to the FP-3 or FP-4 floodproofing classifications in the State Building Code, provided the accessory structure constitutes a minimal investment, does not exceed 576 square feet in size at its largest projection, and for a detached garage, the structure must be used solely for parking of vehicles and limited storage. The structure must meet the following standards:~~

- ~~• To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and~~
- ~~• There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings;~~

- ~~(v) The use will not include the storage or processing of materials that are, in time of flooding, flammable, explosive or injurious to human, animal or plant life. All materials or equipment stored shall be readily removable from the area within the time available after a flood warning;~~
- ~~(vi) Any structural works for flood control that will change the course, current, or cross-section of wetlands or public waters shall comply with the provisions of Minnesota Statutes, Chapter 103G.245;~~
- ~~(vii) Any levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood, based on technical analysis that assumes equal conveyance or storage loss on both sides of a waterway;~~
- ~~(viii) Within an A-O zone, there must be adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures or structure additions;~~
- ~~(ix) Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long term site development plan is submitted which includes an erosion/sedimentation prevention element;~~

#### ~~4. Uses and special use permits — flood fringe.~~

##### ~~(a) Permitted uses in flood fringe.~~

~~Those uses listed in Table 50-19.8 as permitted uses in the zone district where the property is located, provided that the building official determines that:~~

- ~~(i) All structures, including accessory structures, shall be elevated on fill so that a structure's lowest floor is above the regulatory flood protection elevation. The finished fill elevation for structures shall be no lower than one foot below the regulatory flood protection elevation and the fill shall extend at that elevation at least 15 feet beyond the outside limits of the structure. In A-O zones, the finished fill elevation for structures must be a minimum of two feet above the highest adjacent grade. The structure's design and as-built condition in relation to the regulatory flood protection elevation must be certified by a professional engineer or architect licensed in Minnesota;~~
- ~~(ii) Any portion of a non-residential structure below the regulatory flood protection elevation will be structurally dry floodproofed in accordance with the FP-1 or FP-2 classification found in the State Building Code;~~

# Attachment 1

50-18 Overlay Districts

- ~~(iii) As an alternative to elevation, accessory structures that constitute a minimal investment and that do not exceed 576 square feet may be internally floodproofed in accordance with Section 50-18.1.C.2(c)(iii) and (iv) above;~~
- ~~(iv) Any placement of fill with a cumulative volume in excess of 1,000 cubic yards at any one time may only be used to elevate a structure in accordance with this subsection 3(a)(i);~~
- ~~(v) Any stored materials or equipment shall be elevated on fill to the regulatory flood protection elevation;~~
- ~~(b) Special uses in flood fringe.  
The placement of more than 1,000 cubic yards of fill or other similar material, other than for the purpose of elevating a structure to the regulatory flood protection elevation, and the storage of materials and equipment below the regulatory flood protection elevation, may be permitted only after the issuance of a special use permit as provided in Article V. In addition, this use is subject to the limitations on flood plain variances in Article V and the following requirements:~~
  - ~~(i) Any fill deposited in the flood fringe shall be no more than the minimum amount necessary to grade or landscape, shall not in any way obstruct the flow of flood waters and shall be protected from erosion by the planting of vegetative ground cover, the use of rip rap or other method approved by the city;~~
  - ~~(ii) The use must not include the storage or processing of materials that are, in time of flooding, flammable, explosive or injurious to human, animal or plant life. All materials or equipment stored shall be readily removable from the area within the time available after a flood warning;~~
- ~~(c) Standards for all flood fringe uses.
  - ~~(i) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation. If a variance to this requirement is granted, limitations on the period of use or occupancy of the structure for times of flooding may be specified;~~
  - ~~(ii) Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the NR-O map;~~
  - ~~(iii) Accessory land uses such as yards, railroad tracks, and parking lots may be at elevations more than two feet below the regulatory flood protection elevation. Any facility that will be used by employees or the general public must have a flood warning system that provides adequate time for evacuation if the area would be inundated by the regional flood to a depth and velocity such that when multiplying the depth (in feet) times velocity (in feet per second) the product number exceeds four;~~
  - ~~(iv) Standards for recreational vehicles are contained in Section 50-20;~~
  - ~~(v) All manufactured homes and those recreational vehicles not meeting the exemption criteria must be securely anchored to an adequately anchored foundation system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces;~~
  - ~~(vi) Within an A-O zone, there must be adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures or structure additions;~~~~

## ~~5. General flood plain district.~~

- ~~(a) Permitted uses in general flood plain district.
  - ~~(i) The uses listed in subsection C.2(a) above shall be permitted uses;~~
  - ~~(ii) All other uses shall be subject to the floodway/flood fringe evaluation criteria below and the resulting designation shall be used in determining uses. If the property owner does not complete a floodway/flood fringe evaluation, the land is presumed to be floodway;~~
  - ~~(iii) Land determined to be in the floodway pursuant to subsection 4.(b) shall have those permitted and special uses listed in Section 50-18.C.2 above;~~
  - ~~(iv) Land determined to be in the flood fringe pursuant to subsection 4.(b) shall have those permitted and special uses listed in Section 50-18.C.3 above;~~~~
- ~~(b) Procedures for floodway and flood fringe determinations within the general flood plain district:~~



- (i) ~~The applicant shall submit appropriate information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe district and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, parts 6120.5000—6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective DNR Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:~~
- ~~(1) Estimate the peak discharge of the regional flood;~~
  - ~~(2) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas;~~
  - ~~(3) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 feet. A lesser stage increase than 0.5 feet shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries;~~
- (ii) ~~The city engineer shall present the technical evaluation and findings to the city council. The city council must formally accept the technical evaluation and the recommended floodway and/or flood fringe district boundary and that the proposed use is allowed in the area where it is proposed, or deny the permit application. Prior to official action the city council may submit the application and all supporting data and analyses to FEMA, the DNR or the planning commission for review and comment. Once the floodway and flood fringe district boundaries have been determined, and assuming the proposed use is allowed in the area where it is proposed, the city council shall refer the matter to staff who shall process the permit application consistent with the applicable provisions of this Section 50-18.1.C;~~

~~6. Public utilities, railroads, roads and bridges.~~

- ~~(a) All public utilities and facilities such as gas, electrical, sewer and water supply systems, with the exception of sumps and wet wells, to be located in the floodway or flood fringe shall be floodproofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation;~~
- ~~(b) Railroad tracks, roads and bridges to be located within the floodway or flood fringe shall comply with subsections 2 and 3 above, as applicable. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety;~~
- ~~(c) On site water supply and sewage treatment systems: Where public utilities are not provided: 1) on-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems; and 2) new or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and they shall not be subject to impairment or contamination during times of flooding. Any sewage treatment system designed in accordance with the state's current statewide standards for on-site sewage treatment systems shall be determined to be in compliance with this Section;~~

~~6. Subdivisions.~~

~~New subdivisions in the flood plain area shall meet the following requirements:~~

- ~~(a) No land shall be subdivided which is unsuitable for reasons of flooding or inadequate drainage, water supply, or sewage treatment facilities. Manufactured home parks and recreational vehicle parks or campgrounds are considered subdivisions under this Section;~~
- ~~(b) All lots within the flood plain districts shall be able to contain a building site outside of the floodway district at or above the regulatory flood protection elevation;~~

- ~~(c) — All subdivisions shall have water and sewage treatment facilities that comply with the provisions of this Chapter;~~
  - ~~(d) — All subdivisions shall have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation, unless a flood warning emergency plan for the safe evacuation of all vehicles and people during the regional flood has been approved by the city council. The plan shall be prepared by a registered engineer or other qualified individual, and shall demonstrate that adequate time and personnel exist to carry out the evacuation;~~
  - ~~(e) — The floodway and flood fringe district boundaries, the regulatory flood protection elevation and the required elevation of all access roads shall be clearly labeled on all required subdivision drawings and platting documents;~~
- ~~In the general flood plain district, applicants shall provide the information required in section 15-18.C.4(b) to determine the regional flood elevation, the floodway and flood fringe district boundaries, and the regulatory flood protection elevation for the subdivision site;~~

~~7. Amendments.~~

- ~~(a) — The flood plain designation on the official zoning map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regulatory flood protection elevation and is contiguous to lands outside the flood plain. Special exceptions to this requirement may be permitted by the commissioner of the department of natural resources (DNR) if the commissioner determines that, through other measures, lands are adequately protected for the intended use;~~
- ~~(b) — All amendments to Section 50.18.1.C, including flood plain designation amendments to the official zoning map, must be submitted to and approved by the commissioner of the department of natural resources (DNR) prior to adoption. Changes in the official zoning map must meet the federal emergency management Agency's (FEMA) technical conditions and criteria and must receive prior FEMA approval before adoption. The commissioner of the DNR must approve the amendment prior to community approval;~~

This Section regulates development in the flood hazard areas of the City of Duluth. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this Section to promote the public health, safety, and general welfare by minimizing these losses and disruptions.

This Section supports the public interest to promote sound land use practices, and floodplains are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.

This Section is a requirement to maintain eligibility in the National Flood Insurance Program.

This Section is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

1. Applicability

(a) Applicability and Planning Commission Review

- (i) This Section applies to all lands within the jurisdiction of the City of Duluth within the Special Flood Hazard Areas (SFHAs) identified on the Flood Insurance Rate maps identified in Section 50-18.1.A.2(b). Areas within the SFHA are within one of four districts: the Floodway, Flood Fringe, General Floodplain or Coastal Districts.

(ii) The Floodway, Flood Fringe, General Floodplain and Coastal Districts, are within the Natural Resource Overlay District. The standards imposed in the overlay districts are in addition to any other requirements. In case of a conflict, between this Section and any other requirements in Federal and State law or the Duluth City Charter and Code, the more restrictive standards apply.

(iii) These regulations apply to all areas within the SFHA. If areas below the Base Flood Elevation (BFE) extend beyond the mapped SFHA based on actual field conditions, the Base Flood Elevation (BFE) shall be the governing factor in locating the outer boundaries of the one-percent annual chance floodplain and these regulations apply to the outer boundary of the one-percent annual chance floodplain.



**Figure 50-18.1.C-1:** The mapped floodplain may not always align with on-the-ground contour elevations.

(iv) These regulations implement the National Flood Insurance Program (NFIP) rules in 44 CFR § 59 to 78, and the Minnesota department of natural resources (DNR) shoreland regulations, and the DNR flood plain regulations contained in Minnesota Statutes, Chapter 103F and Minnesota Rules, parts 6120.5000 – 6120.6200. The planning and zoning enabling legislation for this overlay is in Minnesota Statutes, Chapter 462.

(v) Abrogation and Greater Restrictions.

It is not intended by this section to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. The standards in this section take precedence over any less restrictive, conflicting local laws, ordinances, or codes. All other sections inconsistent with this section are hereby repealed to the extent of the inconsistency only.

(vi) Warning and Disclaimer of Liability.

This section does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. Not all flood risk is mapped or predictable. Larger floods may and do occur, and the flood height may be increased by man-made or natural causes, such as ice jams or bridge openings restricted by debris. This section does not create liability on the part of the City of Duluth or its officers or employees for any flood damages that result from reliance on this section, or any administrative decision lawfully made hereunder.

(vii) Persons contesting the location of the district boundaries may exercise their rights to Planning Commission review and further appeal as outlined in Sec 50-37.1.O .

(b) Floodplain Districts



- (i.) Floodway District. Those areas of Zone AE delineated within floodway areas as shown on the Flood Insurance Rate Maps referenced in Section 50-18.1.A.2(b) and those areas within Zone A determined to be located in the floodway based on the delineation methods in Section 50-18.1.C.5(d).
- (ii.) Flood Fringe District.  
Those areas of Zone AE located outside of the delineated floodway as shown on the Flood Insurance Rate Maps referenced in Section 50-18.1.A.2(b), and those areas within Zone A determined to be located outside of the floodway based on the delineation methods in Section 50-18.1.C.5(d).
- (iii.) General Floodplain District.  
Those areas within Zone A or AE that do not have a floodway delineated as shown on the Flood Insurance Rate Maps referenced in Section 50-18.1.A.2(b).
- (iv.) Coastal District.  
Those areas within Zones VE, as shown on the Flood Insurance Rate Maps adopted in Section 50-18.1.A.2(b). This area also includes Coastal A and AE Zone Areas shown on the Flood Insurance Rate Maps adopted in Section 50-18.1.A.2(b).

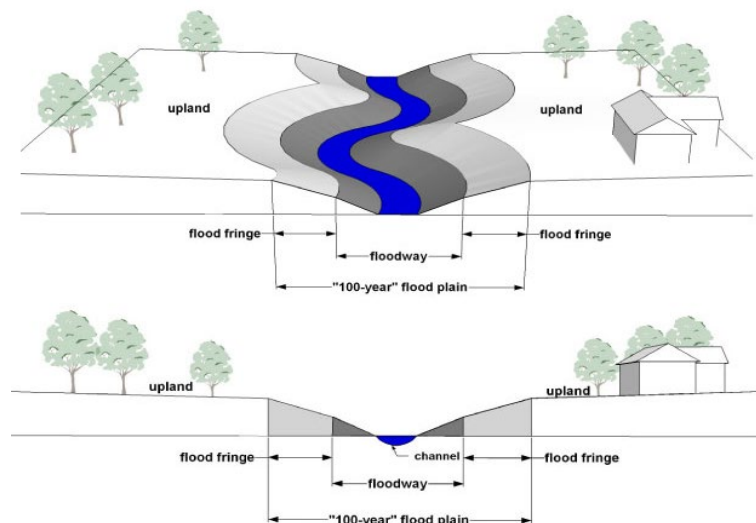


Figure 50-18.1.C-2: Flood plain, floodway, and flood fringe Graphic taken from *Floodplain Management in the United States: An Assessment Report*, prepared for the Federal Interagency Floodplain Management Task Force 1992.

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(c) Annexations.

The Flood Insurance Rate Map panels referenced in Section 50-18.1.A.2(b) may include floodplain areas that lie outside of the corporate boundaries of the City of Duluth at the time of adoption of this Section. If any of these floodplain land areas are annexed into the City of Duluth after the date of adoption of this Section, the newly annexed floodplain lands will be subject to the provisions of this Section immediately upon the date of annexation. Annexations into panels not referenced in Section 50-18.1.A.2(b) require ordinance amendment in accordance with Section 50-18.1.C.10.

(d) Municipal Boundary Adjustments.

The Flood Insurance Rate Map panels referenced in Section 50-18.1.A.2(b) apply countywide. If at any point any lands come under the jurisdiction of another local government, the following shall apply:

- (i.) City adjustments of corporate boundaries, including but not limited to annexations and detachments, shall shift floodplain administrative authority of all affected lands immediately upon the date of the boundary adjustment occurring. Cities retain jurisdictions for all incorporated lands, and the County retains jurisdiction under this Section on all unincorporated lands.

## 2. Requirements for all floodplain districts

(a) Permit Required.

A permit must be obtained from the City of Duluth to verify compliance with all applicable standards outlined in this Section prior to the following uses or activities:

- (i) The erection, addition, modification, maintenance, rehabilitation, repair, or alteration of any building, structure, or portion thereof. Normal maintenance requires a permit to determine if such work, either separately or in conjunction with other planned work, constitutes a substantial improvement, as specified in Section 50-38.2.B.1(c).
- (ii) The construction of a fence, pool, deck, or placement of anything that may cause a potential obstruction.
- (iii) The change or expansion of a nonconforming use.
- (iv) The repair of a structure that has been damaged by flood, fire, tornado, or any other source.
- (v) The placement of fill, excavation, utilities, on-site sewage treatment systems, or other service facilities Placement or excavation of less than 5 cubic yards of material for gardening or small landscaping projects is exempt from this requirement.
- (vi) The storage of materials or equipment, in conformance with Section 50-18.1.C.2(b)(ii).
- (vii) Relocation or alteration of a watercourse (including stabilization projects or the construction of new or replacement dams, culverts and bridges). A local permit is not required if a public waters work permit has been obtained from the Department of Natural Resources.
- (viii) Any other type of "development," as defined in Sec 50-41.4.

(b) Minimum Development Standards

- (i) All development must:
- (1) Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (2) Be constructed with materials and equipment resistant to flood damage;
  - (3) Be constructed by methods and practices that minimize flood damage;



- (4) Be constructed with heating, ventilation, duct work, and air conditioning equipment and other service facilities elevated at least up to the Regulatory Flood Protection Elevation (RFPE). Water, sewage, electrical, and other utility lines below the RFPE shall be constructed so as to prevent water from entering or accumulating within them during conditions of flooding;
- (5) Be reasonably safe from flooding and consistent with the need to minimize flood damage;
- (6) Be assured to provide adequate drainage to reduce exposure to flood hazards;
- (7) Not be detrimental to uses in adjoining areas;
- (8) Not adversely affect the efficiency or restrict the flood carrying capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
- (9) Ensure that any fill or other materials are protected from erosion, discharge, and sediment entering surface waters by the use of vegetative cover or other methods as soon as possible.
  - (ii) Materials that, in time of flooding, are buoyant, flammable, explosive, or could be injurious to human, animal, or plant life shall be stored at or above the Regulatory Flood Protection Elevation (RFPE) or floodproofed. Storage of materials likely to cause pollution of the waters, such as sewage; sand; rock; wrecked and discarded equipment; dredged spoil; municipal, agricultural or industrial waste; and other wastes as further defined in Minnesota Statutes, Section 115.01, are prohibited unless adequate safeguards approved by the Minnesota Pollution Control Agency are provided.
  - (iii) Critical facilities shall be located so that the lowest floor is not less than two feet above the Base Flood Elevation (BFE), or the 0.2% annual chance flood elevation, whichever is higher.

### 3. Floodway District

#### (a) Permitted Uses in Floodway.

Development allowed in the floodway district is limited to that which has low flood damage potential, is allowed in the underlying zone district, and will not obstruct flood flows, increase velocities, or increase the water surface elevations of the one-percent annual chance flood. The following uses and activities may be allowed with a permit, subject to the standards in Section 50-18.1.C.3(b):

- (i) Agricultural uses, recreational uses, parking lots, loading areas, airport landing strips, water control structures, navigational facilities, as well as public open space uses.
- (ii) Roads, driveways, railroads, trails, bridges, and culverts.
- (iii) Public utility facilities and water-oriented industries which must be in or adjacent to watercourses.
- (iv) Grading, filling, land alterations, ecological restoration projects, and shoreline stabilization projects.
- (v) No structures are allowed in the Floodway District, except structures accessory to the uses detailed in Section 50-18.1.C.3(a)(i) and Section 50-18.1.C.3(c)(i), which require a special use permit.

#### (b) Standards for Permitted Uses in Floodway.

In addition to the applicable standards detailed in Section 50-18.1.C.2:

- (i) The applicant must demonstrate that the development will not result in any of the following during the one-percent annual chance flood: cause a stage increase of 0.00 feet or greater, obstruct flood flows, or increase velocities. This shall be demonstrated through hydrologic and hydraulic analysis performed by a professional engineer, or using other standard engineering practices (e.g. projects that restore the site to the previous cross-sectional area). This is commonly documented through a “no-rise certification.”

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(ii) Any development that would result in a stage increases greater than 0.00 feet may only be allowed with a permit if the applicant has applied for a Conditional Letter of Map Revision (CLOMR) in accordance with 44 CFR § 65.12, and FEMA has issued the CLOMR. Map revisions must follow the procedures in Section 50-18.1.C.8(d) and Section 50-18.1.C.9.

(iii) Any development resulting in decreases to the water surface elevation of the base flood identified in the Flood Insurance Study requires a Letter of Map Revision (LOMR) following the procedures in Section 50-18.1.C.8(d) and Section 50-18.1.C.10.

(iv) Any development in the beds of public waters that will change the course, current or cross section is required to obtain a public waters work permit in accordance with Minnesota Statutes, section 103G.245 or a utility crossing license in accordance with Minnesota Statutes, section 84.415, from the Department of Natural Resources, or demonstrate that no permit is required, before applying for a local permit.

(v) Any facility used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation, or be designed to ensure that within the area inundated during the base flood event, the depth (in feet) multiplied by the velocity (in feet per second) is less than four.

(vi) Fill and other land alteration activities must offer minimal obstruction to the flow of flood waters, as certified by a professional engineer, and be protected from erosion and sediment entering surface waters using permanent vegetative ground cover, or other methods as soon as possible.

(c) Special Uses in Floodway.

The following uses and activities may be permitted as special uses, subject to the standards detailed in Section 50-18.1.C.3(d):

(i) Commercial extractive uses, and storage and stockpiling yards.

(ii) Structures accessory to uses detailed in Section 50-18.1.C.3(a)(i) and Section 50-18.1.C.3(c)(i).

(d) Standards for Special Uses in Floodway.

In addition to the applicable standards detailed in Section 50-18.1.C.2, Section 50-18.1.C.3(b) and Section 50-20.1.Q.:

(i) Extractive uses and storage of materials require the completion of a site development and restoration plan, to be approved by the Planning Commission.

(ii) Accessory Structures.

Structures accessory to the uses detailed in Section 50-18.1.C.3(a)(i) and Section 50-18.1.C.3(c)(i) must be constructed and placed so as to offer a minimal obstruction to the flow of flood waters and are subject to the standards in Section 50-18.1.C.4(b)(iii) of this chapter.

(iii) The use or development conforms to the underlying zone district.

4. Flood Fringe District

(a) Permitted Uses in Flood Fringe.

