Chapter 3

Animals

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ARTICLE I. IN GENERAL

Sec. 3-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Animal* means any live, vertebrate creature, domestic or wild.

*Animal at large* means an animal that is off the property and/or premises of the owner and/or caretaker and not under restraint.

*Animal control officer* means any person designated by the Police Department to enforce the ordinances of the City and state statutes adopted by reference as they pertain to animal control.

*Animal shelter* means any facility operated by a humane society or municipal agency or its authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

*Bodily Harm* means bodily injury including, but not limited to, a laceration requiring stitches, any fracture of a bone, a concussion, a loss or fracture of a tooth or any temporary loss of consciousness, sight or hearing.

*Caretaker* means any person who, in the absence of the owner, temporarily harbors, shelters, keeps or is in charge of a dog, cat or any other domesticated bird or animal.

*Confined* means restriction of an animal at all times by the owner to an escape-proof building, vehicle or other enclosure.

*Cruel* means causing unnecessary and excessive pain, suffering or unjustifiable injury or death to an animal. Additionally, it shall be unlawful to tease, annoy, disturb, molest or irritate an animal that is confined to the owner’s premises.

*Dangerous Animal* means any of the following:

(1) Any animal which, when unprovoked, inflicts bodily harm on a person, domestic pet or animal on public or private property.

(2) Any animal which repeatedly chases or approaches persons in a menacing fashion or apparent attitude of attack, without provocation, upon the streets, sidewalks or any public grounds or on private property of another without the permission of the owner or person in lawful control of the property.

(3) Any animal with a known propensity, tendency or disposition to attack, to cause injury to, or otherwise threaten the safety of humans or other domestic pets or animals.

*Domestic animal* means any animal which normally can be considered tame and converted to home life.

*Dwelling unit* means a building or portion thereof designed to be used exclusively for residential purposes.

*Health officer* means the City Health Officer or his duly designated representative.

*Humane officer* means an individual appointed as such in accordance with §173.03.

*Kennel* means any premises wherein any person engaged in the business of boarding, breeding, buying, letting for hire, training for a fee or selling of dogs or cats.

*Leash* means a strap, chain, or cord that is no more than eight (8) feet in length and of appropriate strength to control the animal, used by a person of sufficient capability to restrain, control, and guide an animal.

*Licensing authority* means the political body authorized to issue animal licenses.

*Molest* means excessive barking, running up to or charging, threatening, jumping on or otherwise harassing people or other domestic animals or the passing public that are in the public right-of-way, or on public property, or on their own property, or property of anyone other than the owner and/or caretaker of the animal.

*Owner* means any individual that has the right of property in an animal or who keeps, harbors, cares for, acts as its custodian or who knowingly permits an animal to remain on or about his premises/property for five (5) or more consecutive days.

*Pet store* means any retail establishment in a commercially zoned building whose business includes the sale of live animals.

*Prohibited Dangerous Animal* means any of the following:

(1) Any animal that is determined to be a prohibited dangerous animal under this division.
(2) Any animal that, while off the owner or caretaker’s property, has killed a domesticated animal without provocation.

(3) Any animal that, without provocation, inflicts serious bodily harm on a person on public or private property.

(4) Any animal brought from another city, village, town or county that has been declared dangerous or vicious by that jurisdiction.

(5) Any dog that is subject to being destroyed under s. 174.02(3), Wis. Stats.

(6) Any dog trained, owned or harbored for the purpose of dog fighting.

Public nuisance means any animal which:

(1) Molests passersby or passing vehicles;

(2) Attacks persons or animals without provocation when such persons or animals are peacefully conducting themselves in a place where they are lawfully entitled to be;

(3) Is at large on school grounds, parks or cemeteries;

(4) Is repeatedly at large;

(5) Damages private or public property;

(6) Barks, whines or howls in an excessive, continuous or untimely fashion;

(7) Any animal not having the vaccination as required by §3-18 of the Appleton Municipal Code;

(8) Is the subject of repeated violations under this chapter.

Render sterile refers to a surgical procedure that has been performed on an animal that renders it incapable of siring or bearing offspring. The term includes neutering and spaying.

Restraint means that the animal is secured by a leash not more than eight (8) feet in length and under the control of a responsible person and obedient to that person’s command, or within the real property limits of its owner.

Serious bodily harm means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

Veterinary hospital or clinic means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of disease and injuries of animals.

Wild animal means any nonhuman primate, raccoon, skunk, fox, wolf, or any animal which is in part of the canis lupis species, any animal raised for fur-bearing purposes or any other animal or hybrid thereof which can normally be found in the wild state, or poisonous reptiles, crocodilians and any other snake or reptile exceeding six (6) feet in length.

(Codes 1965, §23.02; Ord 4-93, §1-6-93; Ord 32-97m §1-4-16-97; Ord 116-00, §1, 12-23-00; Ord 58-04, §1, 4-27-04; Ord 17-05, §1, 3-8-05; Ord 13-16, §1, 2-9-16; Ord 50-16, §1, 7-12-16)

Cross reference(s) – Definitions and rules of construction generally, §1-2.

Sec. 3-2. Enforcement and penalties.

(a) The provisions of this chapter shall be enforced by employees of the Health Department, Police Department or other persons authorized by the City Health Officer or Chief of Police. The City Health Officer may grant any exemptions or variances to the enforcement of this chapter for dogs specially trained to lead blind or deaf persons, to provide support for mobility-impaired persons or to assist with emergency search and rescue operations.

(b) Police Department and Health Department personnel are authorized to catch and impound animals at large, with such authorization to include the pursuit of animals upon the premises of the owner, caretaker or other private property. It shall be a violation of this chapter to interfere with the Health Department, Police Department or other persons authorized by the City Health Officer or Chief of Police in the performance of their duties.

(c) Any person who shall violate any provision of this chapter shall be subject to a penalty as provided in §1-16.

(Codes 1965, §23.13; Ord 40-96, §1, 5-1-96; Ord 164-02, §1, 8-27-02; Ord 17-5, §1, 3-8-105)

Cross reference(s) - Citation for violation of certain ordinances, §1-17; schedule of deposits for citation. §1-18; health officer §2-261 et seq.; police department, §2-346 et seq.

Sec. 3-3. Authority to order general confinement of dogs and cats.

Whenever the safety of the public shall require it, the Mayor, by notice published in the official paper of the City, shall order that, for a period of twenty (20) days from and
after the date of the notice, no dogs or cats shall be permitted to go abroad in any of the streets, lanes, alleys or public places in the City without being properly muzzled with a secure muzzle or being led by a chain or other secure fastening.  
(Code 1965, §23-14)

Sec. 3-4. Animal care generally.

No owner or caretaker of an animal shall fail to provide it with adequate food, adequate water and adequate heating, cooling, ventilation, sanitation, shelter, and medical care consistent with the normal requirements of an animal’s size, species and breed.  
(Code 1965, §23.09(1); Ord 17-05, §1, 3-8-05)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation. §1-18.

Sec. 3-5. Abuse of animal; fighting animals.

(a) No person shall beat, cruelly ill-treat, torment, overload, overwork or otherwise abuse an animal.

(b) No person shall cause, instigate or permit any dogfight, cockfight or other combat between animals or between animals and humans and no person may own, possess, keep or train any animal with the intent that the animal be engaged in fighting with other animals or humans. This section shall not apply to animals used by law enforcement, military or licensed security agencies, or animals whose owner or caretaker is a member of a nationally recognized animal organization and the animal is specially trained to compete in organized exhibitions, competitions or trials sanctioned by a recognized organization.  
(Code 1965, §23.09(2); Ord 17-05, §1, 3-8-05)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation. §1-18.

Sec. 3-6. Abandonment.

No owner or caretaker of an animal shall abandon such animal.  
(Code 1965 §23.09(3); Ord 17-05, §1, 3-8-05)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 3-7. Giving animal as prize or inducement.

No person shall give away any live animal, fish, reptile or bird as a prize for or as an inducement to enter any contest, game or other competition or as an inducement to enter a place of amusement, or offer such animal as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.  
(Code 1965, §23.09(4))

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Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation. §1-18.

Sec. 3-8. Reserved.

Editor’s Note: This section, sale of baby fowl was deleted by Ord 17-05, §1, 3-8-05)

Sec. 3-9. Report of vehicle striking animal.

Any person who, as the operator of a motor vehicle, strikes a domestic animal, shall stop at once and shall immediately report such injury or death to the animal’s owner or caretaker. If the owner or caretaker cannot be ascertained and located, such operator shall at once report the accident to the Police Department or to the Humane Society.  
(Code 1965, §23.09(6); Ord 17-05, §1, 3-8-05)

Cross reference(s) - Citation for violation of certain ordinances. §1-17; schedule of deposits for citation. §1-18.

Sec. 3-10. Poisoning.

No person shall expose any poisonous substances, whether mixed with food or not, so that the substance shall be liable to be eaten by any animal, provided that it shall not be unlawful for a person to expose on his own property poisons designed for the purpose of rodent or pest extermination. This provision shall not prohibit the Health Department personnel or licensed pest control operators from providing rodent or pest control services.  
(Code 1965, §23.09(7))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 3-11. State law regarding cruelty to animals adopted.

W.S.A. §951.02 regarding cruelty to animals is hereby adopted by reference and made an offense punishable as a violation of this Code.  
(Code 1965, §8.02(7))

Cross reference(s) - Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 3-12. Maximum number of animals.

No person or household shall keep more than six (6) animals, the maximum number of dogs being three (3), the maximum number of rabbits being two (2), on any City lot, land parcel, or dwelling unit if in a multiple dwelling unit,
with the exception of a litter of pups or kittens, which may be kept for a period of time not to exceed five (5) months from birth. This section does not apply to premises holding a valid kennel license.

(Code 1965, §23.10; Ord 17-05, §1, 3-8-05)

Cross reference(s) - Citation for violation of certain ordinances. §1-17; schedule of deposits for citation. §1-18.

Sec. 3-13. Maintenance of pens and enclosures.

All pens, yards, structures or areas where animals are kept shall be maintained in a nuisance free manner. Excrement shall be removed regularly and disposed of properly so not to attract insects or rodents, become unsightly, or cause objectionable odors.

(Code 1965, §23.12(3); Ord 17-05, §1, 3-8-05)

Cross reference(s) - Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 3-14. Removal of animal waste.

(a) The owner or caretaker of an animal shall promptly remove and dispose of, in a sanitary manner, any excrement left or deposited by the animal upon public or private property.

(b) The owner or caretaker of a dog or cat shall have in his or her immediate possession an appropriate means of removing animal excrement whenever said animal is not on property owned or possessed by the owner or caretaker. This subsection shall not be applicable in cases in which a person is being assisted by a trained and certified seeing eye or mobility assistance dog.

(Code 1965, §23.12(1), (2); Ord 17-05, §1, 3-8-05)

Cross reference(s) - Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 3-15. Restraint, nuisance animals.

(a) The owner and/or caretaker of any animal shall keep an animal within the limits of his or her property and/or premises and when off of the property and/or premises, the animal shall be restrained so that the unprovoked animal does not run at large or become a public nuisance. For purposes of this section, the phrase “running at large” encompasses all places within the City except the owner’s premises, and includes all streets, alleys, sidewalks, other public areas where animals are permitted, and private property.

(b) All owners and/or caretakers shall exercise proper care and control of animals under their ownership, possession and/or custody to prevent them from becoming a public nuisance.

(c) Every female dog or cat in heat shall be confined in a building or secure enclosure, or otherwise restrained, in such a manner that such female dog or cat cannot come into contact with another unneutered male of the same species, except for planned breeding.

(Code 1965, §23.06(1) – (3); Ord 17-05, §1, 3-8-05; Ord 51-16, §1, 7-12-16)

Cross reference(s) - Citation for violation of certain ordinances. §1-17; schedule of deposits for citation §1-18.

Sec. 3-16. Impoundment.

(a) Unrestrained and nuisance animals shall be taken by authorized employees of the Police Department and impounded in a temporary or permanent animal shelter and there confined in a humane manner.

(b) When an animal is causing a public nuisance and its owner cannot be contacted at the time of the complaint, it may be impounded by authorized employees of the Police Department after an attempt to contact the owner is unsuccessful. After impoundment, reasonable attempts shall be made to contact the owner.

(c) An owner reclaiming an impounded animal shall pay the accrued impoundment fee and comply with provisions of Article II, Division 2 of this chapter.

(d) Any animal not reclaimed by its owner within seven (7) days becomes the property of the local government authority or humane society and shall be placed for adoption in a suitable home or humanely euthanized.

(Code 1965, §23.08; Ord 17-05, §1, 3-8-05)

Sec. 3-17. Report of animal bites and scratches.

All incidents occurring in the City in which any animal bites or scratches a person or another animal, or is suspected of such, shall immediately be reported to the Police Department by any person having knowledge of such incident. If the bite or scratch is caused by an animal for which there is no rabies vaccine or known quarantine, the animal, at the discretion of the Police Department or Health Officer, may be euthanized and analyzed for rabies with all expenses incurred being the responsibility of the owner.

(Code 1965, §23.07; Ord 17-05, §1, 3-8-05)

Cross reference(s) - Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 3-18. Rabies vaccination for dogs, cats and ferrets; exemption.

(a) The owner of a dog, cat or ferret shall have the animal vaccinated by a veterinarian at not later than five (5) months of age; or, if an owner obtains or brings an animal into the City that has reached five (5) months of age, unless that animal has been vaccinated as evidenced by a current...
certificate of rabies vaccination from this state or another state, the owner of that animal shall have the animal revaccinated:

(1) Before the date that the immunization expires as stated on the certificate; or

(2) If no date is specified, within one (1) year after the previous vaccination.

(b) The owner of a dog may petition the Health Officer for an exemption to this section. Exemptions shall only be considered if a licensed veterinarian provides a detailed written explanation stating the vaccination is inadvisable because of a reaction to a previous vaccination, a physical condition, or a regimen of therapy that the dog is undergoing. A new letter shall be required for each year that an exemption is sought. The owner may appeal the Health Officer’s decision to the Board of Health by following the same review process set forth in Code §3-131.

(CODE 1965, §23.032)(a); Ord 17-05, §1, 3-8-05; Ord 78-06, §1, 6-13-06)

Cross reference(s) - Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 3-19. Confinement of dog, cat or ferret involved in bite or scratch incident.

(a) If any dog, cat or ferret for which the owner holds a current rabies certificate is involved in a bite or scratch incident, the owner shall quarantine and confine the animal under the supervision of a licensed veterinarian for at least ten (10) days from the date of the incident. The animal shall not be allowed to come in contact with other animals or people during the period of confinement. Supervision of a veterinarian includes, at a minimum, examination of the animal on the first day, on the tenth day, and on one (1) intervening day.

(b) Any dog, cat or ferret involved in a bite or scratch incident that has not been vaccinated or has not been revaccinated within the prescribed times must be confined at a veterinary hospital or a place designated by the City Health Officer or the Police Department.

(c) The owner of any dog, cat or ferret involved in a bite or scratch incident is responsible for any expenses incurred.

(Code 1965, §23.03(2)(d); Ord 17-05, §1, 3-8-05)

Cross reference(s) - Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 3-20. State law regarding humane officers, rabies control and dogs adopted.

The provisions of W.S.A. Chapter 173, §95.21 and Chapter 174, exclusive of any penalties, are adopted by reference and are made part of this chapter, so far as applicable.

(Code 1965, §23.01)

State law reference(s) – Rabies control, W.S.A. §95.21; dogs, W.S.A. ch. 174.

Sec. 3-21. Record of sales for pet shops, animal dealers.

Pet shops and animal dealers shall keep a record of all sales of dogs, cats and ferrets. The record shall contain the date and source of acquisition of the animal and the name, address and telephone number of the purchaser. The record of such sale must be kept at least one (1) year and all records shall be subject to inspection by the Police Department or any employee of the Health Department.

(Code 1965, §23.18)

Sec. 3-22. Humane officer; appointment; authority.

Pursuant to Section 173.03 of the Wisconsin Statutes, the Common Council for the City of Appleton, may from time to time, appoint one (1) or more Humane Officers. Humane Officers shall have the authority specified in ch. 173 and shall be under the direction of the Chief of Police or designee thereof.

Sec. 3-23. Abatement orders.

(a) Issuance of order. After investigation, if a humane officer or law enforcement officer has reasonable grounds to believe that a violation of a statute or ordinance is occurring and that the violation is causing or has the potential to cause injury to an animal, the humane officer or law enforcement officer may issue and serve an order or abatement pursuant to section 173.11 of the Wisconsin Statutes.

(b) Hearing officer. Any person named in an order issued under sub. (a) may, within the ten- (10-) day period following service of the order, request a hearing on the order. The Health Officer shall conduct the hearing pursuant to the provisions of section 173.11 of the Wisconsin Statutes.

(c) Appeal. Appeal from the decision of the Health Officer or other official shall be as provided in section 173.11 of the Wisconsin Statutes.

(Ord 17-05, §1, 3-8-05)
Sec. 3-24. Police dogs.

No person shall knowingly resist, obstruct or interfere with any police dog while the dog is on duty in pursuit of its police duties. Any police dog shall be exempt from the provisions of the animal control ordinance and other City ordinances, including quarantine periods after a bite, while on duty.

(Editor’s Note: This section replaces §10-11, which has been deleted.)

(Ord 17-05, §1, 3-8-05)

Secs. 3-25 – 3-50. Reserved.

ARTICLE II. LICENSES

DIVISION I. GENERALLY

Sec. 3-51. Issuance.

(a) It shall be a condition of the issuance of any license under this article that the Police Department or Health Department shall be permitted to inspect all animals and the premises where the animals are kept at any time. If permission for such inspection is refused, the license of the refusing owner shall be revoked.

(b) If the applicant has withheld or falsified any information on the application, the licensing authority shall refuse to issue a license.

(c) No person who has been convicted of cruelty to animals shall be issued an animal license or be granted a license to operate a kennel.

(Code 1965, §23.05(4) – (6); Ord 17-05, §1, 3-8-05)

Sec. 3-52. Restricted species.

(a) Except as otherwise permitted within this section, no person shall keep, sell or offer for sale within the City any horses, cows, pigs, goats, sheep, bees, pigeons, chickens, geese, ducks or other fowl or any other domestic animal other than a dog, cat, rabbit, small caged birds, small caged animals or reptiles or aquatic and amphibian animals, kept solely as pets.

(b) Upon obtaining a permit issued by the Health Department, up to five (5) honeybee hives may be maintained by a permit holder within areas zoned P-I, Public Institutional District; or, a permit holder may maintain three (3) honeybee hives per acre up to a maximum of twenty-five (25) hives within an area approved as an urban farm.

(c) Upon obtaining a permit issued by the Health Department, residential honeybee hives may be maintained subject to the requirements and limitations on file with the Health Department.

(d) Upon obtaining a permit issued by the Health Department, and subject to the requirements and limitations on file with the Health Department, a limited number of pigeons may be maintained by the permit holder.

(Ord 39-92, §1, 4-15-92; Ord 141-09, §1, 8-25-09; Ord 74-11, §1, 3-22-11; Ord 37-12, §1, 5-16-12; Ord 12-13, §1, 4-9-13; Ord 82-15, §1, 10-13-15)

Sec. 3-53. Kennels and pet stores.

Except as otherwise provided, the restrictions and conditions imposed by this division shall apply to kennels
and pet store licenses pursuant to Chapter 9. Kennel and
pet store operators shall have dogs and cats vaccinated
against rabies, but are not required to license individual
animals. No kennel or pet store license or fee is required of
any veterinary hospital or clinic or animal shelter. The
location of kennels and pet stores is subject to applicable
zoning and other regulations.
(Ord. 33-97, §1, 4-16-97; Ord 17-05, §1, 3-8-05)

Secs. 3-54 – 3-65. Reserved.

DIVISION 2. LICENSE FOR DOGS
AND CATS.

Sec. 3-66. Required.

(a) Any person owning, keeping, harboring or having
custody of any dog or cat over five (5) months of age
within the City must obtain a license as provided in this
division.

(b) Application for a license must be made within
thirty (30) days after obtaining a dog or cat over four (4)
months of age, except that this requirement will not apply
to a nonresident keeping a dog, or cat within the
municipality for not longer than thirty (30) days.
(Code 1965, §23.03(a) (1), (4))
Cross reference(s) - Citation for violation of certain
ordinances, §1-17; schedule of deposits for citation. §1-18.

Sec. 3-67. Application.

Written application for a dog or cat license shall be
made to the licensing authority and shall include the name
and address of the applicant, a description of the animal,
any additional information requested, the appropriate fee,
and a rabies certificate issued by a licensed veterinarian.
(Code 1965, §23.03(1)(a)(2); Ord 17-05, §1, 3-8-05)

Sec. 3-68. Reserved.

