

# **Rochester Gas and Electric Corporation**

## **Rochester Transmission Project Enhancement**

### **Exhibit 7**

#### **Local Ordinances**

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## **EXHIBIT 7: LOCAL ORDINANCES**

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### **7.1 Introduction**

The Rochester Transmission Project Enhancement (RTP Enhancement or the Project) is proposed to be sited in the following jurisdictions:

- County of Monroe
- City of Rochester
- Town of Gates

This exhibit identifies, for each of the jurisdictions listed above, the substantive local ordinances, laws, resolutions, regulations, standards, and other requirements applicable or potentially applicable to the Project (Local Ordinances). Rochester Gas and Electric (RG&E or the Applicant) will comply with the substantive requirements of these Local Ordinances, and the location of the Project and its construction and operation will be in accordance with all such Ordinances, except for those substantive requirements of Local Ordinances that the Applicant in this exhibit identifies as unreasonably restrictive in view of: (i) the existing technology; (ii) factors of costs or economics; or (iii) the needs of consumers. This exhibit contains justification statements in support of the Applicant's request that the New York State Public Service Commission (the Commission) not apply those substantive Local Ordinances identified as unreasonably restrictive.

Due to the preemptive effect of Public Service Law (PSL) Section 130, all procedural requirements to obtain any approval, consent, permit, certificate or other condition for the construction or operation of the Project do not apply.

Table 7-1 lists each substantive Local Ordinance potentially applicable to the Project, as well as each substantive Local Ordinance that the Applicant requests that the Commission not apply.

**Table 7-1 Compliance Summary Table**

<b>Municipality</b>	<b>Subject of Ordinance</b>	<b>Applicant Will Comply or Requests PSC Relief</b>
<b>COUNTY OF MONROE</b>		
	Chapter 255 – Geodetic Survey Monumentation	Will Comply
	Chapter 343 – Sewers	Will Comply
	Chapter 347 – Solid Waste	Will Comply
	Chapter 569 – Sanitary Code	Will Comply
<b>CITY OF ROCHESTER</b>		
	Chapter 10 – Improvements, Municipal and Local	Will Comply
	Chapter 20 – Refuse Collection	Will Comply
	Chapter 35 – Bill Posting and Advertising	Will Comply
	Chapter 39 – Building Code	Will Comply
	Chapter 47A – Demolition Regulations	Will Comply
	Chapter 56 – Flood Damage Prevention	Will Comply
	Chapter 59 – Health and Sanitation	Will Comply
	Chapter 69 – Littering	Will Comply
	Chapter 75 – Noise	Will Comply
	Chapter 89 – Trees	Requests Partial PSC Refusal to Apply
	Chapter 100 – Smoke and Air Pollution Control	Will Comply
	Chapter 104 – Streets and Street Encroachments	Requests Partial PSC Refusal to Apply
	Chapter 111 – Vehicle and Traffic	Will Comply
	Chapter 120 – Zoning	
	Section 120-4 and 120-5 Zoning Map and Districts	Will Comply
	Article XVI U-R Urban Renewal District	Requests Partial PSC Refusal to Apply
	Section 120-149 Temporary Uses	Will Comply
	Section 120-164 Air Quality	Will Comply
	Section 120-165 Dumpsters and Refuse Collection Areas	Will Comply
	Section 120-167 Fences and Walls	Will Comply
	Section 120-169 Landscaping, Buffers and Screening	Requests PSC Refusal to Apply
	Section 120-170 Lighting	Will Comply
	Section 120-171 Noise	Will Comply
	Section 120-177 Signs	Will Comply
	Section 120-178 Site Grading	Will Comply
<b>TOWN OF GATES</b>		
	Chapter 83 – Dumping and Littering	Will Comply
	Chapter 90 – Excavations	Will Comply
	Chapter 100 – Flood Damage Prevention	Will Comply
	Chapter 131 – Parking	Will Comply
	Chapter 133 – Property Maintenance	Will Comply
	Chapter 152 - Sewers	Will Comply
	Chapter 155 – Solid Waste	Will Comply
	Chapter 156 – Storm Sewers	Will Comply
	Chapter 157 – Stormwater Management	Will Comply
	Chapter 158 – Streets and Sidewalks	Will Comply

<b>Municipality</b>	<b>Subject of Ordinance</b>	<b>Applicant Will Comply or Requests PSC Relief</b>
	Chapter 176 – Vehicles and Traffic	Will Comply
	Chapter 190 – Zoning	
	Zoning Map and Districts	Will Comply
	Article XIII Effect of Provisions	Will Comply
	Article XIX Residence District	Requests Partial PSC Refusal to Apply
	Article XXIII Business Non-Retail District	Requests Partial PSC Refusal to Apply
	Article XXVI Limited Industrial District	Requests Partial PSC Refusal to Apply
	Article XXVII General Industrial District	Requests Partial PSC Refusal to Apply
	Article XXVIII Airport Overlay District	Will Comply
	Article XVII Floodway District	Will Comply
	Article V Signs	Will Comply
	Section 190-34 Buffers, Berms and Screen Plantings	Requests PSC Refusal to Apply
	Section 190-35 Visibility at Intersections	Will Comply
	Section 190-51 Lot Grades	Will Comply
	Article XXXII Conditional Permit Review Procedures	Will Comply
	Section 190-218 Unpermitted Use of Property and Erection of Structures Prohibited	Will Comply

## **7.2 County of Monroe<sup>1</sup>**

### **7.2.1 Chapter 255 – Geodetic Survey Monumentation Network**

This Local Ordinance applies to “proposed development, utility installations and construction within public rights-of-way” in the County “where a geodetic monument may be involved, or in any area within the County where a triangulation monument may be involved.” Section 255-4(A) of this Local Ordinance requires that the location of survey monuments in the vicinity of a project be requested from the County and included on project plans. Section 255-4(B) requires project developers to protect monuments against damage or destruction.

### **7.2.2 Chapter 343 – Sewers**

This Local Ordinance regulates the use of the sanitary, storm, and/or combined sewers of the publicly owned treatment works, County storm drainage system, and collection systems tributary thereto.

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<sup>1</sup> The Applicant obtained the local laws of Monroe County online at: <https://ecode360.com/MO0860>.

### **7.2.3 Chapter 347 – Solid Waste**

Sections 347-9 and 347-10 of this Local Ordinance require that all solid waste generated within the County be transported or disposed at authorized solid waste facilities. Section 347-13 establishes certain requirements for vehicles used to haul, transport or dispose of solid waste. Sections 347-27 to 347-37 of this Local Ordinance implement the County’s solid waste management program to separate solid waste into recyclable and reusable material, as required by the New York Solid Waste Management Act of 1988.

### **7.2.4 Chapter 569 – Sanitary Code**

Section 569-10 of this Local Ordinance regulates the storage, transportation, and disposal of “offensive material,” as defined in Section 569-10(A). Article XIII of this Local Ordinance implements the provisions of Section 33-1004 of the New York Environmental Conservation Law (ECL) regarding notification requirements in advance of the application of pesticides, including herbicides used for vegetation management along utility rights-of-way. The Applicant’s Long-Range Right-of-Way (ROW) Management Plan includes provision for advance notification in compliance with Article 33 of the ECL.