Any uses or activities allowed in any applicable underlying zoning districts may be allowed with a permit, subject to the standards set forth in Section 50-18.1.C.4(b).

(b) Standards for Permitted Uses in Flood Fringe.

In addition to the applicable standards detailed in Section 50-18.1.C.2:

(i) Residential Structures.



- (1) Elevation on Fill. Structures erected, constructed, reconstructed, altered, or moved on fill within the Flood Fringe District shall be placed so that the lowest floor is elevated at or above the Regulatory Flood Protection Elevation (RFPE). Construction of this type shall only be permitted in locations where the natural ground is no lower than three feet below the base flood elevation. The finished fill elevation shall be at or above the elevation associated with the base flood plus any stage increases that result from designation of a floodway. Fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure. Elevations must be certified by a registered professional engineer, land surveyor or other qualified person designated by the Building Official. Elevation methods alternative to these fill standards are subject to a Special Use Permit, as provided in Section 50-18.1.C.4(c)(i) (Figure 50-18.1.C-3).

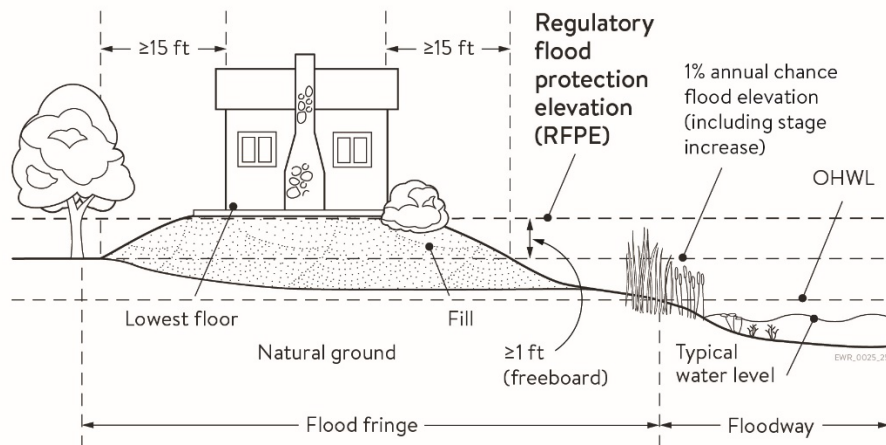


Figure 50-18.1.C-3: Overview of fill standards for residential structures.

(ii) Nonresidential Structures.

Nonresidential structures must meet one of the following construction methods:

(1) Elevation on Fill.

Structures may be elevated on fill, meeting the standards in Section 50-18.1.C.4(b)(i)(1). Fill for nonresidential structures is not required to be extended 15 feet beyond the outside limits of the structure.

(2) Alternative Elevation Methods.

Structures may be elevated using methods alternative to the fill standards in Section 50-18.1.C.4(b)(i)(1). Such methods include the use of blocks, pilings, filled stem walls, or internally-flooded enclosed areas such as crawl spaces, attached garages, or tuck under garages (Figure 50-18.1.C-4).

Blocks or pilings. Filled stem walls. Internally flooded enclosed area.

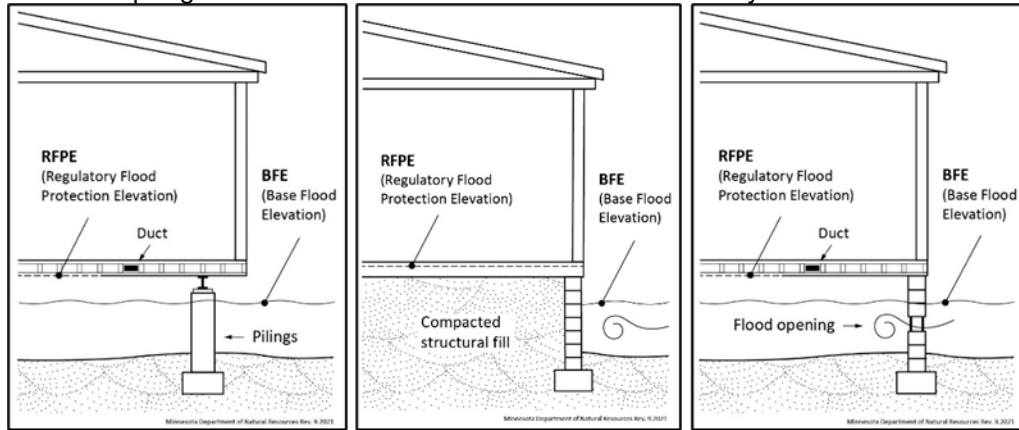


Figure 50-18.1.C-4

(3) Designs accommodating for internally-flooded enclosed areas must be certified by a registered professional engineer or architect, or meet or exceed the standards detailed in FEMA Technical Bulletin 1, as amended, as well as the following standards:

- (a) The lowest floor shall be elevated at or above the Regulatory Flood Protection Elevation (RFPE).
- (b) The floor of the enclosed area must be at or above the exterior grade on at least one side of the structure.
- (c) To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings below the base flood elevation on at least two sides of the structure. The bottom of all openings shall be no higher than one-foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, have a net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention.
- (d) Internally flooded enclosed areas shall only be used for the parking of vehicles, building access, or storage. Bathrooms and toilet rooms shall not be allowed. Such areas shall be subject to a deed-restricted non-conversion agreement as well as inspections as needed by determination of the Land Use Supervisor.

(4) Dry Floodproofing.

Structures having watertight enclosed basements or spaces below the Regulatory Flood Protection Elevation (RFPE) must meet the following standards:

- (a) Walls must be substantially impermeable to the passage of water, with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, at least up to the Regulatory Flood Protection Elevation (RFPE);
- (b) Must meet the standards of FEMA Technical Bulletin 3, as amended; and
- (c) A registered professional engineer or architect shall be required to certify that the design and methods of construction meet the standards detailed in this Section.

(iii) Accessory Structures.

All accessory structures must meet the following standards:

- (1) Structures shall not be designed or used for human habitation.
- (2) Structures will have a low flood damage potential as defined in FEMA Floodplain Management Bulletin P-2140, as amended.
- (3) Structures shall constitute a minimal investment not to exceed 576 square feet in size, one-story in height, and shall only be used for parking and storage, except as provided under Section 50-18.1.C.4(b)(iii)(5).
- (4) Structures with two or more rigid walls, must meet one of the following construction methods:
  - (a) Wet Floodproofing.



Structures may be floodproofed in a way to accommodate internal flooding. To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention. Portions of structures below the RFPE must be constructed of flood damage-resistant materials. Utilities must be elevated above the RFPE and any utility lines below the RFPE shall be constructed so as to prevent floodwaters from entering or accumulating within them. Wet floodproofed structures must be anchored to resist flotation, collapse, and lateral movement.

**(b) Elevation on Fill.**

Structures may be elevated on fill, meeting the standards in Section 50-18.1.C.4(b)(i). Fill is not required to be extended 15 feet beyond the outside limits of the structure.

**(c) Alternative Elevation Methods.**

Structures may have their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) through methods alternative to the fill standards in Section 50-18.1.C.4(b)(iii)(4)(b), and must meet the standards in Section 50-18.1.C.4(b)(ii)(2).

**(d) Dry Floodproofing.**

Structures may be dry-floodproofed, or watertight, meeting the standards in Section 50-18.1.C.4(b)(ii)(3).

- (5) Structures with fewer than two rigid walls, such as carports, gazebos, and picnic pavilions, meeting the standards in Section 50-18.1.C.2(b)(i) may be located at an elevation below the Regulatory Flood Protection Elevation, exceed 576 square feet in size, and may include uses as provided under Section 50-18.1.C.4(a).

(iv) Any facilities where regular employment occurs or that are used by the general public must be designed with a flood warning system that provides adequate time for evacuation, or be designed to ensure that within the area inundated during the base flood event, the depth (in feet) multiplied by the velocity (in feet per second) is less than four.

(v) Manufactured homes and recreational vehicles must meet the standards of Section 50-20.1.F and Section 50-20.1.Q, respectively.

**(c) Special Uses in Flood Fringe.**

The following uses and activities may be permitted as special uses, subject to the standards in Section 50-18.1.C.4(d):

**(i) Alternative Elevation Methods – Residential Structures.**

Residential structures with their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) using methods alternative to the fill requirements in Section 50-18.1.C.4(b)(i).

**(d) Standards for Special Uses in Flood Fringe.**

In addition to the applicable standards detailed in Section 50-18.1.C.2, 6.2:

(i) All residential structures with lowest floors elevated through alternative elevation methods must meet the standards in Section 50-18.1.C(b)(ii)(2).

(ii) The use or development must conform to the underlying zone district.

5. General Floodplain District(a) Permitted Uses in General Floodplain District

(i) Until the floodway is delineated, allowable uses and applicable standards will follow those listed in the Floodway District, Section 50-18.1.C.3

(ii) All other uses are subject to a floodway/flood fringe determination as provided in Section 50-18.1.C.5(d), in addition to the standards provided in Section 50-18.1.C.5(b) and Section 50-18.1.C.5(c). Permitted uses shall be determined as follows:

- (1) If the development is determined to be in the Floodway District, Section 50-18.1.C.3 applies.
- (2) If the development is determined to be in the Flood Fringe District, Section 50-18.1.C.4 applies.

(b) Determining Flood Elevations

(i) All development requires a determination of the Base Flood Elevation (BFE).

- (1) Proposed developments of more than 50 lots or 5 acres, whichever is lesser, must use detailed methods for determining the BFE. This may include use of supporting A Zone modeling and the "shoreland method", when eligible, on lakes.
- (2) Exceptions to this requirement include projects that restore the site to the previous cross-sectional area, such as shore stabilization or culvert replacement projects. Base Flood Elevations (BFE) may be found using best available data from any Federal or State sources (including MNDNR's Lake & Flood Elevations Online (LFEO) Viewer).

(c) Encroachment Analysis

(i) Encroachments due to development may not allow stage increases more than one-half (0.5) foot at any point, unless through a map revision following the procedures in Section 50-18.1.C.8(d) and Section 50-18.1.C.10. This evaluation must include the cumulative effects of previous encroachment and must be documented with hydrologic and hydraulic analysis performed by a professional engineer, or using other standard engineering practices. If increased flood damages would occur, due to the water surface level increase, then a stage increase less than one-half (0.5) feet is required.

(ii) Alterations or changes that result in stage decreases are allowed and encouraged.

(d) Standards for the Analysis of Floodway Boundaries

(i) Requirements for Detailed Studies.

Any development, as requested by the Land Use Supervisor, shall be subject to a detailed study to determine the limits of the Floodway District. This determination must be consistent with the minimum standards for hydrologic and hydraulic mapping standards and techniques, as detailed in Minnesota Rules, part 6120.5600, Subp. 4 and FEMA Guidelines and Standards for Flood Risk Analysis and Mapping, as revised. Additionally:

- (1) A regulatory floodway necessary to carry the discharge of the one-percent annual chance flood must be selected without increasing the water surface elevation more than one-half (0.5) foot at any point. This determination should include the cumulative effects of previous encroachments. A lesser water surface elevation increase than one-half (0.5) foot is required if, due to the water surface level increase, increased flood damages would potentially result; and

- (2) An equal degree of encroachment on both sides of the stream within the reach must be assumed in computing floodway boundaries, unless topography, existing development patterns, and comprehensive land use plans justify a modified approach, as approved by the Department of Natural Resources.

(e) Other Acceptable Methods.

For areas where a detailed study is not available or not required:

(i) Development prohibited in floodways (e.g. most buildings) requires a floodway/flood fringe determination to verify the development is within the flood fringe. This determination must be done by a professional engineer or utilize other accepted engineering practices. The Department of Natural Resources may also provide technical assistance and must approve any determinations made via methods alternative to those described in Sec 50-18.1.C.5(d) to determine floodway boundaries.

(ii) For areas where the floodway has not been determined in and along lakes, wetlands, and other basins, the following methodology may be used as an alternative to Item A above, provided these areas are not affected by velocities and the lot is able to accommodate a building site above the Regulatory Flood Protection Elevation (RFPE):

- (1) All areas that are at or below the ordinary high-water level, as defined in Minnesota Statutes, section 103G.005, Subd. 14, will be considered floodway, and all areas below the Base Flood Elevation (BFE) but above the ordinary high-water level will be considered flood fringe, provided that within 25 feet of the ordinary high water level, or within the Shore Impact Zone, whichever distance is greater, land alterations shall be restricted to:

- (a) The minimum required to accommodate beach areas, access areas, and accessory structures as permitted, not to exceed a volume greater than 10 cubic yards; projects involving volumes exceeding 10 cubic yards require floodway/flood fringe determination in accordance with the procedures in Section 50-18.1.C.5(e)(i); and
- (b) The minimum required to accommodate shoreline stabilization projects to correct an identified erosion problem as verified by a qualified resource agency or the Land Use Supervisor.

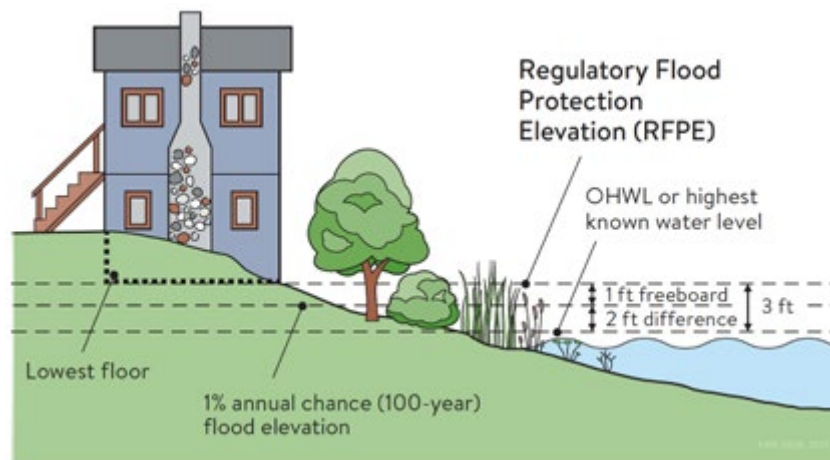


Figure 50-18.1.C-56. Coastal District

- (a) Permitted Uses in the Coastal District.



# Attachment 1

50-18 Overlay Districts

The following uses and activities may be allowed with a permit if they are allowed within the applicable underlying zoning districts, subject to the standards in Section 50-18.1.C.6(c):

(i) Within V Zones: Agricultural uses, recreational uses, parking lots, loading areas, airport landing strips, water control structures, navigational facilities, ecological restoration projects, as well as public open space uses.

(ii) Within coastal AE Zones: Any uses or activities allowed in any applicable underlying zoning districts may be allowed with a permit, subject to the standards set forth in Section 50-18.1.C.4(b) (Flood Fringe District).

(b) Special Uses in the Coastal District.

The following uses and activities may be permitted as special uses if they are allowed within the applicable underlying zoning districts, subject to the standards in Section 50-18.1.C.6(c):

(i) Within V Zones: Any new construction and substantial improvements of structures, including manufactured homes, permitted in any applicable underlying zoning districts are allowed provided they meet the provisions of Section 50-18.1.C.2 and Section 50-18.1.C.6(c).

(ii) Within coastal AE Zones: Special uses within the coastal AE zone are regulated pursuant to the provisions contained within Section 50-18.1.C.4(c) (Flood Fringe District – Special Uses).

(c) Standards for Permitted & Special Uses in the Coastal District.

(i) Within coastal AE Zones: Standards in Section 50-18.1.C.4(b) Flood Fringe District apply.

(ii) Within coastal V Zones:

(1) All new construction and substantial improvements of structure , shall be placed landward of the Ordinary High Water Line of Lake Superior, and be elevated on pilings or columns so that:

(a) The bottom of the lowest horizontal structural member supporting the lowest floor (excluding the pilings or columns) is elevated to or above the regulatory flood protection elevation, and

(b) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components.

Water loading values used shall be those associated with the base flood.

Wind loading values shall be those defined according to American Society of Civil Engineers 7-13, as amended, Minimum design loads and associated criteria for buildings and other structures or those established by the State Building Code in MN Rules 1303.2200 or current version adopted by the Minnesota Department of Labor and Industry.

# Attachment 1

50-18 Overlay Districts

A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice meeting the provisions of this Sec 50-18.1.C.

- (2) All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
- (a) For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot.
- (b) Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Water loading values used shall be those associated with the base flood. Wind loading values shall be those established by the State Building Code. Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.

- (c) All space enclosed by breakaway walls, open wood lattice-work, or insect screening below the lowest floor shall be used solely for parking of vehicles, building access, or storage.
- (3) The use of fill for structural support of buildings is prohibited.
- (4) The man-made alteration of sand dunes, which would increase potential flood damage, is prohibited.
- (5) In zones V or VE, new or substantially improved above ground gas or liquid storage tanks shall be elevated with the bottom of the lowest horizontal supporting member above RFPE on the landward side of buildings.
- (6) In zones V or VE, new or substantially improved underground gas or liquid storage tanks must be installed below the lowest eroded ground elevation.

## 7. Public and private utilities, service facilities, roads, bridges, and railroads

- (a) Public Transportation Facilities.

# Attachment 1

50-18 Overlay Districts

Railroad tracks, roads, and bridges must be elevated to the Regulatory Flood Protection Elevation (RFPE) where such facilities are essential to the orderly functioning of the area, or where failure or interruption would result in danger to public health or safety. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety. All public transportation facilities shall be designed to minimize increases in flood elevations.

(b) Public Utilities.

All utilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be elevated and/or floodproofed to the Regulatory Flood Protection Elevation (RFPE), be located and constructed to minimize or eliminate flood damage, and be designed to eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. All public utilities should be designed to minimize increases in flood elevations. New solid waste management facilities, as defined in Minnesota Rules, part 7035.0300, are prohibited in the one-percent annual chance floodplain. Water supply systems are subject to the provisions in Minnesota Rules, part 4725.4350.

(c) Private On-Site Water Supply, Individual Sewage Treatment Systems, and other Service Facilities.

Private facilities shall be subject to applicable provisions detailed in Section 50-18.1.C.7(b). In addition, new or replacement on-site sewage treatment systems are to be located to avoid impairment to them or contamination from them during times of flooding, shall not be located in a designated floodway, and are subject to the provisions in Minnesota Rules, parts 7080.2270.



8. Administration

- (a) For duties that apply to floodplain administration, see Section 50-36.4.
- (b) For permit application requirements that apply to floodplain administration, see Section 50-37.13.D.4.
- (c) Recordkeeping.

The building official must maintain applicable records in perpetuity documenting:

  - (i) All certifications for dry floodproofing, alternative elevation methods, and construction in Coastal Districts, where applicable.
  - (ii) Analysis of no-rise in the Floodway District, as detailed in Section 50-18.1.C.3(b)(i), and encroachment analysis ensuring no more than one-half foot of rise in the General Floodplain District, as detailed in Section 50-18.1.C.5(b)(i)(2) and Section 50-18.1.C.5(c)(i).
  - (iii) Final elevations, as applicable, detailing the elevation to which structures and improvements to structures are constructed or floodproofed. Elevations shall be determined by an engineer, architect, surveyor or other qualified individual, as approved by the Building Official. In V Zones, the final elevations must be determined by a professional engineer or architect.
  - (iv) Substantial damage and substantial improvement determinations, as detailed in Section 50-38.2.B.1(c), including the cost of improvements, repairs, and market value.
  - (v) The Land Use Supervisor must maintain a record of all variance actions, including justification for their issuance, and must report such variances to the commissioner or the commissioner's designated representative and postmarked within ten days of final action or when requested by the Federal Emergency Management Agency.
- (d) Certificate of Occupancy for a New, Altered, or Nonconforming Use.

No building or structure may be occupied or used in any manner until a certificate of occupancy has been issued by the Building Official stating that the finished fill and building floor elevations or other flood protection measures are in compliance with the requirements of this Section.
- (e) Notifications for Watercourse Alterations.

Before authorizing any alteration or relocation of a river or stream, the Land Use Supervisor must notify adjacent communities. If the applicant has applied for a permit to work in public waters in accordance with Minnesota Statutes, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to FEMA.
- (f) Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations.

Where physical changes affecting flooding conditions may increase or decrease the water surface elevation of the base flood, the City must notify FEMA of the changes in order to obtain a Letter of Map Revision (LOMR), by submitting a copy of the relevant technical or scientific data as soon as practicable, but no later than six months after the date such supporting information becomes available. Within the General Floodplain District, a map revision is only required if physical changes result in stage increases greater than 0.5 feet.

9. Violations and Penalties.

# Attachment 1

50-18 Overlay Districts

(a) Enforcement.

Violations of the provisions of this Section constitutes a misdemeanor and is punishable as defined by law. The Land Use Supervisor may utilize the full array of enforcement actions available to them including, but not limited to, those outlined in Sec 50-39.2, or a request to the National Flood Insurance Program for denial of flood insurance. The City of Duluth must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

10. Amendments

(a) Ordinance Amendments.

Any revisions to the floodplain maps by the Federal Emergency Management Agency or annexations of new map panels require an ordinance amendment to update the map references in Section 50-18.1.A.2(b).

(b) Required Approval.

All amendments to this section must be submitted to the Department of Natural Resources for review and approval prior to adoption, for compliance with state and federal rules and requirements.