Editor’s Note: This section, Term, was deleted by Ord 17-
05, §1, 3-8-05)

Sec. 3-69. Issuance; fee.

(a) A dog or cat license shall be issued after
completing an application, showing evidence of rabies
vaccination and payment of the applicable fee. Evidence of
neutering, spaying, or other method of rendering the animal
sterile, from a licensed veterinarian, will be required to
receive the discounted fee for animals rendered sterile.

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(b) License fees shall be as follows:

1. For each dog or cat not rendered sterile, eleven dollars ($11.00)
2. For each dog or cat rendered sterile, six dollars ($6.00).

(Code 1965, §23.03(1)(a)(5); Ord 17-05, §1, 3-8-05)

Sec. 3-70. Persons exempted from fee.

The license fee provided in this division shall not be required for governmental police dogs or other dogs subject to exemptions under Stats. Sec. 174.054, 174.055 and 174.056, as amended. Every person owning such a dog shall receive a free dog license annually upon application.

(Code 1965, §23.03(1)(a)(5))

Sec. 3-71. License year; proration of fee.

The license year commences on January 1 and ends on the following December 31. Application for a license may be made thirty (30) days prior to the license year. Persons applying for a license during the licensing year shall be required to pay fifty percent (50%) of the fee stipulated in this division if the animal becomes five (5) months of age after July 1 of the licensing year.

(Code 1965, §23.03(1)(a)(9))

Sec. 3-72. Late fee.

The Director of Finance shall assess and collect a late fee of five dollars ($5.00) if the owner fails to obtain a dog or cat license prior to April 1 of each year or within thirty (30) days of acquiring ownership of a licensable animal, or if the owner failed to obtain a license on or before the animal reached licensable age.

(Code 1965, Ord 4-93, §1, 1-6-93; Ord 17-05, §1, 3-8-05)

Sec. 3-73. Duplicates.

A duplicate dog or cat license may be obtained upon payment of a replacement fee of five dollars ($5.00).

Sec. 3-74. Issuance of tags.

Upon acceptance of the dog or cat license application and fee, the licensing authority shall issue a durable tag stamped with an identifying number and the year of issuance. Tags should be designed so that they may be conveniently fastened or riveted to the animal’s collar or harness.

Sec. 3-75. Record of tags.

The licensing authority shall maintain a record of the identifying numbers of all dog and cat license tags and shall make this record available to the public.

Sec. 3-76. Wearing of license tag, rabies tag required.

Dogs and cats must wear license and rabies vaccination tags at all times when off the premises of the owner, with the exception of show dogs or cats during competition.

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 3-77. Unlawful use.

No person may use any dog or cat license for any animal other than the animal for which it was issued.

Cross reference(s) – Citation for violation for certain ordinances. §1-17; schedule of deposits for citation, §1-18.

Sec. 3-78. Revocation.

(a) The Safety and Licensing Committee, with Common Council approval, may revoke any dog or cat license if the person holding the license refuses or fails to comply with this chapter or any other law governing the protection and keeping of animals.

(b) Any person whose license is revoked shall, within ten (10) days thereafter, humanely dispose of all animals owned, kept or harbored. No part of the license fee shall be refunded. For any animal, a receipt from an animal shelter, veterinarian or other individual must be obtained as proof of proper disposal.

(Code 1965, §23.05(1), (3); Ord 17-05, §1, 3-8-05)

Secs. 3-79 – 3-90. Reserved.
ARTICLE III. WILD OR DANGEROUS ANIMALS

DIVISION 1. GENERALLY.

Sec. 3-116. Keeping for exhibition purposes; keeping wild animal as pet.

(a) No person shall exhibit or permit to be kept on their premises or any public place any wild animal for display or exhibition purposes, whether gratuitously or for a fee.

(b) The prohibitions in (a) of this section do not apply when the creatures are in the care, custody or control of a veterinarian for treatment.

(c) Public or private educational institutions, non-profit organizations, itinerant or transient carnivals, circuses or other theatrical performances may seek, from the Health Officer, a limited exemption from this section provided the display will be of limited duration and meet any other requirements or conditions mandated by the Health Officer. The person or organization having custody and control of any animal permitted by this section shall be responsible for compliance with all other provisions of this chapter while the animal remains within the City limits.

(d) No person shall keep or permit to be kept any wild animal as a pet.

(Code 1965, §23.11; Ord 59-04, §1, 4-27-04; Ord 17-05, §1, 3-8-05)

Sec. 3-117. Feeding of deer or other wild animals prohibited.

No person may place any salt, mineral, grain, fruit or vegetable material outdoors on any public or private property for the purpose of feeding whitetail deer or other wild animals.

(a) Presumption. There shall be a rebuttable presumption that either of the following acts are for the purpose of feeding whitetail deer:

(1) The placement of salt, mineral, grain, fruit or vegetable material in an aggregate quantity of greater than one-half (½) gallon at the height of less than six (6) feet off the ground.

(2) The placement of salt, mineral, grain, fruit or vegetable material in an aggregate quantity of greater than one-half (½) gallon in a drop feeder, automatic feeder or similar device regardless of the height of the grain, fruit or vegetable material.
(b) **Exceptions.** This ordinance shall not apply to the following situations:

1. Naturally growing materials. Naturally growing grain, fruit or vegetable material, including gardens.
2. Bird feeders. Unmodified commercially purchased bird feeders or their equivalent.
3. Authorized by the Common Council. Deer feeding may be authorized on a temporary basis by the Common Council.

(Ord 17-05, §1, 3-8-05)

**Cross reference(s)** - Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Secs. 3-118 – 3-130. Reserved.**

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**DIVISION 2. DANGEROUS ANIMALS**

**Sec. 3-131. Procedure for declaring animal dangerous.**

(a) Upon conducting an investigation the humane or law enforcement officer may issue an order declaring an animal to be a dangerous animal. Whenever an owner or caretaker wishes to contest an order, he or she shall, within seventy-two (72) hours after receipt of the order, deliver to the Health Officer a written objection to the order stating specific reasons for contesting the order. Upon receipt of the written objection, the matter shall be placed on the Agenda for the Board of Health to be reviewed at the next regular meeting. The Board of Health shall act as a quasi-judicial body allowing the animal’s owner or caretaker an opportunity to present evidence as to why the animal should not be declared dangerous.

(b) After the hearing, the owner or caretaker shall be notified in writing of the Board’s determination. If the Board upholds the determination that the animal is dangerous, the owner or caretaker shall comply with the requirements of §3-132. If the owner or caretaker further contests the determination, he or she may, within five (5) days of receiving the panel’s decision, seek review of the decision by the Circuit Court.

(c) Upon an animal being declared dangerous, the owner or caretaker shall immediately comply with leashing, muzzling and confinement requirements of §3-132 with all other requirements in that section being satisfied within thirty (30) days of the dangerous declaration or reaffirmation thereof, or within such time as established by the Board of Health.

(Ord 17-05, §1, 3-8-05 ; Ord 117-07, §1, 7-24-07)

**Sec. 3-132. Harboring dangerous animals.**

(a) **Dangerous animals regulated.**

1. No person may harbor or keep a dangerous animal within the city unless all provisions of this section are complied with. Any animal that is determined to be a prohibited dangerous animal under this division shall not be kept or harbored in the city.

2. The issuance of a citation for a violation of this section need not be predicated on a determination that an animal is a dangerous animal.

(b) **Registration.** The owner of any animal declared dangerous, shall register it with the Police Department upon disposition, and annually thereafter on or before April 1 of each year, by providing a current color photograph of...
the animal and payment of a seventy-five dollar ($75.00) registration fee.

(c) **Leash and muzzle.**

1. No owner or caretaker, harboring or having the care of a dangerous animal may permit such an animal to go outside its dwelling, kennel or pen unless the animal is securely restrained with a leash no longer than four (4) feet in length.

2. No person may permit a dangerous animal to be kept on a chain, rope or other type of leash outside its dwelling, kennel or pen unless a person who is sixteen (16) years of age or older, competent to govern the animal and capable of physically controlling and restraining the animal, is in physical control of the leash.

3. A dangerous animal may be securely leashed or chained to an immovable object, with the owner or caretaker being in the physical presence of the animal at all times when it is so leashed or chained.

4. A dangerous animal outside of the animal’s dwelling, kennel or pen shall be muzzled in a humane way by a muzzling device sufficient to prevent the animal from biting persons or other animals.

(d) **Confinement.**

1. Except when leashed and muzzled, all dangerous animals shall be securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner or caretaker and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition.

2. When constructed in a yard, the pen or kennel shall, at a minimum, be constructed to conform to the requirements of this paragraph. The pen or kennel shall be child-proof from the outside and animal-proof from the inside. A strong metal double fence with adequate space between fences (at least two (2) feet) shall be provided so that a child cannot reach into the animal enclosure. The pen, kennel or structure shall have secure sides and a secure top attached to all sides. A structure used to confine a dangerous animal shall be locked with a key or combination lock when the animal is within the structure.

The structure shall either have a secure bottom or floor attached to the sides of the pen or the sides of the pen shall be embedded in the ground no less than two (2) feet. All structures erected to house dangerous animals shall comply with all city zoning and building regulations. All structures shall be adequately lighted and ventilated and kept in a clean and sanitary condition.

3. **Indoor Confinement.** No dangerous animal may be kept on a porch, patio or in any part of a house or structure on the premises of the owner or caretaker that would allow the animal to exit the building on its own volition. No dangerous animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(e) **Signs.** The owner or caretaker of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two (2) inches high warning that there is a dangerous animal on the property. A similar sign is required to be posted on the kennel or pen of the animal. In addition, the owner or caretaker shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(f) **Spay and neuter requirement.** Within thirty (30) days after an animal has been designated dangerous, the owner or caretaker of the animal shall provide written proof from a licensed veterinarian that the animal has been spayed or neutered.

(g) **Liability insurance.** The owner or caretaker of a dangerous animal shall present to the Health Officer or Humane Officer a certificate of insurance that the owner or caretaker has procured liability insurance in an amount not less than $1,000,000 for any personal injuries inflicted by the dangerous animal. Whenever such policy is cancelled or not renewed, the insurer and animal’s owner or caretaker shall notify the Health Officer or Humane Officer of such cancellation or non renewal in writing by certified mail.

(h) **Waiver by Board of Health.** Upon request, by the owner or caretaker, the Board of Health may waive any requirement specified in subsections (a) through (g) that is deemed to be inappropriate for a particular dangerous animal.

(i) **Notification.** The owner or caretaker shall notify the police department within twenty-four (24) hours if a dangerous animal is at large, is unconfined, has attacked another animal or has attacked a human being or has died.
No person may sell or transfer possession of a dangerous animal to another person without first notifying the person to whom the dangerous animal is being sold or transferred of the fact that such animal is a dangerous animal and of any requirements imposed upon the selling or transferring party by this division. No person may sell or transfer possession of a dangerous animal to another person, agency, organization or the like without first notifying the Police Department in writing, at least three (3) days in advance of the sale or transfer of possession with the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the city, the owner or caretaker shall present evidence to the Police Department showing that he or she has notified the Police Department, or other law enforcement agency of the animal’s new residence, including the name, address and telephone number of the new owner of the dangerous animal.

(j) **Euthanasia.** If the owner or caretaker of an animal that has been designated a dangerous animal is unwilling or unable to comply with the regulations for keeping the animal in accordance with this section, he or she may have the animal humanely euthanized by an animal shelter, the humane society or a licensed veterinarian.

(k) **Waiver.** The Health Officer may waive the provisions of subsections (b) to (g) for a law enforcement or military animal upon presentation by the animal’s owner or handler of satisfactory arrangement for safe keeping of the animal.

Sec. 3-133. *Certain animals not be declared dangerous.*

Notwithstanding the definition of a dangerous animal in §3-1:

(a) No animal may be declared dangerous if death, injury or damage is sustained by a person who, at the time such injury or damage was sustained, was committing a trespass on the land or criminal trespass on the dwelling upon premises occupied by the owner of the animal; was teasing, tormenting, abusing or assaulting the animal; or was committing or attempting to commit a crime or violating or attempting to violate an ordinance which protects persons or property.

(b) No animal may be declared dangerous if death, injury or damage was sustained by a domestic animal which, at the time such was sustained, was teasing, tormenting, abusing or assaulting the animal.

(c) No animal may be declared dangerous if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.

(d) No animal may be declared dangerous for acts committed by the animal while being utilized by a law enforcement agency for law enforcement purposes while under the control and direction of a law enforcement officer.

Sec. 3-134. *Prohibited dangerous animals.*

(a) **Not allowed in city.** No person may bring into or keep in the city any animal that is a prohibited dangerous animal under this section.

(b) Determination of a prohibited dangerous animal.

(1) The Health Officer or Police Department may determine an animal to be a prohibited dangerous animal whenever the Health Officer or Police Department finds that an animal meets the definition of prohibited dangerous animal or is a dangerous animal in non-compliance with any of the provisions of §3-132.

(2) Upon conducting an investigation and finding an animal meets the definition of a prohibited dangerous animal, the Police Department may issue an order declaring an animal to be a prohibited dangerous animal. Whenever an owner or caretaker wishes to contest an order, he or she shall, within seventy-two (72) hours after receipt of the order, deliver to the Health Officer a written objection to the order stating specific reasons for contesting the order. Upon receipt of the written objection, the matter shall be placed on the agenda for the Board of Health to be reviewed at the next regular meeting. The Board of Health shall act as a quasi-judicial body allowing the animal’s owner or caretaker an opportunity to present evidence as to why the animal should not be declared a prohibited dangerous animal.

(3) Pending the outcome of the hearing, the animal may be confined subject to Sec. 173.21, Wis. Stats., or held at a location outside the limits of the City.

(4) After the hearing, the owner or caretaker shall be notified in writing of the Board’s determination. If a determination is made that the animal is a prohibited dangerous animal, the owner or caretaker shall comply with subsection (a) within five (5) days after the date of the determination. If the owner or

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caretaker further contests the determination, he or she may, within five (5) days of receiving the panel’s decision, seek review of the decision by the Circuit Court.

(c) **Destruction.** Any dog that has caused bodily harm to a person, persons or a domestic animal on two (2) separate occasions off the owner’s premises, without reasonable cause, may be destroyed as a result of judgment rendered by a court of competent jurisdiction, as specified under sec. 174.02(3), Wis. Stats. The City Attorney may petition an appropriate court to obtain a court order to destroy such a dog.

(d) **Enforcement.** The Health Department and Police Department may make whatever inquiry is deemed necessary to ensure compliance with this section.

(e) **Waiver.** The Health Officer may waive the provisions of this section for a law enforcement or military animal upon presentation by the animal’s owner or handler of a satisfactory arrangement for safe keeping of the animal.

Ord 17-05, §1, 3-8-05)

(The next page is 267)
inspect any building, structure, dwelling unit or equipment thereon, which is reported or found to be damaged, dangerous, unsafe or unfit for human habitation.

(b) Order to discontinue occupancy or use. The Supervisor of Inspections may issue an order to the owner of any building, structure, dwelling unit or equipment thereon, or on the person occupying or using any such building, structure, dwelling unit or equipment, to discontinue such occupancy or use if the building, structure, dwelling unit or equipment is, in the judgment of the Inspections Supervisor, in an unsafe condition or unfit for human habitation per Municipal Code §4-235 and §4-236. An order to discontinue occupancy or use shall identify the code violation that causes the building, structure, dwelling unit or equipment to be unsafe or unfit for human habitation. If the building, structure, dwelling unit or equipment can be made safe or fit for human habitation by repairs, the order shall specify a time frame to make the necessary repairs.

(c) When, in the opinion of the Supervisor of Inspections, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building, the Supervisor of Inspections may order and require the occupants to vacate the building or structure forthwith.

(d) Closing of unsafe or unfit buildings. If the owner or occupant of a building, structure, dwelling unit or equipment thereof, which the Inspections Supervisor finds to be unsafe or unfit for human habitation per Municipal Code sections 4-235 and 4-236, fails or refuses to discontinue the occupancy or use of such building, structure, dwelling unit or equipment within the time prescribed by the Inspections Supervisor, the Inspections Supervisor shall notify the City Attorney and the City Attorney shall be advised of all the facts and he shall institute the appropriate action to compel compliance.

(e) Placarding of unfit/unsafe buildings. The Supervisor of Inspections shall cause to be posted at each entrance to such building that is deemed unfit or unsafe, a notice reading as follows: “This building is unsafe and its use or occupancy has been prohibited by the Supervisor of Inspections.”

(f) Orders and placards shall remain effective until the required repairs or alterations have been made or demolition and removal have been completed. No person may remove a posted order or placard, nor occupy, use or enter a posted or placarded building, structure or dwelling unit, except for the purpose of making the required repairs or alterations, without written permission from the Supervisor of Inspections.

Sec. 4-187. Emergency repairs.

(a) When, in the opinion of the Inspection Supervisor, there is actual and immediate danger of collapse or failure of a building or structure or any part thereof which would endanger life, he shall cause the necessary work to be done to render such building or structure or part thereof temporarily safe, whether or not the legal procedure described in this division has been instituted.

(b) When necessary for the public safety, the Inspection Supervisor shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

(c) Costs incurred in the performance of emergency work shall be paid from the City treasury on certificate of the Inspection Supervisor, and the City Attorney shall institute appropriate action against the owner of the premises where the unsafe building or structure was located for the recovery of such costs.

Sec. 4-188. Demolition of buildings.

(a) Permits. Permits shall be obtained prior to the demolition of any building or structure in accordance with §4-66(a) and §4-161(a)(6). If the demolition will result in two thousand (2,000) square feet of soil disturbance or where more than two hundred (200) cubic yards of fill (soil or gravel) will be placed, an erosion and sediment control permit shall be obtained in accordance to §24-10(a)(1). No permits shall be issued without the following conditions being met:

1. The applicant shall file with the City Clerk proof of workers compensation, automobile and general liability insurance equal to or greater than that required by the City and approved by the City’s Risk Manager, and it shall be kept in full force and effect for one (1) year after the work has been completed.

2. The applicant shall file with the Department of Public Works a permit bond in the penal sum of five thousand dollars ($5,000.00) executed by the applicant as principal and a surety company authorized to do business in the State of Wisconsin, running in favor of the City so that in the event the City should suffer any loss or damage by any negligence, malfeasance or misfeasance in the conduct of the work performed under this section shall have the right to institute an action for recovery against the applicant and the surety upon such bond. The bond must further state that the applicant...
shall fully comply with all provisions of State law and City ordinances as applicable and that the applicant will save and indemnify the City against any costs, expenses or damages which may in any way accrue against the City due to the work performed under this section, and will keep the City harmless against all liabilities, judgments, costs and expenses as a consequence of the work.

(b) **Utility disconnections.** Prior to the issuance of a demolition permit, the owner or agent shall notify all utilities having service connections within the building, including but not limited to: water, electric, gas, sewer and other connections. A permit to demolish or to remove a building shall not be issued until all equipment, such as meters or regulators, have been removed, and service connections are sealed and plugged correctly. No permit to demolish or remove any building shall be issued without written proof of service disconnection.

(c) **Sewer and water connections.** The sewer and water connections are required to be sealed before a building is demolished to protect the sewer from any sand, earth, water or other foreign materials that may enter into the sewer and/or water system in accordance with §4-272. The water connection shall be sealed at the property line or at a point determined by the water utility. The sewer connection may also be sealed at the property line if the piping is constructed of materials listed in Table 82.30-3 of the State Plumbing Code. If the sewer connection is any other material it must either be sealed at the main in the street or brought into compliance with this section by using other approved methods.

(d) **Property to be protected.** Streets, alleys, and private property shall be properly protected by erecting proper fences and scaffolds. If scaffolds are to be built on streets or alleys, they shall be properly protected with a top cover of planks, guard rails, and toe-boards to prevent debris from falling on sidewalks or streets. The top of the scaffold shall be at least eight feet (8’) above the sidewalk or alley.

(e) **Property to be secured.** Properties that are to be demolished shall not be left open and unsecured. If doors and windows are removed for any reason, these openings shall be secured with boards in accordance with §4-142. If a demolition permit is obtained, a permit for boarding is not required. If the permit applicant plans to leave a building open overnight, a security plan must be approved by the Inspections Supervisor prior to the issuance of a demolition permit. The security plan shall detail how any open building or demolition site will be secured from trespassers.

(f) **Unguarded pits a nuisance.** Open excavations or pits caused by the demolition of the building are declared a public nuisance in accordance with §12-30(12) of the Appleton Municipal Code.