## **7.3 City of Rochester<sup>2</sup>**

### **7.3.1 Chapter 10 – Improvements, Municipal and Local**

This Local Ordinance sets forth requirements for street, curb, and sidewalk construction within the City. Section 10-4 provides that City sidewalks shall be constructed using Portland cement or bituminous concrete, and shall be properly graded and aligned. Sections 10-5, 10-6, and 10-7 regulate the types of permitted pavement, pavement foundations, and pavement at intersections. Section 10-9 provides that “curbs shall be of Medina sandstone, granite or concrete of a thickness, depth and section as shown on the standard details of construction for the City of Rochester, except when special designs are approved by the City Engineer. Curbs shall be turned

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<sup>2</sup> The local laws of the City of Rochester are available online at [www.generalcode.com](http://www.generalcode.com) (see <https://ecode360.com/RO0104>).



in at all streets and turned in or dropped at alleys or driveways.” Section 10-11 provides that gutters shall be constructed of Portland cement.

### **7.3.2 Chapter 20 – Refuse Collection**

Section 20-14 of this Local Ordinance regulates the storage of refuse. That Section provides that refuse shall not be stored in a manner that would create a “health hazard or public nuisance.” Section 20-16 of this Local Ordinance prohibits the disposal of waste “upon any premises, street..., sidewalk or park” within the City. Article IV of this Local Ordinance implements the City of Rochester’s solid waste management program to separate solid waste into recyclable and reusable material.

### **7.3.3 Chapter 35 - Bill Posting and Advertising**

Section 35-1 of this Local Ordinance prohibits the writing on, or affixing of, any handbill or sign on any street appurtenance, including electric light or power or telephone poles.

### **7.3.4 Chapter 39 - Building Code**

Article III of this Local Ordinance regulates certain structures and activities. Section 39-307 provides that fences, walls, and retaining walls, permanent or temporary, must be constructed and maintained to be safely self-supporting and prohibits the installation of barbed wire in residential zoning districts and along the line of a street. Section 39-311 governs materials and design for signs and sign structural supports.

Section 39-408 of this Local Ordinance provides site preparation and construction standards. Section 39-410 prohibits activities that will (i) cause a nuisance or hazard to public safety or welfare, (ii) damage public or private property, or (iii) grading within a floodplain or the bed of a watercourse unless a professional engineer certifies that such activity will not result in adverse impact to the public welfare or the watershed. Section 39-411 requires project developers to prevent damage to public utilities or services, prevent damage to adjacent properties, and to promptly remove all hazardous soil, debris, and other materials deposited on streets, highways or other public thoroughfares.

Section 39-442 provides that projects resulting in land disturbance of greater than one acre in area require the preparation and submission of a Stormwater Pollution Prevention Plan (SWPPP), a Notice of Intent (NOI), and other documentation to the City of Rochester Stormwater Management Officer. Section 39-448 specifies the technical requirements of a SWPPP. The Applicant will seek coverage from the New York State Department of Environmental Conservation (NYSDEC) under its State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-0-20-001) (SPDES Permit). One of the requirements of the SPDES Permit is the development of a SWPPP in accordance with the requirements set forth in the SPDES Permit. The Environmental Management and Construction Plan (EM&CP) will include a SWPPP that will address stormwater management and temporary soil erosion and sediment controls, as well as spill prevention and control measures. Refer to Exhibits 4 and 8 for further details.

### **7.3.5 Chapter 47A – Demolition Regulations**

Section 47A-8 of this Local Ordinance provides standards for development projects that include demolition. It prohibits demolition that would “unnecessarily endanger the safety, health or welfare” of persons or “unnecessarily destroy, damage, detrimentally modify or interfere with the enjoyment of significant natural, physical, historic, cultural or educational features on or off the site” of such demolition.

### **7.3.6 Chapter 56 – Flood Damage Prevention**

Section 56-5 (A)(2)(a) of this Local Ordinance provides that within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development is permitted unless: (i) the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location; or (ii) the City applies to the Federal Emergency Management Agency (FEMA) for a conditional Flood Insurance Rate Map (FIRM) revision, FEMA approval is received, and the applicant provides all necessary data, analyses, and mapping, and reimburses the City for all fees and other costs in relation to the application and the map revision.

This Local Ordinance also provides that on streams with a regulatory floodway, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless: (i) a technical evaluation by a licensed professional engineer shows that such an encroachment will not result in any increase in flood levels during occurrence of the base flood; or (ii) the City applies to FEMA for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the City for all fees and other costs in relation to the application and map revision.

### **7.3.7 Chapter 59 - Health and Sanitation**

Section 59-40 of this Local Ordinance provides that “all vehicles transporting stone, gravel, sand, dirt and other similar materials” shall be constructed to prevent spillage of such material.

### **7.3.8 Chapter 69 - Littering**

Section 69-3 of this Local Ordinance prohibits litter in public places and on City property and requires owners of property to keep the sidewalk in front of such premises free of litter.

Section 69-4 prohibits driving a vehicle unless it is built or loaded so as to prevent any contents from being deposited upon any street or other public place or private property. Section 69-6 of this Local Ordinance regulates littering and storage of litter on private property.

### **7.3.9 Chapter 75 - Noise**

Section 75-4 of this Local Ordinance prohibits making any excessive noise.<sup>3</sup>

Section 75-7 prohibits sounding any horn or signaling device on any vehicle, except as a danger warning.

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<sup>3</sup> Section 75-4 provides that it is “prima facie evidence of a violation of this section if noise emanating from any source, including, but not limited to, voices or other sounds caused or emitted by humans, is: (1) audible beyond the property line of the premises from which it emanates between the hours of 10:00 p.m. and 8:00 a.m.; (2) audible at a distance of 50 feet beyond the property line of the premises from which it emanates between the hours of 8:00 a.m. and 10:00 p.m.; or (3) audible at a distance of 50 feet from the source if emanating from a public street, public park or other public place. However, these restrictions do not apply to those activities that are specifically regulated pursuant to Sections 75-7, 75-9, 75-10, 75-11 and 75-13, all of which may be applicable to activities that will occur during the construction of the Project and are addressed separately in this Section 7.3.9.

Section 75-9 prohibits operating any motor vehicle in a manner that the sound level emitted therefrom exceeds 80 decibels (dB) either (i) at a distance of 25 feet or more from the path of the vehicle when operated on a public street or other public place, or (ii) at or beyond the property line when operated on private property.

Section 75-10 prohibits construction activities between the hours of 10:00 p.m. and 7:00 a.m. on any day of the week, except where compliance with such requirement creates “hardship and/or practical difficulty... or upon a determination that the public interest will be served by” granting a variance from such requirement and except in the instance of emergencies where work is allowed for a single continuous period not to exceed 72 hours.

Section 75-11 prohibits creating any noise on any street or other public place, or on private property adjacent to any school, institution of learning, church, or court while the same is in use, or adjacent to any hospital, nursing home, or home for the aged, if the noise unreasonably interferes with the working of such school, institution of learning, church, or court or disturbs or annoys patients in a hospital, nursing home, or home for the aged.