11. Severability.

(a) See Section 50-12.A

**Article 3**50-20.1.F**F. Manufactured home park.**

- ~~1. New manufactured home parks, expansions to existing manufactured home parks, and new or replacement of manufactured home units on lots of record are prohibited in the floodway district. If allowed in the flood fringe district, these uses shall be subject to the requirements of Section 50-18.1 of this Chapter and the following standards;~~
- ~~2. Existing, new and replacement manufactured homes in the flood fringe district must comply with the following standards:
 
  - ~~(a) All manufactured homes must be securely anchored to an adequately anchored foundation system that resists flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors. This requirement is in addition to applicable state anchoring requirements for resisting wind forces;~~
  - ~~(b) New or replacement manufactured homes in existing manufactured home parks must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation, unless the property owner has a flood warning and emergency evacuation plan acceptable to the city council as specified in Section 50-18.1.~~~~

Manufactured homes and manufactured home parks are subject to applicable standards for each floodplain district. In addition:

1. New and replacement manufactured homes must be placed and elevated in compliance with Section 50-18.1.C.4 or Section 50-18.1.C.6, as applicable, of this chapter and must be securely anchored to a system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
2. New manufactured home parks and expansions to existing manufactured home parks must meet the appropriate standards for subdivisions below.
  - (a) All lots within floodplain districts must be suitable for a building site outside of the floodway.
  - (b) Subdivision of lands within the floodplain districts may not be approved if the cost of providing governmental services would impose an unreasonable economic burden on the City of Duluth.
  - (c) All subdivisions must have vehicular access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE), unless a flood warning/emergency evacuation plan has been formulated and submitted for review with the application.
  - (d) The floodplain boundary, including the Floodway and Flood Fringe District boundaries, if determined, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents.
3. Within the coastal V Zone, the placement or substantial improvement of manufactured homes shall comply with the provisions of Section 50-18.1.C.6(c)(ii)(1-4).



#### Q. Recreational vehicle (RV) park.

- ~~1. Within any flood plain district, recreational vehicles that do not meet the exemption criteria specified in Subsection 2 below shall be subject to the elevation and anchoring provisions of Section 50-18.1.C for new structures;~~
- ~~2. Criteria for exempt recreational vehicles:
 
  - ~~(a) The vehicle must have a current license required for highway use;~~
  - ~~(b) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks;~~
  - ~~(c) No permanent structural type additions may be attached to the vehicle;~~
  - ~~(d) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district;~~
  - ~~(e) Accessory structures are not permitted within the floodway district. Any accessory structure in the flood fringe district must be constructed of flood-resistant materials and be securely anchored as specified in Section 50-18.1.C.3.v;~~
  - ~~(f) Cost of an accessory structure must not exceed \$500;~~~~
- ~~3. Recreational vehicles that are exempt in Section 50-20.3.P.2 lose this exemption when development occurs on the site exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all accessory structures will then be treated as a new structure and shall be subject to the elevation/floodproofing requirements and the land use standards specified in Section 50-18.1.C.3(C) of this chapter. No development or improvement on the parcel or attachment to the recreational vehicle is allowed that would hinder the removal of the vehicle to a flood-free location;~~
- ~~4. New commercial recreational vehicle parks or campgrounds, subdivisions or condominium associations, and the expansion of any similar existing use exceeding five units or dwelling sites may be allowed subject to the following:
 
  - ~~(a) On any new or replacement recreational vehicle site in the flood fringe district, the recreational vehicle and its contents must be placed on fill above the regulatory flood protection elevation and adequate road access to the site must be provided in accordance with Section 50-18.1.C.5(d). No fill placed in the floodway to meet the requirements of this section shall increase the flood stage of the regional flood;~~
  - ~~(b) Any new or replacement recreational vehicle site located in the floodway district, or as an alternative to 4(a) above in the flood fringe district, may be allowed as a special use in accordance with the following provisions and the provisions of Section 50-37.10;
 
    - ~~• The applicant must submit an emergency plan for the safe evacuation of all vehicles and people acceptable to the city council as specified in Section 50-18.1.C.5(d). The plan shall demonstrate that adequate time and personnel exist to carry out an evacuation, and that all vehicles will meet the exemption criteria specified in Section 50-20.Q.2 above; and~~
    - ~~• All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding;~~~~~~

New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Recreational vehicles placed in existing recreational vehicle parks, campgrounds or lots of record in the floodplain must either:

1. Meet the requirements for manufactured homes in Sec 50-20.1.F, or
  - (a) Be travel ready, meeting the following criteria:
    - (i) The vehicle must be fully licensed.
    - (ii) The vehicle must be ready for highway use, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities.
    - (iii) No permanent structural type additions may be attached to the vehicle.
    - (iv) Accessory structures may be permitted in the Flood Fringe District, provided they do not hinder the removal of the vehicle should flooding occur, and meet the standards outlined in Section 50-18.1.C.2 and Section 50-18.1.C.4(b)(iii).
  - (b) Within Coastal V zones, recreational vehicles must meet the criteria within Sec 50-20.1.Q.1(a) or otherwise comply with the provisions of Section 50-18.1.C.6(c)(ii)(1-4).

## **Article 4**

### **50-33 PLATS.**

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#### **50-33.1 General.**

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All subdivision plats and replats, and all registered land surveys, shall create lots, streets and walkways and open spaces consistent with the requirements of the zone district within which the land is located. Without limiting the generality of the previous sentence, all plats and land surveys approved after November 19, 2010, shall be consistent with the lot dimension requirements contained in sections 50-13 through 18 of this Chapter, as well as the requirements of Section 50-21, *Dimensional requirements*, 50-22, *Building form standards*, 50-23, *Connectivity and circulation*, 50-24, *Parking and loading*, and 50-18.1.E, *Stormwater and erosion control*. In addition, all subdivision plats and replats, and all registered land surveys approved after November 19, 2010, shall comply with the standards of this Section 50-33. (Ord. No. 10044, 8-16-2010, § 6.)

#### **50-33.2 Site design.**

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- A. The site design process shall begin with an analysis of site constraints and natural resources, and shall avoid both to the degree practicable;
- B. In addition, the site design process shall include a pre-submittal evaluation of storm drainage to ensure that the proposed design will comply with the storm drainage and erosion control standards in Section 50-18.1.E. This study shall be submitted prior to submission of a preliminary plat of the property;
- C. The site design process shall include an evaluation of minimal impact development and low impact development methods;
- D. At a minimum, the lands included in the plat or survey shall be designed so that all developable parcels can be developed in compliance with the requirements of:
  1. Section 50-18.1, *Natural resources overlay district*, which identifies areas subject to flood plain, shorelands and wetland constraints, and stormwater and erosion control;
    - (a) If located in a floodplain, proposed developments of more than 50 lots or 5 acres, whichever is lesser, must meet the requirements of Section 50-18.1.C.5(b)(i)
  2. Section 50-18.4, *Skyline Parkway overlay district*, which identifies constraints on the location of structures and fences on lands located within 200 feet downhill of Skyline Parkway;
- E. Shore and bluff impact zones shall be included in common open space. Wetlands, floodplains, wildlife areas, steep slopes, rock outcrops, tree stands and areas in their natural state that are unsuitable for development shall be included in common open space if possible;
- F. Whenever a portion of a tract is proposed for platting and it is intended to enlarge such platted portion in the future, a tentative plan for the entire tract shall be submitted;

G. To ensure a harmonious development in areas not subject to any zoning ordinance (areas now outside the corporate limits of Duluth), the subdivider may be required to place upon such plats restrictions comparable to those of this Chapter for similar areas. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 44.)

### **50-33.3 Block size.**

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- A. In the MU-B, I-G and I-W zone districts, block lengths and widths shall be platted to accommodate the anticipated occupancy of the platted lots;
- B. In other zone districts, blocks shall be not less than 300 feet nor more than 600 feet in length;
- C. Through lots or double-frontage lots shall be avoided as far as practicable, but may be permitted when necessary to allow efficient use of the land in light of site topography. (Ord. No. 10044, 8-16-2010, § 6.)

### **50-33.4 General lot design and layout.**

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- A. All lots shall have frontage on a public street unless that is impracticable due to topography and the land use supervisor approves an alternative layout based on considerations of public safety and land use efficiency;
- B. Where practicable, side lot lines shall be at approximately right angles to the street on which the lot fronts;
- C. Where practicable, adjacent lots shall not be platted so that their long axes are at right angles to each other;
- D. No strips of land shall be platted for private ownership that control access to public streets or that are untaxable for special improvements;
- E. Where practicable, lots shall be oriented so that the long axis of the lot is within 15 degrees of east-west in order to increase solar orientation;
- F. Flag lots are prohibited in R-1, R-2 and MU-N zone districts.
- G. All plats must have vehicular access both to the platted area and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE), unless a flood warning/emergency evacuation plan has been formulated and submitted for review with the application.
- H. The floodplain boundary, including the Floodway and Flood Fringe District boundaries, if determined, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 45; Ord. No. 10286, 3-10-2014, § 16.)

**Article 5**  
**50-35**

**50-35 SUMMARY TABLE.**

Table 50-35-1: Procedures Summary Table								
Type of Application	Public Notice Required		Review, Decision, & Appeal Authority					
	Public Notice Required	Pre-Application Required	Staff	Land Use Supervisor	Heritage Preservation Commission	Planning Commission	Council	Final Action
R = Review A = Appeal  N = Newspaper Notice S = Sign Notice  RES = Resolution ORD = Ordinance AL= Action Letter COA = Certificate of Appropriateness								
D = Decision <> = Hearing  M = Mail Notice								
<b>Comprehensive Land Use Plan</b>								
Text Amendment	N			R		<R>	D	RES
Map Amendment	N, M			R		<R>	D	RES
<b>UDC Text or Zoning Map Amendment</b>								
Text Amendment	N			R		<R>	D	ORD
Map Amendment	N, S, M*	✓		R		<R>	D	ORD
<b>District Plan Adoption/Amendment</b>	S	✓		R		<D>	<A>	
<b>Subdivision Plat Approval</b>								
Concept Plan		✓		R				**
Preliminary Plat	N, S, M	✓		R		<D>		AL
Final Plat				R		<D>		AL***
<b>Minor Subdivision/Registered Land Survey</b>				R		<D>		AL***
<b>Vacation of Street</b>	S, M	✓		R		<R>	D	RES
<b>Concurrent Use of Streets Permit</b>	S	✓		R		<R>	D	ORD
<b>Historic Resource Designation</b>	M					<R>	R	D
<b>Variance</b>	S, M	✓	R			<D>	<A>	AL
<b>Special Use Permit</b>	S, M	✓		R		<D>	<A>	AL
<b>Interim Use Permit</b>	S, M	✓		R		<D>	<A>	AL
<b>Planning Review</b>								
General Planning Review				D		<A>		AL
Planning Commission Review When required in MU-C, MU-W, MU-I Zoning Districts and HE-O Overlay District	S, M	✓		R		<D>	<A>	AL
<b>Temporary and Sidewalk Use Permit</b>				D		<A>		AL
<b>Zoning Permit****</b>			D			<A>		AL
<b>Historic Construction/Demolition</b>	S					<D>	<A>	COA
<b>Wetland/WCA Permits</b>			D			<A>		AL

\*Mailed notice is required to affected property owners within 350 ft. when the amendment involves changes in district boundaries affecting an area of 5 acres or less.

\*\* Planning staff will provide applicant with a preapplication verification.



Table 50-35-1: Procedures Summary Table									
Type of Application			Review, Decision, & Appeal Authority						
R = Review A = Appeal  N = Newspaper Notice S = Sign Notice  RES = Resolution ORD = Ordinance AL= Action Letter COA = Certificate of Appropriateness	D = Decision <> = Hearing  M = Mail Notice	Public Notice Required	Pre-Application Required	Staff	Land Use Supervisor	Heritage Preservation Commission	Planning Commission	Council	Final Action

\*\*\* Applicant must provide documentation that the plat or RLS has been recorded with the county.

\*\*\*\* This category includes shoreland permit, floodplain permit, erosion and sediment control permit, sign permit, fence permit and airport environs permits. Appeals of airport environs permits related to Duluth International Airport are heard by the airport board of adjustment.

**50-37.5 Subdivision plat approval or amendment.**

**A. Applicability.**

This Section applies to all applications to subdivide unplatted land, or to replat previously platted land, or to adjust the boundary lines between existing property lines. This Section is intended to comply with all applicable provisions of state law, including without limitation Laws of Minnesota 1933, Chapter 93 and Laws of Minnesota 1974, Chapter 236 and any provisions of MSA 462.358 and Chapter 505 and 508, as amended, still applicable to the city, and shall be interpreted to comply with those provisions wherever possible. All applications to subdivide land shall follow the standard subdivision process in subsections G and H below unless provided for in subsections C, D, E or I below.

In addition to city approval, all subdivision plats, registered land surveys, and condominium plats will need to be approved by the St. Louis County surveyor prior to recording at the St. Louis County recorder's office.

1. General exemptions.

The following subdivisions of land are exempted from the provisions of this Section:

- a) Platted cemeteries done in accordance with the requirements of applicable state statutes and ordinances;
- b) Transfers of interest in land pursuant to court order; or
- c) Registered land surveys prepared for the purpose of clarifying existing land descriptions.

2. Conveyance by metes and bounds.

The following conveyances by metes and bounds shall be exempt from the provisions of this Section and shall not constitute a subdivision if the subject of the conveyance meets any of the following:

- a) Was a separate parcel of record on the date of adoption of subdivision regulations, or was the subject of a written agreement to convey entered into prior to such time; or
- b) Was a separate parcel of not less than 2-1/2 acres in area and 150 feet in width on January 1, 1966; or
- c) Was a separate parcel of not less than five acres in area and 300 feet in width on July 1, 1980, or;
- d) Is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width; or
- e) Is a single parcel of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area or 500 feet in width.

In any case in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interfere with the purpose of the subdivision regulations, the planning commission may waive such compliance by adoption of a resolution to that effect and the conveyance may then be filed or recorded;

**B. Property transfers.**

Pursuant to Minnesota Statute 272.162, no land shall be transferred or divided in official records until the transfer has been approved by the land use supervisor to determine if the transfer is appropriate and conforms with existing city ordinances and regulations if the platted lot or parcel conveyed is:

- 1. Less than a whole parcel of land as charged in the tax lists; and
- 2. Is part of or constitutes a Subdivision as defined in Minnesota Statute 462.352, sub. 12.

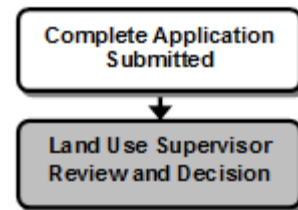
The land use supervisor shall certify that the transfer has complied with subsection C through I below, as applicable;

**C. Boundary line adjustment.**

A boundary line adjustment provides for the alteration of existing property lines, where no additional lots and parcels are created.

- 1. The land use supervisor shall approve the application if it is determined that:
  - (a) The application will not result in the creation of any new lots or parcels;
  - (b) If each of the existing lots and parcels, and the structures on those lots parcels, complies with the requirements of this Chapter, then after the adjustment each of the resulting lots or parcels, and the structures on those lots or parcels, will still comply with the requirements of this Chapter;
  - (c) If one or more of the existing lots or parcels, or a structure on one or more of those lots or parcels, does not comply with the requirements of this Chapter, the proposed relocation will not create any new nonconformity or increase any existing nonconformity between the requirements of this Chapter;
  - (d) All lots within floodplain districts must be suitable for a building site outside of the floodway.
  - (e) The floodplain boundary, including the Floodway and Flood Fringe District boundaries, if determined, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents
- 2. After the application is approved, the applicant must submit a legal description and survey or similar recordable exhibit, prepared by a licensed land surveyor, reflecting the relocated boundaries; obtain the land use supervisor’s signature on that survey or exhibit; and record the survey or exhibit in the appropriate office at St. Louis County. If the survey or exhibit is not recorded within 180 days after the boundary line adjustment is approved, that approval will lapse;

**Boundary Line Adjustment**



**D. Minor subdivision.**

A minor subdivision allows for the subdivision of a maximum of four lots, or the combination of any number of previously platted lots into a smaller number of platted lots. A minor subdivision is an approval process for simple land divisions; it does not provide for the subdivision of unplatted land, unless that land is described by a governmental subdivision legal description.

- 1. The planning commission shall approve the application if it is determined that:
  - (a) The lot or lots to be subdivided or combined have frontage on an improved public street;

- (b) Each proposed lot meets the minimum zoning requirements of the district that it is in. If a proposed lot is described by a governmental subdivision legal description, the proposed lot must be at least five acres in size and have 250 feet of frontage regardless of the zoning requirements of the district that it is in;
  - (c) If an existing structure on a lot complies with the requirements of this Chapter, then after the minor subdivision structures on each of the resulting lots will still comply with the requirements of this Chapter; and
  - (d) If one or more of the existing lots, or a structure on one or more of those lots, does not comply with the requirements of this Chapter, the proposed relocation will not create any new nonconformity or increase any existing nonconformity between the requirements of this Chapter.
  - (e) All lots within floodplain districts must be suitable for a building site outside of the floodway.
  - (f) All subdivisions must have vehicular access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE), unless a flood warning/emergency evacuation plan has been formulated and submitted for review with the application.
  - (g) The floodplain boundary, including the Floodway and Flood Fringe District boundaries, if determined, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents.
2. After the application is approved, the applicant must submit a legal description and survey or similar recordable exhibit prepared by a licensed land surveyor, reflecting the relocated boundaries; obtain the land use supervisor's signature on that survey or exhibit; and record the survey or exhibit in the appropriate office at St. Louis County. The approval will lapse if the survey or exhibit is not recorded within 180 days after the minor subdivision is approved;

**E. Combination of parcels.**

Any person with a legal or equitable interest in two or more contiguous lots or parcels of land may combine those parcels into a fewer number of lots or parcels by plat or registered land survey by complying with all the applicable subdivision procedures in subsections D, H or I;

**F. Amending an approved subdivision plat.**

An application to adopt or amend a subdivision preliminary plat or a subdivision final plat shall be filed pursuant to Section 50-37.5.G. An application to amend the street names of a subdivision final plat shall be filed pursuant to Section 50-37.5.H;

**G. Subdivision plat, preliminary procedure.**

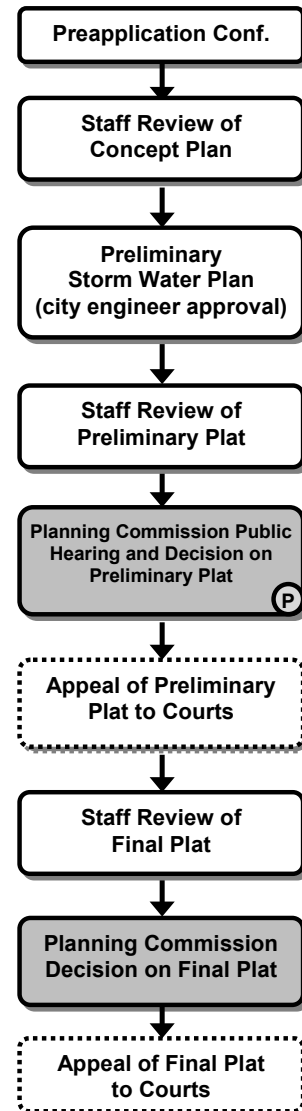
- 1. Consolidated preliminary and final review.  
For subdivisions that result in no more than four lots that are no less than five acres each, and where each lot will have a minimum frontage of 250 feet on an improved public road, preliminary and final review may be consolidated if the land use supervisor determines that the proposed subdivision is of small size and minor importance. Subdivisions so designated as being of small size and minor importance may submit a final plat application after staff review of a concept plan;
- 2. Concept plan.  
No application for a preliminary plat shall be accepted until the applicant has submitted a concept plan for the proposed subdivision. Concept plans shall reflect the general location of proposed lots, tracts, and streets, shall reflect all areas of the property where development is restricted pursuant to the NR-O overlay district in Section 50-18.1. The intent of the concept plan is to review general concepts for development of the site before applicants have incurred costs for

# Attachment 1

50-18 Overlay Districts

## Subdivision Plat Approval or Amendment

- engineering, soil, or storm water studies. The concept plans shall be reviewed in an informal discussion with planning staff;
3. Preliminary storm water plan.  
A preliminary storm water plan shall be submitted and approved by the city engineer prior to submittal of the application for a preliminary plat;
  4. Preliminary plat decision.  
The planning commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision to approve, adopt with modifications or deny the application based on the criteria in subsection 50-37.5.J.3 below;
  5. Preliminary plat criteria.  
The planning commission shall approve the application, or approve it with modifications if it determines that the application:
    - a) Is consistent with the comprehensive land use plan;
    - b) Is consistent with all applicable requirements of MSA 462.358 and Chapter 505;
    - c) Is consistent with all applicable provisions of this Chapter;
    - d) Is consistent with any approved district plan covering all or part of the area of the preliminary plat;
    - e) Is located in an area where adequate police, fire and emergency facilities are available to serve the projected population of the subdivision within the city's established response times, or the applicant has committed to constructing or financing public facilities that will allow police, fire or emergency service providers to meet those response times;
    - f) Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible;
    - g) All lots within floodplain districts must be suitable for a building site outside of the floodway;



**P** Indicates Public Hearing Required

### H. Subdivision plat, final procedure.

1. Final plat decision.  
After the approval of the preliminary plat, the applicant shall submit one or more final plats covering part or all of the land covered by the preliminary plat, together with evidence that the requirements of the approved plat have been met for the portion(s) of the land covered by the final plat. The planning commission shall approve, adopt with modifications or deny the final plat based on the criteria in subsection 3 below. The planning commission may refer the final plat to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection 3 below have been met;
2. Final plat review and referral.  
The final plat, together with the surveyor's mathematical calculations, shall be reviewed by the city engineer for accuracy of the surveys, the adequacy of the monuments, the proposed street improvements and other features of concern. The final plat may be submitted to the county engineer if the plat involves features of concern to the county highway department, and to such other divisions of government or public utility corporations as the city deems necessary or desirable. The city engineer shall check the plat boundary survey to determine the coinciding of



the plat boundary lines with the boundary lines of adjoining plats, tracts or other subdivision lines or markers;

3. Final plat criteria.

The planning commission shall approve the application, or approve it with modifications, if the application meets the following criteria:

- a. Is consistent with all applicable provisions of MSA 462.358 and Chapter 505;
- b. Is consistent with the terms and provisions of the preliminary plat approval for the property;
- c. Demonstrates that all required improvements have been installed or that (a) the applicant has signed a development agreement committing to construct those improvements within 2 year after approval of the final plat and (b) adequate security for the construction of the required improvements has been posted with the city pursuant to Section 50-37.1.P;

4. Final plat recording.

Once approved, plats shall be signed by the president and secretary of the planning commission. After the final plat is approved, it must be recorded in the office of the county recorder as provided in MSA 505.04. The approval will lapse if the plat is not recorded within two years after the plat is approved. After the final plat has been recorded, lots may be sold and building permits for structures on the platted lots may be issued; any sales of lots shown on the final plat before recording of the final plat shall be a violation of this Chapter;

## I. Registered land survey.

Registered land surveys that subdivide land shall be approved in the manner required for the approval of minor subdivision plats in subsection D above if the registered land survey create four or less parcels or tracts of land. Registered land surveys that create five or more parcels or tracts of land must follow the process listed below.