(g) **Obstruction of streets.** When razing requires the obstruction of a public street, alley or sidewalk, a street occupancy permit must be obtained from the Department of Public Works before starting work on razing the building.

(h) **Completion of project.** Except for commercial properties with approved site plans, when demolition activities are completed, disturbed areas shall be graded and restored to perennial grass vegetation at a slope of no greater than 10:1 (horizontal to vertical), unless approved by the building inspector upon permit issuance. For purposes of this section, site restoration shall consist of the following:

1. Topsoil capable of supporting a dense cover of perennial grass shall be placed at a minimum thickness of four (4) inches over all disturbed areas.

2. Till and prepare a fine, but firm seedbed, reasonably free of rocks, foreign matter or soil clods over two (2) inches in size.

3. Uniformly seed the site in a manner consistent with typical landscaping standards, utilizing grass seed that conforms to the requirements of the Wisconsin Statutes and of the Administrative Code Chapter ATCP 20.01 regarding noxious weed seed content and labeling. Seed application rates shall be consistent with supplier recommendations.

4. At a minimum, mulch seeded areas with straw or hay that is substantially free of noxious weed seeds or other objectionable matter. Application shall be uniform and at a loose depth of one-half (½) inch to one and one-half (1½) inches. Mulch shall be anchored in place by use of a mulch crimper to impress the mulch into the soil or other approved methods. Where steep slopes dictate, other seed/soil stabilization methods such as erosion control mat may be required.

5. Re-seed areas as necessary to achieve a uniform dense cover of grass.

6. Commercial properties with approved site plans must proceed pursuant to those plans as soon as demolition activities are completed.

Secs. 4-189 – 4-205. Reserved.
DIVISION 4. MOVING OF BUILDINGS AND STRUCTURES*

Sec. 4-206. Permit required; application.

(a) No building or other structure shall be moved over the streets of the City unless a permit has been granted by the Common Council, except as provided in §4-211.

(b) Any person wishing to move a building over the streets of the City shall make application to the Director of Public Works on a form provided by the Director of Public Works. Such application shall also be signed by the owner of the property to which the building is to be moved.

(Code 1965, §15.08(1), (2))

Cross reference(s)-Street, sidewalks and other public places, ch. 16; traffic and vehicles, ch. 19.

Sec. 4-207. Issuance of permit; permit fee.

No permit shall be granted to the Common Council for the moving of buildings over the streets of the City without the following conditions being met:

1. The axle load shall be such that there will be no damage to the road surface as determined by the Director of Public Works.

2. The building shall be of such length, height and width that, in the opinion of the Municipal Services Committee, it will not interfere with power lines, trees and other structures along the route to be traveled.

3. No building shall be moved over a bridge in the City unless it can be shown to the satisfaction of the Director of Public Works that such move will not result in undue stress on or physical damage to the bridge.

4. The applicant shall file with the City Clerk proof of workers compensation, automobile and general liability insurance equal to or greater than that required by the City and approved by the City’s Risk Manager, which shall be kept in full force and effect for one (1) year after the building has been moved.

5. The applicant shall file with the Department of Public Works a permit bond in the penal sum of five thousand dollars ($5,000) executed by the applicant as principal and a surety company authorized to do business in the State of Wisconsin, running in favor of the City so that in the event the City should suffer any loss or damage by any negligence, malfeasance or misfeasance in the conduct of the work of this section shall have the right to institute an action for recovery against the applicant and the surety upon such bond. The bond must further state that the applicant shall fully comply with all provisions of State law and City ordinances and that the applicant will save and indemnify the City against any costs, expenses or damages which may in any way accrue against the City due to the work of this section, and will keep the City harmless against all liabilities, judgments, costs and expenses as a consequence of the work.

6. The applicant shall pay to the Director of Finance a fee as provided in §4-161(7).

(Code 1965, §15.08(4); Ord 73-89, §1, 6-7-89; Ord 4-93, §1, 1-6-93; Ord 9-97, §1, 2-19-97; Ord 38-12, §1, 5-16-12; Ord 100-16, §1, 12-13-16)

Sec. 4-208. Approval of relocation in city; old buildings.

(a) No building shall be moved from one location to another location within the City without the conditions provided in this division being met.

(b) The Inspection Supervisor shall issue a building permit for the relocation of the building in compliance with all building and zoning regulations, provided that the permit has been approved by the Municipal Services Committee and the Common Council.

(c) The Inspection Supervisor shall notify the alderperson of the ward of the proposed relocation.

(d) A relocation shall not be made if there is a protest of the relocation duly signed and acknowledged by the owners of twenty percent (20%) or more of the land immediately adjacent to the property extending one hundred (100) feet therefrom or by the owners of twenty percent (20%) or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, unless so granted by a three-fourths (¾) vote of the Common Council.

(e) No building shall be moved from one location to another location within the City if the building has been in existence more than fifty percent (50%) of its estimated life expectancy as set forth in Boeckh’s Manual of Appraisals Depreciation Table for Buildings.

(f) No old building shall be moved from outside the corporate limits of the City to within the corporate limits of the City. Newly constructed factory-built homes and parts thereof may be moved from outside the City to within the City in compliance with all other provisions of this division. The permit fee for the move to the first permanent location shall
be as provided in §4-161(7). The Chief of Police may require a police escort for moving factory-built housing and, if required, a fee of twenty dollars ($20.00) per hour per man shall be charged.

(g) No old building shall be moved to a new location within the City unless it fully complies with or is remodeled to fully comply with all minimum requirements of the plumbing, heating and ventilating, building and housing and electrical codes for new construction.
(Code 1965, §15.08(6); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96, Ord 108-04, §1, 8-10-04; Ord 39-12, §1, 5-16-12)

Sec. 4-209. Route, time limits and safety requirements.

(a) Every permit issued under this division shall state all conditions to be complied with and designate the route to be taken and the limit of time for removal.

(b) The moving of the building shall be continuous during all hours of the day, and day by day, if the Common Council, Mayor or Director of Public Works so orders, until the moving is completed, to cause the least possible obstruction to streets.

(c) No building shall be allowed to remain overnight on any street crossing or intersection.

(d) Red warning lights shall be placed conspicuously at both ends of the building during the night.

(e) The mover of the building shall report daily to the Fire Department the location of the building on the street.

(f) If a building being moved must remain stationary on a street for any period of time, permission for such shall be obtained from the Mayor and Director of Public Works and the building shall be so placed as to permit easy access to any fire hydrant.
(Code 1965, §15.08(3))

Sec. 4-210. Supervision of operation; trimming of trees.

The mover of the building to whom a permit has been granted under this division shall notify the Director of Public Works of the time when moving is to begin. The Director of Public Works may appoint an inspector to be present during the moving operation to supervise such moving. The appointment of an inspector in no way relieves the mover from any liability for damage that may be done during the moving operation. The Director of Public Works may also request the Forestry Division to trim the necessary trees along the route. The costs of the inspector and tree trimmers shall be billed at actual cost to the mover.
(Code 1965, §15.08(5), Ord 40-12, §1, 5-16-12)

Sec. 4-211. Small buildings; buildings to be moved out of city.

(a) Smaller buildings of one story in height and not more than fourteen (14) feet wide including cornice may be moved on a truck or trailer equipped with pneumatic tires.

(b) The permit required for moving any building from a location in the city to a location outside the city may be issued by the Engineering Division provided all conditions required for moving buildings shall be met.

(c) In the case of small buildings all conditions shall be met except §4-207(6) and the following shall apply:

(1) A police escort shall be required if a bridge is to be crossed;

(2) The fee shall be five dollars ($5.00) per one hundred (100) square feet of the area of the building.
(Code 1965, §15.08(7); Ord 73-89, §1, 6-7-89)

Sec. 4-212. Police escort.

Whenever a permit is issued for the moving of a building, a police escort shall be required and may be required when moving factory-built houses or other small buildings pursuant to §4-211(c). A fee of twenty dollars ($20.00) per hour per man assigned to the escort shall be charged.
(Code 1965, §15.08(8))

Secs. 4-213 – 4-230. Reserved.
Sec. 4-262. State plumbing code adopted.

The Wisconsin State Plumbing Code adopted by the State Board of Health, Wisconsin Administrative Code SPS chapters 382, 383 and 384, and W.S.A. chapter 145, are hereby adopted by reference and made a part of this article. The provisions thereof and of this article shall govern all plumbing, private sewage disposal and drainage work and no plumbing, private sewage disposal and drainage work shall be done except in accordance with the adopted codes and this article.

(Code 1965, §16.01; Ord 85-97, §1, 10-15-97)

Sec. 4-263. Inspection of new work.

The Inspection Supervisor shall be notified for inspection of work regulated under this article in accordance with requirements of Article II of this chapter and of the State Plumbing Code. Notification shall include the owner's name, correct address of the property and name of the master plumber. When work is approved, a tag indicating such approval will be placed upon the work in the basement and on each floor level where plumbing is installed. No work shall be enclosed on any floor level where such tag is not in place. Such inspection and approval shall not in any case constitute a guarantee against imperfection by either the City or the Inspection Supervisor.

(Code 1965, §16.11; Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Sec. 4-264. Inspection of rental properties, relocated buildings.

(a) All rentable properties, upon becoming vacant, may be inspected by the Inspection Supervisor and their sanitary condition determined. If the plumbing or any work covered by this article is in an unsanitary condition or a menace to health or safety, the Director shall report to the Health Officer and the premises shall be repaired and put in a sanitary condition before a new occupant takes possession.

(b) The plumbing in buildings moved from one lot or location to another shall be inspected by the Inspection Supervisor and, when found necessary, tested in a manner satisfactory to the Director at the expense of the owner. If plumbing is found unsafe or unsanitary, the plumbing shall be repaired or remodeled and made to reasonably comply with this article.

(Code 1965, §16.08; Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Sec. 4-265. Permit required for plumbing work in public right-of-way.

(a) No person shall engage in or work at plumbing in the public right-of-way without the following conditions first being met:

(1) The applicant shall obtain a permit from the Department of Public Works.

(2) The applicant shall file with the City Clerk proof of workers compensation, automobile and general liability insurance equal to or greater than that required by the City and approved by the City's Risk Manager, and it shall be kept in full force and effect for one (1) year after the work has been completed.

(3) The applicant shall file with the Department of Public Works a permit bond in the penal sum of five thousand dollars ($5,000.00) executed by the applicant as principal and a surety company authorized to do business in the State of Wisconsin, running in favor of the City so that in the event the City should suffer any loss or damage by any negligence, malfeasance or misfeasance in the conduct of the work performed under this section shall have the right to institute an action for recovery against the applicant and the surety upon such bond. The bond must further state that the applicant shall fully comply with all provisions of State law and City ordinances as applicable and that the applicant will save and indemnify the City against any costs, expenses or damages which may in any way accrue against the City due to the work performed under this section, and will keep the City harmless against all liabilities, judgments, costs and expenses as a consequence of the work.

(Code 1965, §16.06; Ord 32-92, §1, 3-18-92; Ord 174-93, §1 10-19-93; Ord 53-94, §1, 4-20-94; Ord 118-96, §1, 12-18-96; Ord 101-16, §1, 12-13-16)

Sec. 4-266. Correction of unsanitary installations.

When directed by the Health Officer or upon written and signed complaint of any person to the Health Officer that work covered by this article is contrary to the ordinances of the city or is a menace to health, the Inspections Supervisor shall investigate the cause for complaint on the premises. He shall report his findings in writing to the Health Officer, suggesting such changes and corrections as are necessary to put the premises in proper sanitary condition. The Director may also make such report at his own discretion or upon written and signed complaint made to him. The Health Officer thereupon shall direct such changes and corrections to
be made as he deems necessary, and fix a time for having the changes and corrections done.
(Code 1965, §16.07; Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Sec. 4-267. Supervision of sewer and water services.

All sewer service laterals and water service pipes, except that portion of the water service lateral installed or repaired by the City Water Utility from the water main to the private property line, shall be under the supervision of the Inspection Supervisor, and no service pipe shall be laid and no opening into or connection with a sewer service lateral, public sewer or water main shall be made, including the relaying, replacing or repairing of the lateral, sewer or water main, except under his direction.
(Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Cross reference(s)--Water utility, §20-31 et seq.; sewers and waste water disposal, §20-66 et seq.

Sec. 4-268. Street openings.

(a) Requirements. Openings in any street, alley or public place shall be governed by Chapter 16 and by any specifications or policies on street openings adopted by the Common Council.

(b) Any person receiving a permit to connect to a storm sewer shall notify the Inspections Division whenever the work is ready for inspection. All work shall be left uncovered until examined and approved by the Department.
(Code 1965, §16.04; Ord 185-04, §1, 1-1-05)

Sec. 4-269. Connections to public sewer.

(a) Record of sewers. The Director of Public Works shall keep a record in a book card file or plat, for the purpose of showing the size and location of public sewers and the position of the branches, junctions, laterals and appurtenances.

(b) Location of branches; new connections. Information concerning the location of wye branches in the public sewer or of sewer service laterals shall be furnished by the City Engineer. All reasonable care will be taken to ensure the correctness of such information, but such correctness will not be guaranteed. When, in accordance with the measurement furnished, the junction is not found in the public sewer within a distance of three (3) feet from the flow side of the measurement, permission shall be given by the Inspection Supervisor to the plumber applying therefore to make a new connection. All such connections shall be made in a manner directed by the Inspection Supervisor. No connection with any sewer or any part thereof shall be covered without permission of the Inspection Supervisor, but such inspection and approval shall not in any case constitute a guarantee against imperfection by either the City or the Director. The permit shall be at all times upon the work and exhibited to any police or other officer of the City.

(c) Record of connections. The Inspection Supervisor shall keep a record in a book or card file of all sewer connections, showing the location of the lot, the name of the owner, the name of the installer, and the location of the connection.

(d) Minimum depth. A sewer service lateral or building or house sewer shall, where the depth of the main sewer permits, be installed at a minimum depth in residence districts of ten (10) feet below the established sidewalk grade and in commercial or industrial districts at a minimum depth of twelve (12) feet below the established sidewalk grade. Measurements shall be from the top of the sidewalk to the invert or flow line of the sewer. The grade of a sidewalk, where established, may be obtained in the Office of the City Engineer on request.
(Code 1965, §16.05; Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Sec. 4-270. Connection to public sewers and water mains required.

(a) Whenever public sewers and water mains are laid along and within any public street, alley or place in the City and ready for use, the Inspection Supervisor shall notify in writing all owners or their agents and occupants of all houses, tenements and other buildings used for human habitation situated on lots or parcels of land abutting upon such street, alley or place which is accessible to such sewer and water main, to connect therewith and to connect all bathtubs, water closets, lavatories, sinks and urinals upon their respective lots or parcels of land with the sewer in a sanitary manner in accordance with the state plumbing code within thirty (30) days after service of such a notice. In a district zoned commercial, light manufacturing or heavy industrial all buildings other than those used for residential purposes shall be connected to storm sewers, where available, upon order of the Inspection Supervisor.

(b) Whenever public mini-storm sewers or storm laterals are laid along and within any public street, alley or place in the city and ready for use, property owners shall, upon notice from the City, connect to the facility provided to their particular property. All connections shall be in a manner in accordance with the State Plumbing Code. Failure of the property owner to connect within the time period specified in said notice shall result in said connection being made by the City of Appleton and all charges being assessed against the property as a special charge.

(c) If any such owner, agent or occupant shall fail to comply with such notice, the Inspection Supervisor or the Finance Committee, shall cause such connections to be made
and the cost thereof assessed as a special tax against the lots or parcels of land and the amount thereof shall be levied and collected in the same manner as other taxes, pursuant to W.S.A. §144.06.

(d) After connection to a water main and public sewer, no septic system shall be constructed or maintained upon any such lot or parcel and shall be abated upon thirty (30) days written notice for such abatement by the Inspection Supervisor. If not so abated, the Inspection Supervisor shall cause the same to be done and the cost thereof assessed as a special tax against the property and the amount shall be levied and collected in the same manner as other taxes, pursuant to W.S.A. §144.06. The abatement should be conducted pursuant to, Wisconsin Administrative Code SPS 383.03(2).

(e) The Finance Committee may extend the time for connection hereunder or may grant temporary relief where strict enforcement of this section would work as unnecessary hardship without corresponding public or private benefit. (Code 1965, §7.04, § 7.04(1)-(4); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 15-97, §1, 3-5-97; Ord 85-97, §1, 10-15-97; Ord 25-12, §1, 3-7-12; Ord 14-13, §1, 7-8-13)

Sec. 4-271. Discharge of drains and sewers.

(a) Certain discharges prohibited. No person shall discharge domestic sewage, industrial wastes or septic tank effluent onto the surface of the ground, into any drainage ditch, into any river or stream or into any storm sewer or drain, or permit such materials to be so discharged.

(b) Discharges to storm sewers. Roof leaders, surface drains, groundwater drains, foundation footing drains and other clear water drains shall be connected wherever possible with a storm sewer, but they shall not be connected to a building sewer which discharges into a sanitary sewer or private sewage treatment plant. Air conditioning and clear water drains not described in this subsection shall also discharge to storm drains or sewers, unless special permission is obtained from the Inspection Supervisor in cases where an unnecessary hardship would result and where the spirit of this subsection would be observed. If stormwater or clear water is being discharged into a sanitary sewer the Inspection Supervisor shall give the offending person fifteen (15) days notice to disconnect. Failure to disconnect after such notice shall authorize the Director to cause disconnection and assessment of the costs of such disconnection against the property involved. The Director may, in the alternative, institute action for violation of this subsection.

(c) Discharge to public streets. No person shall discharge any clear water directly into a public street or alley from November 1 to March 31, inclusive. No person shall discharge any clear water directly into a public street or alley from April 1 to October 31, inclusive, without first obtaining permission from the Public Works Director or an authorized representative.

(d) Discharge onto sidewalks. No person shall permit the regular discharge of water directly onto any sidewalk or other public area. Such discharge shall constitute a nuisance.

(e) Other discharges. Where a storm sewer is not available or suitable, as determined by the City of Appleton Engineering Department, clear water shall be discharged onto the ground surface at least four (4) feet from the foundation of the building (this shall include discharge from downspouts). Such discharge shall not be directed so as to flow on adjacent property nor shall the discharge be allowed to accumulate and create ponds of standing water or other public nuisance. Nothing contained in this subsection shall act to relieve a person from complying with the other provisions of this section. (Code 1965, §16.09; Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 186-04, §1, 1-1-05)

Sec. 4-272. Sealing of unused sewer and water services.

(a) All sewer and water laterals or building sewers and water services installed and not immediately used shall be securely sealed so as to be watertight. This shall be done by the use of proper fittings and materials manufactured for that purpose and in a manner approved by the Inspection Division.

(b) Before any building connected to city sanitary sewer or water mains is razed or moved to another location, a permit shall be obtained by a person licensed by the State to perform such work from the Inspection Division to disconnect and seal all sanitary sewer and water services serving the premises. Sealing of the sewer and water laterals shall comply with Sec. 4-188. The water service shall be disconnected and sealed at a location point determined by the Water Utility. The disconnections and sealing thereof shall be approved by the Inspection Division before the work is covered.

(c) All water wells which are temporarily or permanently abandoned shall be sealed by a Wisconsin registered well constructor or pump installer after first obtaining a permit from the Inspection Division. The well shall be sealed and a report filed with the State Board of Health in conformance with the State Well Construction and Pump Installation Code. (Code 1965, §16.12; Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 176-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 102-16, §1, 12-13-16)

Sec. 4-273. Building sewers and building drains.

(a) Building drains and subdrains under twelve (12) inches inside diameter shall be constructed of asphalt-coated cast iron, or copper, except that the Inspection Supervisor may grant permission for the use of other materials for
specific reasons upon written request. Written request shall be made to the Inspection Supervisor for approval of materials to be used for building drains and subdrains and for wastes and vents where acid and chemical wastes are to be conveyed.

(b) All building sanitary sewers shall be constructed of cast iron, SDR 35 or schedule 40 PVC or ABS pipe. No new building or reconstructed building shall be connected to a sanitary sewer lateral unless the lateral is constructed of material complying with this section and the State of Wisconsin Plumbing Code.

(c) Every soil or waste stack shall be provided with a cleanout. This cleanout shall be twenty-eight (28) to sixty (60) inches above the basement or lowest floor.

(d) All sewer service laterals and building sewers shall be bedded in clear stone to the centerline of the pipe.

Bedding material shall be washed gravel with the sand removed, or crushed and screened stone with general fines removed. The size of the bedding stone shall be such that one hundred percent (100%) shall pass a one-half (½) inch sieve.