Section 75-13 prohibits excessive noise when loading or unloading any vehicle.

As stated in Exhibit 4, the Applicant will limit construction activities on the Project to the hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday in order to minimize noise impacts during construction. If, due to safety or continuous operation requirements, construction activities are required to occur on Sundays or after 7:00 p.m., the Applicant will notify the New York State Department of Public Service (NYSDPS) Staff and the affected municipality at least 24 hours in advance unless safety considerations prohibit making such advance notice. Noise levels will also be mitigated by the attenuating effects of distance; the intermittent and short-lived character of the noise; the presence of existing vegetation; the presence of existing homes and buildings (particularly in the more suburban areas); and the use of functional mufflers on all equipment.

### **7.3.10 Chapter 89 - Trees**

Section 89-9 of this Local Ordinance prohibits cutting down of any tree in a public street or place, cutting any branch of such a tree, trimming any branch of such a tree, pruning or spraying such a tree, or attaching any wire to such a tree, and prohibits injuring any tree in a public street

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or place, or attaching or hanging anything on such a tree. It also requires that tree trimming by an electric utility: be limited by actual necessities; be done in a neat and workmanlike manner with a saw and not an axe or hatchet; and be done in conformance with conditions that may be imposed upon such trimming by the City Forester.<sup>4</sup> Section 89-9 also provides that in doing any work on the surface or below the surface of a street, guards shall be placed around trees or other precautions implemented to prevent damage to nearby trees in or on any highway, park, or other public property.

*The Applicant requests that the Commission refuse to apply the tree-cutting restrictions of Section 89-9 to the Project because they are unreasonably restrictive in view of the existing technology, cost factors, and the needs of consumers. This Local Ordinance cannot be reconciled with the Applicant's Best Management Practices (BMPs) and Long-Range ROW Management Plan, which require, for reasons of both safety and reliability, that sufficient clearance be maintained between electric transmission facilities and any object that could cause damage to them or conduct high-voltage to persons or property in the vicinity. Thus, this request is the minimum necessary and cannot be obviated by design changes to the Project.*

*The needs of the Applicant's consumers are best met by enabling the Applicant to construct, operate, and maintain the Project safely and reliably. The Applicant submits that these factors outweigh the impact on the City that would result from the Commission's refusal to apply the above-referenced ordinances.*

### **7.3.11 Chapter 100 – Smoke and Air Pollution Control**

Sections 100-3 and 100-4 of this Local Ordinance prohibit, with certain exceptions, the emission of dense smoke, fumes, noxious gases, strong odors, dust, dirt, soot, cinders or fly ash from any fuel-burning equipment, portable equipment or other similar contrivance or from any open fire.

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<sup>4</sup> The Applicant's counsel was advised by the City of Rochester Forester that it is unaware of typical conditions that would be imposed by such a tree cutting permit since the City generally performs tree trimming in public places within the City.

### 7.3.12 Chapter 104 – Streets and Street Encroachments

Section 104-11 of this Local Ordinance requires the owners of property to keep the sidewalks adjoining such property free and clear of obstructions, weeds, rubbish, snow, and ice. Section 104-12 regulates excavations near street lines.

Section 104-14 provides that when work occurs within the City-owned street ROW, traffic control devices must be installed to conform to the requirements of the City’s Traffic Control Board and the New York State Manual of Uniform Traffic Control Devices.

Section 104-16 requires persons working or making excavations in streets or public places to properly restore the street or public place.

This Local Ordinance authorizes the City Engineer to adopt rules regarding construction activities occurring within City ROW. Those rules are set forth in the City’s “Rules and Regulations for Work in the Right-of-Way,” issued April 1, 2019, revised August 22, 2019 (City ROW Rules).<sup>56</sup> Section 8.5(7) of the City ROW Rules requires that any person performing work in the City’s right-of-way shall, on a daily basis, remove “debris and excess construction materials” from such work area. The Applicant will comply with Section 8.5(7) to the extent that such debris and excess construction materials result from the Project.

*The Applicant requests that the Commission refuse to apply to the Project Section 8.5(7) of the City ROW Rules to the extent that such provision is construed to require the Applicant to remove debris or excess material in the City ROW that did not result from the Project. This is because this Local Ordinance, if interpreted in this way, is unduly restrictive in view of the cost and the needs of the Applicant’s consumers. The location of Proposed Line 949 is a function of the overall integrated Project design and reflects the requirements of constructability, security, and public safety. The Project’s crossing of City-owned ROW at certain locations is a result of the Project design and it would be unduly burdensome to require the Applicant to assume the*

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<sup>5</sup> The City of Rochester “Rules and Regulations of Work in the Right of Way” can be found at: <https://www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=21474840796>.

<sup>6</sup> Section 8.5(4) of the City ROW Rules incorporates by reference section 89-9 of the City Code. As set forth in Section 7.3.10, above, the Applicant requested that the Commission refuse to apply certain requirements include in Section 89-9 of the City Code.

*obligation and cost of removing debris or material from the ROW that resulted from activity performed by others. This request cannot be obviated by design changes to the Project and is the minimum necessary. Any adverse impacts of granting this request are mitigated to the maximum extent practicable.*

### **7.3.13 Chapter 111 – Vehicle and Traffic**

This Local Ordinance regulates parking, traffic, and vehicle operations within the City.

### **7.3.14 Chapter 120 – Zoning**

#### **7.3.14.1 Section 120-4 and Section 120-5 Zoning Map and Districts**

Figure 7-1 is the City of Rochester Zoning Map. Proposed Line 949 would traverse the Low-Density Residential (R-1), Community Center (C-2), Industrial (M-1), Open Space (O-S), Mt. Read-Emerson Urban Renewal District Industrial (URD M-1), and Mt. Read-Emerson Urban Renewal District Low Density Residential (URD R-1)<sup>7</sup> zoning districts. Station 48 is located in the M-1 zoning district.

Sections 120-9, 120-43, 120-83, and 120-91 provide that public utilities are Special Permit Uses within the R-1, C-2, M-1 and O-S zoning districts, respectively, and are subject to additional regulations set forth in Section 120-144. Section 120-144 provides that the following additional requirements apply to public utility uses: (i) the minimum structure<sup>8</sup> setback is 25 feet from property lines or the minimum setback requirements of the applicable zoning district, whichever is greater; (ii) parking or storage areas are prohibited within the front yard setback; (iii) such uses

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<sup>7</sup> Based on the City of Rochester Zoning Map, the Project appears to traverse the Mt. Read-Emerson URD M-1 and Mt. Read-Emerson URD R-1. However, on October 2, 2019, the City’s Zoning Manager advised the Applicant’s counsel that these urban renewal districts are no longer in effect since the legislation authorizing those districts includes a sunset provision, the date for which has passed, and such legislation has not been amended to further extend such zoning districts. The underlying R-1 or M-1 district regulations apply in areas where the Mt. Read-Emerson Urban Renewal District regulations have expired. In the event that the zoning legislation for those districts is amended to extend the duration of those zoning districts during the time that the Application is pending, the Applicant has included a discussion of the substantive requirements of the Mt. Read-Emerson URD M-1 and URD R-1 districts in this exhibit.