1. Concept plan.

No registered land survey shall be accepted until the applicant has submitted a concept plan for the proposed subdivision. Concept plans shall reflect the general location of proposed parcels and tracts, and shall reflect all areas of the property where development is restricted pursuant to the NR-O overlay district in Section 50-18.1. The intent of the concept plan is to review general concepts for development of the site before applicants have incurred costs for engineering, soil, or storm water studies. The concept plans shall be reviewed in an informal discussion with planning staff;

2. Storm water plan and wetland delineation.

A storm water plan shall be submitted and approved by the city engineer, and all wetlands must be delineated, prior to submittal of the application for a registered land survey;

3. Review and referral.

The registered land survey, together with the surveyor's mathematical calculations, shall be reviewed by the city engineer. The registered land survey may be submitted to the county engineer if the registered land survey involves features of concern to the county highway department, and to such other divisions of government or public utility corporations as the city deems necessary or desirable;

4. Registered land survey decision.

The planning commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision to approve, adopt with modifications or deny the application based on the criteria in subsection 50-37.5.I.5 below;

5. Registered land survey criteria.

The planning commission shall approve the application, or approve it with modifications if it determines that the application:

- (a) Is consistent with the comprehensive land use plan;
- (b) Is consistent with all requirements of MSA 462.358 and Chapter 508;
- (c) Is consistent with all applicable provisions of this Chapter;
- (d) Is consistent with any approved district plan covering all or part of the area of the registered land survey;
- (e) Is located in an area where adequate police, fire and emergency facilities are available to serve the projected population of the subdivision within the city's established response times, or the applicant has committed to constructing or financing public facilities that will allow police, fire or emergency service providers to meet those response times;
- (f) Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible;
- (g) All lots within floodplain districts must be suitable for a building site outside of the floodway.
- (h) All subdivisions must have vehicular access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE), unless a flood warning/emergency evacuation plan has been formulated and submitted for review with the application.
- (i) The floodplain boundary, including the Floodway and Flood Fringe District boundaries, if determined, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents

6. Registered land survey recording.

After the registered land survey is approved, it must be recorded in the office of the county recorder as provided in MSA 508. The approval will lapse if the registered land survey is not recorded within 180 days after the registered land survey is approved. After the registered land survey has been recorded, parcels and tracts may be sold and building permits for structures on the parcels and tracts may be issued; any sales of parcels and tracts shown on the registered land survey before recording of the registered land survey shall be a violation of this Chapter. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10303, 6-9-2014, § 3.)

50-37

**50-37.9 Variance.**

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This Section applies to applications for a variance from the terms and provisions of this Chapter. Different types of variances are subject to differing criteria for approval, and in many cases are also subject to limitations on the types of variances that can be granted.

**Application.**

An application for a variance shall be filed pursuant to Section 50-37.1.B;

**Procedure.**

The planning commission shall review the application, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision on the application based on the criteria in subsections C through M below, as applicable to the specific type of variance being requested. The planning commission may grant a different variance or different form of relief than that requested by the applicant if it determines that the alternative relief better meets the criteria in subsections C through M below. The commission may impose appropriate conditions and safeguards to protect adjacent properties and the public interest, including but not limited to financial security pursuant to Section 50-37.2.P or a development agreement regarding the design, construction and operation of the project, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the variance will continue to be met. Constructing any improvement or beginning any activity authorized by the variance shall constitute the applicant's agreement to conform to all terms and conditions of the permit;

**General variance criteria.**

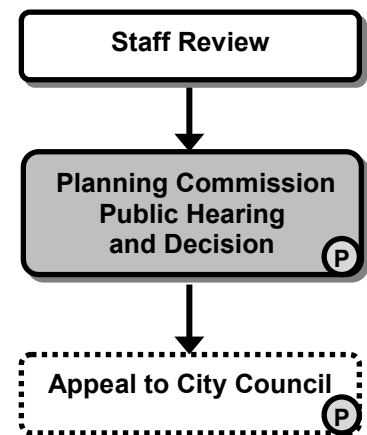
Unless different or inconsistent criteria or limitations are stated in subsections D through M below for the specific type of variance being requested, the planning commission shall approve an application for a variance, or approve it with conditions, if it finds that the proposed variance meets the following criteria. If there is a direct conflict between a provision or criteria in subsections D through M below and the general criteria in this subsection C, the provisions in subsections D through M shall govern:

1. Because of the exceptional narrowness, shallowness or shape of the applicant's property, or because of exceptional topographic or other conditions related to the property, the strict application of the requirements of this Chapter would result in practical difficulties to the property owner;
2. The plight of the property owner is due to circumstances unique to the property, and not created by the property owner or the property owners predecessors-in-interest;
3. The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity;
4. The property owner proposes to use the property in a reasonable manner not permitted by this code;
5. The relief will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety or public welfare of the inhabitants of the city;
6. The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map, and will not alter the essential character of the locality;
7. The relief does not allow any type of sign that is not allowed in the zone district where the property is located, pursuant to Section 50-27;
8. The relief complies with any additional limitations or criteria applicable to that variance in subsections D through M below;
9. Economic considerations alone shall not constitute a practical difficulty;

**No use variances.**

No variance may be permitted to allow any use that is not listed in Table 50-19.8 as a permitted or special use in the zone district where the property is located, or Table 50-27.4 for a permitted sign in the district where the property is located;

## Variance



**(P)** Indicates Public Hearing Required

#### Variations to lot size in unsewered areas.

A variance from the minimum lot size in unsewered area shall not be granted without presentation of a permit or letter of intent to issue a permit for onsite sewerage treatment from the county.

#### Variations for two-family dwellings in the R-1 district.

The commission shall not grant any variance from the requirements for the allowance of two-family dwellings within the R-1 zone district except:

7. A variance from the required front yard setback;
8. A variance reducing the minimum dimensional requirements by up to ten percent;

#### Variations from parking and loading regulations.

##### 9. Residential districts.

(a) A variance may be granted to allow parking on a portion of a lot in a residential district where parking is not permitted by Section 50-24.6.B for lots meeting all the following:

- (i) The distance between the dwelling and the public right of way exceeds 18 feet; and
  - (ii) The position of the principle structure on the lot does not permit access to the side or rear yard; and
  - (iii) There is no improved alley or street providing access to the side or rear yard; and
  - (iv) There is no permitted overnight parking on any street within 150 feet of the property;
- (b) The variance shall be subject to the following conditions, and any other conditions determined by the commission to be reasonable and necessary to protect the interests of the abutting property owners and the residential character of the surrounding neighborhood:

- (i) The maximum variance that can be granted shall not exceed 55% of the lot width;
- (ii) A paved walkway at least 3 feet wide shall be provided that links the front entrance of the dwelling and the street;
- (iii) A wall, fence or dense vegetative screen at least 3 feet tall and at least 75% opaque must be provided to screen parked vehicles from view of abutting properties and the street, where screening the street view is possible;
- (iv) Barriers must be installed to prevent vehicles from overrunning the parking and driveway areas; such barrier may be a fence, wall or raised curbing (or concrete parking bumpers when secured to the underlying pavement);
- (v) A placard with a diagram no less than 5 inches by 7 inches showing the location and arrangement of parking spaces shall be visible at all times from the exterior of the dwelling; such placard shall be on all-weather media and installed on the front exterior door at an elevation of between 2 feet and 6 feet above the threshold;

##### 2. Reducing required parking spaces.

Except as provided in 50-37.9.G, variances from the minimum amount of off-street parking required may be approved if a smaller amount of off-site parking will be adequate to meet the needs of the facility because the facility is restricted to occupancy or use by populations with documented lower vehicle uses, such as the elderly or disabled;

##### 3. Exceeding required parking spaces.

Variations from the maximum parking limits provided in 50-24.4 shall not exceed 200 percent of the minimum requirement provided in Table 50-24.1. In addition to meeting the general variance criteria in 50-37.9C, a parking study that provides justification for the number of off-street parking spaces proposed is required. It must include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the City Engineer and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study must document the source of data used to develop the recommendations. (Ord. No. 10460, 7-11-2016, § 1)

#### Variations to reduce setbacks;

When the application is for the reduction of a required front, rear or side yard setback, the commission may require the submission of a landscaping and buffering plan, and may require that all required landscaping



or buffering, or landscaping and buffering of equal effectiveness, be installed within the reduced setback area. Decorative fencing and decorative wall structures may be proposed where more intense vegetated landscaping will not provide adequate mitigation of impacts on adjacent properties. The commission shall only approve the variance if the landscaping and buffering will mitigate impacts on adjacent properties as effectively as those required by Sections 50-25 and 50-26 of this Chapter;

#### Variations in the MU-C district.

10. Within the MU-C district, the only variances that may be approved are variations in any dimensional standard in Sections 50-15.3 and 50-21 by no more than ten percent. However, if the need for a variance is the result of a government taking pursuant to eminent domain powers, then (a) the limits of this subsection I.1 shall not apply and (b) all or part of the required landscaping and buffering may be placed in the public right-of-way if the property owner executes a perpetual maintenance agreement with the owner of the right-of-way;
11. In the case of a setback reduction variance, the landscaping and buffering in any reduced setback area shall be at least four feet in height and screen out at least 50 percent of the view of any parking area, unless the setback is reduced to less than five feet, in which case it shall screen out at least 75 percent of the view of the parking area;

#### Variations in A-O airport overlay district.

Variations within the A-O at the Duluth International Airport (DLH) shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance, created by the Duluth International Airport Joint Zoning Board, effective date October 6, 2021, recorded in the St. Louis County Recorder's Office as Document Number 1432556. Variations within the A-O at the Sky Harbor Regional Airport shall be pursuant to and consistent with the procedures of 50-37.9.B.

#### K. Variations from flood plain regulations.

Variations to the flood plain regulations in Section 50-18.1.C shall only be granted in compliance with the following limitations in this subsection K.

- ~~1. In a floodway:
 
  - ~~a) No variance shall be granted that would result in any increase in flood levels during the base flood discharge;~~
  - ~~b) No variance shall authorize the placement of a manufactured home, dwelling unit or any structure designed for human habitation;~~
  - ~~c) No variance shall be granted authorizing a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;~~
  - ~~d) Variations shall be limited to giving the applicant a minimal reasonable use of the site;~~~~
- ~~2. In a flood fringe:
 
  - ~~a) No variance shall authorize a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;~~
  - ~~b) Variations shall not produce any adverse effects to the flood capacity or efficiency of the watercourse;~~~~
- ~~3. Flood insurance notice and recordkeeping.
 

The building official shall notify the applicant for a variance that:

  - ~~a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and~~
  - ~~b) Construction below the 100 year or regional flood level increases risks to life and property. Such copy notification shall be maintained with a record of all variance actions. The building official shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the administrator of the national flood insurance program;~~~~

# Attachment 1

50-18 Overlay Districts

## ~~4. General considerations.~~

~~The city shall consider the following factors in granting variances and imposing conditions on permits and variances in flood plains:~~

- ~~a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;~~
- ~~b) The danger that materials may be swept onto other lands or downstream to the injury of others;~~
- ~~c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;~~
- ~~d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;~~
- ~~e) The importance of the services to be provided by the proposed use to the community;~~
- ~~f) The requirements of the facility for a waterfront location;~~
- ~~g) The availability of viable alternative locations for the proposed use that are not subject to flooding;~~
- ~~h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;~~
- ~~i) The relationship of the proposed use to the comprehensive land use plan and flood plain management program for the area;~~
- ~~j) The safety of access to the property in times of flood for ordinary and emergency vehicles; and~~
- ~~k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;~~

## ~~5. Submittal of hearing and decision notices to the DNR.~~

- ~~a) The planning commission shall submit to the commissioner of the DNR a copy of the application for proposed variance sufficiently in advance so that the commissioner will receive at least ten days' notice of the hearing. Such notice shall specify the time, place, and subject matter of the hearing and shall be accompanied by such supporting information as is necessary to indicate the nature and effect of the proposed use. The notice may be sent by electronic mail or U.S. mail to the respective DNR area hydrologist;~~
- ~~b) A copy of all decisions granting variances shall be forwarded to the commissioner of the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. mail to the respective DNR area hydrologist;~~

## ~~6. Additional federal emergency management agency conditions.~~

~~The following additional conditions of FEMA must be satisfied:~~

- ~~a) Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;~~
- ~~b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;~~

## ~~7. Conditions attached to variances,~~

~~Upon consideration of the factors listed above and the purpose of this Section, the planning commission may attach such conditions to the granting of variances and permits as it deems necessary to fulfill the purposes of this Section. Such conditions may include, but are not limited to, the following:~~

- ~~a) Modification of waste treatment and water supply facilities;~~
- ~~b) Limitations on period of use, occupancy, and operation;~~
- ~~c) Imposition of operational controls, sureties, and deed restrictions;~~
- ~~d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures; and~~

# Attachment 1

50-18 Overlay Districts

- e) ~~Floodproofing measures, in accordance with the State Building Code and this chapter. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors;~~

Variances must not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

1. Variances from the provisions of Section 50-18.1.C may only be issued upon;
  - (a) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - (b) Variances from the provisions of Section 50-18.1.C may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (c) A determination that failure to grant the variance would result in exceptional hardship to the applicant.
  - (d) A showing of good and sufficient cause.
2. Variances must be consistent with the general purpose of these standards and the intent of applicable provisions in state and federal law.
3. Variances may be used to modify permissible methods of flood protection, but no variance shall permit a lesser degree of flood protection than the Regulatory Flood Protection Elevation (RFPE).
4. The Land Use Supervisor must notify the applicant for a variance in writing that:
  - (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - (b) Such construction below the base flood level increases risks to life and property. Notification must be maintained with a record of all variance actions.
5. The following are additional considerations when granting variances:
  - (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments.
  - (b) The danger that materials may be swept onto other lands or downstream to the injury of others.
  - (c) The safety of access to the property in times of flood for ordinary and emergency vehicles.
6. Land Use Supervisor or Planning Commission may attach such conditions to the granting of variances as it deems necessary to fulfill the purposes of this subsection K and Section 50-18.1.C. Such conditions may include, but are not limited to, the following:
  - (a) Limitations on period of use, occupancy, and operation.
  - (b) Imposition of operational controls, sureties, and deed restrictions.
  - (c) The prevention of soil erosion or other possible pollution of public waters, both during and after construction.
  - (d) Other conditions as deemed appropriate by the Land Use Supervisor or Planning Commission.

## Notifications to the Department of Natural Resources

1. All notices of public hearings to consider variances under this subsection K must be sent via electronic mail to the Department of Natural Resources respective area hydrologist at least ten (10) days before the hearings.
2. A copy of all decisions granting variances under this subsection K must be sent via electronic mail to the Department of Natural Resources respective area hydrologist within ten (10) days of final action.

50-37.10

**50-37.10 Special use or interim use permit.**

This Section applies to all applications for those special uses listed for specific zone districts in Table 50-19.8. It also applies to applications for interim uses that will be authorized for only a specified period of time. This Section is intended to comply with the provisions of MSA 462.3595 and 462.3597 as amended, and shall be interpreted to comply with those provisions wherever possible.

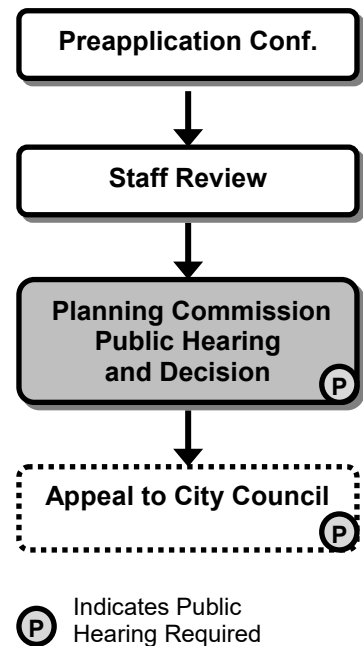
**Applications.**

An application for a special use or interim use shall be filed pursuant to Section 50.37.1.B; all applications for a special use in the floodplain shall be processed and reviewed in accordance with the provisions of Section 50-18.1(C).

**Procedure.**

1. The planning commission shall review the application, shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H. The planning commission shall make a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The commission or council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.2.P, a development agreement regarding the design, construction, and operation of the special use, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the special use permit will continue to met;
2. If the permit is approved or approved with modifications, all future use of the land and structures erected on the land pursuant to the permit shall comply with its terms and conditions. The city may require that some or all of the documents presented by the applicant in support of the application, including without limitation any site plan, landscape plan, building elevation drawings, or development agreement, be recorded as a city public document prior to the issuance of any building permit. A decision not to require recording of some or all of those documents shall not relieve the applicant or any successors or assigns in title to the property from the duty to comply with all terms and conditions of the permit. Constructing any improvement or beginning any activity authorized by the permit shall constitute the applicant's agreement to conform to all terms and conditions of the permit;
3. The city may approve an application or approve it with modifications, with a condition that if a structure authorized by the permit is not constructed by a specified date, or if an activity authorized by the permit is not begun by a specified date, the permit shall terminate. If that condition is attached, the city shall notify the applicant and the property owner when a permit has lapsed, and that decision may be appealed pursuant to Section 50-37.1.O;
4. The city may approve an application or approve it with modifications, with a condition that abandonment of an activity authorized by a permit longer than a stated period terminates the permit, and any future reactivation of the use will require the filing and approval of a new permit application;
5. The commission may not approve or approve with modifications, a special use permit valid only for a specific period of time, but must instead recommend to council an interim use permit pursuant to subsection D below for that purpose;
6. Any approved permit shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is

**Special Use Permit**





overturned by a competent authority, the permit shall be void in total, upon determination by the city;

7. The City of Duluth must consider all relevant factors specified in other sections of this chapter in granting special use permits.
8. Notifications to the Department of Natural Resources for Special Uses in Floodplains
  - (a) All notices of public hearings to consider special uses in floodplains identified in Section 50-18.1.C must be sent via electronic mail to the Department of Natural Resources respective area hydrologist at least ten (10) days before the hearings.
  - (b) A copy of all decisions granting special uses in floodplains identified in Section 50-18.1.C must be sent via electronic mail to the Department of Natural Resources respective area hydrologist within ten (10) days of final action.

### 50-37.13

#### A. Application.

An application for a zoning permit shall be filed pursuant to Section 50-37.1.B;

#### B. Procedure.

9. The building official shall review and make a decision on an application for a zoning permit based on the criteria in subsection C below. The building official may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;
10. All buildings, structures and improvements must be constructed and maintained, and all land uses must be operated, in accordance with the terms and conditions of this Chapter and any zoning permit issued pursuant to this Section 50-37.13;

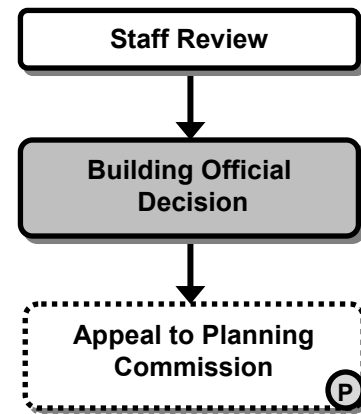
#### C. General criteria.