(e) Underground building drains shall be laid on original or firm ground or thoroughly compacted material. Voids between such firm foundation and the bottom of the pipe, along its entire length, shall be filled with bedding stone as specified for building sewers.

(f) An approved backwater valve shall be installed in the sanitary sewer lateral of every new building and shall be accessible to the property owner for service or replacement except as provided below. The required backwater valve shall not be installed in the public right-of-way.

Exception. A property owner may apply in writing to the plumbing inspector for an exception to the provision of (f). The application must include evidence of the elevation of both the lowest floor level served by sanitary sewer and the nearest downstream manhole to which the sanitary building drain is or will be connected. The plumbing inspector may approve the exception if the elevation of the lowest floor level served by the sanitary sewer is at least one (1) foot higher than the elevation of the nearest manhole to which the sanitary building drain is or will be connected.

(Code 1965, §16.13; Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 36-02, §1, 3-25-02)

Sec. 4-274. Waste pipes and vents.

(a) Garage drains shall not be connected to foundation footing drains nor to a clear water sump.

(b) All vent terminals shall extend at least eight (8) inches above the roof at the centerline of the pipe, but not more than twelve (12) inches above the roof. The joint where a vent terminal passes through the roof shall be made watertight by the use of copper or lead flashings. The top of the flashing shall extend over the top of the vent and turn down into the vent.

(c) Where the only vent serving a fixture is a wet vent, the unit discharge into such wet vent shall be limited to one (1) fixture unit for a one-and-one-half (1½) inch vent or two (2) fixture units for a two-inch vent pipe.

(d) Wherever possible, all changes in direction from vertical to horizontal on any vent shall be made above the overflow rim of the fixture. Where a vent is connected to a horizontal soil or waste pipe and is not a wet vent, such vent shall, where impossible to rise vertically, rise at not less than twenty-two and one-half (22½) degrees until the bottom of the horizontal vent is above the horizontal soil or waste pipe which it serves. The horizontal vent shall have a slope of not less than one-fourth (¼) inch per foot, shall be installed with drainage fittings, and shall be provided with a cleanout twenty-eight (28) to thirty (30) inches above the floor.

(Code 1965, §16.14)

Sec. 4-275. Clearwater inspections.

(a) The building inspection division shall, when deemed necessary by the Director of Public Works or designee thereof, or upon a reasonable request by the owner of record, conduct an inspection of the premises to ensure compliance with the provisions of the code relating to illegal surface or ground water connections into the sanitary sewer system.

(b) A notice of noncompliance shall be issued by the building inspection division to the owner of record of any building found not to be in compliance with the provisions of the code. The notice shall set forth areas of noncompliance and shall order the owner to bring the building into compliance within an established period of time.

(c) Failure to bring the property into compliance within the applicable compliance period shall constitute a violation of this section and shall be subject to the penalties set forth in Sec. 4-24.

(d) No warranty. An inspection meeting compliance only indicates that so far as can be reasonably determined by a visual inspection of the premises and review of City records, the premises meets the requirements of this section. Neither the City nor its inspectors assume any liability in the inspection findings, whether compliant or not, and the City does not guarantee or warrant the condition of the premises inspected.

(e) Not liable. The City will not be liable for any unsafe and/or unsanitary conditions that exist in any building inspected for clearwater compliance. However, if any such conditions exist, and are noticed by an inspector, authority
shall be granted to issue orders to correct such conditions.
(Ord 187-04, §1, 1-1-05; Ord 160-10, §1, 11-23-10; Ord 10-16, §1, 1-12-16)

Secs. 4-276 – 4-290. Reserved.

DIVISION 2. PERMITS

Sec. 4-291. Required; exception.

(a) No plumbing shall be done in the City without a permit being first issued therefore by the Inspection Supervisor and the paying of the proper fee as provided in this division. Such permits may be issued only to persons duly licensed to do plumbing under the laws of the state and bonded as required by §4-265; provided that any person actually owning and occupying a single-family residence may do plumbing therein without the license and bond, although such person shall secure a permit and work shall fully conform with all requirements as to workmanship, design and materials. Any person assisting such owner shall be a licensed master plumber. Any plumbing shall conform to all provisions of state law and state codes and the ordinances of the city.

(b) Any person desiring to do plumbing shall, before beginning active work, file with the Inspection Supervisor upon application blanks furnished by the City, a description of the property and the nature of the work to be done. A plan or sketch showing the location and manner of installing the work shall be furnished upon request of the Director. Plumbing plans and specifications for all buildings or structures requiring industrial commission approval shall be presented to the Director before a permit is granted.
(Code 1965, §16.10(1); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 3-06, §1, 1-10-06)

Sec. 4-292. Plumbing fees.

(a) The following fees shall apply to plumbing permits, and no permit shall be valid until the appropriate fee has been paid:

(1) The amount of the permit fee for any plumbing, sewer or water permit shall be on file in the Office of the City Clerk;

(2) The amount of the permit fees for residential one- (1-) and two- (2-) family buildings shall be on file in the Office of the City Clerk;

(3) The amount of the permit fees for multifamily apartment buildings and commercial or industrial structures shall be on file in the Office of the City Clerk.

(4) The fees in subsections (1) through (3) of this section apply to new and replacement installations. For repair work on existing installations, the permit fee shall be on file in the Office of the City Clerk.
(5) The amount of the permit fee for manholes and catch basins installed concurrently with laterals of private main shall be on file in the Office of the City Clerk.

(6) The amount of the permit fee for a septic tank and private disposal system shall be on file in the Office of the City Clerk.

(7) The amount of the permit fee for a water well shall be on file in the Office of the City Clerk.

(8) The amount of the permit fee for each fixture or appliance connected to the water supply or sewer, including trapped and untrapped openings in both sanitary and storm sewers, shall be on file in the Office of the City Clerk.

(b) The penalty for installation without a permit shall be triple the permit fee prescribed in this section when a permit is obtained. Payment of any fee mentioned in this section, however, shall in no way relieve any person of the penalties that may be imposed for violation of this article.

(Code 1965, §16.10(3)(b); Ord 106-97, §1, 12-17-97)

Sec. 4-293. Issuance for new or relocated building.

No permit for plumbing in a new or relocated building shall be issued until:

(1) The Inspection Supervisor is satisfied that all unused sewer and water services to the premises are sealed;

(2) A sewer permit and building permit have been issued; and

(3) The connection fee required by §20-3 has been paid.

(Code 1965, §16.10(3)(a); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Sec. 4-294. Persons not eligible for permit.

No plumbing or sewer permit shall be granted to anyone who has failed to comply with this article. No permit shall be issued to any person or to any master plumber against whom an order issued by the Inspection Supervisor is pending. No permit shall be issued to any person who has been found violating or has willfully violated this article. Bad faith or unreasonable delay in the performance of any work covered by this article or failure to respond promptly to official communications shall be deemed sufficient reason for withholding permits, and the master plumber shall be held responsible for the violation of these regulations by himself or any of his employees.

(1) If the master plumber does not complete the entire installation for which he received a permit, he shall immediately notify the Inspection Supervisor in writing requesting cancellation and detailing the extent of the work he has done.

(2) The person who has hired the master plumber may request cancellation in writing and shall then specify the name of the master plumber he is employing to finish the work.

(3) The work shall be stopped until a permit has been issued for completion.

(4) The original permit fee shall apply to the entire job, except that the minimum permit fee of fifteen dollars ($15.00) shall be paid for the second permit. If additional work is included on the new permit, such work shall be listed and the proper fee shall apply.

Sec. 4-295. Expiration.

All permits issued under this division are good for a continuous performance of the work named thereon. Permits will automatically expire when work ceases for a period of sixty (60) days without good and reasonable cause for such cessation of work. A permit will automatically expire on completion of the work for which it was issued.

(Code 1965, §16.10(3)(c))

Sec. 4-296. Cancellation for violation.

The Inspection Supervisor may cancel a permit issued under this division on any job for violation of the license law or codes and ordinances, and to stop work in any case where installation is not being made in compliance with this article.

(Code 1965, §16.10(3)(d); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Sec. 4-297. Cancellation on request of plumber or owner.

The Inspection Supervisor may cancel a permit issued under this division upon written request of a master plumber or the owner for which the work is being done; provided that acceptable arrangements shall first be made for reissuance of the permit to another master plumber for proper completion of the work. The original permit shall not be canceled until a master plumber applies for and is granted a permit to complete the work. The procedure for requested cancellation and reissuance of permits shall be as follows:

(1) If the master plumber does not complete the entire installation for which he received a permit, he shall immediately notify the Inspection Supervisor in writing requesting cancellation and detailing the extent of the work he has done.

(2) The person who has hired the master plumber may request cancellation in writing and shall then specify the name of the master plumber he is employing to finish the work.

(3) The work shall be stopped until a permit has been issued for completion.

(4) The original permit fee shall apply to the entire job, except that the minimum permit fee of fifteen dollars ($15.00) shall be paid for the second permit. If additional work is included on the new permit, such work shall be listed and the proper fee shall apply.
Sec. 6-12. Burning trash, rubbish, garbage, yard waste, etc.

(a) No person shall build, maintain or allow to be operated or maintained on a premises controlled by him/her, any waste burner, refuse burner, trash burner or other similar appliance unless such device is permitted with the approval of the Inspections Supervisor and the Fire Chief, or his designee.

(b) No person shall operate an outside incinerator, burn garbage, or leaves within the City.

Sec. 6-13. Open outdoor fires, outdoor fireplaces, cooking fires and barbecue grills, kettles and outdoor hibachis.

(a) No open outdoor fires, including fires confined within outdoor fireplaces and outdoor cooking fires, with the exception of fires fueled by natural gas, propane or charcoal in commercially manufactured appliances or a non-commercially manufactured appliance approved by the Fire Chief or his designee, shall be started by any person unless a permit is first obtained from the Fire Department. No permit shall be granted for open burning for multifamily occupancies without separate private yards for each tenant, nor without the property owner’s permission, in a public right-of-way, alley or other public thoroughfare.

(1) Daily permits are available for bonfires, brush burns, wildland management burns, outdoor fireplaces and cooking fires.

(2) Annual permits are available for recreational fires in outdoor fireplace appliances. (January 1 through December 31).

(3) Annual and single day permits are valid 6:00 a.m. to 10:00 p.m. Sunday through Thursday, 6:00 a.m. to 12:00 a.m. Friday, Saturday, and any day/evening preceding a federal holiday.

(4) No permit will be issued for any fire within ten (10) feet of any building, structure, fence, combustible material or property line.

(5) Only those fuels and appliances approved by the Fire Chief or his designee shall be used.

(6) Burning is to be attended at all times by a person at least eighteen (18) years of age, with an approved means of extinguishing the fire available for use at the location of the fire.

(b) Barbecue grills, kettles, outdoor hibachis.

(1) Charcoal burners and other open-flame devices shall not be operated on combustible balconies or within ten (10) feet of combustible construction in all dwellings. Exceptions:

a. Single family dwellings.

b. Permanently piped natural gas fired barbecue grills, where dwellings, balconies, and decks are protected by automatic sprinkler system.

(2) Cylinders having water capacities greater than 2½ lb. (1 kg) [nominal 1 lb. (0.5 kg) LP-Gas capacity] shall not be located on balconies above the first floor that are attached to a multiple family dwelling of three (3) or more living units.

(c) No person shall install, use or maintain a woodfire furnace, stove or boiler that is not located within a building intended for habitation by humans within the City limits. This prohibition shall apply to furnaces, stoves or boilers installed after the effective date of this ordinance.

(d) The Fire Chief or his designee shall have the authority to prohibit any and all open burning when atmospheric conditions or local circumstances make such fire hazardous. No burning will be allowed if wind conditions will cause smoke, embers or other burning materials to be carried towards any building or other combustible material, nor anytime the wind is in excess of nine miles per hour (9 m.p.h.) as measured by the Outagamie County Emergency Communication Center.

Sec. 6-14. Careless smoking prohibited.

(a) It is unlawful for any person, by reason of careless, willful or wanton conduct in smoking or in the use of lighters or matches in smoking to set fire to any bedding, carpet, curtains, draperies, furniture, household equipment or other goods or chattels or to any building.

(b) A plainly printed notice of the provisions of this section shall be posted in a conspicuous place in every sleeping room of every place renting rooms for the accommodations of the public. Such printed notices shall also be posted in any place of public assembly where smoking is permitted.
Sec. 6-15. Posting of no smoking signs.

The Fire Chief shall post or cause to be posted no smoking signs in retail establishments where flammable or combustible materials are handled or sold and the act of smoking or striking a match or lighter device presents a fire hazard. Such signs shall be plainly visible on a contrasting background and shall be posted conspicuously in all areas where such hazards exist. Such sign shall bear the words “No Smoking” across the top in large letters, and bear the signature of the Fire Chief.

Sec. 6-16. Portable fire extinguishers.

All public buildings within the City and wherever flammable and combustible materials including dusts, solids, liquids and gases are sold, manufactured, handled or processed, shall have a fire extinguisher with a minimum rating of 2A 10 BC. One (1) fire extinguisher shall be required for each three thousand (3,000) square feet or fraction thereof and at least one (1) per each floor.

Sec. 6-17. Sale of defective fire extinguishers.

No person shall sell or trade any form, type or kind of fire extinguisher which is not approved or which is not in proper working order, or the contents of which do not meet the requirements of city and state fire and building codes. However, this shall not apply to the sale or trade of fire extinguishers to any person or firm engaged in the business of selling or handling of such extinguishers or the sale or exchange of obsolete or damaged equipment for junk.

Sec. 6-18. Key box.

When access to or within a structure or an area is unduly difficult because of secured openings or where immediate access is necessary for life saving or fire fighting purposes, the Fire Chief or his designee may require a key box to be installed in an accessible location. The key box shall be a type approved by the Fire Department and shall contain keys to gain necessary access as required by the Fire Department.

Sec. 6-19. Fire Department signs.

It shall be illegal for anyone to remove, mutilate or destroy any legally required sign posted by the Fire Department or required sign to be posted by the owner, manager or operator of any occupancy open to the public.

Sec. 6-20. Fire alarms.

(a) Every public building, dwelling or place of employment containing either a manual, sprinkler activated or fire detector activated alarm system shall comply with this section.

(b) New or upgraded fire alarm systems at large buildings or buildings with multiple occupancies shall provide outside strobe lights indicating the occupancy or area of fire alarm activation and if applicable, the location of the Fire Department connection. The location of these strobe lights is to be determined by the Fire Chief or designee.

(c) The Fire Department will be contacted immediately upon activation of an alarm by on-site personnel or a monitoring agency so not to cause a delay in alarm. Any monitoring agency shall be licensed or approved by either Factory Mutual (FM) or Underwriters Laboratories (U.L.). All systems shall be maintained in operable condition as specified in the International Fire Code. If the alarm or fire sprinkler system becomes inoperative for any reason, the Fire Department shall be notified and the provisions of the International Fire Code, Section 901.7 and subsequent revisions shall apply.

(d) False alarms and fees.

(1) Words and phrases defined in §12-121 are used in the same sense in this section unless a different definition is specifically provided.

(2) If the Fire Department responds to a false alarm, the party responsible for the false alarm shall pay the city a fee according to the schedule of fees kept on file with the City Clerk’s Office.

(3) If the Fire Department is cancelled by the emergency communications center while responding to an alarm, the party responsible for causing the alarm may still be assessed the false alarm fee.

(4) Any fees payable to the City which are delinquent may be assessed against the property involved as a special charge for current service, without notice, pursuant to Wisconsin Statutes Annotated §66.0627.

(5) The party responsible or the alarm user may appeal the assessment of a false alarm fee by submitting written documentation to the Fire Department.
Chief or designee within ten (10) business days after notification of the assessment of a fee. The Chief or designee must inform the alarm user of the decision in writing. If the alarm user further contests the Chief or designee’s decision, within ten (10) days of receiving the Chief or designee’s decision, the alarm user may seek review by the Safety and Licensing Committee by submitting a written notification to the City Clerk’s Office.

(Ord 1-91, §1(19.25), 1-9-91; Ord 7-95, §1, 2-1-95, Ord 65-99, §1, 9-19-99; Ord 117-06, §1, 1-1-07; Ord 23-09, §1, 1-13-09)

**Sec. 6-21. Malls.**

The mall manager or designee shall notify the Fire Department prior to any use of a mall common space for any intended use other than exiting. Examples of other uses would be trade shows, exhibitions, or public assemblies.

(Ord 1-91, §1(19.27), 1-9-91; Ord 23-09, §1, 1-13-09)

**Sec. 6-22. Violations.**

It is unlawful for any person to violate any provision of this chapter or to fail to obey any rule, regulation or order of the Fire Chief or his designees.

(Ord 1-91, §1(19.28), 1-9-91; Ord 23-09, §1, 1-13-09)

**Cross reference(s)**--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Secs. 6-23 – 6-30. Reserved.**
ARTICLE II. FIRE DEPARTMENT

Sec. 6-31. Generally.

The Fire Department shall be a paid department, consisting of such officers and members as the Common Council may establish from time to time. The Department shall be charged with providing response to fires, hazardous material spills, medical emergencies, rescue of people in distress and other dangerous conditions. The Department shall also provide for fire investigation, prevention, inspection, code compliance, and other services designed to maintain fire and life safety within the community.

(Code 1965, §4.08; Ord 23-09, §1, 1-13-09)

Sec. 6-32. Duties of Fire Chief.

It shall be the duty of the Fire Chief to:

(1) Direct the operation of the Fire Department subject to the rules and regulations which may be adopted by the Common Council or the Police and Fire Commission;

(2) Issue and enforce such orders as in his judgment may be best for the protection of property and the extinguishing of fires;

(3) Enforce all ordinances, rules and regulations of the Common Council governing the Fire Department;

(4) Report the condition of the Fire Department at the end of each year and make further reports when ordered to do so by the Common Council or the Police and Fire Commission;

(5) Report promptly to the Police and Fire Commission any member of the Fire Department who may have disobeyed his order or violated any of the laws or rules governing the Department;

(6) Keep a record and report to the Police and Fire Commission the absence of any member of the Fire Department from fires, together with any dereliction of duty or violation of any of the rules and regulations of the Department.

In the absence or disability of the Fire Chief, the Deputy Chief shall perform his duties.

(Code 1965, §4.09, Ord 65-99, §1, 9-19-99; Ord 23-09, §1, 1-13-09)

Sec. 6-33. Wearing of name tag and badge.

The members of the Fire Department of the City, when on duty, shall wear the badge or insignia and name tag of the office on the outside of the outermost garment, conspicuously displaying the badge and name tag so the entire surface thereof may be seen, except when caution may dictate that the badge and name tag should not be exposed.

(Code 1965, §4.04; Ord 23-09, §1, 1-13-09)

Secs. 6-34 – 6-42. Reserved.
in this section unless otherwise provided by state statutes or the ordinances of the City:

(1) The violation by the licensee or permittee or his agent or employee of any law of the United States or of the state relating to the particular trade, occupation or business so licensed.

(2) The violation of this chapter or of any other ordinance, regulation or bylaw of the City relating to such particular trade, occupation or business, including, but not limited to, all plumbing, building, electrical and heating codes and parking lot regulations of this Code.

(3) The violation of any statute, ordinance or law, when the circumstances of the violation, arrest or conviction substantially relates to the licensed activity.

(b) Procedure. The manner of revocation or suspension shall be as follows:

(1) A complaint shall be made in writing by the Chief of Police or by any person to the Common Council. A copy of the complaint, accompanied by a notice or summons signed by the City Clerk stating the time and place when and where the complaint will be heard before the Common Council or a committee thereof shall be served on the licensee or permittee complained of. The summons shall command the licensee or permittee complained of to appear before the Common Council or a committee thereof on a day and place named in the summons, not less than three (3) days and not more than ten (10) days from the date of issuance, and show cause why his license or permit should not be revoked or suspended.

(2) At the time and place so named in such notice or summons, the accused may appear in person with or without counsel and shall be fully heard by the Common Council or a committee thereof in his defense on the complaint and the proof which may be submitted in support thereof. On motion of either interested party, the Common Council or committee in its discretion may adjourn the hearing from time to time. After such hearing, the Common Council or committee shall determine whether cause for revocation or suspension exists. If such cause is found to exist, the Common Council may revoke or suspend such license or permit.

(Code 1965, §11.01(8), (9))

State law reference(s)--Administrative procedures, W.S.A. §68.01 et seq.

Sec. 9-30. Miscellaneous license fees.

A license shall be required to exhibit, operate or conduct the following businesses. The fee for said license shall be on file with the City Clerk.