<sup>8</sup> Section 120-208 of the City Zoning Code provides that the term “structure” does not include “poles, lines, cables or other transmission or distribution facilities of public utilities,” and, thus, the provisions of the Zoning Code that would apply to structures (e.g. yard setback and height restrictions) do not apply to the Project.

shall be screened and landscaped in accordance with Article XX of the City Zoning Code;<sup>9</sup> (iv) the storage of vehicles and equipment is prohibited; (v) such uses shall be fenced where any safety hazard is present; (vi) no service or storage yard or building shall be permitted except as permitted for other uses in the district; and (vii) noise emanating from public utility uses may not exceed 66 dB by day and 45 dB by night measured at any lot line that is also the lot line of a property in a residential or planned development zoning district, or a permitted or specially permitted residential use in any other zoning district.

**7.3.14.2      *Article III R-1 Low Density Residential District***

Section 120-11 provides that minimum frontage and minimum lot size requirements are not applicable to non-residential uses in the R-1 District.

**7.3.14.3      *Article VII C-2 Community Center District***

Section 120-44 provides that, in the C-2 District, lot frontage and lot area requirements do not apply to non-residential uses.

**7.3.14.4      *Article XI M-1 Industrial District***

Sections 120-84 and 120-85 provide that, in the M-1 District, lot frontage, lot area, and building height and area requirements are not applicable for non-residential uses.

**7.3.14.5      *Article XII – Open Space District***

Section 120-92 provides that lot frontage and lot area requirements are not applicable in the O-S District.

**7.3.14.6      *Article XVI – U-R Urban Renewal District***

Section 120-120D(1)(a) provides that in the areas of the Urban Renewal District designated as R-1, all of the requirements of the R-1 shall apply, except that no special permit uses are

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<sup>9</sup> The screening and landscaping requirements set forth in Article XX are addressed in Section 7.3.14.11 below.



permitted in the URD-R-1 District. As stated above, public utilities are Special Permit Uses within the R-1 district.

*The Applicant requests that the Commission refuse to apply to the Project the public utility use restriction referenced in the foregoing paragraph because it is unduly restrictive in view of the existing technology, cost, and the needs of the Applicant's consumers. Proposed Line 949 must be located in the URD-R-1 district, which overlays the western portion of the railroad ROW along which the Project is proposed to be sited. The location of Proposed Line 949 is a function of the overall integrated Project design and reflects the requirements of constructability, security, and public safety. This request cannot be obviated by design changes to the Project and is the minimum necessary. Any adverse impacts of granting this request are mitigated to the maximum extent practicable.*

#### **7.3.14.7 Section 120-149 – Temporary Uses**

This Local Ordinance allows temporary contractors' offices, equipment sheds, and construction staging areas for a period equal to the duration of the construction project to which they are related.

#### **7.3.14.8 Section 120-164 – Air Quality**

This Local Ordinance regulates emissions to outdoor air of “dust, fumes, gas, mist, odor, smoke, vapor, toxic or deleterious” materials, and requires that such emissions comply with State and federal laws and regulations. This Local Ordinance also prohibits any use that would “emit smoke, dust, heat or heated air, noxious odors, odorous gases or other matter in such quantities as to be readily discernible on neighboring property and detrimental to the use and enjoyment of such neighboring property.”

#### **7.3.14.9 Section 120-165 – Dumpsters and Refuse Collection Areas**

This Local Ordinance requires that dumpsters “must be completely screened from view when visible from any residential or open space district or public street or walkway with screening that is at least as tall as the dumpster.”

#### **7.3.14.10 Section 120-167 – Fences and Walls**

Section 120-167B(4) states that “[w]ithin non-residential districts no fence shall exceed eight feet in height.”

Section 120-167B(6) states that within “non-residential districts, a ten-foot perimeter landscaped setback shall be required in conjunction with any fence or wall proposed along any street frontage, except a decorative fence or wall of no more than three feet in height in conjunction with landscaping may encroach in the required setback area.”

#### **7.3.14.11 Section 120-169 – Landscaping, Buffers and Screening**

Section 120-169(D) of this Local Ordinance requires screening for any non-residential use where it abuts an area zoned or used residentially on the ground floor. This Local Ordinance also provides landscaping, plant specification, and ground maintenance requirements.

The Applicant will construct and maintain the Project in accordance with its BMPs and Long-Range ROW Management Plan, which would not result in all Project components being screened from adjacent residential zoning districts or adjacent ground floor residential uses. These procedures and practices are consistent with state law and have been developed with Commission oversight. The extent, if any, of Project screening will be detailed in the EM&CP.

*The Applicant requests that the Commission refuse to apply to the Project the landscaping and screening requirements set forth in Section 120-169. This is because the requirement is unreasonably restrictive in view of the existing technology, cost factors, and the needs of consumers. This Local Ordinance cannot be reconciled with the Applicant’s BMPs and Long-Range ROW Management Plan, which contain a number of requirements for purposes of both safety and reliability. These include requirements that sufficient clearance be maintained between high-voltage electric facilities and any object that could cause damage to them or conduct high-voltage to persons or property in the vicinity. Thus, this request is the minimum necessary and cannot be obviated by design changes to the Project. Any adverse impacts of granting this request will be mitigated to the maximum extent practicable. The needs of the Applicant’s consumers are best met by enabling the Applicant to construct the Project and operate and maintain the Project safely, securely, and reliably. The Applicant submits that these*

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*factors outweigh the impact on the City that would result from the Commission's refusal to apply this requirement.*

**7.3.14.12      *Section 120-170 - Lighting***

Section 120-170 provides the lighting standards for uses within the City including security and service area lighting.

Section 120-170(A)(4) provides the following:

Security lighting fixtures shall not project above the facade or roofline of any building and are to be shielded. Lighting shields shall be painted to match the surface to which they are attached. Security lighting fixtures shall not be substituted for parking lot or walkway lighting fixtures and are restricted to lighting only loading and storage locations or other similar areas requiring security lighting.

Section 120-170(A)(5) states:

Service-area lighting shall be contained within the service yard boundary. No light spillover shall occur outside the service area; the light source shall not be visible from the street.

The proposed expansion of Station 48 will include additional security and service lighting. Security lighting is proposed to be limited to perimeter, dusk-to-dawn lighting illuminating the perimeter security fencing and immediately adjacent areas to deter unauthorized access to the substation facility. Service area lighting supporting the functional structural components of the substation infrastructure will be present, but activated on an as-needed basis to support short-term maintenance and/or repair activities at the substation.

The Project does not include any changes to the existing portions of Station 48. No new lighting is required for Line 949.

**7.3.14.13      *Section 120-171 – Noise***

This Local Ordinance references City Code Chapter 75. See Section 7.3.9, above.

#### **7.3.14.14      *Section 120-177 – Signs***

This Local Ordinance regulates permanent and temporary signs within the City. Section 120-177(B) provides that safety signs shall be permitted in all zoning districts. The Applicant will place permanent signs on the Project structures for safety reasons, including compliance with the signage requirements of the National Electrical Safety Code (NESC).