The building official shall approve the application, or approve it with modifications, if the building official determines that the application complies with all applicable provisions of this Chapter;

#### D. Additional provisions for specific areas and types of permits.

1. **Shoreland permit.**  
No building or zoning permit for land within any shoreland shown on the Natural Resources Overlay map in Section 50-18.1 may be issued until the building official has confirmed that the application complies with all applicable requirements of Section 50-18.1.D;
2. **Erosion and sediment control permit (ESCP).**  
No land disturbance activity that requires an erosion and sediment control permit (ESCP) as indicated in Table 50-18.1.E-1 may be begun until a permit has been obtained. The building official shall refer the application to the city engineer, who shall review the plan to ensure that it complies with the requirements of Section 50-18.1.E. The city engineer may require additional information and may require that any information submitted be verified by a licensed engineer, licensed surveyor or other technical professional. If the application is denied, the applicant shall be given a summary of the plan's deficiencies. The ESCP permit shall be considered expired only after all construction activities are completed and the entire site is fully stabilized with 70 percent successful establishment of vegetation;
3. **Airport environs permit.**  
No airport environs permit shall be issued unless all of the requirements of Section 50-18.2 have been met. A permit for a tree or structure of less than 75 feet of vertical height above the ground shall not be required in the horizontal and conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree or structure, because of terrain, land contour or topographic features, would violate the provisions of 18.2. The

### Zoning Permit



**(P)** Indicates Public Hearing Required

following structures or uses shall not be allowed in a Safety Zone 2 unless a Permit has first been approved pursuant to Sec. 50-37.13:

- a) Material expansion of an Existing Structure or Use. Permit required.
- b) New structures or uses. Permit required.
- c) Abandoned Non-Conforming Structure. Permit required for structure to be re-used, rebuilt or replaced.
- d) Substantially Damaged Non-Conforming Structure. Permit required to rebuild, repair, or replace.
- e) Material Change in Non-Conforming Use. Permit required before material change in use may occur.

4. Flood plain permit.

No building or zoning permit for land within any floodplain, ~~as identified in Sec 50-13.1.A.2(b), shown on the Natural Resources Overlay map in Section 50-18.1~~ may be issued until the building official has confirmed that the application complies with all applicable requirements of Section 50-18.1.C.

The permit application must include the following, as applicable:

- (a) A site plan showing all existing or proposed buildings (with uses defined), structures, service facilities, potential obstructions, and pertinent design features having an influence on the permit. In V Zones, the plans must be prepared by a professional engineer or architect.
- (b) Location and detail of grading (with land elevations noted), fill, or storage of materials.
- (c) Copies of any required local, state or federal permits or approvals.
- (d) Other relevant information requested by the Land Use Supervisor or Building Official as necessary to properly evaluate the permit application.

(Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 55; Ord. No. 10285, 3-10-2014, § 3; Ord. No. 10413, 10-12-2015 § 2; Ord. No. 10797, 3-28-2022, § 4)

## **50-38 NONCONFORMITIES**

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This Section clarifies how this Chapter applies to those buildings, structures and land uses that do not comply with this Chapter, including without limitation (a) those that do not comply with the Chapter on the date it is adopted, and (b) those that comply with the Chapter on the date it is adopted but become nonconforming due to the adoption of an amendment to this Chapter. This Section is intended to comply with the provisions of MSA 462.357, subd. 1.e as amended, and shall be interpreted to comply with those provisions wherever possible. (Ord. No. 10044, 8-16-2010, § 6; cited only by Ord. No. 10285, 3-10-2014, § 4.)

### **50-38.1 Types of nonconformities.**

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The city recognizes five different types of nonconformities, each of which is addressed in the subsections below.

- A. Nonconforming buildings;
- B. Nonconforming uses;
- C. Nonconforming lots;
- D. Nonconforming on-premises signs;
- E. Nonconforming off-premises signs. (Ord. No. 10044, 8-16-2010, § 6; cited only by Ord. No. 10285, 3-10-2014, § 4.)

### **50-38.2 General provisions.**

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#### **A. Airport hazards.**

- 11. The owner of any nonconforming structure or tree within the Airport Overlay is required to allow the installation, operation and maintenance on the structure or tree those markers and lights deemed necessary by the building official to indicate to aircraft the presence of the airport

hazards. Any required markers and lights shall be installed, operated and maintained at the expense of the owner;

12. The regulations in Section 50-18.2 A-O Airport Overlay shall not:

- 50-38.2.A.1.1 Require the removal, lowering or other alteration of any structure or tree not conforming to the regulations regarding Duluth International Airport on June 18, 1988, or not conforming to the regulations regarding Sky Harbor Municipal Airport on September 26, 1994;
- 50-38.2.A.1.2 Interfere with the continuance of any nonconforming use as permitted by this Section 50-38;
- 50-38.2.A.1.3 Require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun before September 26, 1994 and completed on or before September 25, 1996;

## B. Floodplains.

- ~~1. A structure or the use of a structure or premises located in a floodplain or flood fringe area as defined and shown in Section 50-18.1.B that was lawful before February 1, 1980, or before an amendment to the flood plain management regulations of Section 50-18.1.B, but that is not in conformity with the provisions of this Chapter may be continued subject to the following conditions. Historic structures, as defined under "substantial improvement" in Section 50-41, are subject to the provisions of subsections 1 through 5 of this Section:~~
- ~~2. No such use or structure shall be expanded, changed or altered in a way that increases its nonconformity. Expansion of uses or structures within the floodway district is prohibited;~~
- ~~3. Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 3 and 6 below;~~
- ~~4. The cost of all structural alterations to any nonconforming structure over the life of the structure shall not exceed 50 percent of the assessed market value of the structure as determined by the city assessor unless the conditions of this Section are satisfied. The cost of all structural alterations must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the assessed market value of the structure as determined by the city assessor, then the structure must meet the standards of this Chapter for new structures depending upon whether the structure is in the floodway or flood fringe district, respectively;~~
- ~~5. If any nonconforming use, or any use of a nonconforming structure, is discontinued for one year, any future use of the premises shall conform to this Chapter;~~
- ~~6. If any nonconformity is substantially damaged, as defined in Section 50-41, it shall not be reconstructed except in conformity with the provisions of this chapter. The applicable provisions for establishing new uses or new structures in Section 50-18.1.C will apply, depending upon whether the use or structure is in the floodway, flood fringe or general flood plain district;~~
- ~~7. Any substantial improvement, as defined in Section 50-41, to a nonconforming structure requires that the existing structure and any additions must meet the applicable requirements of Section 50-18.1.C for new structures, depending upon whether the structure is in the floodway, flood~~

# Attachment 1

50-18 Overlay Districts

~~fringe or general flood plain district. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10285, 3-10-2014, § 4.)~~

1. A structure or the use of a structure or premises located in a floodplain or flood fringe area as defined and shown in Section 50-18.1.C that was lawful before February 1, 1980, or before an amendment to the flood plain management regulations of Section 50-18.1.C, but that is not in conformity with the provisions of this Chapter may be continued subject to the following conditions.
  - (a) Within the floodway and general floodplain districts (when a site has been determined to be located in the floodway following the procedures in Section 50-18.1.C.5(c), or when the floodway has not been delineated), any expansion or enlargement of uses or structures is prohibited.
  - (b) Within all districts, any addition, modification, rehabilitation, repair, or alteration shall be in conformance with the provisions of the Unified Development Chapter, shall not increase the flood damage potential or increase the degree of obstruction to flood flows, and where applicable, must be protected to the Regulatory Flood Protection Elevation (RFPE).
  - (c) If any nonconforming structure is determined to be substantially damaged or substantially improved based on the procedures in Section 50-38.2.B.2, it may not be reconstructed except in conformity with the provisions of this chapter. Any structures located outside the one-percent annual chance floodplain are exempt from this provision.
  - (d) If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to Section 50-18.1(C).
  - (e) If any nonconforming structure has utilities, electrical, or mechanical equipment damaged due to flooding, it must be rebuilt in conformance with the elevation requirements in Section 50-18.1.C.2(b)(i)(4) to the greatest extent practicable. This requirement shall apply regardless of the determinations made in Section 50-38.2.B.2.

## 2. **Substantial Improvement and Substantial Damage Determinations.**

Prior to issuing any permits for additions, modifications, rehabilitations, repairs, alterations, or maintenance to nonconforming structures, the Building Official is required to determine if such work constitutes substantial improvement or repair of a substantially damaged structure. A determination must be made in accordance with the following procedures:

- (a) Estimate the market value of the structure.

In the case of repairs, the market value of the structure determined by the county assessor shall be the market value before the damage occurred and before any restoration or repairs are made.

- (b) Estimate the cost of the project.

The property owner shall accommodate for inspection, and furnish other documentation needed by the Building Official to evaluate costs.

- (i) Improvement costs shall be comprised of the market rate of all materials and labor, as well as the costs of all ordinary maintenance and upkeep carried out over the past one year.
- (ii) Costs to repair damages shall be comprised of the market rate of all materials and labor required to restore a building to its pre-damaged condition regardless of the work proposed, as well as associated improvement costs if structure is being restored beyond its pre-damaged condition.
- (c) Compare the cost of the improvement, repairs, or combination thereof to the estimated market value of the structure, and determine whether the proposed work constitutes substantial improvement or repair of a substantially damaged structure.

- (i) For the purposes of determining whether the proposed work would constitute substantial improvement, the evaluation shall also include all rehabilitations, additions, or other improvements completed since the community has adopted floodplain standards impacting this structure.
- (ii) If any nonconforming structure experiences a repetitive loss it shall be considered substantially damaged and must not be reconstructed except in conformity with the provisions of this chapter.
- (d) Based on this determination, the Building Official shall prepare a determination letter and notify the property owner accordingly. Structures determined to be substantially damaged or substantially improved may not be reconstructed except in conformity with the provisions of this chapter.

## **Article 6**

### **50-41.1 Definitions: A**

**Accessory agriculture roadside stand.** A structure erected for the display and sale of agriculture products grown on the premises and that is subordinate to the primary residential or agricultural use of the premises.

**Accessory bed and breakfast.** An owner-occupied building designed as a one-family dwelling that provides no more than five guest rooms for lodging accommodations by prior arrangements for compensation. The primary residence in the building or a separate, lawfully existing building located on the same site must be occupied by the building owner on a permanent basis. It may or may not include serving of meals to guests.

**Accessory boat dock, residential.** A personal use boating structure, subordinate to a primary residential use of property, that is built over or floats upon the water of a lake, river, or stream, and that serves one property owner for mooring boats or as a landing place for marine transport.

**Accessory caretaker quarters.** A subordinate dwelling unit intended for an employee or owner who looks after or takes charge of goods or property. The unit shall be either inside or attached to a main structure by a common wall. The unit is a complete, independent living facility with provisions for cooking, eating, sanitation and sleeping.

**Accessory communications tower for private use.** Any structure, subordinate to a primary use of land, that is designed and constructed primarily for the purpose of supporting one or more wireless analog or digital telecommunication facilities, that is located on the ground or anchored to the ground and exceeds 24 feet in height. Such a tower may have a variety of configurations, including a monopole, a lattice tower or a guyed tower.

**Accessory day care facility.** A private or public establishment licensed by the state that regularly provides, for periods less than 24 hours a day, one or more dependents of employees or users of a business or facility with care, training, supervision, rehabilitation or developmental guidance, for gain or otherwise, while the employees or users are on site for work or other activities related to the principal use of the property. This use is a secondary and subordinate activity to a permitted or approved special use of the property and does not result in additional trips to the site.

**Accessory dwelling unit.** A subordinate dwelling unit added to, created within, or detached from a one or two family dwelling, located on the same lot or parcel as a primary residential structure and owned by the same owner as the primary residential structure, and providing basic requirements for living, sleeping, cooking, eating, and sanitation, and is constructed on compliant permanent footings or foundation, with permanent connections to public sanitary sewer and water. No recreational vehicle, or structure on a chassis, shall constitute an accessory dwelling unit.

**Accessory heliport.** An area used or intended to be used for the landing and takeoff of helicopters that is secondary and incidental to, and is operated in support of, a permitted or approved special use on the same property, including operations facilities, such as maintenance, loading, and unloading, storage, fueling or terminal facilities.



**Accessory home occupation.** A business or occupation incidental and subordinate to the principal residential use. All home occupations must comply with the conditions in Section 50-20.5.F. Examples include but are not limited to: artist's studio; dressmaking; accessory beauty salon or barber shop, office of a physician or dentist for consultation or emergency treatment but not for general professional practice, lawyer, engineer, architect or accountant; teaching, with instruction limited to not more than two pupils at the same time. A home occupation shall not be interpreted to include accessory bed and breakfast, restaurants or tea rooms.

**Accessory home share.** A habitable bedroom or bedrooms in an owner-occupied dwelling, offered for trade or sale, whether for money or exchange of goods or services, for periods of 29 nights or less.

**Accessory recycling collection point.** A facility used for the collection and temporary storage of empty beverage containers, aluminum, glass, paper or clothing for recycling purposes conducted totally within an enclosed structure or container, and that is accessory to a permitted or approved special use in the zone district. This definition does not include processing except for can banks that crush cans as they are deposited.

**Accessory retail or showroom.** Space allocated within an industrial business for the display and/or sales (or donation) of products assembled, manufactured, or processed on site.

**Accessory sidewalk dining area.** An outdoor eating and drinking area that is generally associated with and subordinate to a permitted or approved special use on the same property and that is, located on a public sidewalk. This use may include removable tables, chairs, planters, or similar features and equipment.

**Accessory solar or geothermal power equipment.** Accessory uses and structures that are clearly subordinate in size and use to the primary use and structure on the property, and that are used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. These structures and uses may include but are not limited to the following, and may be located at ground level or above or below ground unless specifically limited in this Chapter, provided that they meet all other applicable requirements of this Chapter: solar photovoltaic modules, solar thermal hot water collectors, solar arrays; and geothermal heat pumps, earth tubes, or downhole heat exchangers.

**Accessory use or structure.** A use or structure subordinate in use, area or purpose to the principal use or structure on the same lot and serving a purpose naturally and normally incidental to the principal use or structure and that is not included in a separate definition of an accessory use or structure in this Chapter. Where an accessory building is attached to the principal building in a substantial manner by a wall or a roof, it shall be considered part of the principal building. An accessory building or use may be permitted on a lot of record that abuts or is separated by a public easement of no more than 25 feet in width to another lot or lots on which the primary use is located, provided all lots are owned by the same owner and none of the parcels are severed, legally sold, conveyed, or used without the other parcels. Examples include but are not limited to: pet houses, storage sheds, swimming pools, garages, accessory uses and structures for energy conservation and renewable energy production, and accessory structures for stormwater management and water conservation. Accessory structures proposed in the Special Flood Hazard Area, as defined within this section, shall be subject to the standards of Section 50-18.1.C.

**Accessory vacation dwelling unit.** An accessory dwelling unit as defined by this Chapter that is used as a vacation dwelling unit as defined by this Chapter for periods of occupancy from 2 to 29 nights.

**Accessory vacation dwelling unit, limited.** A dwelling unit, as defined by this Chapter, that is an owner occupied homesteaded property, offered for trade or sale, whether for money or exchange of goods or services, for periods of no less than 2 consecutive nights and no more than 7 consecutive nights, and not exceeding 21 nights in total per year.

**Accessory wind power equipment.** A small scale accessory wind power generating or distribution system, that is clearly subordinate in size and use to the primary use and structure on the property, and that is used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. Accessory wind power equipment is designed to generate no more than 10Kw of energy.

**Accessory wireless antenna attached to existing structure.** Any wireless service antenna located in or on the roof or upper facade of a structure that is not a telecommunications tower, such as a building, water tower, steeple, silo or utility pole.

**Adjacent developed lots facing the same street.** Where a dimensional standard is related to dimensions on "adjacent developed lots facing the same street" the measurement shall only include those lots that contain a primary structure and that share a side lot line with the subject property and shall not

include corner lots where the primary structure faces a different street. If there is only one adjacent developed lot that fronts the same street, the measure shall refer only to the dimension on that lot. For purposes of this measurement, all contiguous lots in common ownership shall be considered as a single lot, not as separate platted lots.

**Adult entertainment establishment.** See definition in Chapter 5 of the City Code.

**Adult bookstore.** See definition in Chapter 5 of the City Code.

**Agriculture, community garden.** A use in which land managed by a group of individuals is used to grow food or ornamental crops, such as flowers, for donation or for use by those cultivating the land and their households. Community gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained and used by group members.

**Agriculture, farmers market.** A recurring event, held outdoors or in another defined place, on designated days and times, where market vendors, consisting of agricultural producers, home processors, and craft producers that manufacture non-food goods by the force of their own labor, are organized for the purpose of selling their products directly to the public. A minimum of 30% of vendors shall be vendors selling food crops.

**Agriculture, general.** The production or keeping of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, or bees and apiary products. This definition includes all activities listed under "agriculture, urban."

**Agriculture, urban.** An establishment where food or ornamental crops are grown that includes, but is not limited to, growing on the ground, on a rooftop or inside a building, aquaponics, and aquaculture.

**Airport boundary.** Those lands including the property owned by the city, state, and the United States, and their respective political subdivisions, that are used for aeronautical purposes and are contiguous with the runway and building area facilities. The Duluth International Airport boundaries are illustrated in the Airport Property Map of the approved set of Airport Layout Plans on file in the offices of the Duluth Airport Authority. The Sky Harbor Municipal Airport boundaries are illustrated on Exhibit 50-18.2-2.

**Airport elevation.** Any structure, object of natural growth, or use of land, which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off. (Minn. Stat. 360.013)

**Airport hazard.** Any structure, tree, or use of land that obstructs the air space required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land that is hazardous to persons or property because of its proximity to the airport.

**Airport and related facilities.** An area of land that is used or intended for the landing and takeoff of aircraft, and includes its buildings and facilities, if any. Accessory uses may include but are not limited to: car rental, aircraft servicing, fueling, or leasing, private aviation clubs or associations, and hotels. The Duluth International Airport lands located in Sections 1, 2, 3, 11, 12, Township 50, Range 15; Section 6, Township 50, Range 14; and Section 31, Township 51, Range 14 that is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights of way, together with all airport buildings and facilities located thereon.

**Airport Safety Zone.** An area subject to land use zoning controls adopted under Minnesota Statutes sections 360.061 to 360.074 if the zoning controls regulate (1) the size or location of buildings, or (2) the density of population. (Minn. Stat. 394.22, Subd. 1(a)).

**Airport Zoning Map of the Duluth International Airport.** The Duluth International Airport Zoning Map prepared by RS&H, and adopted and attached as Exhibit C of the Duluth International Airport Zoning Ordinance.

**Alley.** A dedicated public right-of-way not more than 30 feet wide affording a secondary means of access to abutting property and not intended for general traffic circulation.

**Alley line.** The established side line of an alley easement.

**Antenna.** A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

**Apartment.** A part of a building consisting of a room or suite of rooms intended, designed or used as a residence by an individual or a one-family, including full cooking and bathroom facilities for individual use.

**Apartment hotel.** A building designed for or containing not less than 20 apartments, individual guest rooms or suites and in which may be furnished services ordinarily furnished by hotels, such as

drugstores, tea room, barbershop, cigar and newsstands when such uses are located entirely within the building with no separate entrance from the street, and having no sign or display visible from the outside of the building indicating the existence of such use.

**Artisan production shop.** A building or portion thereof used for the creation of original handmade works of art or craft items by no more than six artists or artisans, either as a principal or accessory use, where the facility includes an area for retail of the art/craft items being produced.

**Artisan studio.** A building or portion thereof used for the creation of original handmade works of art or craft items by no more than three artists or artisans, either as a principal or accessory use, where the facility includes an area for retail of the art/craft items being produced.

**Automobile and light vehicle sales, rental, or storage.** The sale, display, lease, rental, or storage of light motor vehicles, including automobiles, vans, light trucks, light trailers, boats, and recreational vehicles. This shall not include salvage operations, scrap operations, vehicle impound yards, or commercial parking lots available for short-term use.

**Automobile, repair.** An establishment engaged in performing repairs of, automobiles, light vehicles, and small engines. Repair may include all activities or repair or servicing of automobiles allowed in "automobile service", rebuilding or reconditioning of passenger automobiles, body, frame or fender straightening, dent repair, replacement or repair, painting or rust-proofing, or other similar repair or servicing of automobiles. Such work excludes commercial wrecking or dismantling, scrap/salvage yards, tire recapping and truck-tractor repair.

**Automobile, service.** An establishment engaged in performing servicing of automobiles, light vehicles, and small engines. Service may include muffler replacement, oil changing and lubrication, tire repair and replacement except tire recapping, wheel alignment, brake repair, suspension repair, transmission repair and replacement, flushing of radiators, servicing of air conditioners, audio installation, detailing, and other similar activities of light repair or servicing of automobiles. This shall not include car washes, retail sale of automotive supplies, tires, or parts unrelated to repairs being performed on the premises, the retreading or vulcanizing of tires, filling stations, or convenience stores that sell gasoline or lubricating oil.

**Automobile and light vehicle impound lot.** A facility or area of land devoted principally to the storage of impounded vehicles or recreational vehicles with or without an office on the premises for the release of those types of vehicles.

**Average lot depth.** The average of the lengths of the two side lot lines of a platted lot. In the case of flag lots (lots where the buildable portion of the lot is connected to a public street by an access or driveway 20 feet wide or less), the length of the access or driveway portion of the lot shall be ignored in measuring either side lot line. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10225, 5-28-2013, § 12; Ord. No. 10366, 4-13-2015, § 5; Ord. No. 10414, 10-12-2015, § 5; Ord. No. 10446, 4-11-2016, §6; Ord. No. 10563, 4-9-2018, § 3; Ord. No. 10659, 10-28-2019, §10; Ord. No. 10698, 4-13-2020, §4; Ord. No. 10777, 11-25-2021, §11; Ord. No. 10797, 3-28-22, §5; Ord. No. 10799, 3-28-2022, §3, Ord. No. 10829, 2-13-2023, § 6; Ord. No. 10875, 12-18-2023, § 4; Ord. No. 10875, 12-18-2023, §5)

**50-41.2 Definitions: B**

**Bank.** An establishment that provides retail banking, mortgage lending, and financial services to individuals and businesses, and including check-cashing facilities. Accessory uses may include automatic teller machines, offices, and parking.