(1) Sale of cigarettes.

(2) Christmas tree dealers.

(3) Pawnbroker. W.S.A. §138.10 relating to pawnbrokers is hereby adopted and made a part of this section by reference.

(4) Pet stores (as defined in §3-1).

(5) Kennels (as defined in §3-1).

(Code 1965, §11.02(1); Ord 82-90, §1, 9-20-90; Ord 141-91, §1, 12-4-91; Ord 4-94, §1, 1-5-94. Ord 31-97, §1, 4-16-97; Ord 59-09, §1, 4-28-09)

Cross reference(s)--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18; Christmas tree sales, §9-566 et seq.

Sec. 9-31. Miscellaneous licenses.

(a) The license fee for a carnival shall be on file in the City Clerk’s Office. All applications for a license for a carnival or similar exhibition must be considered by the Common Council. No special license shall be issued.

(b) The license fee for a circus, including menagerie and sideshows under one (1) management, for one (1) day including the evening, shall be on file in the City Clerk's Office.

(c) Unless otherwise provided, all licenses granted and issued under this subsection are subject to the prior approval of the Common Council, and in determining the suitability of the license, consideration shall be given to the financial responsibility of the applicant, the appropriateness of the location and premises proposed, and, generally, the applicant’s fitness for the trust to be reposed, together with the type and nature of the event in relation to demand for municipal services such as police, fire, inspection, sanitation and parking. The applicant may be required to post a cash bond or other security for the payment of the cost of required municipal services attributable to the event, together with a sufficient policy of insurance to cover damages to persons and property.

(d) Special events, as defined and governed by the Special Events Policy, shall be licensed. The license fees for a special event shall be on file in the City Clerk’s Office. Penalties for holding a special event without a license, or violating the terms or conditions under which a license was applied for and granted, shall be set forth in §1-18.

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(e) Those licenses not issued automatically pursuant to Section 9-24 shall be issued by the City Clerk upon approval of the Safety and Licensing Committee and the Common Council. The license fees are on file in the office of the City Clerk.
(Code 1965, §11.02(2); Ord 72-89, §1, 6-7-89; Ord 17-91, §1, 2-20-91; Ord 141-91, §1, 12-4-91; Ord 5-94, §1, 1-5-94; Ord 71-96, §1, 8-7-96; Ord 63-98, §1, 6-17-98; Ord 52-99, §1, 8-22-99, Ord 103-02, §1, 7-9-02, Ord 122-03, §1, 7-2-03; Ord 51-10, §1, 2-9-10; Ord 62-10, §1, 4-13-10)

Sec. 9-32. Refund of fees; replacement fee.

License and permit fees listed in this article, except those covered by Article III of this chapter, shall not be refunded upon denial or withdrawal of the license application. A replacement fee shall be charged for any lost license. Said fee amount shall be on file in the City Clerk's office.
(Code 1965, §11.02(3); Ord 6-94, §1, 1-5-94)

Sec. 9-33. Walks, curbs and other concrete work license.

(a) License required. No person shall construct or repair any concrete walk, curb and gutter, driveway or pavement in any public right-of-way unless a license is obtained pursuant to this section. Property owners repairing the sidewalks on their own property are not required to obtain a license.

(b) Application for license; issuance; term. Any person required to be licensed under this section shall apply to the Department of Public Works for a license. The Department of Public Works shall issue an annual license to any qualified person. The license shall expire December 31 of each calendar year.

(c) License fee; bond and insurance. No person shall engage in work under this section without the following conditions first being met:

(1) The applicant shall file with the Department of Public Works a license bond in the penal sum of five thousand dollars ($5,000.00) executed by the applicant as principal and a surety company authorized to do business in the State of Wisconsin, running in favor of the City so that in the event the City should suffer any loss or damage by any negligence, malfeasance or misfeasance in the conduct of the work performed under this section shall have the right to institute an action for recovery against the applicant and the surety upon such bond. The bond must further state that the applicant shall fully comply with all provisions of State law and City ordinances as applicable and that the applicant will save and indemnify the City against any costs, expenses or damages which may in any way accrue against the City due to the work performed under this section, and will keep the City harmless against all liabilities, judgments, costs and expenses as a consequence of the work.

(2) The applicant shall file with the City Clerk proof of workers compensation, automobile and general liability insurance equal to or greater than that required by the City and approved by the City's Risk Manager, and it shall be kept in full force and effect for one (1) year after the work has been completed.

(d) Revocation of license. If a person holding a license violates any of the ordinances of the City relating to the construction of concrete improvements, the Common Council may, upon giving the offender two (2) days’ notice, revoke his license. After the license has been revoked the licensee shall not again receive a license within three (3) months of the date of revocation.
(Code 1965, §5.13(1)--(4); Ord 7-94, §1, 1-5-94; Ord 70-09, §1, 6-9-09; Ord 91-10, §1, 6-22-10; Ord 103-16, §1, 12-13-16)

Cross reference(s)--Streets, sidewalks and other public places, ch. 16.
*Cross reference(s)--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18; alcohol and other drug abuse prevention committee, §2-61 et seq.; possession of open container of alcoholic beverage on public property restricted, §10-14; possession of alcoholic beverages in parks and recreation areas restricted, §13-78.

State law reference(s)--Alcoholic beverage licenses, W.S.A. §125.01 et seq.; alcoholic beverage licenses authority, W.S.A. §125.12(1); non-intoxicating beverages and soda water, W.S.A. §66.0433.

Secs. 9-34 – 9-50. Reserved.
ARTICLE III. ALCOHOLIC BEVERAGES*

DIVISION 1. GENERALLY

Sec. 9-51. Adoption of state law.

(a) The provisions of W.S.A. Chapter 125 relating to the sale of fermented malt beverages and intoxicating liquors, except W.S.A. §125.03, §125.04(11), §125.05, §125.10, §125.11, §125.14, §125.15, §125.56, §125.60, §125.61, §125.62, §125.66(3) and §125.69, exclusive of any provisions thereof relating to the penalty to be imposed or the punishment for violation of the statutes, are hereby adopted and made a part of this article by reference. A violation of any such provision shall be a violation of this article. The City elects to operate under W.S.A. §125.51(3)(b).

(b) The forfeiture provisions of §125.07(4)(bs), exclusive of any operating privilege suspension, is hereby adopted and made a part of this section by reference.

(Code 1965, §11.03(1); Ord 100-94, §1, 8-3-94)

Sec. 9-52. Operation of premises licensed for retail sales.

All class A and B retail licenses granted under this article shall be granted subject to the following conditions and all other conditions of this article, and subject to all other ordinances and regulations of the City applicable thereto:

(1) Every applicant procuring a license thereby consents to the entry of police or other authorized representatives of the City at all reasonable hours for the purpose of inspection and search, and consents to the removal from the premises of all things and articles there in violation of City ordinances or state laws and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offense.

(2) No retail licensee shall hire any person under twenty-one (21) years of age, except as modified by W.S.A. §125.07(4)(bm).

(3) No gambling or games of chance shall be permitted upon the licensed premises. Dice, slot machines, or any other devices of chance are prohibited and shall not be kept upon the premises, except those permitted by law.

(4) No premises for which a class B or class C retail license has been issued shall be permitted to remain open during the closing hours required by W.S.A. §125.32(3) or W.S.A. §125.68(4), and the premises shall be vacated during such hours.

(5) Each premises shall be conducted in a sanitary manner and shall be a safe and proper place for the purpose for which used. Effective July 1, 2017, taverns serving no food shall obtain a municipal health permit from the Health Department on an annual basis, pursuant to Sec. 9-190. Additionally, the Board of Health may make reasonable rules for the sanitation of all places of business possessing licenses under this article. Such rules or regulations may be classified and made applicable according to the class of business conducted. All such rules and regulations shall have the same force as this article and infraction thereof may be punished as a violation of this article.

(Ord 78-16, §1, 11-8-16)

(6) A violation of this article by a duly authorized agent or employee of a licensee or permit holder shall constitute a violation by the licensee or permit holder.

(7) Class “A” retail licensees shall not sell, dispense, give away or furnish, directly or indirectly, fermented malt beverages for consumption off the premises between 12 midnight and 8:00 a.m., Central Standard Time. “Class A” retail licensees shall not sell, dispense, give away or furnish, directly or indirectly, intoxicating liquors including wine for consumption off the premises between 9:01 p.m. and 8:00 a.m., Central Standard Time.

(8) Class B or class C retail licensees shall not sell, dispense, give away or furnish directly or indirectly fermented malt beverages or intoxicating liquors for consumption off the premises between 12:01 a.m. and 8:00 a.m., Central Standard Time.

(9) Abandonment or non-use. Any licensee granted or issued a license to sell alcohol beverages that abandons such business shall forfeit any right or preference the licensee may have to the holding or renewal of such license. Abandonment shall be sufficient grounds for revocation or non-renewal of any alcohol beverage license. In this section “abandon” and “abandonment” shall mean a continuing refusal or failure of the licensee to use the license for the purpose or purposes for which the license was granted by the city council for a period of one (1) year. The Common Council may, for good cause shown, extend such period.

(10) A retail class A, B or C license shall not be
granted to any applicant whereby the applicant had been convicted of selling alcoholic beverages without the proper retail license within the last eighteen (18) months.

(Ord 10-07, §1, 2-13-07; Ord 71-09, §1, 6-9-09; Ord 161-10, §1, 11-23-10; Ord 187-10, §1, 12-7-10)

Sec. 9-53. Adoption of state law regarding sale of alcoholic beverages to intoxicated persons.

W.S.A. §125.07(2) regarding the sale of alcohol beverages to intoxicated persons in violation of this article is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §11.03(9)(a)--(c), (g), (i), (j), (l)--(n); Ord 122-91, §1, 11-6-91; Ord 98-96, §1, 11-20-96)

Sec. 9-54. Demerit point system.

(a) There is hereby established a point system for the purpose of guiding the Safety and Licensing Committee in the suspension or revocation of alcoholic beverage licenses. The number of demerit points is assigned according to the type of violation. This system is intended to identify habitually troublesome liquor licensees who repeatedly violate state statutes and/or City of Appleton ordinances and to take consistent action against such licensees.

(b) There is hereby assigned the following demerit points for each type of violation:

<table>
<thead>
<tr>
<th>TYPES OF VIOLATIONS</th>
<th>DEMERIT POINTS (per violation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refusal to cooperate with Fire Chief,</td>
<td>100</td>
</tr>
<tr>
<td>Police Chief or designee</td>
<td></td>
</tr>
<tr>
<td>Exceeding posted occupancy capacity</td>
<td>80</td>
</tr>
<tr>
<td>Exceeding posted occupancy capacity by more than 30%</td>
<td>150</td>
</tr>
<tr>
<td>Sale to person under age 21</td>
<td>80</td>
</tr>
<tr>
<td>Person under age 21 on premises</td>
<td>80</td>
</tr>
<tr>
<td>Sale to intoxicated person</td>
<td>80</td>
</tr>
<tr>
<td>False statement on application</td>
<td>70</td>
</tr>
<tr>
<td>Operating while license is suspended</td>
<td>200</td>
</tr>
<tr>
<td>Unauthorized transfer/use of license</td>
<td>90</td>
</tr>
<tr>
<td>Conducting unlawful business</td>
<td>150</td>
</tr>
<tr>
<td>No licensed bartender on premises</td>
<td>40</td>
</tr>
<tr>
<td>Open after hours / failure to vacate</td>
<td>50</td>
</tr>
<tr>
<td>After hours carry-outs</td>
<td>50</td>
</tr>
</tbody>
</table>

Health Code Violations

<table>
<thead>
<tr>
<th>HEALTH CODE VIOLATIONS</th>
<th>DEMERIT POINTS (per violation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-critical violation</td>
<td>25</td>
</tr>
<tr>
<td>Critical violation</td>
<td>80</td>
</tr>
</tbody>
</table>

(c) Calculating violations. In determining the accumulated demerit points, the date of the violation is used as the basis for assigning demerit points per violation. Points shall be assigned only after conviction for violations.

(d) Suspension and revocation of license. The Police Department shall notify the Safety and Licensing Committee of any convictions which result in the assessment of demerit points against any licensee. Following this notification, or the filing of a complaint pursuant to W.S.A. §125.12, the Committee shall hold a hearing if required by W.S.A. §125.12 or this section, and shall take the following action, after first determining the number of demerit points to be assessed against the licensee:

(1) For demerit points totaling 25-149 within a 12-month period, a warning to the licensee of the consequences of additional violations.

(2) For demerit points totaling 150-199 within a 12-month period, suspension of the license for a period of not less than ten (10) days nor more than ninety (90) days.

(3) For demerit points totaling two hundred (200) or more within an 18-month period, revocation of the license. Whenever any license is revoked,
at least six (6) months from the time of such revocation shall elapse before another license shall be granted for the same premises, and twelve (12) months shall elapse before any other license shall be granted to the person whose license was revoked.

(e) **Scope.** Nothing in this section shall be construed to conflict with, abridge or modify, the rights or procedures established for revocation or suspension of licenses in W.S.A. §125.12. Notwithstanding the requirements of this section, the Safety and Licensing Committee may require the appearance before it of any licensee at any time.

(f) **Transfer/sale of licensed business.** Upon the transfer or sale of the licensed business, all accumulated demerit points shall be canceled unless any of the following apply:

1. The new licensee is related to the former licensee by blood, adoption or marriage;
2. The new licensee held a business interest in the previous licensed business, real estate or equipment;
3. The former licensee or an individual related to the former licensee by blood, adoption or marriage retains an interest in the business, real estate or equipment used by the business;
4. The new licensee’s acquisition of the business did not involve an arm’s length transaction consisting of an open market sale in which the owner is willing, but not obligated to sell, and the buyer is willing, but not obligated to buy.

If any of the above apply, the new licensee shall inherit the demerit points previously assessed and be subject to the penalties set forth in the code.

(Ord 29-97, §1, 4-2-97; Ord 56-98, §1, 5-20-98, Ord 126-03, §1, 7-22-03, Ord 108-04, §1, 8-10-04; Ord 72-09, §1, 6-9-09)

**Sec. 9-55. Quadricycles.**

No person may consume a fermented malt beverage while a passenger on a commercial quadricycle, as that term is defined in §340.01(8m), Wis. Stats. within the city of Appleton.

**Secs. 9-56 – 9-70. Reserved.**
(2) Class “B” fermented malt beverage retail license.

(3) “Class A” intoxicating liquor retail license.

(4) “Class B” intoxicating liquor retail license.

a. If the City has granted or issued a number of licenses equal to or exceeding the quota established under W.S.A. §125.51, the City may still issue a license for any of the following:

1. A full service restaurant that has seating for three hundred (300) or more persons.
   a. The principal business during all hours of operation must be that of a restaurant which serve meals that are primarily prepared individually and served to customers at their table by waitstaff.
   b. At any given time, three hundred (300) or more persons must be able to be seated for meal service.
   c. The seating area shall not include outdoor seating, any bar area or any area regularly used for entertainment.
   d. The business shall only be held out and advertised to the public as a restaurant.
   e. Any establishment representing itself as a full service restaurant under this subsection shall maintain that status throughout the license period. If the establishment does not maintain its status, the license shall be revoked or not renewed. The burden is on the license holder to provide evidence that the principal business is a full service restaurant that has seating for three hundred (300) or more persons.

2. A hotel that has fifty (50) or more rooms of sleeping accommodations and that has either an attached restaurant with seating for one hundred fifty (150) or more persons or a banquet room in which banquets attended by four hundred (400) or more persons may be held.
   a. At any given time, one hundred fifty (150) or more persons must be able to be seated for meal service in any attached restaurant.
   b. The seating area for a restaurant shall not include outdoor seating, any bar area or any area regularly used for entertainment.
   c. Any establishment representing itself under this subsection shall maintain that status throughout the license period. If the establishment does not maintain its status, the license shall be revoked or not renewed. The burden is on the license holder to provide evidence that the principal business is a hotel that has fifty (50) or more rooms of sleeping accommodations and that the hotel has either an attached restaurant with seating for one hundred fifty (150) or more persons or a banquet room in which banquets attended by four hundred (400) or more persons may be held.

3. An opera house or theater for the performance arts operated by a nonprofit organization as defined in W.S.A. §134.695(1)(am).
   a. The sale of intoxicating beverages shall only be for consumption on the premises and only in connection with ticketed performances.
   b. Any establishment representing itself under this subsection shall maintain that status throughout the license period. If the establishment does not maintain its status, the license shall be revoked or not renewed. The burden is on the license holder to provide evidence that the principal business is an opera house or theater for the performance of arts operated by a nonprofit organization.
(5) Reserve “Class B” intoxicating liquor retail license.

a. The number of reserve “class B” intoxicating liquor licenses shall be determined pursuant to W.S.A. §125.51(4)(br).

b. A reserve “class B” license cannot be transferred to another place or premises.

(6) “Class C” wine retail license.

(7) Provisional retail license.

a. A provisional retail license may be issued by the City Clerk to a person who has applied for a Class “A”, Class “B” or “Class C” license and authorizes only the activities that the type of retail license applied for authorizes.

b. A provisional license may not be issued to any person who has been denied a retail license.

c. The provisional license expires sixty (60) days after its issuance, when a license under subsection a. is issued to the applicant or upon written notice that the Common Council denied the applicant a license, whichever is sooner.

d. Persons are limited to one (1) provisional license for each type of license applied for by the holder per year.

(8) Wholesaler’s fermented malt beverage license.

(9) Picnic license. A single meeting license may be issued to eligible organizations pursuant to W.S.A. §125.26(6) for a fee of ten dollars ($10.00). Said license may be issued by the City Clerk upon approval of the appropriate departments and the Safety and Licensing Committee, and after the application has been on file in the City Clerk’s office for ten (10) business days. Any application requesting an open concept license must be approved by the Common Council.

(10) Operator’s license.

a. An operator’s license shall be valid for a two- (2-) year period and shall expire on June 30.

b. The Clerk shall issue a photo identification card for operator’s licenses. Lost or stolen licenses may be replaced for a fee, the amount of which is on file in the City Clerk’s Office.

c. Each new applicant or each applicant who failed to renew the license shall successfully complete an approved bartender’s awareness program prior to the issuance of an operator’s license, unless the applicant meets one of the requirements listed on W.S.A. §125.185(6).

(Ord 56-16, §1, 9-13-16)

(11) Provisional operator’s license.

a. A provisional operator’s license may be issued by the City Clerk to a person who has applied for a beverage operator's license under subsection (10) above.

b. A provisional license may not be issued to any person who has been denied an operator’s license.

c. The provisional license expires sixty (60) days after its issuance, when a license under subsection a. is issued to the applicant or upon written notice that the Common Council denied the applicant a license, whichever is sooner.

d. Persons are limited to one (1) provisional license per year.

(12) Temporary operator licenses.

a. A temporary operator’s license may be issued only to operators employed by, or donating their services to, nonprofit corporations. This license may be issued by the City Clerk to a person who has applied for a temporary beverage operator’s license and conforms to the requirements under subsection (10)(c) above.

b. A temporary operator’s license shall be valid for any period of one (1) day to fourteen (14) days and the period for which it is valid shall be stated on the license.

c. No person may hold more than two (2) kinds of this license per year.

(13) Clubs as defined in W.S.A. §125.27.

(b) Deposit of fee; refunds. License fees required under
prorated fee. Licenses may be granted which shall expire on June 30 of each year upon payment of such proportion of the annual license fee as the number of months or fraction of a month remaining until June 30 of each year bears to twelve (12). This section only applies to licenses with an annual cost in excess of one hundred dollars ($100.00).

(1) Proration of fee. Licenses may be granted which shall expire on June 30 of each year upon payment of such proportion of the annual license fee as the number of months or fraction of a month remaining until June 30 of each year bears to twelve (12). This section only applies to licenses with an annual cost in excess of one hundred dollars ($100.00).

(2) Cross reference(s).—Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 9-76. Restrictions on issuance.

(a) No license shall be granted to any person who does not meet the requirements of W.S.A. §125.04(5).

(b) No class B retail license shall be granted for any premises where any other business is to be conducted in connection with the premises, except that such restriction shall not apply to a hotel, to a restaurant not a part of or located in any mercantile establishment, to a combination grocery store and tavern, to a novelty store and tavern, or to a bowling alley or recreation premises, or to a bona fide club, society or lodge that has been in existence for not less than six (6) months prior to the date of filing application for such license.

(c) No class A or B retail license shall be issued to any person acting as agent for or in the employ of another, except that for class B retail licenses this restriction shall not apply to a hotel nor to a restaurant not a part of or located in or upon the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for not less than six (6) months prior to the date of application. Such license for a hotel, restaurant, club, society or lodge may be taken in the name of an officer or manager, who shall be personally responsible for compliance with all of the terms and provisions of this article.