#### **7.3.14.15      *Section 120-178 – Site Grading***

This Local Ordinance requires that site grading preserve or enhance topographic features and provide positive drainage of stormwater away from structures and into public storm sewers or approved drainage channels.

### **7.4      *Town of Gates***<sup>10</sup>

#### **7.4.1      *Chapter 83 – Dumping and Littering***

Section 83-3 of this Local Ordinance prohibits the dumping of any “refuse, trash, garbage, rubbish, litter, snow, ice, sand, gravel, cinders, topsoil, mud, earth or any other nauseous or offensive matter” within the Town. Section 83-9 prohibits the driving of any vehicle unless such vehicle is constructed to prevent any load or litter from being blown onto any street or other public place and from allowing “mud, dirt, sticky substances, litter or foreign matter” from being transferred from the tires of such vehicle to Town streets.

#### **7.4.2      *Chapter 90 – Excavations***

Section 90-2 of this Local Ordinance prohibits an excavation in which water is allowed to stand for a period of 30 days or more. All excavations associated with “laying out public utilities” are exempt from the excavation permit requirement.

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<sup>10</sup> The local laws of the Town of Gates are available online at <https://ecode360.com/GA0050>.

### **7.4.3 Chapter 100 – Flood Damage Prevention**

This chapter implements the National Flood Insurance Program. The floodplains associated with Little Black Creek in the Town of Gates, crossed by a portion of the Project, comprises a special flood hazard area as identified and defined on the flood insurance rate map for Monroe County prepared by FEMA.

Section 100-14(B)(1) of this Local Ordinance provides that within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development is permitted unless: (i) the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location; or (ii) the Town applies to the FEMA for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses, and mapping, and reimburses the Town for all fees and other costs in relation to the application and the map revision.

This Local Ordinance also provides that on streams with a regulatory floodway, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless: (i) a technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or (ii) the Town applies to the FEMA for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses, and mapping, and reimburses the Town for all fees and other costs in relation to the application and map revision.

### **7.4.4 Chapter 131 – Parking**

This Local Ordinance regulates vehicle parking within the Town. Section 131-7A prohibits parking vehicles on public roads from November 1 and April 1, between the hours of 12:00 midnight and 8:00 a.m. Section 131-7B prohibits the parking or stopping of an unattended vehicle on any public road or street that has an accumulation of four or more inches of snowfall, which is then considered an emergency route until plowed.

#### **7.4.5 Chapter 133 – Property Maintenance**

This chapter sets forth certain property maintenance standards. Section 133-5A(6) requires property owners to prevent overgrowth of grass, weeds, and brush, specifically “[b]rush grass or weeds in excess of 10 inches in height on any property shall be deemed to be unhealthful, hazardous, and a dangerous condition.” Section 133-5A(14) requires that “[d]ust, site drainage or any other condition which may create a nuisance to the public must be controlled during construction and at all times.” Section 133-5B regulates the storage and disposal of garbage and refuse and the recycling of material, and includes a requirement for source-separation of recyclable materials.

#### **7.4.6 Chapter 152 – Sewers**

Section 152-1 of this Local Ordinance regulates stormwater drains.

#### **7.4.7 Chapter 155 – Solid Waste**

Chapter 155 of the Town Code regulates the collection, storage or accumulation of commercial waste on any premises. It provides that solid waste must be separated into recyclable, reusable or other components.

#### **7.4.8 Chapter 156 – Storm Sewers and Chapter 157 – Stormwater Management**

Chapters 156 and 157 of the Town Code set forth the Town’s minimum stormwater management, pollution discharge, as well as erosion and sediment control requirements. Section 157-7A(1) requires a SWPPP be prepared for land disturbance activity affecting an area of at least 25,000 square feet.

The Applicant will seek coverage from the NYSDEC under the SPDES Permit by filing an NOI prior to commencement of Project construction. One of the requirements of the SPDES Permit is the development of a SWPPP in accordance with the requirements set forth in the SPDES Permit. The SWPPP will address stormwater management and temporary soil erosion and sediment controls, as well as spill prevention and control measures. Refer to Exhibits 4 and 8 for further details.

#### **7.4.9 Chapter 158 – Streets and Sidewalks**

Section 158-6 of this Local Ordinance provides that when sidewalks are required to be repaired or constructed, that such sidewalks shall be “constructed of stone or cement in accordance with the specifications prescribed by the Town Engineer.”

#### **7.4.10 Chapter 176 – Vehicles and Traffic**

This Local Ordinance sets forth vehicle speed limits for Town roads.

#### **7.4.11 Chapter 190 – Zoning**

##### **7.4.11.1 Zoning Map and Districts**

Figure 7-2 is the Town of Gates Zoning Map. Within the Town of Gates, the Project would be located in the following zoning districts: General Industrial (GI), Limited Industrial (LI), Residential – One Family (R-1-11), Business/Non Retail (BN-R), Floodway (FW), Floodplain Overlay (FPO), and Airport Overlay (AOD-b and AOD-c). Substation 418 is located in the GI District.

##### **7.4.11.2 Article XIII – Effect of Provisions**

Section 190-52 of the Town Zoning Code provides that “[n]othing in this chapter shall prohibit the provision of essential services, provided that the installation of such service does not violate any other applicable provision of this chapter. Nothing in this section shall be construed to permit the erection, construction or enlargement of any aboveground structure except utility poles and wires, except as otherwise permitted in this chapter.”<sup>11</sup>

Section 190-53 permits the “use of a travel trailer, a mobile home or other similar structure in any district as a temporary construction field office for a period not to exceed the period of construction, or in other situations not to exceed a period of one year...”

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<sup>11</sup> The Applicant’s counsel spoke with the Town of Gates Town Attorney, Daniel Schum, regarding this Local Ordinance on October 2, 2019. During that phone call, the Town Attorney could not confirm that Section 190-52 of the Zoning Code would exempt the Project from the requirements of the Town’s Zoning Code. Accordingly, for purposes of this exhibit, the Applicant has assumed that the substantive requirements of the Town’s Zoning Code apply to the Project.

#### **7.4.11.3 Article XIX – R-1 Residence District**

Section 190-93 provides that public “utilities substations and uses” are conditionally permitted uses in the R-1 Residence District. Section 190-94 provides that within the R-1-11 District, the minimum lot area is 11,000 square feet, minimum lot width is 80 feet, and rear yard setbacks shall be not less than 30 feet.

*The Applicant requests that the Commission refuse to apply to the Project the minimum lot and yard setback requirements detailed in Section 190-94 because they are unduly restrictive in view of the existing technology, cost, and the needs of the Applicant’s consumers. The position of the Project is a function of the overall integrated transmission line design and reflects the requirements of constructability, security, and public safety. The proximity of the Project to lot lines is completely unrelated to the location of the lot lines. The Applicant could, in theory, site the Project in sub-optimal locations, or acquire additional property in order to satisfy some of the minimum yard and/or setback requirements, but such action would only incur unnecessary cost to the Applicant, decrease public safety, and be of no benefit to the Town. This request cannot be obviated by design changes to the Project and is the minimum necessary. Any adverse impacts of granting this request are mitigated to the maximum extent practicable.*

#### **7.4.11.4 Article XXIII – Business Non-Retail District**

Section 190-126 provides that public “utilities substations and uses” are conditionally permitted uses in the BN-R District. Section 190-127 provides that minimum lot area is that which is necessary to accommodate the structures and all other loading, parking access and buffer area regulations required by the Zoning Code. Section 190-127 also provides that where “uses in this district abut one another, the side and/or rear yard setback shall not be less than 15 feet exclusive of any parking or loading area requirements. The lot depth to width ratio should not exceed 3 to 1. The height of principal structures shall not exceed 2 1/2 stories or 35 feet and accessory structures shall not exceed 20 feet in height.