**Base Flood.** The flood having a one-percent chance of being equaled or exceeded in any given year. "Base flood" is synonymous with the term "regional flood" used in Minnesota Rules, part 6120.5000.

**Base Flood Elevation (BFE).** The elevation of the base flood, regional flood, or one-percent annual chance flood. The term "base flood elevation" is used in the flood insurance study.

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

**Bed and breakfast.** A building designed as a one-family dwelling and operated as a primary use of land containing habitable units providing up to 12 guest rooms of lodging accommodations by prior arrangements, for compensation. It may or may not include serving of meals to guests and the general public, and the operator need not live inside the dwelling.

**Block.** An area of land enclosed by four public or dedicated private streets, or by a combination of public or dedicated private streets and a railroad right-of-way or a natural feature such as a lake shore, riverfront or stream.

**Block face.** All lots abutting both sides of a street (street A) between the nearest two streets that intersect street A.

**Bluff.** A topographic feature such as a hill, cliff, or embankment having all of the following characteristics:

- A. Part or all of the feature is located in a shoreland area;
- B. The slope rises at least 25 feet above the Ordinary High Water level of the water body or bottom of the bluff;
- C. The grade of the slope from the toe of the bluff to the top of the bluff averages 30 percent or greater.

**Bluff, bottom of.** The ordinary high water level or the lower point of a horizontal ten foot segment with an average slope exceeding 18 percent.

**Bluff, top of.** The higher point of a horizontal ten feet segment with an average slope exceeding 18 percent.

**Bluff impact zone.** A bluff and land located within 20 feet of a bluff.

**Bluff line.** The designation of a line to administratively divide the city as above or below the escarpment for purposes of requiring stormwater detention for future development.

**Boathouse.** A structure designed and used solely for the storage of boats or boating equipment and that is not used for human habitation. Any door or opening exceeding 40 inches in width in a boathouse shall face the water.

**Breakaway wall.** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Brewery, craft, small.** A facility with a capacity to manufacture 3,500 or fewer barrels of alcoholic and nonalcoholic malt liquor in a calendar year. A small craft brewery is one that contains less than 7,000 square feet of gross floor area. This definition excludes small breweries operated in conjunction with a bar or restaurant defined herein as an accessory use.

**Brewery, craft, large.** A facility with a capacity to manufacture more than 3,500 barrels of alcoholic and nonalcoholic malt liquor in a calendar year. A large craft brewery is one that contains 7,000 square feet or more of gross floor area.

**Buffer area.** A strip of land with natural or planted vegetation located between a structure and a side or rear property line intended to separate and partially obstruct the view of two adjacent land uses or properties from one another. A buffer area may include any required screening for the site.

**Buffer, naturally vegetative.** Land that is used to protect adjacent lands and waters from development and more intensive land uses. The land is kept in a natural state of trees, shrubs, and low ground cover and understory of plants and functions to filter runoff, control sediment and nutrient movement, and protect fish and wildlife habitat.

**Build-to zone.** The maximum horizontal distance, or a range of maximum horizontal distances, between a front lot line and a building or structure required by this Chapter.

**Building.** Any structure designed or built for the support, enclosure, shelter or protection of persons, animals, chattels or property of any kind, and when separated by party or division walls without openings, each portion of such building so separated shall be deemed a separate building. For floodplain management and flood hazard purposes, the term “building” shall be used synonymous with “structure” as defined in this section.

**Building material sales.** An establishment engaged in the storage, distribution, and sale of building materials such as lumber, brick, tile, cement, insulation, floor covering, lighting, plumbing supplies, electrical supplies, cabinetry and roofing materials. Accessory uses may include repair or delivery services and outside sale of plants and gardening supplies.

**Bulk storage not listed elsewhere.** An establishment engaged in the storage of oils, lubricants, grains, mineral products or other commodities not listed separately as specific types of warehousing, wholesaling or storage.

**Bus or rail transit station.** A facility or structure where bus transit or rail transit vehicles stop to provide transportation services to the public. Accessory uses can include convenience retail or restaurants.

**Business, art, or vocational school.** A school, other than a college, that provides specialized training and education beyond the high school level, principally in the business, commercial or vocational arts, that does not provide lodging or dwelling units for students or faculty, and that has programs that typically result in the awarding of a certificate.

**Business park support services.** An establishment primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing, consulting services, protective services, equipment rental, leasing and financial services. Uses must be incidental to and supportive of business park uses and shall not include activities that are primarily retail in nature and devoted to the sale of consumer goods. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10414, 10-12-2015, § 6.)



**50-41.3 Definitions: C**

**Car wash (primary use)** A building containing facilities for washing one or more motor vehicles using steam cleaning or other mechanical devices. This definition includes self-service or automated car wash establishments. This definition does not include garages and filling stations where the washing of automobiles is only incidental or accessory to the business.

**Cemetery or mausoleum.** Land used or dedicated to the burial of the dead or the storage of cremated remains in a columbaria, and including necessary sales and maintenance facilities.

**Channel.** A natural or artificial depression of perceptible extent with a definite bed and banks to confine and conduct flowing water either continuously or periodically.

**Club or lodge (private).** A building or portion of a building or premises owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit or to render a service that is customarily carried on as a business. This category includes fraternities and sororities.

**Coastal A Zone.** A special flood hazard area subject to the potential for breaking wave heights of greater than or equal to 1.5 feet, but less than 3 feet. The area will be identified on a FIRM as Zone AE, and located between the inland limit of Zone VE and the Limit of Moderate Wave Action (LiMWA).

**Coastal High Hazard Area.** An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast, and any other area subject to high velocity wave action from storms or seismic sources.

**Co-housing facility.** A residential development that combines individual owned dwelling units with smaller or partial kitchens and a larger community kitchen and dining room intended for communal use on a regular basis, and in which all residents agree to share in the provision of regular communal services such as cooking meals or providing child care.

**Co-location.** The use of an existing tower or structure to support antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonably short time frame after the new tower is constructed.

**Coldwater river.** Rivers including trout streams and their tributaries.

**Commercial impracticability or commercially impracticable.** The inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercial impracticable and shall not render an act or the terms of an agreement commercially impracticable.

**Commercial support services:** A facility or area of land where commercial services such as cooking and cooking supplies, printing and photocopying, publishing, engraving, and other uses designed to support commercial activities in the vicinity, provided that such services are not listed separately as a permitted of special use in this Chapter.

**Common open space.** A portion of a development permanently set aside to preserve elements of the natural landscape for public or private use, which will not be developed or subdivided and is either owned in common by the individual owners in the development or by a permanently established management entity. Common open space does not include the area within 25 feet of any structure, any impervious surface, or the area between buildings within an individual cluster of buildings when the development is designed using clustered compact lots or clustered units or sites to create and preserve green space, such as in a conservation subdivision, planned unit development, or resort.

**Common plan of development or sale.** A contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan. For redevelopment projects, contiguous includes parcels separated by a right-of-way.

**Composting.** The controlled microbial degradation of organic waste to yield a humus-like product.

**Confined animal feeding operation.** A facility, area, or place where the feeding of livestock, poultry, pigs, or small animals takes place for commercial purposes in lots, pens, ponds, sheds or buildings where food is supplied primarily by means other than grazing, foraging, or other natural means.

**Construction debris.** Waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition of buildings and roads.

**Contractor's shop and storage yard.** A lot or portion of a lot or parcel used to store and maintain construction equipment and other materials and facilities customarily required in the building trade by a construction contractor. This definition includes architects, engineers, surveyors' construction offices and shops, real estate sign placement service, and showroom and shops for the display and sale of electrical, plumbing, heating, air conditioning, sheet metal and other material in connection with contracting services.

**Convention or event center.** A facility specially designed to host conferences, exhibitions, events, large meetings, seminars and training facilities, which may be associated with a hotel or motel.

**Cottage home park.** A residential development consisting of two or more one-family dwellings with a common open space or amenity area.

**Critical Facilities.** Buildings and structures that contain essential facilities and services necessary for emergency response and recovery, or that pose a substantial risk to the public in the event of failure, disruption of function, or damage by flooding. Examples include (1) hospitals and health care facilities having surgery or emergency treatment facilities; (2) fire, rescue, ambulance, and police stations and emergency vehicle garages; (3) designated emergency shelters; (4) designated emergency preparedness, communication, and operation centers and other facilities required for emergency response.

**Critical root radius.** An area around a tree measured with a radius of one foot for every in. dia. of the tree, which is generally the area of soil that must remain undisturbed to ensure long-term viability of the tree.

**Cutoff angle.** For purposes of exterior lighting regulations, the angle formed by a line drawn from the direction of light rays at the light source and a line perpendicular to the ground from the light source above from which no light is emitted. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10659, 10-28-2019, §11; Ord. No. 10799, 3-28-2022, §5)

**0-41.5 Definitions: E**

**Electric power or heat generation plant.** A facility or area that generates electricity from mechanical power produced by the firing of fossil fuels, or that produces heat or steam for space heating and other similar uses.

**Electric power transmission line or substation.** A conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of more than 46 kilovolts and less than 200 kilovolts. Associated facilities shall include insulators, towers and terminals operating at a nominal voltage greater than 46 kilovolts and less than 200 kilovolts, as well as substations related to those facilities.

**Elevation (flood).** In the context of flood related regulation, that elevation above mean sea level referenced in the National Geodetic Datum of 1929.

**Encroachment lines.** In the context of flood related regulation, the lateral limits or lines drawn along each side and generally parallel to a stream or another body of water, which delineates the floodway and within which the flood carrying capacity of the stream or other body of water is to be preserved. Their location, if along a stream, should be such that the floodway between them will effectively carry and discharge a flood not less than the regional flood.

**Equal degree of encroachment.** ~~In the context of flood related regulation, a method of determining the location of encroachment lines so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows. This is determined by considering the effect of encroachment on the hydraulic efficiency of the flood plain along both sides of a stream for a significant reach. A method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.~~

**Erosion.** Any process that wears away the surface of the land by the action of water, wind, ice or gravity. Erosion can be accelerated by the activities of man and nature.

**Erosion and sediment control plan.** A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

**Erosion and sedimentation practice specifications, or practice.** The management procedures, techniques and methods adopted by the city to adequately and effectively control soil erosion and sedimentation incident to land disturbing activity within the city. The specifications are primarily based upon the MPCA handbook entitled *Protecting Water Quality in Urban Areas*, published in October of 1989, but may be varied on a case by case basis to effectively control erosion and sedimentation.

**Established residential neighborhood in a built up urban area (ERN BUUA).** In the context of airport regulation, an area that, if it existed on or before January 1, 1978 (for low density structures and lots) and an area that, if it existed on or before July 2, 1979 (for all other land uses) shall be considered a conforming use that shall not be prohibited except as provided in this Chapter. The following criteria shall be applied and considered in determining what constitutes an ERN BUUA:

- A. Location of the airport;
- B. Nature of the terrain within safety zones A and B;
- C. Existing land uses and character of the neighborhood around the airport;
- D. Population of the community;
- E. That the average population density in all areas within one mile of any point on a runway shall be equal to or greater than one dwelling unit per acre;
- F. Population density near the airport compared with population density in other areas of the community;
- G. The age, and the economic, political, and social stability of the neighborhood and the community as a whole;
- H. The proximity of supporting school, commercial, religious, transportation and other facilities, and their degree of integration with residential land uses;
- I. Presence or absence of public utilities including, but not limited to, public sanitary sewer system, electric service and gas mains;
- J. Whether or not the factors listed in subparagraphs H and I above tend to make the community surrounding the airport a self sufficient unit;
- K. Whether the areas within one mile of the perimeter of the airport property would be considered primarily residential in character;

L. Other material factors deemed relevant in distinguishing the area in question as established, residential, urban, and built up.

**Excepted parcel (airport overlay).** In the context of airport regulation, any parcel of land exempted from any or all of the regulations imposed by Section 50-18.2, Airport Overlay, because the joint airport zoning board determines that the otherwise applicable requirements or proscriptions are not reasonably necessary to effectuate the purposes of Section 50-18.2 by reason of flying operations expected to be conducted, the location of the airport, the nature of the terrain within the airport hazard area, existing land uses and character of the neighborhood around the airport, the uses to which the property to be zoned are planned and adaptable and the social and economic costs of restricting land uses versus benefits derived from application of Section 50-18.2, as authorized by MSA 360.066, subd. 1.

**Expression line.** A decorative, three-dimensional, linear element, horizontal or vertical, protruding or indented at least one inch from the exterior facade of a building and extending the length or height of the building with minimal interruptions from doors and windows. This element typically delineates the floors or stories of a building. (Ord. No. 10044, 8-16-2010, § 6; renumbered by Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4.)

**50-41.6 Definitions: F**

**FAA.** A federal agency charged with regulating air commerce to promote its safety and development; encourage and develop civil aviation, air traffic control, and air navigation; and promoting the development of a national system of airports.

**Family.** One or more persons related by blood, marriage or adoption, including foster children, and in addition to and including five other unrelated persons occupying a dwelling and living as a single housekeeping unit.

**FCC.** The federal communications commission or its duly designated and authorized successor agency.

**Filling station.** A building, structure or land used primarily for the dispensing, sale or offering for sale at retail of any automobile fuels, oils or accessories, including lubrication of automobiles and replacement or installation of minor parts and accessories but not including major repair work such as motor replacement, body and fender repair or spray painting. This use may include the retail sales of convenience goods.

A. A small filling station is one that contains no more than 6 pumps or 12 fueling points.

B. A large filling station is one that contains more than 6 pumps or 12 fueling points.

**FEMA.** Federal Emergency Management Agency

**Flood.** ~~A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.~~ A temporary rise in the stream flow or water surface elevation from any source that results in the inundation of normally dry land areas.

**Flood frequency.** ~~The frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.~~

**Flood fringe.** ~~That portion of the flood plain outside of the floodway. Flood fringe is synonymous with "floodway fringe."~~ The portion of the floodplain located outside the floodway. This includes areas mapped as one-percent annual chance floodplain.

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

**Flood Insurance Study (FIS).** The study referenced in Section 50-18.1.A.2(b), which is an examination, evaluation and determination of flood hazards, and if appropriate, corresponding surface elevations, or an examination, evaluation, and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.

**Flood hazard area.** ~~The areas identified as flood plain, floodway, or flood fringe at or below the flood protection elevation.~~

**Flood peak.** ~~The highest value of stage or discharge attained during a flood event; thus peak stage or peak discharge.~~

**Flood plain.** ~~The beds proper and the areas adjoining a wetland, lake, or watercourse that have been or may in the future be covered by a regional flood.~~ The beds, channel and the areas adjoining a wetland, lake or watercourse, or other source which have been or hereafter may be inundated by the base flood.

**Flood profile.** ~~A graph or a longitudinal plot of water surface elevations of a flood event along a reach of a stream or river.~~

**Floodproofing.** ~~A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.~~ A combination of structural and non-structural additions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

**Floodway.** ~~The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain that are reasonably required to carry and store the regional flood discharge.~~ floodplain which must be reserved to carry or store the base flood discharge without cumulatively increasing the water surface elevation more than one-half foot.

**Food processing.** The sorting, treatment, or preparation of food products for sale or as inputs to further processing, but not including the slaughtering of small or large livestock or confined animal feeding operations. Examples include: creamery operations and poultry processing.

**Forest management.** Tree removal from a predominantly forested area with the intent of maintaining forest cover and not resulting in conversion to non-forest, such as grassy fields or pavement. Clearcuts constitute forest management as long as tree cover returns by planting or natural regeneration.



# Attachment 1

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**Frontage.** All the property on one side of a street between two streets that intersect such street (crossing or terminating), measured along the line of the street, or if the street is dead ended, then all of the property abutting on one between a street that intersects such street and the dead end of the street.

**Funeral home or crematorium.** An establishment providing services such as preparing the human dead for burial, cremating human remains, and arranging and managing funerals. This use does not include cemeteries and columbaria. (Ord. No. 10044, 8-16-2010, § 6; renumbered by Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10285, 3-10-2014, § 6; Ord. No. 10563, 4-9-2018, § 4; Ord. No. 10797, 3-28-2022, §5)

**50-41.7 Definitions: G**

**Garage, private.** An accessory building designed or used for the storage only of not more than four motor driven vehicles. Not more than one of the vehicles may be a commercial vehicle, and that vehicle shall not exceed a two ton capacity.

**Garden material sales.** An establishment engaged in the storage, distribution, and sale of garden materials, including a green house used to raise flowers, shrubs and plant for sale. Accessory uses may include delivery services.

**General development waters.** Includes lakes that are generally large, deep lakes or lakes of varying sizes and depths with high levels and mixes of existing development at the time of the original classification. These lakes often are extensively used for recreation. General development rivers include agriculture and urban rivers. This class has a wide variety of existing land and recreational land use characteristics.

**General floodplain.** ~~The area within a flood plain on the flood insurance rate map and on the flood boundary and floodway map adopted in Section 50.18.1.C that does not have a delineated floodway or flood fringe.~~ Those floodplains designated on the Flood Insurance Rate Maps referenced in Section 50-18.1.A.2(b), that are not VE or V zones, and that do not have a delineated floodway.

**Golf course.** A tract of land laid out with at least 9 holes for playing the game of golf and improved with tees, greens, fairways and hazards. This use does not include a miniature golf course. A golf course may include a driving range, clubhouse, restaurant, putting and chipping greens, maintenance facilities, and shelters as accessory uses.

**Government building or public safety facility.** A building or facility housing the offices or operations of a department or agency of the city, county, state, or federal government, or a quasi-governmental, including but not limited to a building or facility that provides fire protection, police protection, or emergency medical services (not including a hospital or medical or dental clinic), together with incidental storage and maintenance of necessary vehicles.

**Grade.**

A. For buildings having walls adjoining one street only, the elevation of the sidewalk at the center of the wall adjoining the street;

B. For buildings having walls adjoining more than one street, the average of the elevations of the sidewalk at the centers of all walls adjoining the streets;

C. For buildings having no wall adjoining a street, the average level of the finished surface of the ground adjacent to the exterior walls of the building;

D. Any wall approximately parallel to and not more than 15 feet from a street line is to be considered as adjoining the street. Where sidewalks do not exist the grade shall be as established by the office of the city engineer.

**Grocery store.** A retail sales establishment selling primarily food and beverages for off-site preparation and consumption that maintains a sizable inventory of fresh fruits, vegetables, fresh-cut meats, or fresh seafood or specialize in the sale of one type of food item. This use may also include sales of personal convenience and small household goods.

A. A small grocery store is one that contains less than 15,000 square feet of gross floor area;

B. A large grocery store is one that contains 15,000 square feet or more of gross floor area.

**Groundwater management area.** A geographically defined area that may be particularly sensitive in terms of groundwater quantity or quality by nature of the use or movement of groundwater, or the relationship between groundwater and surface water, and where special management measures are deemed necessary to protect groundwater and surface water resources.

**Groundwater recharge volume.** The portion of the water quality volume used to maintain groundwater recharge rates at development sites. (Ord. No. 10044, 8-16-2010, § 6; renumbered by Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10225, 5-28-2013, § 14; Ord. No. 10285, 3-10-2014, § 7.)

**50-41.12 Definitions: L**

**Land development.** A human-made change to, or construction on, the land surface that changes its runoff characteristics.

**Land disturbing activity.** Land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands of or downstream of the city, including clearing, grading, excavating, transporting and filling of land. Land disturbing activity does not include:

- A. Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- B. Construction, installation and maintenance of electric, telephone and cable television utility lines or individual service connection to these utilities;
- C. Installation of septic tank lines or drainage fields unless included in an overall plan for a land disturbance activity relating to construction of a building to be served by the septic tank system;
- D. Tilling, planting or harvesting of agricultural, horticultural or silviculture crops;
- E. Installation of fence, sign, telephone and electric poles and other kinds of posts or poles;
- F. Emergency work to protect life, limb or property and emergency repairs, except if the land disturbing activity would have required an approved erosion and sediment control plan except for the emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of Section 50-18.1.E.

**Landing area.** The area of the airport used for the landing, taking off, or taxiing of aircraft.

**Land owner.** The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

**Landscape plan.** An accurate scale drawing that indicates the major natural features of a site and all proposed buildings, structures and site improvements in sufficient detail to allow the evaluation of impacts on natural systems and other aspects of the development.

**Laundromat.** An establishment providing home type (large institutional or commercial type) washing, drying or ironing machines for use on the premises.

**Limit of Moderate Wave Action (LiMWA).** A line shown on a Flood Insurance Rate Map to indicate the inland limit of the 1.5-ft breaking wave height during the base flood.

**Link.** For purposes of the connectivity index described in Section 50-23.3, links are stretches of road that connect “nodes” as defined below. Street stub-outs are considered as links, but temporary dead-end streets internal to a development, private streets in gated sections or alleys shall not be counted as links. Every road segment that connects a node in the development to the external street network shall be counted as a link in the index calculation.

**Loading space.** A space within the principal building or on the same lot as the principal, providing for the off street standing, loading or unloading of trucks and trailers.

**Local watershed.** All the water that drains to a natural waterway located primarily within the city.

**Lot.** Land occupied or intended for occupancy by a use permitted in this Chapter, including one main building together with its accessory buildings, and the yards and parking spaces required by this Chapter, and having its principal frontage upon a street or upon an officially approved place. For the purposes of this Chapter, the term “lot” may include two or more lots of record that are contiguous or separated only by a public easement not exceeding 25 feet in width, are owned by the same owner and where none of the parcels can be severed or legally sold, conveyed or used without the other parcels by virtue of a legally binding agreement that runs with the land and is recorded in the office of the county recorder. If at any time any parcel that had been recognized as part of any lot by reason of such proximity, ownership and agreement are severed, legally sold, conveyed or used separately from the other parcel or parcels making up said lot, the parcel so severed, legally sold, conveyed or used shall henceforth not be considered part of the lot, any uses relying on its status as part of the lot shall become nonconforming and the provision of Section 50-38 shall not be applicable to any such use.