(d) W.S.A. §125.04(6), relating to the issuance of licenses to domestic or foreign corporations shall apply to the issuance of class “B” fermented malt beverage and “class B” intoxicating liquor retail licenses.

(e) No license shall be granted to any person under twenty-one (21) years of age, except as modified by W.S.A. §125.04(5)(d).

(f) No license shall be issued for operation on any premises upon which taxes or assessments or other financial claims of the City are delinquent or unpaid. It shall be the duty of the City Clerk to enforce this provision, in accordance with §9-23(b) of this code.

(g) No license shall be granted to or for any building, room or place in the City wherein for a second time any of the provisions of this article or other provisions of any ordinance relating to the sale, manufacture or possession of fermented malt beverages or intoxicating liquors are violated and the violator convicted therefore, for a period of one (1) year from and after the date of such second violation.

(h) Each premises for which a class B retail license is granted shall be connected with City water and sewage facilities and shall be properly lighted and ventilated and supplied for each sex with separate sanitary toilet and lavatory facilities equipped with running water.

(1) Cross reference(s).—Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 9-77. Investigation of applicant for class B license.

(a) Generally. The City Clerk shall notify the Chief of Police, Health Officer, Fire Chief, Director of Community Development, Inspection Supervisor and the Director of Finance of each application for a retail class B license. These officers shall inspect or cause to be inspected each application for a retail class B license and the premises, insofar as the application relates to their respective departments, together with such other investigation as shall be necessary to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto, including those governing sanitation in restaurants, and whether the
applicant is a proper recipient of a license. These officials shall each furnish the City Clerk in writing the information derived from each investigation, accompanied by approval or disapproval as to whether a license should be granted or refused. The City Clerk shall submit this information to the Safety and Licensing Committee of the Common Council for a recommendation to the Common Council for approval or disapproval.

(b) **Renewals.** No license shall be renewed without a reinspection of the premises and a report as originally required. In determining the suitability of an applicant, consideration shall be given to the financial responsibility of the applicant, the appropriateness of the location and premises proposed, and, generally, the applicant's fitness for the trust to be reposed.

(Code 1965, §11.03(6); Ord 32-92, §1, 3-18-92; Ord 4-93, §1, 1-6-93; Ord 173-93, §1, 10-19-93; Ord 176-93, §1, 10-19-93; Ord 121-96, §1, 12-18-96, Ord 108-04, §1, 8-10-04))

**Sec. 9-78. Granting; term; transfer.**

Opportunity shall be given by the Common Council to any person to be heard for or against the granting of any license under this division. Upon the approval of the application by the Common Council, the City Clerk shall, upon the filing by the applicant of a receipt showing the payment of the required license fee to the Director of Finance, issue a license to the applicant. Each license shall be numbered in the order in which it is issued and shall contain the date of issuance, the fee paid and the name of the licensee. All licenses shall remain in force through June 30 after the granting thereof, unless sooner revoked. No license shall be transferable either as to licensee or location, except as provided by W.S.A. §125.04(12), and except that the Common Council may authorize a transfer of location if the licensed premises become unsuitable for occupancy.

(Code 1965, §11.03(7); Ord 4-93, §1, 1-6-93)

**Sec. 9-79. Appeal of denial.**

If the investigating authority denies an application for a license or grant under this division, the City Clerk shall forthwith notify the applicant by certified mail of the recommendation for denial and the reason therefor. The notice shall indicate that the applicant has the right to appeal the decision but must contact the City Clerk’s Office within thirty (30) days of receipt of the letter to schedule the appeal before the Safety and Licensing Committee. The Safety and Licensing Committee shall hear any person for or against the granting of the license or grant and shall report its recommendation to the Common Council, which shall grant or deny the license or grant.

(Ord 45-01, §1, 2-12-01, Ord 108-04, §1, 8-10-04; Ord 75-09, §1, 6-9-09; Ord 76-15, §1, 9-22-15)

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**Sec. 9-80. Posting; duplicates.**

(a) Every license and permit issued under this division shall be posted while in force in a conspicuous place in the room or place where fermented malt beverages or intoxicating liquors are kept for sale. No person shall post such license or permit or be permitted to post such license or permit upon premises other than those mentioned in the application, knowingly deface or destroy such license or permit, or remove such license or permit without the consent of the licensee or permit holder.

(b) Whenever a license or permit is lost or destroyed without fault of the holder or his agent or employee, a duplicate in lieu thereof under the original application shall be issued by the City Clerk on satisfying himself as to the facts, upon the payment of a fee, the amount of which is on file in the office of the City Clerk.

(Code 1965, §11.03(8); Ord 9-94, §1, 1-5-94)

**Sec. 9-81. Revocation.**

Any license issued under this division for the sale of fermented malt beverages or intoxicating liquors may be revoked under §9-29, §9-54 or W.S.A. §125.12. No license fee shall be refunded where a license is revoked. Whenever any license is revoked, at least six (6) months from the time of such revocation shall elapse before another license shall be granted for the same premises, and twelve (12) months shall elapse before any other license shall be granted to the person whose license was revoked.

(Code 1965, §11.03(10); Ord 76-09, §1, 6-9-09)

**Sec. 9-82. Improper exhibitions.**

(a) It shall be unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any employee, entertainer or patron to engage in any live act, demonstration, dance or exhibition on the licensed premises which:

1. Expose his/her genitals, pubic area, perineum, anus, anal clef or cleavage, anal region or pubic hair region with less than a fully opaque covering; or
2. Expose any device, costume or covering which gives the appearance of or simulates genitals, pubic hair, perineum, anal region or pubic hair region; or
3. Exposes any portion of the female breast below a point immediately above the top of the areola thereof; or
4. Show the covered male genitals in a discernibly turgid state; or
(5) To engage in or simulate sexual intercourse and/or sexual contact, including the touching of any portion of the female breast or the male and/or female genitals.

(b) For the purposes of this ordinance, the term “licensed premises” means any establishment licensed by the common council of the City of Appleton to sell alcohol beverages pursuant to Ch. 125, Stats. The term “licensee” means the holder of a retail “Class A”, “Class B”, Class “B”, Class “A”, “Class C” license granted by the Common Council of the City of Appleton pursuant to Ch. 125, Stats.

(c) The provisions of this ordinance do not apply to the following licensed premises: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude erotic dancing.

(d) Any person, partnership or corporation who violates any of the provisions of this ordinance shall be subject to penalty as prescribed in §1-18 of this Municipal Code, in addition to liquor license suspension, revocation or renewal as provided by §9-29 of the Code and by §125.12, Wis. Stats. A separate offense shall be deemed committed on each day of which a violation occurs or continues.

(e) If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

(Ord 95-95, §1. 9-20-95)

Secs. 9-83 - 9-100. Reserved.

ARTICLE IV. AMUSEMENTS AND ENTERTAINMENT*

DIVISION 1. GENERALLY

Secs. 9-101 - 9-125. Reserved.

DIVISION 2. MECHANICAL AMUSEMENT DEVICES**

Sec. 9-126. Definition.

For purposes of this division, a mechanical amusement device is a machine which upon the insertion of a coin or slug operates a game, contest or amusement, except music. A billiard table or pool table is a mechanical device for purposes of this division when operated commercially, whether it is coin-operated or not.

(Code 1965, §11.11(1))


Sec. 9-127. Licenses generally.

No person shall operate a mechanical amusement device, pool table or billiard table within the City without first obtaining the required licenses therefore from the City Clerk pursuant to §9-21 et seq. The City Clerk may issue such licenses upon compliance with this division and payment of the required fee. The annual license fee amount shall be on file in the office of the City Clerk.

(Code 1965, §11.11(2); Ord 77-09, §1, 6-9-09)

Cross reference(s)--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

*Cross reference(s)--Permits required for certain amusements, §9-31; issuance of license, §9-2 et seq.

State law reference--Amusement places, license and regulation, W.S.A.§175.20.

**Cross reference(s)--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18; issuance of license, §9-21 et seq.
Supp. #87

ARTICLE V.  CABLE TELEVISION SERVICE*

Sec. 9-151.  Short title.

This article shall be known as the Appleton Cable Communications Ordinance.

Sec. 9-152.  Purposes.

The purpose of this article is to:

(1) Provide for the franchising and regulation of cable television systems within the City of Appleton; and

(2) Provide for the payment of a fee and other valuable consideration to the City for the use of City streets and other public ways in the construction and operation of cable television systems and to compensate the City for costs associated therewith; and

(3) Provide for the development of cable television as a means to improve communication between and among the citizens and public institutions of the City; and

(4) Provide remedies and prescribe penalties for violation of this article and the franchise(s) granted hereunder.

Sec. 9-153.  Definitions.

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

Agency means the person, department or agency designated by the City Council to act in matters related to cable television. In the absence of any specific designation by Council, the Mayor or her designate shall act as the agency.

Auxiliary services means any communications services in addition to “regular subscriber services” including, but not limited to, services for which a per-person or per-channel charge is made, pay TV, burglar alarm services, data or other electronic transmission services, facsimile reproduction services, meter reading services and home shopping services, interactive two-way services and any other service utilizing any facility or equipment of a cable
television system operating pursuant to a franchise granted under this article.

**Cable television system** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service over the public right-of-way which includes video programming and which is provided to multiple subscribers within a community, but such a term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a cable system (other than for purposes of §621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems.

**Channel** is a band of frequencies, six (6) megahertz wide in the electro-magnetic spectrum, capable of carrying either one audio-visual television signal and a few non-video signals or a large number of non-video signals.

**Converter** means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and with an appropriate channel selector, also permits a subscriber to view all signals delivered at designated dial locations.

**Council** means the Common Council of the City of Appleton or the designated committee of jurisdiction.

**Federal Communications Commission or FCC** means the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

**Franchise** means an initial authorization or renewal thereof (including a renewal of an authorization which has been granted pursuant to §9-155(e) of this article) issued by the franchising authority.

**Franchise area** means that portion of the City for which a franchise is granted under the authority of this article. If not otherwise stated in the franchise, the franchise area shall be the corporate limits of the City.

**Grantee** means the natural person, partnership, domestic or foreign corporation, association, joint venture or organization of any kind granted a franchise by the Council under this article and its lawful and approved successor, transferee or assignee.

**Gross revenues** means all receipts derived directly or indirectly from operation or use of all or part of a cable television system franchised pursuant to this article by the grantee and its subsidiaries including, but not limited to, revenue from basic subscriber fees, premium channel fees, pay-per-view performance fees, equipment rentals and connection fees; provided, however, that this shall not include any taxes on services furnished by the grantee herein imposed directly on any subscriber or user by the state, local or other governmental unit and collected by the grantee on behalf of said governmental unit or separate revenues of affiliates of a parent company not attributable to the parent company’s local cable operation.

**Net profit** means the amount remaining after deducting from gross revenues all of the actual, direct and indirect, expenses associated with operating the cable television system including the franchise fee, interest, depreciation and federal or state income tax.

**Person** means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

**Public way** means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkways, waterways or other public right-of-way including public utility easements or rights-of-way and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City which shall entitle the City and the grantee to the use thereof for the purpose of installing and maintaining the grantee's cable television system.

**Regular subscriber service** means the distribution to subscribers of signals over the cable television system the FCC requires the grantee to carry.

**Schools** means all public educational institutions, including elementary and secondary schools, junior colleges, colleges and universities and other educational institutions where the City and grantee jointly agree to provide service.

**Subscriber** means any person who pays for the regular subscriber services and/or any one or more of such other services as may be provided by the grantee's cable television system, and does not further distribute such service(s).

**Two-way service** means the subscriber or any other location shall have the capability to choose whether or not to respond immediately or by sequential delay utilizing any type of terminal equipment whatever, by push-button code, dial code, meter, voice, video including, but not limited to,
DIVISION 2. RETAIL FOOD ESTABLISHMENTS*

Sec. 9-216. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Food means articles used for food or drink by persons, chewing gum, and articles used as components of food.

Retail food establishment means an establishment required to be licensed under W.S.A. §97.30, and all other commercial enterprises, fixed or mobile, where food is processed or sold or offered for sale at retail. The term shall also include all areas and facilities of such establishments used in conjunction therewith and all vehicles and equipment utilized in conjunction therewith. It includes retail grocery stores; meat markets; poultry markets; fish markets; delicatessens; bakeries; confectioneries; ice cream shops; cheese stores; convenience marts; milk cases; spice and herb shops; mobile retail food establishments; and all other establishments where food is processed or sold or offered for sale at retail.

(Code 1965, §7.16(2); Ord 21-92, §1, 3-4-92; Ord 59-92, §1, 6-3-92; Ord 35-94, §1, 2-16-94, Ord 21-03, §1, 1-21-03; Ord 79-16, §1, 11-8-16)

Cross reference(s)---Definitions and rules of construction generally, §1-2.

Sec. 9-217. License required.

(a) No person shall operate or carry on a business of a retail food establishment without obtaining a license therefore from the Health Department.

(b) The following establishments are excepted from the provisions of this section:

(1) Any establishment exempted according to the terms and conditions in any agreement by and between the City and State Department of Agriculture, Trade and Consumer Protection. Any such agreements shall be on file with the Department of Health.

(Code 1965, §7.16(1); Ord 21-92, §1, 3-4-92; Ord 36-94, §1, 2-16-94, Ord 21-03, §1, 1-21-03)

Cross reference(s)---Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

*Cross reference(s)---Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

State law reference(s)---Licenses, W.S.A. §§93.09, 97.30 et seq.

Sec. 9-218. Fees.

A license shall be required to operate or conduct the following retail food establishments. The fee for said license shall be on file with the Department of Health. Other regulations shall be as prescribed in this chapter.

(1) Food sales of one million dollars ($1,000,000) or more and processes potentially hazardous food.

(2) Food sales of two hundred fifty thousand dollars ($250,000) to one million dollars ($1,000,000) and processes potentially hazardous food.

(3) Food sales of twenty-five thousand dollars ($25,000) to two hundred fifty thousand dollars ($250,000) and processes potentially hazardous food.

(4) Processes non-potentially hazardous food.

(5) Does not engage in food processing.

(6) Food sales of less than twenty-five thousand dollars ($25,000) and engage in food processing.

(7) In addition, the applicant must pay any state administrative fees, the amount of which is on file with the Department of Health.

(Code 1965, §7.15(1)(B); Ord 100-90, §1(b), 11-7-90; Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91; Ord 21-92, §1, 3-4-92; Ord 106-92, §1, 10-7-92; Ord 38-93, §1, 3-17-93, Ord 21-03, §1, 1-21-03)

Sec. 9-219. State sanitation regulations adopted.

All retail food establishments and licenses under this division shall be subject to and comply with the provisions of Wisconsin Administrative Code, Sections ATCP 75.01 through ATCP 75.05, which are hereby adopted by reference and incorporated as part of this division.

(Code 1965, §7.16(3); Ord 20-92, §1, 3-4-92; Ord 144-94, §1, 12-7-94, Ord 21-03, §1, 1-21-03; Ord 80-16, §1, 11-8-16)

Cross reference(s)---Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Secs. 9-220 – 9-235. Reserved.
DIVISION 3. RESTAURANTS AND OTHER PUBLIC EATING AND DRINKING ESTABLISHMENTS

Sec. 9-236. Definition.

For purposes of this division, public eating and drinking establishment shall mean any premises as defined by Wisconsin Administrative Code, ATCP §75.03(5), and shall also mean any restaurant, coffee shop, cafeteria, caterer, luncheonette, sandwich stand and all other catering establishments, as well as kitchens and other places where food or drink is prepared, served or sold to the public for human consumption.

(Code 1965, §7.17(2), Ord 21-03, §1, 1-21-03; Ord 81-16, §1, 11-8-16)

Cross reference(s)—Definitions and rules of construction generally, §1-2.

Sec. 9-237. License required; fees.

(a) No person shall conduct a business of or operate a public eating and drinking establishment without obtaining a license therefore from the Health Department. The fee for a license under this division shall be on file with the Department of Health.

(b) In addition, the applicant must pay any state administrative fees, the amount of which is on file with the Department of Health.

(Code 1965, §§7.15(1)(a), 7.17(1); Ord 100-90, §1(a), 11-7-90; Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91; Ord 20-92, §1, 3-4-92; Ord 21-93, §1, 2-17-93; Ord 39-93, §1, 3-17-93)

Cross reference(s)—Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 9-238. State sanitation regulations adopted.

All restaurants and licensees under this division shall be subject to and comply with the provisions of Wisconsin Administrative Code, sections ATCP 75.01 through ATCP 75.112, which are hereby adopted by reference and incorporated as part of this division.

(Code 1965, §7.17(3); Ord 145-94, §1, 12-7-94, Ord 21-03, §1, 1-21-03; Ord 82-16, §1, 11-8-16)

Cross reference(s)—Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 9-239. Cleanliness of utensils.

The Health Officer may test the efficacy of bactericidal processes of utensil cleaning by performing swab tests or other suitable testing methods, and the average of such counts on eating and drinking utensils shall not exceed one hundred (100) colonies per utensil at any time.

(Code 1965, §7.17(3))
DIVISION 4. SIDEWALK CAFES

9-256. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Amenity Strip** shall mean the area between the curb and the defined pedestrian right-of-way along College Avenue between Richmond Street and Drew Street. On all other streets, amenity strip shall mean a minimum four- (4-) foot width between the curb and an eight- (8-) foot pedestrian right-of-way.

**Sidewalk Café** shall mean any group of tables and chairs maintained upon the amenity strip for use directly in front of an establishment with a valid food and drink permit.

(Ord 51-05, §1, 5-24-05; Ord 114-06, §1, 9-26-06)

9-257. Permit required.

No merchant shall have a sidewalk café within the City without first obtaining a Street Occupancy Permit from the Department of Public works.

(Ord 51-05, §1, 5-24-05)

9-258. Application for permit; permit fees.

In order to obtain a Street Occupancy Permit required under this division, a written request shall be made to the Department of Public Works and shall contain such information which the Department may prescribe and require and shall be accompanied by payment of the applicable fee.

(Ord 51-05, §1, 5-24-05)

9-259. Granting; transfer.

Upon approval of the written request by the Common Council, the Department of Public Works shall issue the Street Occupancy Permit. Each permit shall be numbered in the order in which it is issued and shall contain the approval date, the location, and the name of the permit holder. No permit shall be transferable either to the permit holder or the location.

(Ord 51-05, §1, 5-24-05)


If the investigating authority denies a written request for a Street Occupancy Permit under this division, the Department of Public Works shall forthwith notify the requestor by certified mail, return receipt requested, of the denial and the reason therefore. The notice shall indicate the date and time of the review of the denial by the Municipal Services Committee and the right of the
requestor to appear before the Committee. The Municipal Services Committee shall hear any person for or against the granting of the permit and shall report its recommendation to the Common Council, which shall grant or deny the permit.

(Ord 51-05, §1, 5-24-05)

9-261. Restrictions on use of permit.

Street Occupancy Permits issued under this division shall not be valid on the following special event days: Flag Day Parade, License to Cruise, Octoberfest, Christmas Parade and any day that planned/permitted special event would close the street in front of the sidewalk café for normal use or traffic.

(Ord 51-05, §1, 5-24-05)

9-262. Conduct of business generally.

(a) A permit holder under this division shall be subject to the following:

(1) The parameters of the sidewalk café shall be limited to the area of the amenity strip located immediately in front of the establishment and shall not extend beyond the width of the establishment’s property line.

(2) No sidewalk café may obstruct the defined pedestrian right-of-way adjacent to the amenity strip.

(3) A permit holder shall keep the parameters of the sidewalk café and the surrounding area in a clean and sanitary condition.

(4) All food, beverages or other items shall only be served within the sidewalk café by employees of the permit holder and only to patrons who are seated at a table within the sidewalk café. This section shall not apply to establishments that solely offer over the counter service and are not licensed to sell alcoholic beverages.

(5) During the sidewalk café’s operating hours, patrons being served within the sidewalk café shall count towards the premise’s established capacity.

(6) A minimum width of twelve (12) feet between the back of curb and the building face must exist; with a minimum of eight (8) feet available for pedestrian traffic and four (4) feet available for tables and chairs.

(7) The sidewalk café must be adjacent to the street with marked on-street parking stalls to provide a physical barrier between vehicular traffic and the café.

(b) If a permit holder is going to serve alcoholic beverages within the parameters of the sidewalk café, the permit holder shall also be subject to the following:

(1) The permit holder must hold a Class B license.