*The Applicant requests that the Commission refuse to apply to the Project the minimum yard setback, lot depth to width ratio, and height restrictions detailed in Section 190-127 because they are unduly restrictive in view of the existing technology, cost, and the needs of the Applicant's consumers.*

*The position and height of the Project is a function of the overall integrated transmission line design and reflects the requirements of constructability, security, and public safety. The proximity of the Project to lot lines is completely unrelated to the location of the lot lines. The Applicant could, in theory, site the Project in sub-optimal locations, or acquire additional property in order to satisfy some of the minimum yard and/or lot requirements, but such action would only incur unnecessary cost to the Applicant, decrease public safety, and be of no benefit to the Town.*

*The Applicant proposes constructing monopole transmission structures as a part of the Project and, based on prudent engineering considerations and NESC safety standards, has determined the optimal height for the tops of these structures to be between approximately 76 feet and 126 feet above the ground surface. Based on these considerations, it is technically impossible, impracticable and otherwise unreasonable to change the Project design to comply with the town's height restriction without sacrificing public safety and the security of the Project, and this request cannot be obviated by design changes to the Project. By keeping the height of these structures to a minimum after taking into account prudent engineering considerations, the Applicant has mitigated to the maximum extent practicable the impact of granting this request.*

*These requests cannot be obviated by design changes to the Project and is the minimum necessary. Any adverse impacts of granting this request are mitigated to the maximum extent practicable.*

#### **7.4.11.5 Article XXVI – Limited Industrial District**

Section 190-150 provides that public “utility substations and uses” are permitted uses in the LI District. Section 190-152 provides that minimum lot area is that which is necessary to accommodate the structures and all other loading, parking access, and buffer area regulations required by the Zoning Code. Section 190-152 also provides that where “adjacent to R, MR,

BN-R, and/or NB Districts, there shall be a minimum setback distance equal to the height of the tallest structure closest to that district boundary on the limited industrial site plus the required buffer area set forth in § 190-34B.” Side and/or rear setbacks shall be equal to the height of the tallest structure on either lot or 30 feet, whichever is greater, exclusive of parking and/or loading requirements. The lot depth to width ratio should not exceed 3 to 1. Structures shall not exceed 50 feet in height.

*The Applicant requests that the Commission refuse to apply to the Project the minimum yard setback, lot depth to width ratios, and height restrictions detailed in Section 190-152 because they are unduly restrictive in view of the existing technology, cost, and the needs of the Applicant’s consumers.*

*The position and height of the Project is a function of the overall integrated transmission line design and reflects the requirements of constructability, security, and public safety. The proximity of the Project to lot lines is completely unrelated to the location of the lot lines. The Applicant could, in theory, site the Project in sub-optimal locations, or acquire additional property in order to satisfy some of the minimum yard and/or lot requirements, but such action would only incur unnecessary cost to the Applicant, decrease public safety, and be of no benefit to the Town.*

*The Applicant proposes constructing monopole transmission structures as a part of the Project and, based on prudent engineering considerations and NESC safety standards, has determined the optimal height for the tops of these structures to be between approximately 76 feet and 126 feet above the ground surface. Based on these considerations, it is technically impossible, impracticable and otherwise unreasonable to change the Project design to comply with the town’s height restriction without sacrificing public safety and the security of the Project, and this request cannot be obviated by design changes to the Project. By keeping the height of these structures to a minimum after taking into account prudent engineering considerations, the Applicant has mitigated to the maximum extent practicable the impact of granting this request.*

*These requests cannot be obviated by design changes to the Project and is the minimum necessary. Any adverse impacts of granting this request are mitigated to the maximum extent practicable.*

#### **7.4.11.6 Article XXVII – General Industrial District**

Section 190-159 of this Local Ordinance provides that public utility “substations and uses, including storage and repair, power plants and other similar uses” are permitted within the GI District. Section 190-161 provides that the “minimum lot area shall be that necessary to accommodate the necessary structures and all loading, parking, access and buffer area regulations required” by the Zoning Code and when adjacent to R, MR, and NB Districts, there shall be a minimum setback distance equal to the height of the tallest structure closest to that district boundary on the GI site plus a 100-foot buffer area. Side and rear yard setbacks shall be equal to the height of the tallest structure on either lot or 40 feet, whichever is greater. The depth to width ratio shall not exceed 4 to 1 and the maximum structure height is 50 feet. Section 190-166 provides that outdoor storage or equipment parking shall be screened from adjacent public roads and prohibits “dust, smoke, smog, observable gas, fumes, odors, radiation or other atmospheric pollution; objectionable noise, glare or vibrations; or hazard to any adjacent buildings, to any plant growth or to any land adjacent to the site.”

*The Applicant requests that the Commission refuse to apply to the Project the minimum yard setback, lot depth to width ratio, and height restrictions detailed in Section 190-161 because they are unduly restrictive in view of the existing technology, cost, and the needs of the Applicant’s consumers.*

*The position and height of the Project is a function of the overall integrated transmission line and substation design and reflects the requirements of constructability, security, and public safety. The proximity of the Project to lot lines is, in most cases, completely unrelated to the location of the lot lines. The Applicant could, in theory, site the Project in sub-optimal locations, or acquire additional property in order to satisfy some of the minimum yard and/or lot requirements, but such action would only incur unnecessary cost to the Applicant, decrease public safety, and be of no benefit to the Town.*

*The Applicant proposes constructing monopole transmission structures as a part of the Project and, based on prudent engineering considerations and NESC safety standards, has determined the optimal height for the tops of these structures to be between approximately 76 feet and 126 feet above the ground surface. Based on these considerations, it is technically impossible,*

*impracticable and otherwise unreasonable to change the Project design to comply with the town's height restriction without sacrificing public safety and the security of the Project, and this request cannot be obviated by design changes to the Project. By keeping the height of these structures to a minimum after taking into account prudent engineering considerations, the Applicant has mitigated to the maximum extent practicable the impact of granting this request.*

*These requests cannot be obviated by design changes to the Project and is the minimum necessary. Any adverse impacts of granting this request are mitigated to the maximum extent practicable.*

#### **7.4.11.7      *Article XXVIII – Airport Overlay District***

Portions of the Project will be located in the AOD-b and AOD-c zoning overlay districts. This Local Ordinance provides a review procedure for projects proposed near the Greater Rochester International Airport to assess whether the height of a structure or the use would present a hazard to aircraft operations. Refer to Exhibits 8 and E-6 for further details regarding the Applicant's evaluation of the potential impact of the proposed facilities and construction activities in the vicinity of the Airport on air navigation or airport operations.