**Lot, corner.** A lot abutting upon two or more streets at their intersection.

**Lot, double frontage.** A lot having a frontage on two streets as distinguished from a corner lot.

**Lot, flag.** A lot so shaped and designed that the main building site is setback from the street and that portion of the lot providing access has a width less than 25 percent of the lot width at its greatest point.

**Lot, front.** The area of a lot that abuts a public street is the front of the lot. For corner lots, the shortest side fronting upon a street shall be considered the front of the lot unless structures exist on the lot. In that case, the frontage shall be established by the orientation of the buildings, or of the principle entrance if

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building orientation does not clearly indicate lot frontage. For corner lots, where no other method determines conclusively the front of a lot, the city engineer shall select one frontage on the basis of traffic flow on adjacent streets, so that the lot is considered to front on the street with the greatest traffic flow.

**Lot frontage.** Frontage shall be the dimension of the lot line at the street, except where the lot line at the street is not straight, in which case the frontage shall be the dimension across the lot at the required front yard line.

**Lot of record.** A parcel of land that is part of a subdivision, the map of which has been recorded by the county recorder or a parcel of land described by metes and bounds the description of which has been recorded by the county recorder.

**Lots on the block face.** When a dimensional standard is calculated based on a dimension measured for "lots on the block face" the measurement shall apply only to (a) developed lots on the same side of the street between the next two intervening side streets, and (b) lots that face developed streets (not to streets shown on a plat or map that have not been constructed). For purposes of this measurement, all contiguous lots in common ownership shall be considered as a single lot (not as separate platted lots).

**Low density residential lot.** A single lot located in an area that is zoned for one-family or two-family residences and in which the predominant land use is such type of residences.

**Low density residential structure.** A one-family or two-family home.

**Lowest floor.** ~~The lowermost floor of the lowest enclosed area, including basement and crawl space.~~ The lowest floor of the lowest enclosed area (including basement). In the context of flood related regulation, an unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR § 60.3. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10285, 3-10-2014, § 8.)

**50-41.14 Definitions: N**

**Nameplate.** An accessory sign containing only the name of the occupant of a dwelling and an occupation permitted in that zone district.

**National register of historic places.** The nation's official list of properties worthy of preservation designated by the United States department of the interior, national park service.

**Natural environment waters.** Include rivers that are forest previously classified remote, forest, transitional river segments, and tributary river segments that flow into natural environment lakes. The types and intensities of recreational uses within this class vary widely.

**Natural resource inventory.** An inventory that identifies and maps the critical natural resources on a site, including the following resources: existing land cover of vegetative types; streams; wetlands; lakes; significant, sensitive, threatened, or endangered species; critical wildlife habitat; soil types; geologic hazards (floodplains, unstable slopes, highly erodible soils); and mineral resources.

**Natural state.** Where vegetation exists in a wild state, where the condition of the ground and shrub layers and floristic composition of the plant community is substantially unaltered by humans, where restoration has been consistent with Commissioner 525 Guidelines or local government approved plans, or where the vegetation has been unaltered for at least one growing season.

**Navigable airspace.** Airspace at and above the minimum flight altitudes prescribed in the FARs including airspace needed for safe takeoff and landing (refer to FAR Part 77 and 91).

**New Construction.** In the context of floodplain requirements, structures for which the start of construction commenced on or after the effective date of an adopted floodplain management regulation and includes any subsequent improvements to such structures.

**NIER.** Non-ionizing electromagnetic radiation.

**Node.** For purposes of the connectivity index described in Section 50-23.3, a node exists at each street intersection and cul-de-sac head within the development subject to the connectivity index.

**Nonconforming use.** Any building or land lawfully occupied by a use at the time of passage of this Chapter or an amendment to this Chapter that does not conform after the passage of this Chapter or amendment to this Chapter with the use regulations of the district in which it is situated.

**Nonpoint source pollution.** Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include but not be limited to pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

**Nonprecision instrument runway.** A runway having an existing or planned straight-in instrument approach procedure utilizing air navigation facilities with only horizontal guidance, and for which no precision approach facilities are planned or indicated on an approved planning document.

**Non-structural measure.** When used in the context of stormwater control, a stormwater control and treatment technique that uses natural processes, restoration or enhancement of natural systems, or design approaches to control runoff or reduce pollutant levels. Such measures are used in lieu of or to supplement structural practices on a land development site. Non-structural measures include but are not limited to: minimization or disconnection of impervious surfaces; development design that reduces the rate and volume of runoff; restoration or enhancement of natural areas such as riparian areas, wetlands, and forests; and on-lot practices such as rain barrels, cisterns, and vegetated areas that intercept roof and driveway runoff.

**NPDES.** National pollution discharge elimination system.

**Nursing home.** Licensed facilities primarily engaged in providing shelter, food and intermediate or long term nursing and health related care for individuals, including assisted living facilities, but not including hospitals, clinics or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured. (Ord. No. 10044, 8-16-2010, § 6; renumbered by Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4.)



**50-41.16 Definitions: P**

**Park, playground or forest reserve.** A facility or area for recreational, cultural, or aesthetic use owned or operated by a public or quasi-public agency and available to the general public. This definition may include but is not limited to: parks, public lawns, active and passive recreation areas, playgrounds, water courses and wooded areas. Facilities may also include fountains, swimming pools, pavilions and similar public facilities within their boundaries.

**Parking area.** An open unoccupied space used or required for use for parking of motor vehicles exclusively and in which no gasoline or vehicular accessories are sold or no other business is conducted and no fees are charged.

**Parking lot.** An off-street area used for the temporary storage of operable and street legal motor vehicles. Includes parking spaces, aisles, drives and landscaped areas, and provides vehicular access to public street.

**Parking space.** An off-street space available for the parking of one motor vehicle.

**Parking structure.** A structure designed to accommodate vehicular parking spaces that are fully or partially enclosed or located on the deck surface of a building. This definition includes parking garages, deck parking, and underground or under-building parking areas.

**Patterned wall.** Walls with a patterned or textured look to mimic stone or similar design or patterned to create reveals and shadow lines. No blank concrete or wood timber walls shall be permitted.

**Permanent stormwater best management practice (BMP).** A stormwater best management practice (BMP) that will be operational after the construction phase of a project and that is designed to become a permanent part of the site for the purposes of managing stormwater runoff.

**Personal services and repair (small).** An establishment containing less than 10,000 square feet of gross floor area and generally having no more than ten employees on site at one time, that is engaged in the provision of informational, instructional, personal improvement, personal care, and similar services. Examples include but are not limited to: catering establishments, custom dressmaking, film processing, garment printing and embroidering, licensed massage salons, optical and optician services, real estate sign placement service, service and repair establishments, sun tan centers, bicycle rental, small craft rental, tailor shops, and laundromats.

**Personal services and repair (large).** An establishment, containing 10,000 square feet of gross floor area and generally having more than 10 employees on site at one time, that is engaged in the provision of informational, instructional, personal improvement, personal care, and similar services.

**Personal wireless facility.** See wireless telecommunications facilities.

**Personal wireless service or PWS.** This term, which is sometimes also referred to as "personal telecommunications service" or "PCS," shall have the same meaning as defined and used in the 1996 Federal Telecommunications Act.

**Place.** An open, unoccupied space or thoroughfare other than a street or alley permanently reserved as a principal means of access to abutting property.

**Place of public or semi-public assembly.** A place of public or semi-public assembly is defined as a building or portions of a building used for the gathering of persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, dining or awaiting transportation.

**Planned future airport improvement.** As used in Section 50-18.2, Airport Overlay, those proposed future airport developments that are indicated on a planning document having the approval of the federal aviation administration, Minnesota department of transportation, office of aeronautics, and Duluth airport authority.

**Power transmission line.** A conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of more than 46 kilovolts and less than 200 kilovolts. Associated facilities shall include insulators, towers and terminals operating at a nominal voltage greater than 46 kilovolts and less than 200 kilovolts.

**Precision instrument runway.** A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), a Microwave Landing System (MLS), or a Precision Approach Radar (PAR), a Transponder Landing System (TLS), or a satellite-based system capable of operating to the same level of precision guidance provided by the other included systems. Also, a runway for which such a precision instrument approach system is Planned.

**Premises.** A lot together with all buildings and structures existing on the lot.

**Preschool.** An establishment licensed by the state to provide a systematic organization or arrangement of activities, personnel, materials, and equipment in a facility to promote the physical, intellectual, social, and emotional development of a child, who is at least 33 months old but who has not yet attended the first day of kindergarten, in the absence of the parent for a period of less than 24 hours a day.

**Principal Use.** A use that is the primary use of the zoning lot upon which it is situated and that is specifically listed in the Table 50-19.8 as a permitted or special use in the zoning district in question; for unlisted uses follow the process in Sec 50-19.7.

**Principal use or structure.** ~~All uses or structures that are not accessory uses or structures.~~ The main building or other structure on a lot that is utilized for the property's principal use.

**Pylon.** A decorative extension above the roof line of a building that is designed as an integral part of the building and that is constructed of masonry or is completely enclosed by the same material as the main exterior walls of the building. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10338, 11-24-2014, § 5; Ord. No. 10797, 3-28-2022, §5)

**50-41.18 Definitions: R**

**R-district parking area.** The area on a lot in a residential district where vehicles may be parked, unless a front yard parking variance has been approved pursuant to Section 50-37.9. The parking area shall be limited to an area that may include one side yard, the rear yard, and the following additional areas of the lot:

- A. On a lot, other than a corner lot, containing a dwelling unit without garage, the parking area also includes the area between one side lot line and the nearest wall of the dwelling unit and its extension to the improved street abutting the front yard;
- B. On a lot, other than a corner lot, containing a dwelling unit with a detached garage, the parking area also includes the area between the closest side lot line to the side wall of the dwelling unit nearest the garage and its extension to the improved street abutting the front yard;
- C. On a lot, other than a corner lot, containing a dwelling unit with attached garage, the parking area also includes the area between the closest side lot line and the common wall separating the dwelling unit and the garage and its extension to the improved street abutting the front yard;
- D. On any corner lot, any parking area in addition to the rear yard and one side yard may be granted by variance as provided in Section 50-37.9.

**Radio or television broadcasting tower.** A structure that is designed and constructed primarily for the purpose of supporting one or more antennae that transmit information (audio, video, data, but not personal wireless communications) in the form of electromagnetic signals to one or more receivers without the use of a physical connection between the transmitting and receiving source. The term includes but is not limited to: lattice towers, guyed towers, and monopole towers. The term does not include a wireless communication tower, clock tower, bell tower, steeple, light pole, power pole, water tower, or similar structure that incidentally supports antennae.

**Railroad yard or shipyard and related facilities.** An area of land, a portion of which is covered by a system of tracks, that provides for the making up of trains by one or more railroads or private industry concerns including roadhouses and repair and overhaul shops. Necessary functions of a railroad yard include but are not limited to the classifying, switching, storing, assembling, distributing, consolidating, repairing, weighing, or transferring of cars, trains, engines, locomotives, and rolling stock. In addition, this use includes a facility or area containing wharves, docks, or other facilities used in connection with water transportation or navigation, and for the repair, service, sales or storage of boats.

**Rainfall events.** See the engineering guidelines for the current rainfall data.

**Reach.** As used in the context of flood prevention, the hydraulic engineering term used to describe longitudinal segments of a stream or river influenced by a natural or manmade obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would typically constitute a reach.

**Receiving stream or channel.** The body of water or conveyance into which stormwater runoff is discharged.

**Receiving waters.** Lake Superior, St. Louis River, St. Louis Bay and the 16 trout streams, which are the major receivers of city drainage.

**Recharge.** The replenishment of underground water reserves.

**Recreational vehicle.** A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. For the purposes of this chapter, the term recreational vehicle shall be synonymous with the term "travel trailer/travel vehicle."

**Recycling collection point (primary use).** A facility used for the collection and temporary storage of empty beverage containers, aluminum, glass, paper or clothing for recycling purposes conducted totally within an enclosed structure or container. This definition does not include processing except for can banks that crush cans as they are deposited.

**Redevelopment.** A change to previously existing, improved property, including but not limited to the demolition or building of structures, filling, grading, paving or excavating, but excluding ordinary maintenance activities. For purposes of the erosion and stormwater controls in Section 50-18.1.E, redevelopment does not include remodeling of buildings on the existing footprint, resurfacing of paved areas, and exterior changes or improvements that do not result in the disturbance of equal to or greater than one acre of land.

**Regional flood.** A flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of a one percent chance or 100-year recurrence interval. Regional flood is synonymous with the term "base flood" used in a flood insurance study.

**Regional stormwater.** Stormwater BMPs designed to control stormwater runoff from multiple properties or a particular land use district, and where the owners or developers of the individual properties may participate in the provision of land, financing, design, construction or maintenance of the facility.

**Regulatory flood protection elevation.** ~~An elevation corresponding with a point not less than two feet above the water surface profile associated with the regional flood plus any increases in flood stages attributable to encroachments on the flood plain. Within an A-O zone, as shown on the flood insurance rate map adopted in Section 18.1.A.2(b), an elevation above the highest adjacent grade of an existing or proposed structure equivalent to two feet plus the depth number in feet specified on the flood insurance rate map.~~ An elevation that is two feet above the elevation of the base flood plus any increases in the water surface elevation caused by encroachments on the floodplain that result from designation of a floodway. These increases in water surface elevations are typically identified in the Floodway Data Tables, found in the Flood Insurance Study.

**Religious assembly.** A facility or area for people to gather together for public worship, religious training or other religious activities including a church, temple, mosque, synagogue, convent, monastery or other structure, together with its accessory structures, including a parsonage or rectory. This use does not include home meetings or other religious activities conducted in a privately occupied residence. Accessory uses may include meeting rooms and childcare provided for persons while they are attending assembly functions.

**Repairs and maintenance.** When used in the context of wireless telecommunications, the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted. When used in the context of repairing or reconstructing damaged or deteriorated non-conforming structures, the proposed repair or reconstruction must be of the same volume or smaller as the original structure, be located in the same footprint as the original structure, and have fewer adverse impacts on the surrounding properties as the original structure.

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

**Research laboratory.** A facility or area for conducting scientific research, investigation, testing, or experimentation, but not including facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory. This definition also includes labs for the manufacture of dentures and prostheses.

**Residential care facility/assisted living facility.** A facility that houses persons, on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This classification shall include, but not be limited to, the following; residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers, and convalescent facilities. Sober houses do not constitute a residential care facility.

**Responsible party.** In the context of stormwater regulations, any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity or their legal representatives, agents or assigns, that is named on a stormwater maintenance agreement as responsible for long-term operation and maintenance of one or more stormwater BMPs.

**Restaurant (no drive-in/drive-through).** A commercial establishment, including but not limited to taverns and brewpubs, where food and beverages are prepared, served, and consumed primarily within the principal building.

**Restaurant (with drive-in/drive-through).** A commercial establishment, including but not limited to taverns and brewpubs, where customers order and are served their food and beverages at a walk-up counter or in a motor vehicle to be consumed on or off the site.

**Retail store.** A facility or area for the retail sale of general merchandise or food to the general public for direct consumption and not for wholesale. Typical general merchandise includes clothing and other apparel, equipment for hobbies or sports, gifts, flowers and household plants, dry goods, convenience and specialty foods, toys, furniture, books and stationery, pets, drugs, hardware and similar consumer goods. This definition does not include retail uses defined elsewhere in this Chapter.

A. A small retail store is one that contains less than 15,000 square feet of gross floor area;

B. A large retail store is one that contains 15,000 square feet or more of gross floor area.

**Riding stable.** An establishment or area for keeping horses or other domestic animals other than for the property owner's personal use, for compensation, hire, boarding, riding or show.

**Rooming house.** A building containing habitable units and that provide sleeping or living accommodations by prior arrangements, regardless of whether those accommodations are offered for compensation or not, and for definite time periods. Some or all bathroom and/or kitchen facilities, where provided, are for use on a communal basis. Individual habitable units are not owned by occupants, except that a habitable unit may be occupied by the owner of the building.

**Runway.** Any existing or planned paved surface or turf covered area of the airport that is specifically designated and used or planned to be used for the aircraft landing and takeoff. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10047, 8-30-2010 § 5; Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10285, 3-10-2014, § 10; Ord. No. 10338, 11-24-2014, § 6; Ord. No. 10746, 5-10-2021, § 6; Ord. No. 10797, 3-28-2022, §5)

**50-41.19 Definitions: S**

**Safe Routes to School Program.** A federal program under Title I, Section 1404 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, Public Law 109-59, and adopted by the State of Minnesota in Minnesota Statutes, Section 174.40.

**Safe Routes to School Program Funding.** A State of Minnesota account consisting of state bond proceeds and other funds as appropriated to be expended on eligible costs of a Safe Routes to School Program project receiving financial assistance. Assistance may be offered for acquisition of land or permanent easements, predesign, design, preliminary and final engineering, environmental analysis, construction and reconstruction of publicly owned infrastructure with a useful life of at least ten years that provides for non-motorized to and from a school; preparation of land for which a route to school is established, including demolition of structures and remediation of any hazardous conditions on the land; payment for the unpaid principal on debt issued by a political subdivision for a Safe Route to School project; and for any other eligible activity described in Minnesota Statutes, Section 174.40, as amended.

**Safe Routes to School Administration.** The Minnesota Department of Transportation program requirements and competitive process for financial assistance following Minnesota Statutes, Section 174.40, establishing criteria to evaluate capital improvements of transportation infrastructure that improves safety and encourages non-motorized transportation to and from a school.

**Safe Routes to School Infrastructure.** A safe and appealing non-motorized means of transportation to and from a school consistent with the Safe Routes to School Program and the Safe Routes to School Administration criteria and guidelines.

**School, elementary.** An public or private establishment providing educational services from kindergarten or Grade 1 through Grade 5, or from kindergarten or first grade through Grade 8, or some combination of those included years, together with incidental sports and outdoor activity areas.

**School, middle or high.** A public or private establishment providing educational services from Grade 6 through Grade 12, or from Grade 6 through 8, or from Grade 9 through Grade 12, or some combination of those included years, together with incidental sports and outdoor activity areas.

**Seasonal camp or cabin.** A facility containing one or more tent sites or cabins that is offered for use on short-term during defined seasons of the year, for compensation, and that may include accessory facilities such as showers, laundries or cooking and dining facilities.

**Sediment.** Solid mineral or organic material that, in suspension, is being transported, or has been moved from its original site by air, water, gravity or ice and has been deposited at another location.

**Sedimentation.** The process or action of depositing sediment that is determined to have been caused by erosion.

**Setback.** The minimum horizontal distance between a lot line and a building or structure required by this Chapter.

**Shore impact zone.** Land located between the ordinary high water level of public waters and a line parallel to it at a setback of 50 percent of the required structure setback, but not less than 50 feet.

**Shoreland.** Lands within 1,000 feet of a lake or within 300 feet of a river and its floodplain, as shown on the NR-O map. The limits of shorelands may be less than the above limits whenever the waters involved are bounded by topographic divides that extend landward from the waters for lesser distances and when approved by the commissioner.

**Sidewalk.** A paved surface located in the public right of way and used as a pedestrian walkway.

**Sidewalk café.** An outdoor dining area located within the public right of way in front or adjoining a restaurant or other eating and drinking establishment.

**Sign.** Any letter, word, symbol, model, printed, projected or affixed device, poster, picture, reading matter or representation in the nature of an advertisement, announcement, direction or informative device including its structure or component parts, which is more than one square foot in area and is located outdoors or is affixed to the interior or exterior of a window or door, or is displayed within 12 inches of a window intended for viewing from the exterior of the building. A sign shall not include (a) temporary parks and recreation signs permitted pursuant to Chapter 35 of the City Code, or (b) overhead banners and devices regulated under Article III of Chapter 45 of the City Code, or (c) any street name sign, public directional, utility or transportation sign, or motor vehicle traffic signs of any kind when officially placed, or to advertising or other information affixed to any motor vehicle, provided that such vehicle's primary use is not as a stationary advertising device, or (d) any inscription on any publicly owned building when the inscription is incorporated into the architectural design as a permanent feature.



**Sign, A-frame.** A sign ordinarily in the shape of the letter “A,” or some variation thereof, that is displayed on the ground, not permanently attached, and usually two-sided.

**Sign, agricultural identification.** A sign describing an agricultural use that includes the name of the farm and/or the products grown on-site.

**Sign, animated.** A sign that uses movement or change of lighting to depict action or to create a special effect or scene. Animated signs do not include electronic message signs.

**Sign, attention getting.** Flags, pennants, streamers and similar devices or ornamentations designated for the purpose of attracting attention. Flags of nations, states, and cities, or fraternal, religious and civic organizations, permanent commercial flags, or temporary holiday decorations are not considered attention getting devices.

**Sign, awning.** A sign that is printed or displayed upon an awning. An awning is a roof-like cover designed for protection from the weather or as a decorative embellishment, which projects from a wall or roof of a structure over a window, walkway or door, with no supports that extend to the ground.

**Sign, balloons.** Balloons or inflated devices used as a means of directing attention to a business or service offered.