(2) The description for the premise on the Class B license must include the parameters of the sidewalk café.

(3) The permit holder must obtain a Special Use Permit.

(4) The permit holder can begin serving alcoholic beverages in the sidewalk café at 4:00 p.m. Monday through Friday and 11:00 a.m. on Saturday and Sunday. All alcoholic beverages must be removed from the sidewalk café by 9:30 p.m.

(5) A licensed operator working for the permit holder must serve the alcoholic beverages in the sidewalk café.

(6) Customers are not allowed to carry alcoholic beverages outside the sidewalk café.

(c) The Chief of Police or designee may close a sidewalk café at any time the health, safety, welfare or good order of the City is threatened.

(Ord 51-05, §1, 5-24-05; Ord 115-06, §1, 9-26-06; Ord 138-09, §1, 8-11-09; Ord 53-14, §1, 7-8-14)

9-263. Revocation, suspension, non-renewal.

(a) Causes. A Street Occupancy Permit may be revoked, suspended or not renewed for a violation of any provision of this ordinance, or any other City ordinance or state statute which is substantially related to the permit activity.

(b) Procedure.

(1) A complaint shall be made in writing by the Chief of Police or any other person to the Common Council.

(2) A hearing shall be held before the Municipal Services Committee. The permit holder shall be notified in writing of the hearing date and time and of the charges alleged, not less than three (3) days and not more than ten (10) days prior to the hearing.

(3) At the hearing, the Chief of Police or designee shall present evidence of the alleged
the premises, specifying the requirements of such ordinance or law, and requiring that such business comply with the provisions of such ordinance or law, and specify the time limits within which compliance shall take place. If the time limit or any extension thereof set forth in the notification is not met, the license may be suspended or revoked by the Health Officer. The Health Officer may also request the issuance of citations for any such violations pursuant to the provisions of §1-17.
(Code 1965, §7.15(6); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91)

Sec. 9-304. Emergency powers of Health Officer.

Whenever the Health Officer has reasonable or probable cause to believe that any food, sanitary condition, equipment, premises or method of operation thereof creates a danger to public health, the Health Officer may issue a temporary order prohibiting the sale or movement of food for any purpose, or an order prohibiting the continued operation of the premises or any part thereof which creates the immediate danger to health. The Health Officer may suspend any license without notice whenever the licensed premises constitutes an immediate health hazard.
(Code 1965, §7.15(7); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91)

Sec. 9-305. Appeals.

Any person aggrieved by the denial of a license or by suspension or revocation of a license required under this article by the Health Officer or by any temporary suspension or any other order may appeal any such order to the Board of Health within thirty (30) days of suspension, revocation or issuance of the order. The Board of Health shall provide the appellant a hearing or opportunity for hearing on the matter and may either suspend or continue any such other pending determination of the appeal. The Board of Health may affirm, modify or set aside the order of the Health Officer after a hearing on the matter. The Board of Health shall make and keep a record of all proceedings relating to any such appeal and the record and actions of the Board of Health shall be subject to review by certiorari by a court of record
(Code 1965, §7.15(8)(b); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91)

Secs. 9-306—9-320. Reserved.
DIVISION 2. BED AND BREAKFAST
ESTABLISHMENTS*

Sec. 9-321. Definition.

For the purposes of this division, bed and breakfast establishment means any place of lodging that provides eight (8) or fewer rooms for rent to no more than a total of twenty (20) tourists or other transients for more than ten (10) nights in a twelve-(12-) month period, is the owner’s personal residence, is occupied by the owner at the time of rental, and in which the only meal served to guests is breakfast.

(Code 1965, §7.24(2); Ord 146-94, §1, 12-7-94; Ord 48-97, §1, 6-4-97; Ord 68-07, §1, 6-26-07; Ord 33-14, §1, 5-27-14)

Sec. 9-322. License required; fees.

No person shall operate or carry on a bed and breakfast establishment without obtaining a license from the Health Department. The fee for the license is on file with the Department of Health. In addition, the applicant must pay any state administrative fees, the amount of which is on file with the Department of Health.

(Code 1965, §7.15(1)(h), 7.24(1); Ord 100-90, §1(h), 11-7-90; Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91; Ord 20-92, §1, 3-4-92; Ord 41-93, §1, 3-17-93)

Sec. 9-323. State sanitation regulations adopted.

All bed and breakfast establishments and licensees under this division shall be subject to and comply with Wisconsin Administrative Code, ATCP §73.01 through ATCP §73.15, which are hereby adopted by reference and incorporated as part of this division.

(Code 1965, §7.24(3), Ord 22-03, §1, 1-21-03; Ord 34-14, §1, 5-27-14; Ord 83-16, §1, 11-8-16)

*Cross reference(s)--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 9-324. Guest register.

Each bed and breakfast establishment shall provide a register and require all guests to register their true names and addresses before being assigned sleeping quarters. The register shall be kept intact and available for inspection by representatives of the Health Department for at least one (1) year.

(Code 1965, §7.24(3))

Sec. 9-341. Definition.

For purposes of this division, hotel, motel and tourist rooming house shall mean any premises defined by Wisconsin Administrative Code, DHS §195.03.
(Code 1965, §7.21(2), Ord 22-03, §1, 1-21-03)

Sec. 9-342. License required; fee.

(a) No person shall operate a hotel, motel or tourist rooming house without obtaining a license from the Health Department.

(b) The fee for such license is according to the schedule on file with the Health Department.

(c) In addition, the applicant must pay any state administrative fees, the amount of which is on file with the Department of Health.
(Code 1965, §§7.15(1)(E), 7.21(1); Ord 100-90, §1(e), 11-7-90; Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91; Ord 20-92, §1, 3-4-92; Ord 42-93, §1, 3-17-93)

Sec. 9-343. State sanitation regulations adopted.

All hotels, motels and tourist rooming houses and licensees under this division shall be subject to and comply with the provisions of Wisconsin Administrative Code, ATCP §72.01 through ATCP §72.16, which are hereby adopted by reference and incorporated as part of this division.
(Code 1965, §7.21(3), Ord 22-03, §1, 1-21-03; Ord 84-16, §1, 11-8-16)

*Cross references--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Secs. 9-344 – 9-360. Reserved.
**DIVISION 2. SALVAGE DEALERS**

**Sec. 9-386. License required.**

No person in the City shall keep, conduct or maintain any building, structure, yard or place for keeping, storing or piling in commercial quantities, whether temporarily, irregularly or continually, or for the buying and selling or picking up and selling at retail or wholesale or dealing in any old, used or secondhand materials of any kind, including cloth, rags, clothing, paper, rubbish, bottles, rubber, iron, brass, copper or other metal, furniture, used motor vehicles or the parts thereof, or other article which from its worn condition renders it practically useless for the purpose for which it was made and which is commonly classed as junk or salvage, nor shall any person engage in the business of buying or selling junk or salvage as described in this section in the City, without first having obtained a license as provided in this division. Any person engaging in the business described in this section shall be known as a salvage dealer.

(Code 1965, §11.05(1))

**State law references**—Secondhand goods, W.S.A. §100.18(3); storage of junked automobiles, W.S.A. §175.25; secondhand goods dealer regulations, W.S.A. §134.71.

**Cross references**—Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Sec. 9-387. Application for license.**

Every applicant for a license to engage in the business of salvage dealer shall file with the City Clerk a written application upon a form prepared and provided by the City, signed by the applicant. The application shall state:

1. The name and residence of the applicant if an individual, partnership or firm, or the names of the principal officers and their residences if the applicant is an association or corporation.

2. Whether the applicant or an officer or manager of the applicant has been employed by a salvage dealer or has been a salvage dealer.

3. The detailed nature of the business to be conducted and the kind of materials to be collected, bought, sold or otherwise handled.

4. The place where such business is to be located or carried on.

Such application shall contain an agreement that the applicant accepts the license, if granted, upon the condition that it may be suspended for cause at any time by the Common Council. Every application shall be signed and acknowledged before a notary public or other officer authorized to administer oaths.

(Code 1965, §11.05(2))

**Sec. 9-388. Investigation; issuance of license.**

(a) The City Clerk shall report an application for a license under this division to the Chief of Police, Health Officer, Fire Chief, Inspection Supervisor and the Director of Finance, who shall inspect or cause to be inspected such premises to determine whether the premises comply with all laws, ordinances, rules and regulations. The premises and all structures thereon shall be so situated and constructed that the business may be carried on in a sanitary manner, shall contain no fire hazards, and shall be arranged so that thorough inspection may be made at all times by the proper health, fire, building and police authorities.

(b) The Common Council shall issue a license to the applicant upon the approval of the application, after investigation, and the payment to the City of the license fee. No license shall be refused except for a specific reason. All licenses shall be numbered in the order in which they are issued and shall state clearly the location of the business, the date of issuance and expiration of the license, and the name and address of the licensee. No applicant to whom a license has been refused shall make further application until a period of at least six (6) months has elapsed since the last previous rejection, unless he can show that the reason for such rejection no longer exists.

(Code 1965, §11.05(3), (5); Ord 32-92, §1, 3-18-92; Ord 4-93, §1, 1-6-93; Ord 173-93, §1, 10-19-93; Ord 176-93, §1, 10-19-93; Ord 122-96, §1, 12-18-96)

**Sec. 9-389. Appeal of denial of license.**

If the investigating authority denies an application for a license under this division, the City Clerk shall forthwith notify the applicant by certified mail of the recommendation for denial and the reason therefor. The notice shall indicate that the applicant has the right to appeal the decision but must contact the City Clerk’s Office within thirty (30) days of receipt of the letter to schedule an appeal of the denial before the Safety and Licensing Committee. The Safety and Licensing Committee shall hear any person for or against granting the license and shall report its recommendation to the Common Council, which shall grant or deny the license.

(Ord 108-04, §1, 8-10-04; Ord 77-15, §1, 9-22-15)

**Sec. 9-390. License fee.**

Every licensee under this division shall pay an annual license fee, the amount of which is on file in the office of the City Clerk.

(Code 1965, §11.05(6); Ord 11-94, §1, 1-5-94)

**Sec. 9-391. Nonconforming uses.**

Licensees under this division permitted in zoning
(d) **Form of permit.** The form of the permit shall be prescribed by the City Clerk and the permit shall contain such information as the City Clerk shall consider reasonably necessary to protect the public from improper solicitation.

(Ord 120-94, §1, 9-21-94)

**Sec. 9-645. Expiration of permit.**

A permit issued under this division shall expire on the last day of solicitation stated in the application, which shall be not more than ninety (90) days after the date of application unless extended by the City Clerk upon a showing of unnecessary hardship for not to exceed an additional ninety (90) days.

(Ord 120-94, §1, 9-21-94)

**Sec. 9-646. Revocation of permit.**

The Common Council may revoke any permit under this division pursuant to §9-29 for violation by any solicitor or his principal or agent of any provision of this division or any ordinance of the City which renders future solicitations inimical to the public health, safety or welfare, or for fraud or misrepresentation in solicitation under this division.

(Ord 120-94, §1, 9-21-94)

**Sec. 9-647. Hours of solicitation.**

No person shall solicit door to door between the hours of 9:00 p.m. and 8:00 a.m.

(Ord 120-94, §1, 9-21-94; Ord 36-95, §1, 4-19-95)

**Secs. 9-648 – 9-670. Reserved.**

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**ARTICLE XII. PUBLIC SWIMMING POOLS**

**Sec. 9-671. Definition.**

For purposes of this article, public swimming pool shall mean any premises or place as defined or classified by Wisconsin Administrative Code, §§PS 390.03.

(Code 1965, §7.20(2); Ord 100-90, §1(f), 11-7-90; Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91; Ord 20-92, §1, 3-4-92; Ord 43-93, §1, 3-17-93)

Cross reference(s)--Definitions and rules of construction generally, §1-2.

**Sec. 9-672. License required.**

No person shall own, operate or manage a public swimming pool without obtaining a license from the Health Department.

(Code 1965, §7.20(1))

Cross reference(s)--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Sec. 9-673. Fees.**

(a) The fee for a public swimming pool license is on file with the Department of Health.

(b) In addition, the applicant must pay any state administrative fees, the amount of which is on file with the Department of Health.

(Code 1965, §7.15(F); Ord 100-90, §1(f), 11-7-90; Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91; Ord 20-92, §1, 3-4-92; Ord 43-93, §1, 3-17-93)

**Sec. 9-674. Application for license.**

Application for a license required in this article shall be made to the Health Department upon a form furnished by the Department and shall contain such information which the Department may prescribe and require and shall be accompanied by payment of the applicable fee.

(Code 1965, §7.15(2); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91)

**Sec. 9-675. Issuance of license generally.**

Licenses required under this article, when approved by the Health Department, shall be issued by the Health Officer. A selective or restrictive permit may be issued by the Health Officer on his determination of conformance with appropriate standards and good public health practices.

(Code 1965, §7.15(3); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91; Ord 7-08, §1, 2-26-08)

*Cross reference(s)*--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18; private swimming pools, §4-541 et seq.
Sec. 9-676. Inspection required prior to granting of license; fee.

A license will not be granted under this article to an operator of a new establishment or to a new operator of an existing establishment without a preinspection. A preinspection fee will be assessed for each establishment according to the schedule on file with the Health Department.

(Code 1965, §7.15(10); Ord 100-90, §1J(10), 11-7-90; Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91; Ord 44-93, §1, 3-17-93)

Sec. 9-677. Transfer of license; issuance to agent or employee.

No license issued under this article may be transferred unless otherwise provided by the ordinances of the City. No license shall be issued to or used by any person acting as agent for or in the employ of another.

(Code 1965, §7.15(9); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91)

Sec. 9-678. Expiration and renewal of license.

Except where otherwise provided, every Health Department license shall terminate or expire on June 30 of each year and may be renewed annually thereafter. The application for renewal shall be filed with the Health Department on or before June 30, together with payment of the required fee. The fee for said license shall be on file with the Health Department. In addition, the applicant must pay any state administrative fees, the amount of which is also on file with the Health Department. If the annual renewal fee has not been paid on or before June 30, an additional late payment fee shall be required, the amount if which is on file with the Health Department. Establishments operating on July 15 without a proper license shall be ordered closed by the Health Officer. Failure to comply will result in the issuance of a uniform citation with current bond as set forth in §1-18. Each violation and each day a violation continues or occurs shall constitute a separate offense.

(Code 1965, §7.15(4))(Ord 100-90, §1J(4), 11-7-90; Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91; Ord 20-92, §1, 3-4-92, Ord 106-95, §1, 11-15-95; Ord 74-96, §1, 9-4-96)

Sec. 9-679. Suspension or revocation of license.

The Health Officer may suspend or revoke any license issued pursuant to this article for violations of ordinances or laws regulating the licensed activity and for other good cause.

(Code 1965, §7.15(8)(a); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91)

Sec. 9-680. Right of entry; testing of samples.

The Health Officer may enter any establishment required by ordinance to be licensed in this article at all reasonable times to inspect the premises, secure samples or specimens, examine and copy documents, obtain photographs, or take any action he deems necessary to properly enforce the provisions of applicable laws regulating such business or activity. Samples of water from any licensed premises may be taken and examined by the Health Officer at such time as he deems necessary, for detection of microbiological quality, chemical disinfection, or any other enforcement purposes. Standards and definitions set forth in Wisconsin Administrative Code ATCP §76 are hereby adopted as reference and incorporated as part of this section.

(Code 1965, §7.15(5); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91, Ord 23-03, §1, 1-21-03; Ord 85-16, §1, 11-8-16)

Sec. 9-681. Correction of violations; citations.

Whenever the Health Officer finds that any establishment required to obtain a license in this article is not operating or equipped in any manner required by ordinances or laws regulating such establishment, the Health Officer may notify, in writing, the person operating the premises, specifying the requirements of such ordinance or law, and requiring that such business comply with the provisions of such ordinance or law, and specify the time limits within which compliance shall take place. If the time limit or any extension thereof set forth in the notification is not met, the license may be suspended or revoked by the Health Officer. The Health Officer may also request the issuance of citations for any such violations pursuant to the provisions of §1-17.

(Code 1965, §7.15(6))

Sec. 9-682. Emergency powers of Health Officer.

Whenever the Health Officer has reasonable or probable cause to believe that any sanitary condition, equipment, premises or method of operation thereof creates a danger to public health, the Health Officer may issue a temporary order prohibiting the continued operation of the premises or any part thereof which creates the immediate danger to health. The Health Officer may suspend any license without notice whenever the licensed premises constitutes an immediate health hazard.

(Code 1965, §7.15(7); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91)

Sec. 9-683. Appeals.

Any person aggrieved by the denial of a license or by suspension or revocation of a license required under this article by the Health Officer or by any temporary
suspension or any other order may appeal any such order to the Board of Health within thirty (30) days of suspension, revocation or issuance of the order. The Board of Health shall provide the appellant a hearing or opportunity for hearing on the matter and may either suspend or continue any such order pending determination of the appeal. The Board of Health may affirm, modify, or set aside the order of the Health Officer after a hearing on the matter. The Board of Health shall make and keep a record of all proceedings relating to any such appeal and the record and actions of the Board of Health shall be subject to review by certiorari by a court of record.

(Code 1965, §7.15(8)(b); Ord 111-91, §1, 11-6-91; Ord 125-91, §1, 11-20-91)

Sec. 9-684. State sanitation regulations adopted.

All public swimming pools and licensees under this article shall be subject to and comply with the provisions of Wisconsin Administrative Code, SPS 390 or ATCP §76 as applicable.

(Code 1965, §7.20(3); Ord 147-94, §1, 12-7-94; Ord 76-96, §1, 9-4-96; Ord 23-03, §1, 1-21-03; Ord 25-12, §1, 3-7-12; Ord 86-16, §1, 11-8-16)

Cross reference(s)--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18; permits, §4-546.

Sec. 9-685. Authority to close pools.

In addition to the closing criteria set forth in Wisconsin Administrative Code, ATCP §76, the Health Officer may order any public swimming pool closed if the following conditions exist:

(1) Bacteriological or chemical analysis of water samples exceeds those standards listed in Wisconsin Administrative Code, ATCP §76.30 or the presence of Pseudomonas aeruginosa or any other microbiological pathogen capable of transmitting a communicable disease is detected; or

(2) Any imminent health or safety hazard is identified.

(Code 1965, §7.20(3), Ord 23-03, §1, 1-21-03; Ord 87-16, §1, 11-8-16)

Secs. 9-686 – 9-695. Reserved.
DIVISION 2. TAXICABS AND SIMILAR SERVICES*

Sec. 9-720. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to this section, except where the context clearly indicates a different meaning.

**Taxicab** shall mean any vehicle (1) carrying passengers for hire (2) on a prearranged or on a demand basis (3) at a metered, mileage-based or per trip fare.

**Limousine** shall mean any vehicle (1) used for the business of carrying passengers for hire (2) on a prearranged and not on a demand basis (3) at a premium fare.

**Premium Fare** shall mean a rate based on an hourly rental of not less than one hour. A mileage charge may be assessed for transportation of the vehicle only for the time before and after the transportation service is provided and only in addition to the minimum hourly charge as provided by this definition.

**Taxicab or Limousine** shall not include the following:

(a) Buses, funeral cars, ambulances or medical transport vehicles;

(b) Vehicles operating on established routes which are regulated by the Public Service Commission of Wisconsin; and

(c) Vehicles rented to be driven by the renters or renter’s agent, commonly known as “rent-a-cars”.

(Ord 204-02, §1, 10-22-02)

Sec. 9-721. Licenses – required; exemptions.

(a) No person, firm or company shall conduct a taxicab or limousine business within the City nor shall any person solicit passengers to be transported for hire within the City unless duly licensed to do so by the Common Council.

(b) Subsection (a) of this section shall not apply to taxicabs or limousines that both pick up and drop off passengers within the City if the services are licensed in another municipality.

(Code 1965, §11.09(1), Ord 204-02, §1, 10-22-02)

Cross reference(s)--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 9-722. Same – application; issuance; renewal.

(a) **Application.** Application for a license to convey passengers for hire shall be made in writing to the City upon the appropriate form furnished by the City Clerk. The application shall give the address from which business is conducted and shall be signed by the owner of the vehicle. The application shall state the number of vehicles proposed to be covered by such license.

(b) **Hearing; approval by Council.** The application shall be submitted by the City Clerk to the Common Council, which shall set a date for a public hearing before the Safety and Licensing Committee to examine the public convenience and necessity of granting such license. The City Clerk shall notify the applicant and all interested parties of the time and place set for the hearing. Not later than thirty (30) days after the date of the hearing the committee shall submit to the Common Council its recommendation as to whether public convenience and necessity will be served by the granting of the application. No license shall be granted until the Common Council has determined that the public convenience and necessity will be served by the service proposed in the application for license. The Common Council may hold such further hearings and procure such additional information as it may deem necessary or advisable in making such determination.