#### **7.4.11.8      *Article XVII – Floodway District***

Section 190-66 provides that utility uses are not among the permitted uses in the FW/FPO District, but this Section provides that uses not specifically listed as a permitted use may apply to the Town Board to locate in this district. Section 190-70 provides that each applicant who requests permission to conduct uses other than those listed among the specified permitted uses and whose site is located in the Floodplain Overlay District shall submit sufficient information to the Town Engineer to prove that the site in question is not in the floodway of Little Black Creek.

#### **7.4.11.9      *Article V – Signs***

Article V of the Town's zoning ordinance sets forth regulations applicable to signs. Section 190-22 requires all signs to comply with applicable regulations of the Building Code as to construction, erection, and electrical needs. Additionally, signs that meet the following criteria are permitted in all districts: signs for (i) identification purposes as long as it is no more than one

square foot in area, (ii) regulating the use of a property as long as it is no more than two square feet in area, or (iii) guiding and directing traffic as long as it is no more than three square feet in area and no more than 60 inches tall. Section 190-25 sets forth the signage rules for all industrial districts and allows non-illuminated public safety signs provided that one side of such sign does not exceed two square feet in area. The Applicant will place permanent signs on the Project structures for safety reasons, including compliance with the signage requirements of the NESC.

#### **7.4.11.10 Section 190-34 – Buffers, Berms and Screen Plantings**

This Local Ordinance requires: (i) a buffer area of at least 25 feet along the boundary line between any residential district and an NB or BN-R District, and (ii) a buffer area on any property within a General Business (GB), LI or GI District containing screen plantings of trees, hedges, and shrubs of at least 100 feet wide along the boundary of any R, MR, NB, and BN-R District.

*The Applicant requests that the Commission refuse to apply to the Project the requirement in Section 190-34 because the requirement is unreasonably restrictive in view of the existing technology, cost factors and the needs of consumers. This ordinance cannot be reconciled with the Applicant's BMPs and Long-Range ROW Management Plan, which contain a number of requirements for purposes of both safety and reliability. These include requirements that sufficient clearance be maintained between high voltage electric facilities and any object that could cause damage to them or conduct high-voltage to persons or property in the vicinity. They also include security-driven requirements to minimize obstacles preventing unobstructed visibility of substation facilities and their environs. Thus, this request is the minimum necessary and cannot be obviated by design changes to the Project. Any adverse impacts of granting this request will be mitigated to the maximum extent practicable. The needs of the Applicant's consumers are best met by enabling the Applicant to construct the Project and operate and maintain the Project safely, securely, and reliably. The Applicant submits that these factors outweigh the impact on this town that would result from the Commission's refusal to apply this requirement.*

**7.4.11.11      *Section 190-35 – Visibility at Intersections***

This Local Ordinance requires a clear vision zone at all corners of intersecting roads or road junctions.

**7.4.11.12      *Section 190-51 – Lot Grades***

This Local Ordinance requires that the “ground grade of any lot upon which new construction or earth movement is to be conducted shall be related to existing grades and drainage system so as to provide adequate drainage...”

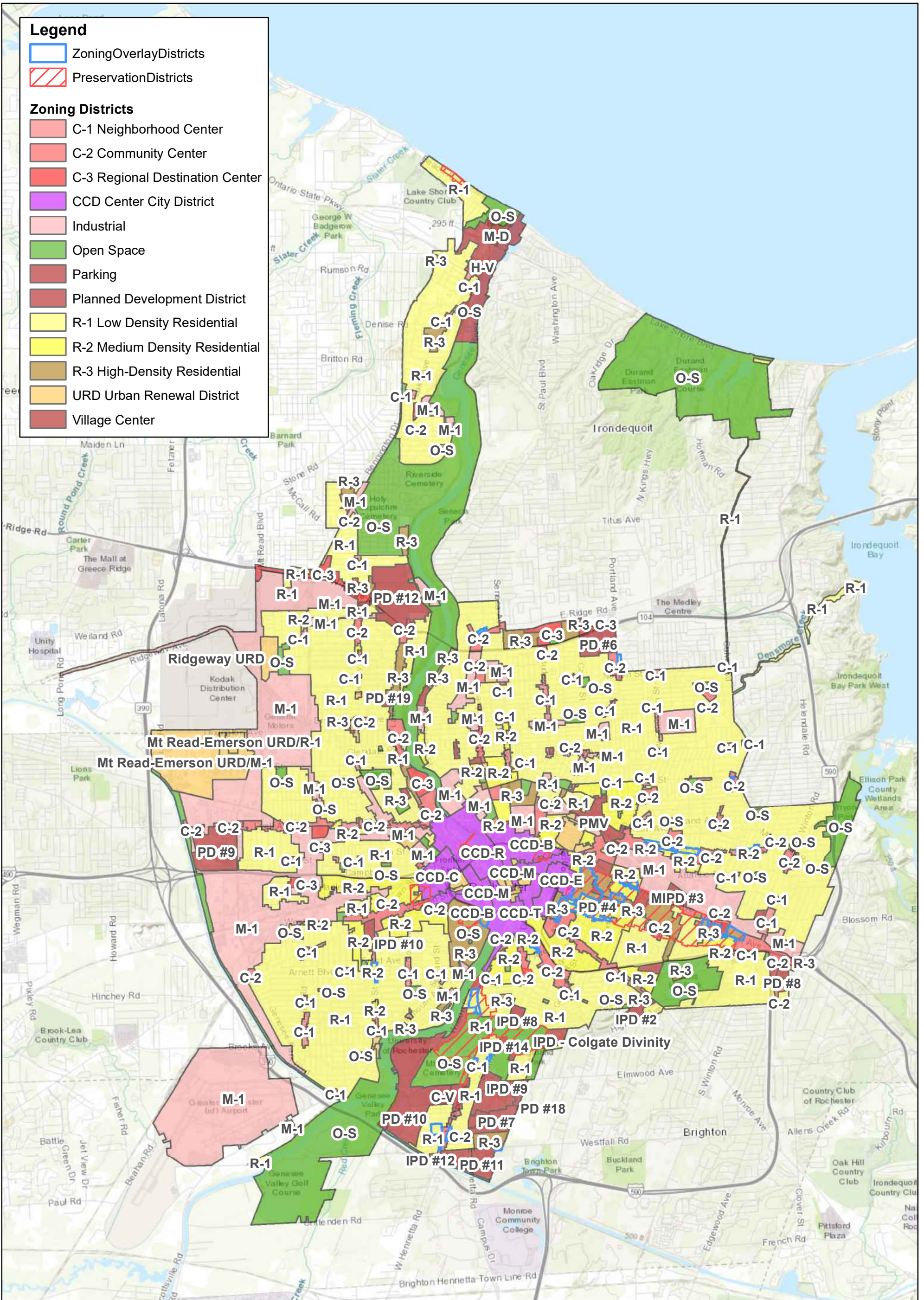
**7.4.11.13      *Article XXXII – Conditional Permit Review Procedures***

Section 190-198 of this Local Ordinance provides that conditionally permitted uses must be in “harmony with the general purpose and intent of this chapter and of other respective zoning districts in which it is proposed” and shall not be “detrimental in any way to any uses permitted in the respective zone or adjacent zones.” That Section further provides that conditionally permitted uses shall not “be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.”