**Sign, banner.** A sign that is printed or displayed upon flexible material with or without frames.

**Sign, banner-exhibition.** A sign that is printed or displayed upon flexible material with or without frames in conjunction with a special exhibit for an educational facility, government building, museum, library or art gallery, or religious assembly.

**Sign, billboard.** A sign that directs attention to a business, commodity, service, event or other activity that is sold, offered or conducted other than on the premises where the sign is located.

**Sign, building directory.** A sign that serves as common or collective classification for a group of persons or businesses operating in the same building or on the same lot. A building directory sign may name the persons or businesses included, but carry no other advertising matter.

**Sign, canopy.** A sign that is printed or displayed upon a canopy. A canopy is a roofed structure constructed of fabric or other material placed to extend outward from the building and supported both by the structure and by supports that extend to the ground directly under the canopy.

**Sign, construction.** A temporary sign that identifies an architect, contractor, subcontractor and/or material supplier participating in construction on the property on which the sign is located and which may identify the proposed use for the property.

**Sign, community event.** Temporary signs that announce community events and activities, including the activities of religious assemblies, social clubs or similar groups, or special events such as fairs, rummage sales and garage sales.

**Sign, directional-parking lot.** A sign that identifies parking lot entrances and exits, driveway intersections, drive-through lanes, and features of a similar nature.

**Sign, electronic display screen.** A sign, or portion of a sign, that displays electronic video via television screens, plasma screens, digital screens, flat screens, LED screens, video boards, and holographic displays.

**Sign, electronic message.** Any sign, or portion of a sign, that uses changing lights to form a sign message or messages in text or image form where the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes. Time/temperature signs are not considered electronic message signs.

**Sign, flashing.** A sign which contains an intermittent or sequential flashing light source used primarily to attract attention. Flashing signs do not include electronic message signs.

**Sign, freestanding.** A sign that is placed on or supported by the ground, independent of the principal structure on the lot. Freestanding signs may be either pole or monument signs.

**Sign, freestanding monument.** A freestanding sign where the base of the sign structure is on the ground or up to a maximum of 24 inches above ground. The monument base must be designed as an integral part of the sign structure. The width of the top of the sign structure can be no more than 120 percent of the width of the base.

**Sign, freestanding pole.** A freestanding sign that is affixed, attached or erected on one or two poles that is not itself an integral part of the sign.

**Sign, ghost.** A painted wall sign that remains from an earlier time or advertises the use of a building that provides evidence of the history of the use of the building or activities of the community. A ghost sign is not considered an off-premises sign.

**Sign, government information sign.** Traffic signs, legal notices, railroad crossing signs, signs regulating vehicular or pedestrian traffic, or designating or giving direction to streets, schools, historic sites or public buildings, and temporary emergency signs.

**Sign, home occupation.** A sign identifying a home occupation or permitted accessory use on the premises.

**Sign, illumination types.**

A. Gooseneck reflector. Lighting designed for mounting above or to the side of signs with a long, shepherd hook-shaped arm to hold fixtures at a distance from the area of illumination;

B. Illumination, external. Lighting of a sign where lighting components are outside the sign structure and light is directed at the sign face;

C. Illumination, internal. Lighting of a sign constructed so that all lighting components are internal and illumination occurs as lighting is diffused through the sign face surfaces.

**Sign, marquee.** A permanent roof-like sign structure constructed over a building entry, with no supports extending to the ground, where a changeable message area is part of the vertical sign fascia.

**Sign, memorial plaque.** A sign, tablet or plaque memorializing a historic person, event, structure or site.

**Sign, menuboard.** A device that lists items for sale at an establishment with drive-through facilities.

**Sign, moving.** A sign that, in whole or in part, rotates, elevates or in any way alters position or geometry. Moving signs do not include clocks.

**Sign, nameplate.** A sign that is affixed flat against a wall of a building or imprinted into the wall of a building that designates the name of the building or the name and profession of one who resides or occupies space in the building.

**Sign, noncommercial.** A sign advocating action on a public issue or recommending a candidate for public office.

**Sign, off-premises.** A sign that directs attention to a business, product, service or entertainment not conducted, sold or offered upon the premises where the sign is located.

**Sign, on-premises.** A sign that directs attention to the name of the building or the name of the building management firm or to a business, principal product, service or entertainment conducted, sold or offered upon the premises where such sign is located.

**Sign, parking lot information.** Signs that provide information on the operation of a parking lot, such as "No Parking" or "Unauthorized users shall be towed."

**Sign, political.** Any sign that directs attention to an issue in an election or to either the name of a candidate running for election to a public office or the name of the office for which he is a candidate, or both.

**Sign, portable.** A sign whose principal supporting structure is intended, by design and construction, to rest upon the ground for support and may be easily moved or relocated for reuse. Portable signs include, but are not limited to, signs mounted upon a trailer, wheeled carrier or other non-motorized mobile structure, with wheels or with wheels removed. Portable signs do not include A-frame signs.

**Sign, projecting.** A sign that is attached to a structure that extends beyond the surface of the structure to which it is attached.

**Sign, property identification/management.** An accessory sign containing only messages related to the identification or management of the property where the sign is located, including but not limited to signs identifying entrances, exits, parking areas or hazardous areas, prohibiting trespassing, or information about limits on property use.

**Sign, property identification.** A sign identifying the property management company or apartment complex name of a multi-family dwelling.

**Sign, public information.** Signs within an educational facility, cemetery or mausoleum, museum, library or art gallery, and park, playground or forest reserve property that provide information on the use of the facility, such as directional signs, trailhead locations and information kiosks.

**Sign, public assembly bulletin board.** A bulletin board accessory to and located on the same property as a religious assembly or educational use listed in Table 50-19.8 that identifies the name of the institution and the dates and times of events related to that institution to which some or all of the public are invited. These signs are allowed where electronic message signs are allowed, and are subject to the same regulations and standards.

**Sign, readerboard.** A sign or portion of a sign face that allows for the creation of messages by physical manipulation of simple block letters, but not including an electronic message sign or electronic billboard. These signs are allowed where electronic message signs are allowed, and are subject to the same regulations and standards.

**Sign, real estate.** A sign advertising the real estate upon which the sign is located as being for rent, lease or sale. A real estate sign can also advertise an open house.

**Sign, roof.** A sign that is wholly erected, constructed or maintained above the roof structure or parapet of any building with the principal support attached to the roof structure.

**Sign, scoreboard.** A sign that records and displays the score of a game and may include such information as the name of the field or home team and advertising.

**Sign, snipe.** An off-premises sign painted, pasted or otherwise affixed to any tree, rock, retaining wall, fence, utility pole, hydrant, bridge, sidewalk, curb or street, bench or trash receptacle. Logos and labels located on mechanical equipment, recycling bins, trash containers or dumpsters, which are part of the equipment as manufactured and/or installed, are not snipe signs.

**Sign, temporary off-premises.** A temporary sign that advertises a business, commodity, service, event or other activity that is sold, offered or conducted other than on the premises where the sign is located, or is sold, offered or conducted on the premises only incidentally, if at all.

**Sign, under-awning.** A sign that is attached to and mounted under an awning.

**Sign, under-canopy.** A sign that is attached to and mounted under a canopy.

**Sign, wall.** A sign that is mounted flat against or painted on a wall, and projects no more than 12 inches from the wall of a structure with the exposed face of the sign in a plane parallel to the face of the wall. Wall sign does not include window sign. For the purposes of this definition, a fence is not considered a wall and wall signs are prohibited mounted on fences.

**Sign, window.** A sign that is attached to, placed upon, printed on the interior or exterior of a window or door of a building, or displayed within 12 inches of a window intended for viewing from the exterior of such a building. A window sign may be either permanent or temporary. Window clings are considered a window sign and subject to all window sign regulations.

**Site.** A parcel or several adjoining parcels of land under common ownership. For purposes of the natural resources overlay district, this definition is limited to apply to any parcel of land upon which work requiring a permit under this Chapter is to be performed, and includes any adjacent lands owned by the owner of the subject parcel on the date of application for any permit and any lands adjacent to the subject parcel that were owned by the same person owning the subject parcel as of January 1, 1980.

**Site plan.** An accurate scale drawing that indicates the major features of a proposed development in sufficient detail to allow the evaluation of the land planning, building design and other aspects of the development, and meeting all requirements of the UDC application manual.

**Slope.** An incline from the horizontal expressed in an arithmetic ratio of horizontal magnitude to vertical magnitude (e.g., slope = 3:1 = 3 feet horizontal to 1 feet vertical).

**Sober house.** A dwelling unit occupied by persons that are in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988. It provides a non-institutional residential environment in which the residents willingly subject themselves to written rules and conditions, including prohibition of alcohol and drug use (except for prescription medications obtained and used under medical supervision), intended to encourage and sustain their recovery. The residents of a sober house share kitchen and bathroom facilities and other common areas of the unit. Sober houses do not provide on-site supportive services to residents, such as mental health services; clinical rehabilitation services; social services; medical, dental, nutritional and other health care services; financial management services; legal services; vocational services; and other similar supportive services.

**Solar, geothermal or biomass power facility (primary use).** Uses and structures that are used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. These structures and uses may include but are not limited to the following: solar panels (photovoltaic and hot water), heat exchanges, biomass firing equipment, piping, and other transfer mechanisms, controls and related structural support for transporting and storing collected energy from solar, geothermal, or biomass energy systems. These structures and uses may be located at ground level or above or below ground unless specifically limited in this Chapter, provided that they meet all other applicable requirements of this Chapter.

~~**Solid land.** Any land that is neither a wetland nor located in a floodway.~~

**Solid waste.** As defined in MSA 116.06, Subd. 22, and also including medical wastes and petroleum contaminated soils.

**Solid waste disposal or processing facility.** Any tract or parcel of land, including any constructed facility that is designed or operated for the purpose of disposing of solid waste on or in the land, at which solid waste is disposed of in or on the land or processed for disposal or reuse, together with any appurtenant facilities needed to process solid waste for disposal or for transfer to another solid waste facility, and that is not listed as a separate use in this Chapter.

**Special flood hazard area (SFHA).** An area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

**Special tree species.** White pines (*pinus strobus*), red (Norway) pines (*pinus resinosa*), white cedars (*Thuja occidentalis*), white spruces (*Picea glauca*), eastern hemlocks (*Tsuga canadensis*), sugar maples (*Acer saccharum*), American basswoods (*Tilia americana*), American elms (*Ulmus americana*), yellow birches (*Betula alleghaniensis*) and all oak species.

**Special use.** A specific type of structure or land use listed in Table 50-19.8 that may be allowed only after review and evaluation of potential impacts on surrounding properties and the attachment of any conditions necessary to mitigate those impacts.

**Stage Increase.** Any increase in the water surface elevation during the one-percent annual chance flood caused by encroachments on the floodplain.

**Start of Construction.** Includes substantial improvement, and means the date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Stealth or stealth technology.** When used in the context of wireless telecommunications, to minimize adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

**Steep slope.** Land having average slopes over 12 percent, as measured over horizontal distances 50 feet or more, and that are not bluffs.

**Storage or Shipping Container.** A container used for the storage or transport of goods, cargo, materials or merchandise, typically by container ships, by rail, or other types of transport, that are used in connection with a lawful principle or accessory use of the lot. This use includes, but is not limited to, containers such as semi-trailers, roll-off containers, slide-off containers, piggyback containers, shipping containers, and portable moving and storage containers.

**Storage warehouse.** A structure containing an area available for storing raw materials, produce, goods or property, but not including mini-storage facilities.

**Stormwater.** Stormwater runoff, snowmelt runoff, surface runoff and drainage.

**Stormwater management.** The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

**Stormwater pollution prevention plan.** A plan, usually required by a permit, to manage stormwater associated with industrial, commercial, public, institutional, civic or other land use activities, including construction. The plan commonly describes and ensures the implementation of practices that are to be used to reduce pollutants in stormwater and non-stormwater discharges

**Stormwater pollution prevention program (MS4 program).** A compilation of best management practices (BMPs) to address the six minimum control measures and other provisions of the MS4 permit,

that is designed and managed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable as appropriate to the community.

**Stormwater best management practice (BMP).** A measure, either structural or nonstructural, that is determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies. Non-structural BMPs are those practices that require modified or additional operational or behavioral practices, such as sweeping or having spill response equipment on site. Structural BMPs are those that require the construction of a structure or other physical modification on the site.

**Stormwater retrofit.** A stormwater BMP designed for an existing development site that previously had either no stormwater BMP in place or a practice inadequate to meet the stormwater management requirements of the site.

**Stormwater runoff.** Flow on the surface of the ground resulting from precipitation.

**Story.** That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

**Story, half.** A partial story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than four feet above the floor of such story, except that any partial story used for residence purposes, other than for a janitor or caretaker or his family, or by a family occupying the floor immediately below it, shall be deemed a full story.

**Stream buffer.** An area of land at or near a stream bank, wetland or water body that has intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes that may result in significant degradation to water quality.

**Street.** A public dedicated right-of-way, other than an alley, which affords the principal means of access to abutting property.

**Street line.** The established side line of a street easement or right-of-way.

**Structure.** Anything constructed or erected, the use of which requires a location on the ground, or attached to some thing having a location on the ground. Examples include but are not limited to: backstops for tennis courts, fences or pergolas. For flood plain management and flood hazard purposes only, a structure shall be defined as: A roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Recreational vehicles not considered travel ready, as detailed in Section 50-20.1.Q.1(a), shall also be considered a structure for the purposes of this chapter.

**Structural alteration.** Any change in the supporting members of a building, such as bearing walls, columns, beams or girders, or any substantial changes in the roofs or exterior walls but not including openings in bearing walls as permitted by existing ordinances.

~~**Subdivision.** The division of a lot, tract or parcel of land into three or more lots, plats, sites or other divisions of land of one acre or less in area, for the purpose, whether immediate or future, of sale, rent, lease, or of building development. This term also includes the division of a lot, tract or parcel of land into two or more lots, plat, sites or other divisions of land of more than one acre and less than ten acres in area, if the division provides or there is shown on a plat of the division a new street or highway. The term also includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.~~

The division of a lot, tract or parcel of land into two or more lots, tracts, plats, sites or other divisions of land.

The term also includes resubdivision or replatting.

~~**Substantial damage.** Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 60 percent of the assessed market value of the structure as determined by the St. Louis County Assessor before the damage occurred. For flood plain management and flood hazard purposes, substantial damage shall occur when damage of any origin sustained by a structure, where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the assessed market value of the structure as determined by the St. Louis County Assessor before the damage occurred.~~ Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial improvement.** Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition or other improvement of a structure, the cost of which equals or exceeds 60 percent of the assessed market value of the structure

~~as determined by the city assessor before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. For flood plain management and flood hazard purposes, substantial improvement shall be within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the assessed market value of the structure as determined by the city assessor before the “start of construction” of the improvement.~~

~~The term does not, however, include either:~~

~~(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;~~

~~(b) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this Chapter, “historic structure” shall be as defined in 44 Code of Federal Regulations, Part 59.1.~~

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this chapter, “historic structure” is defined in 44 CFR § 59.1.

**Sustainable development.** Development that maintains or enhances economic opportunity and community well being while protecting and restoring the natural environment upon which people and economies depend. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10047, 8-30-2010, §§ 6, 7, 8; Ord. No. 10075, 1-24-2011, § 3; Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10285, 3-10-2014, § 11; Ord. No. 10338, 11-24-2014, § 7. Ord. No. 10592, 9-24-2018, § 3, Ord. No. 10670, 12-9-2019, §3; Ord. No. 10746, 5-10-2021, § 7; Ord. No. 10784, 12-8-2021, § 2; Ord. No. 10797, 3-28-2022, §5)



**50-41.20 Definitions: T**

**Telecommunications.** The transmission or reception of audio, video, data, and other information by wire, radio frequency, light and other electronic or electromagnetic systems.

**Telecommunications site.** See *wireless telecommunications facilities*.

**Telecommunications structure.** A structure used in the provision of services described in the definition of wireless telecommunications facilities.

**Temporary.** A fixed period of time not to exceed 180 days. For the purposes of wireless telecommunications, temporary means not more than 90 days.

**Temporary construction office or yard.** A facility or area used as a temporary field construction office, temporary outdoor storage of construction equipment and materials associated with an active permit to demolish or construct buildings, structures or infrastructure.

**Temporary event or sales.** A temporary outdoor use of land for the purposes of an event or sale including but not limited to: a circus, carnival, fair, part, or celebration that reasonably may be expected to attract more than 100 persons at any one time; or any sale made by a person, firm or corporation engaging in the temporary business of selling goods, wares or merchandise from a tent, truck, vending cart or other area outside of a permanent structure on property owned or leased by the person, firm or corporation. The temporary event or sale must be secondary to or incidental to the permitted use or structure existing on the property and not incompatible with the intent of the zone district.

**Temporary farm stand.** A temporary structure or use allowing the display and sale of food or ornamental crops.

**Temporary real estate sales office.** A facility or area used as a temporary office to sell land or buildings within a specified area or subdivision.

**Theater.** A building, structure or part of a building devoted to showing motion pictures, or for dramatic, dance, musical, or other live performances.

**Tourist or trailer camp.** Any park, trailer park, trailer court, camp, site, lot, parcel or tract of land designed, maintained or intended for the purpose of supplying a location or accommodations for any trailer coach or trailer coaches or upon which any trailer coach or trailer coaches are parked, and shall include all buildings used or intended for use as part of the equipment or establishment, whether or not a charge is made for the use of the trailer camp and its facilities. Trailer camp shall not include automobile or trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale.

**Tower.** In the context of wireless telecommunications, any structure designed primarily to support an antenna for receiving or transmitting a wireless signal.

**Trailer.** Any vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term shall include trailers whose wheels or axles have been removed.

**Tree of interest.** All trees of more than ten inches DBH, and all special tree species of more than six inches DBH shall be considered trees of interest, unless they are under power lines or deemed hazardous by a certified arborist or landscape architect or professional forester. In addition, any replacement tree planted as part of a tree replacement plan shall be considered trees of interest, even if it does not meet the size definition above.

**Truck.** Every motor vehicle designed, used or maintained primarily for the transportation of property.

**Truck, Light Duty.** Any motor vehicle that has all three of the following: (a) 8,500 pounds Gross Vehicle Weight Rating or less; (b) vehicle curb weight of 6,000 pounds or less; and (c) basic vehicle frontal area less than 45 square feet.

**Truck freight or transfer terminal.** A facility in which goods shipped by truck are loaded, unloaded, or transferred between trucks for shipping or distribution, together with incidental truck storage, maintenance, and administrative offices.

**Truck or heavy vehicle sales, rental, repair or storage.** A facility that is engaged in the sales, rental, repair or storage of heavy equipment typically used in agricultural, commercial or industrial operations, including tractors, trucks with a gross vehicle weight of over 10,000 pounds, semi trucks or trailers, harvesters, loaders and tracked vehicles as well as sales of parts, whether new or used, for heavy equipment. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10204, 3-11-2013, § 4, Ord. No. 10670, 12-9-2019, §4; Ord. No. 10784, 12-8-2021, § 3)

**50-41.23 Definitions: W**

**Water Control Structure.** A water management system that conveys water, controls the direction or rate of flow, or maintains a desired water surface elevation.

**Watercourse.** A channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.

**Water-dependent bulk storage or wholesaling not listed elsewhere.** A bulk storage or wholesaling use as defined by this Chapter, but not separately defined, that must be located near water because of the nature of the goods being stored or wholesaled or the means by which they are being transferred to or from the site, or because the establishment's suppliers or customers must be located near water

**Water dependent manufacturing, light or heavy.** A light or heavy manufacturing use, as defined by this Chapter, that must be located near water because of the nature of the goods being manufactured, assembled, fabricated, or treated or the means by which they or their inputs are being transferred to or from the site, or because the establishment's suppliers or customers must be located near water

**Water management district.** Land that by definition is in a flood plain district, a shoreland district, or a wetland.

**Water or sewer pumping station/reservoir.** Facilities to collect or distribute water or wastewater from a defined service area, and that typically does not have employees at the site, including but not limited to water-pumping stations, water reservoirs and sewage pumping stations.

**Water or sewer treatment facility.** An establishment to treat water or wastewater from a defined service area, and that typically has employees at the site, including but not limited to water treatment plants, sewage treatment plants and sewage disposal plants.

**Waters of the state.** All streams lakes ponds, marshes, water course, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, that are contained within, flow through or border upon the state or any portion of the state. Constructed wetlands designed for wastewater treatment are not waters of the state.

**Wetland.** Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands must have the following attributes:

- A. A predominance of hydric soils;
- B. Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition;
- C. Under normal circumstances support a prevalence of such vegetation.

**Wholesaling.** A use engaged in enclosed wholesale of manufactured products, supplies, and equipment, including accessory offices and showrooms. Products may be picked up on-site or delivered to the customer. This use does not include sales to the public at large or to consumers who are members or a club or association, regardless of whether the name of the business includes some version of the word "wholesale."

**Wind power facility (primary use).** A primary use of land including an aggregation of parts including the base, tower, generator, rotor, blades, supports, guy wires and accessory equipment such as utility interconnect and battery banks, in a configuration necessary to convert the power of wind into mechanical or electrical energy. Examples include but are not limited to: wind charger, windmill and wind turbine.

**Wireless telecommunications facilities.** A structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures, including but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of antennas. It also includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC. This term also includes a telecommunications site and personal wireless facility. (Ord. No. 10044, 8-16-2010, § 6; renumbered by Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4.)