**7.4.11.14      *Section 190-218 – Unpermitted Use of Property and Erection of Structures Prohibited***

This Local Ordinance prohibits the “use of property or the erection of any structure which is not permitted outright or conditionally” pursuant to the Zoning Code.

\* \* \* \* \*

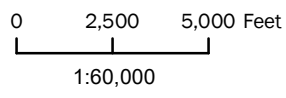
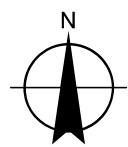


**Legend**

- ZoningOverlayDistricts
- PreservationDistricts

**Zoning Districts**

- C-1 Neighborhood Center
- C-2 Community Center
- C-3 Regional Destination Center
- CCD Center City District
- Industrial
- Open Space
- Parking
- Planned Development District
- R-1 Low Density Residential
- R-2 Medium Density Residential
- R-3 High-Density Residential
- URD Urban Renewal District
- Village Center



Rochester Gas and Electric

RTP Enhancement  
Article VII Certificate  
Amendment

**FIGURE 7-1**  
City of Rochester  
Zoning Map

Source:  
1. Zoning Districts: City of Rochester GIS Department May 2019  
2. Basemap: ESRI World Topographic Map

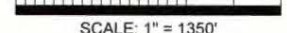
# OFFICIAL ZONING MAP

## TOWN OF GATES

MONROE COUNTY NEW YORK STATE



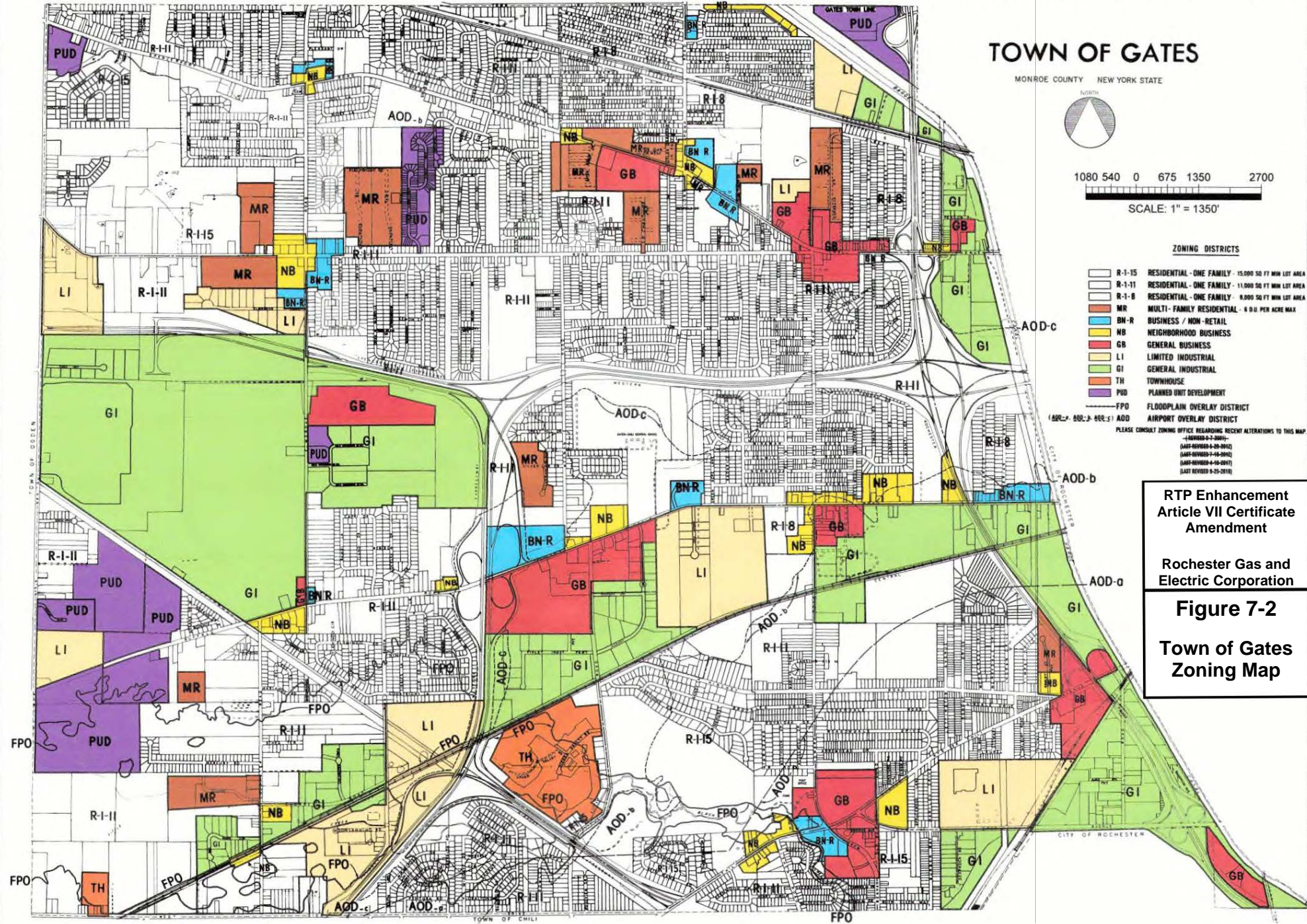
1080 540 0 675 1350 2700



SCALE: 1" = 1350'

### ZONING DISTRICTS

- R-1-15 RESIDENTIAL - ONE FAMILY - 15,000 SQ FT MIN LOT AREA
  - R-1-11 RESIDENTIAL - ONE FAMILY - 11,000 SQ FT MIN LOT AREA
  - R-1-8 RESIDENTIAL - ONE FAMILY - 8,000 SQ FT MIN LOT AREA
  - MR MULTI-FAMILY RESIDENTIAL - 6 D.U. PER ACRE MAX
  - BN-R BUSINESS / NON-RETAIL
  - NB NEIGHBORHOOD BUSINESS
  - GB GENERAL BUSINESS
  - LI LIMITED INDUSTRIAL
  - GI GENERAL INDUSTRIAL
  - TH TOWNHOUSE
  - PUD PLANNED UNIT DEVELOPMENT
  - FPO FLOODPLAIN OVERLAY DISTRICT
  - AOD AIRPORT OVERLAY DISTRICT
- PLEASE CONSULT ZONING OFFICE REGARDING RECENT ALTERATIONS TO THIS MAP  
 (AOD-a, AOD-b, AOD-c) AOD  
 (LAST REVISED 6-7-2001)  
 (LAST REVISED 4-28-2012)  
 (LAST REVISED 1-18-2012)  
 (LAST REVISED 4-18-2017)  
 (LAST REVISED 9-25-2018)



RTP Enhancement  
 Article VII Certificate  
 Amendment

Rochester Gas and  
 Electric Corporation

**Figure 7-2**  
**Town of Gates  
 Zoning Map**