(c) **Renewal.** All licenses issued by the Common Council may be renewed from year to year upon payment of the annual license fee and deposit of a sufficient policy of insurance as required by §9-723; provided that, if charges are filed with the Common Council against any license holder, such license shall not be granted until after a hearing is had and affirmative action is taken in the case of original application. Whenever charges are filed against any licensee, a temporary license shall be issued by the City Clerk to permit operation pending final action by the Common Council.

(d) **Fee; approval by Police Chief.** The license application shall be accompanied by the license fee. The amount of the fee shall be on file in the office of the City Clerk. Before a license is granted by the Common Council, such application shall be approved or disapproved by the Police Chief and the City Sealer or designees thereof.

(Code 1965, §11.09(2)--(5); Ord 21-94, §1, 1-5-94, Ord 83-99, §1, 10-24-99)

*Cross reference(s)--Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

State law reference(s)--Authority to license, W.S.A. §349.24.

Sec. 9-723. Insurance.

No vehicle for the conveyance of passengers shall be operated or licensed under this division until the applicant for the license deposits with the City Clerk a sufficient policy of insurance issued by an insurance company licensed to do business in the state which shall provide that the insurance company shall be liable for damages in the minimum amount of five hundred thousand dollars

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Establishments operating on July 15 without a proper license shall be ordered closed by the Health Officer. Failure to comply will result in the issuance of a uniform citation with current bond as set forth in §1-18. Each violation and each day a violation continues or occurs shall constitute a separate offense.

(Ord 123-92, §1, 11-4-92; Ord 106-95, §1, 11-15-95; Ord 74-96, §1, 9-4-96)

Sec. 9-780. Suspension or revocation of license.

The Health Officer may suspend or revoke any license issued pursuant to this article for violations of ordinances or laws regulating the licensed activity and for other good cause.

(Ord 123-92, §1, 11-4-92)

Sec. 9-781. Right of entry; testing of samples.

The Health Officer may enter any establishment required to be licensed in this article at all reasonable times to inspect the premises, secure samples or specimens, examine and copy documents, obtain photographs, or take any other action he deems necessary to properly enforce the provisions of applicable laws regulating such business or activity. Samples of food, drink or water from any licensed premises may be taken from any licensed premises and examined by the Health Officer at such times as he deems necessary, for detection of unwholesomeness, adulteration, microbiological quality, or any other enforcement purposes. Adulteration and microbiological quality standards and definitions set forth in W.S.A. §97.02, or to the State Department of Agriculture, Trade and Consumer Protection, Food Division’s Polices and Procedures Manual Sections 14.1 and 14.2 are hereby adopted by reference and incorporation as part of this section.

(Ord 123-92, §1, 11-4-92, Ord 24-03, §1, 1-21-03)

Sec. 9-782. Correction of violations; citations.

Whenever the Health Officer finds that any establishment required to obtain a license in this article is not operating or equipped in any manner required by ordinances or laws regulating such establishment, the Health Officer may notify, in writing, the person operating the premises, specifying the requirements of such ordinance or law, and requiring that such business comply with the provisions of such ordinance or law, and specify the time limits within which compliance shall take place. If the time limit or any extension thereof set forth in the notification is not met, the license may be suspended or revoked by the Health Officer. The Health Officer may also request the issuance of citations for any such violations pursuant to the provisions of §1-17.

(Ord 123-92, §1, 11-4-92)

Sec. 9-783. Emergency powers of Health Officer.

Whenever the Health Officer has reasonable or probable cause to believe that any food, sanitary condition, equipment, premises or method of operation thereof creates a danger to public health, the Health Officer may issue a temporary order prohibiting the sale or movement of food for any purpose, or an order prohibiting the continued operation of the premises or any part thereof which creates the immediate danger to health. The Health Officer may suspend any license without notice whenever the licensed premises constitutes an immediate health hazard.

(Ord 123-92, §1, 11-4-92)

Sec. 9-784. Appeals.

Any person aggrieved by the denial of a license or by suspension or revocation of a license required under this article by the Health Officer or by any temporary suspension or any other order may appeal any such order to the Board of Health within thirty (30) days of suspension, revocation or issuance of the order. The Board of Health shall provide the appellant a hearing or opportunity for hearing on the matter and may either suspend or continue any such other pending determination of the appeal. The Board of Health may affirm, modify, or set aside the order of the Health Officer after a hearing on the matter. The Board of Health shall make and keep a record of all proceedings relating to any such appeal and the record and actions of the Board of Health shall be subject to review by certiorari by a court of record.

(Ord 123-92, §1, 11-4-92)

Secs. 9-785 – 9-795. Reserved.
DIVISION 2. RECREATIONAL AND EDUCATIONAL CAMPS

Sec. 9-796. Definitions.

For the purpose of this division, a recreational and educational camp shall mean a premise, including temporary and permanent structures, which is operated as overnight living quarters where both food and lodging or facilities for food and lodging are provided for children or adults, or both children and adults, for a period which includes four (4) or more consecutive nights of lodging, for a planned program of recreation or education, and which is offered free of charge or for payment of a fee by a person or by the state or a local unit of government.
(Ord 123-92, §1, 11-4-92)

Sec. 9-797. License required; fees.

No person shall operate a recreational or educational camp without obtaining a license from the Health Department. The fee for the license shall be on file with the Health Department. In addition, the applicant must pay any state administrative fees, the amount of which is also on file with the Department of Health.
(Ord 123-92, §1, 11-4-92; Ord 109-95, §1, 11-15-95)

Sec. 9-798. State sanitation regulations adopted.

All recreational and educational camps and licenses under this division shall comply with Wisconsin Administrative Code ATCP §78.01 through §78.22, which are hereby adopted by reference and incorporated as part of this division.
(Ord 123-92, §1, 11-4-92, Ord 24-03, §1, 1-21-03; Ord 88-16, §1, 11-8-16)

Secs. 9-799 – 9-810. Reserved.

DIVISION 3. CAMPGROUNDS

Sec. 9-811. Definitions.

For the purposes of this definition, a “campground” shall mean any parcel or tract of land owned by a person, the state or local government, which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by four (4) or more camping units, or by one (1) to three (3) camping units if the parcel or tract of land is represented as a campground.

Camping unit means any portable device, not more than four hundred (400) square feet in area, used as a temporary dwelling, including but not limited to a camping trailer, motor home, bus, van, pick-up truck or tent.

Special event campground means a single event such as a fair, rally or festival involving the gathering of camping units for a maximum of seven (7) consecutive nights.
(Ord 123-92, §1, 11-4-92)

Sec. 9-812. Exemptions.

The following are exempt from obtaining a license under this article:

Where independent camping unit(s) are utilized in conjunction with a business event, such as a carnival.
(Ord 123-92, §1, 11-4-92)

Sec. 9-813. License required; fees.

No person shall operate a campground without obtaining a license from the Health Department. The fee for said license shall be on file with the Health Department. In addition, the applicant must pay any state administrative fees, the amount of which is also on file with the Health Department.
(Ord 123-92, §1, 11-4-92, Ord 110-95, §1, 11-15-95)

Sec. 9-814. State sanitation regulations adopted.

All campgrounds under this division shall comply with Wisconsin Administrative Code ATCP §79.01 through ATCP §79.27, which are hereby adopted by reference and incorporated as part of this division.
(Ord 123-92, §1, 11-4-92, Ord 24-03, §1, 1-21-03; Ord 89-16, §1, 11-8-16)
(e) Any act or omission of any employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(f) No person shall escort or agree to escort a person under the age of eighteen (18) years.
(Ord 128-03, §1, 8-12-03, Ord 47-05, §1, 5-10-05)

Sec. 9-839. Registration of employees.

(a) All operators or employees working for any escort service and independent contractors shall, prior to beginning employment or contracted duties, obtain a photo identification card from the City Clerk. Prior to issuance, the person shall provide:

1. Name, address, birth date, any aliases used, telephone numbers, date of employment and name of employer;

2. Photographs and fingerprinting with the Appleton Police Department.

(b) Upon registration, the Appleton Police Department will provide to each registered employee or independent contractor an identification card, provided by the City Clerk, containing the employee's or independent contractor's photograph identifying the person as such, which shall be kept available for production upon request.

(c) All identification cards shall expire on December 31st following its issuance.

(d) The applicant shall pay a fee, the amount of which is on file in the office of the City Clerk.

(e) Any escort employed by more than one (1) escort service shall submit a separate registration for each service by which the escort is employed.
(Ord 98-97, §1, 12-5-97, Ord 128-03, §1, 8-12-03)

Sec. 9-840. Penalties.

Any person found to have violated any provision of this article shall be subject to a forfeiture of not less than two thousand dollars ($2,000) and not more than five thousand dollars ($5,000).

Sec. 9-841. Severability.

If any provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions of same.
ARTICLE XVIII. TATTOO AND BODY PIERCING ESTABLISHMENTS

Sec. 9-850. Authority and purpose

(a) This chapter is promulgated under the authority of Wis. Stats. §463.16 for the purpose of regulating tattooists, tattoo establishments, body piercers and body piercing establishments in order to protect public health and safety.

(b) State sanitation regulations adopted. All tattoo and body piercing establishments, practitioners, and licenses under this division shall be subject to and comply with the provisions of Wis. Admin. Code, Secs. SPS §221, which are hereby adopted by reference and incorporated as part of this division.

(Ord 90-16, §1, 11-8-16)

Sec. 9-851. Definitions.

Agent means a local health department serving a population greater than five thousand (5,000) which is designated by the Wisconsin Department of Safety and Professional Services under a written agreement authorized by Wis. Stat. §252.245(1), to issue licenses to and make investigations or inspections of tattooists, tattoo establishments, body piercers and body piercing establishments.

(Ord 91-16, §1, 11-8-16)

Antiseptic means a chemical that kills or inhibits the growth of organisms on skin or living tissue.

Approved means acceptable to the department based on its determination of conformance to this chapter and good public health practices.

Autoclave means an apparatus that is registered and listed with the Federal Food and Drug Administration for sterilizing articles by using superheated steam under pressure.

Body pierce, as a verb, means to perforate any human body part or tissue, except an ear, and to place a foreign object in the perforation to prevent the perforation from closing.

Body piercer means a person who performs body piercing on another person at that person’s request.

Body piercing means perforating any human body part of tissue, except an ear, and placing a foreign object in the perforation to prevent the perforation from closing.

Body piercing establishment means the permanent premises where a body piercer performs body piercing and is in business for more than seven (7) consecutive days in a license year.

Branding means the burning of skin with a hot tool, cauterizing laser or dry ice so that a mark is imbedded in the deep tissue.

Cleaning means the removal of foreign material from objects, normally accomplished with detergent, water and mechanical action.

Department means the Wisconsin Department of Health and Family Services.

Disinfectant means a chemical that is capable of destroying disease-causing organisms on inanimate objects, with the exception of bacterial spores.

Health Officer means and includes the Health Officer or authorized agent of the Health Officer.

Hot water means water at a temperature of 110°F, or higher.

Implantation means the insertion of an object under the skin, so that it remains under the skin, in whole or in part, after the procedure. This definition shall not apply to the post used in body piercing to keep the perforation from closing.

Local health department means an agency of local government that takes any of the forms specified in Wis. Stats. §250.01(4), specifically the City of Appleton Health Department.

Operator means the owner or person responsible to the owner for the operation of a tattoo or body-piercing establishment.

Patron means a person receiving a tattoo or body piercing.

Practitioner means a tattooist or body piercer.

Premises means a building, structure, area or location where tattooing or body piercing is performed.

Scarification means the cutting of the skin so that when it heals, scar tissue remains.

Sharps waste means waste that consists of medical equipment or clinical laboratory articles that may cause punctures or cuts, such as hypodermic needles, syringes with attached needles and lancets, whether contaminated, unused or disinfected.

Single use means a product or item that is disposed of after one use, such as a razor, a needle, a cotton swab, a tissue or paper product, a paper of soft plastic cup, or gauze...
or other sanitary covering.

**Sterilization** means the killing of all organisms and spores through use of an autoclave operated at a minimum of 250°F (121°C) at a pressure of at least fifteen (15) pounds per square inch for not less than thirty (30) minutes or through use of a an autoclave approved by the department that is operated at different temperature and pressure levels but is equally effective in killing all organisms and spores.

**Tattoo** as a verb, means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce an indelible mark or figure through the skin.

**Tattoo establishment** means the permanent premises where a tattooist applies a tattoo to another person and is in business for more than seven (7) consecutive days in a license year.

**Tattooist** means a person who tattoos another person at that person’s request.

**Tempered water** means water ranging in temperature from 85°F to less than 110°F.

**Temporary establishment** means a single building, structure, area or location where a tattooist or body piercer performs tattooing or body piercing for a maximum of seven (7) days per license year.

**Sec. 9-852. Scope.**

(a) **Applicability.** This chapter applies to all tattooists, body piercers, tattoo establishments and body piercing establishments.

(b) **Approved comparable compliance.** When it appears to the Department that strict adherence to a provision of this chapter is impractical for a particular tattooist, tattoo establishment, body piercer or body piercing establishment, the Department may approve a modification in that requirement for that person or establishment if the Department is provided with satisfactory proof that the grant of a variance will not jeopardize the public’s health, safety or welfare.

**Sec. 9-853. Right of entry.**

The Health Officer may enter any establishment required to be licensed in this article at all reasonable times to inspect the premises, view the practice (with patron’s permission), secure samples or specimens, examine and copy documents, obtain photographs or take any other action deemed necessary to properly enforce the provisions of applicable laws regulating such business or activity.

**Sec. 9-854. Responsibility of the operator.**

(a) Every act or omission by an employee or practitioner constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator’s negligent failure to supervise the employee’s conduct, the operator shall be liable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(b) Any act or omission of any employee constituting a violation of the provisions of this ordinance shall be deemed an act or omission of the operator for purposes of determining whether the license shall be suspended, revoked, or not renewed.

**Sec. 9-855. Correction of violations, citations.**

Whenever the Health Officer finds that any establishment, tattooist or body piercer required to obtain a license in this article is not operating or equipped in any manner required by ordinances or laws regulating such establishment or activity, the Health Officer may notify, in writing, the person operating the premises, or performing the activity, specifying the requirements of such ordinance or law, and requiring that such business or practitioner comply with the provisions of such ordinance or law, and specify the time limits within which compliance shall take place. If the time limit or any extension thereof set forth in the notification is not met, the license may be suspended or revoked by the Health Officer. The Health Officer may also issue citations for any such violations pursuant to the provisions of Appleton Municipal Code Sec. 1-17(c).

**Secs. 9-856 — 9-859. Reserved.**
DIVISION 2. LICENSES

Sec. 9-860. Generally.

(a) Any person, partnership, or corporation desiring to secure a tattoo establishment, body-piercing establishment, combination tattoo/body piercing establishment, tattooist and/or body piercer license shall make application to the local health department.

(b) The application shall be on a form provided by the local health department and shall include, at a minimum, the following information:

(1) The name(s) (including aliases), addresses, dates of birth and driver’s license number, of the applicant, any partner or limited partner in a partnership application, any shareholder holding more than ten percent (10%) of the stock of a corporate applicant and each corporate officer and director.

(2) Written proof that each person required to be identified under this section is at least eighteen (18) years of age.

(3) The address of the establishment to be licensed.

(4) Whether the applicant or any person required to be identified is currently operating or has previously operated, in this or any other municipality or state, under a tattoo or body piercing establishment license, whether the applicant or person required to be named in this section has ever had such a license or permit suspended or revoked, or has been convicted of a violation of state or local laws governing the practice of tattooing or body piercing, the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension, revocation or conviction.

(c) Failure or refusal of the applicant to completely and truthfully provide responses to the application questions, to give any information relevant to the investigation of the application, or refusal to appear at any reasonable time and place for examination regarding said application shall constitute an admission by the applicant that the applicant is ineligible for such license and shall be grounds for denial thereof.

(d) Application for a license required in this article shall be made to the local health department upon a form furnished by the local health department and shall contain such information that the local health department may prescribe and require and shall be accompanied by payment of the application fee.

(e) Within thirty (30) days after receiving a completed application for a license, the local health department or its agent shall either approve the application and issue a license or deny the application. If an application for a license is denied, the local health department shall give the applicant reasons, in writing, for the denial and provide information about how the applicant may appeal that decision.

(f) A license will not be granted under this article to an operator of a new establishment or to a new operator of an existing establishment without a preinspection. A preinspection fee will be assessed for each establishment according to the schedule on file with the local health department.

(g) The operator of a tattoo or body-piercing establishment shall promptly notify the local health department of his or her intention to cease operations and shall supply the local health department with the name and mailing address of any new operator. A license is not transferable. A new operator will submit an application for a new license. No license shall be issued to or used by any person acting as agent for or in the employ of another.

Sec. 9-861. Application for establishment license.

(a) Requirements.

(1) No person may operate a tattoo establishment or body piercing establishment or a combined tattoo and body piercing establishment unless he or she has obtained a license for the establishment from the local health department by application made upon a form furnished by the local health department. All applications submitted to the local health department shall be accompanied by a fee under (c).

(2) No person shall engage in the practice of tattooing and/or body piercing except in a permanent licensed tattoo and/or body-piercing establishment.

(3) Reciprocity within the State of Wisconsin will be recognized upon receipt of proof that the local requirements as set forth in this chapter are met by the applicant.

(b) Prohibitions.

(1) No person shall intentionally engage in the practice of implanting, branding or scarification in the City of Appleton, except as set forth herein.
(2) The prohibitions set forth in (b) shall not apply to licensed physicians, or procedures or orders delegated by a licensed physician.

(c) **Expiration and renewal of license.**

(1) Except where otherwise provided, every Health Department license shall terminate or expire on June 30th of each year and may be renewed annually thereafter.

(2) The application for renewal shall be filed with the Health Department on or before June 30th, together with payment of the required fee. The fee for said license shall be on file with the local health department.

(3) In addition, the applicant must pay any state administrative fees, the amount of which is on file with the local health department. If the annual renewal fee has not been paid on or before June 30th, an additional late payment fee shall be required; the amount of which is also on file with the local health department. Establishments operating on July 15th without a proper license shall be ordered closed by the Health Officer. Practitioners operating on July 15th without a proper license shall be ordered to cease operations by the Health Officer. Failure to comply will result in the issuance of a uniform citation with current bond as set forth in §1-18, Appleton Municipal Code. Each violation and each day a violation continues or occurs shall constitute a separate offense.

**Sec. 9-862. Application for practitioner license.**

(a) **Requirements.**

(1) No person may tattoo or body pierce another person, use or assume the title of tattooist or body piercer or designate or represent himself or herself as a body piercer unless the person has obtained a license from the Department of Safety and Professional Services and also completing an application made upon a form furnished by the local health department. An application submitted to the local health department shall conform with the requirements set forth in Sec. 9-880.

(2) No person shall engage in the practice of tattooing and/or body piercing except in a permanent licensed tattoo and/or body-piercing establishment.

(b) Reciprocity within the State of Wisconsin will be recognized upon receipt of proof that the local requirements as set forth in this article are met by the applicant.

(Ord 92-16, §1, 11-8-16)

**Sec. 9-863. Suspension or revocation of license.**

The Health Officer may suspend or revoke any license issued pursuant to this article for violations of ordinances or laws regulating activity and for other good cause.

**Sec. 9-864. Emergency powers of health officer.**

Whenever the Health Officer has reasonable or probable cause to believe that the premises or method of operation thereof creates a danger to public health, the Health Officer may issue a temporary order prohibiting continued operation of the premises or any part thereof which creates the immediate danger to health. The Health Officer may suspend any license without notice whenever the licensed premises, tattooist, and/or body piercer constitute an immediate health hazard.

**Sec. 9-865. Appeals.**

Any person aggrieved by the denial of a license or by suspension or revocation of a license required under this article by the Health Officer or by any temporary suspension or any other order may appeal any such order to the Board of Health within thirty (30) days of denial, suspension or revocation of a license or issuance of the order. The Board of Health shall provide the appellant a hearing or opportunity for hearing on the matter and may either suspend or continue any such order pending determination of appeal. The Board may affirm, modify or set aside the order of the Health Officer after a hearing on the matter. The Board of Health shall make and keep a record of all proceedings related to any such appeal and the record and actions of the Board of Health shall be subject to review by certiorari by a court of record.

**Secs. 9-866 – 9-869. Reserved.**
DIVISION 3. LIMITATIONS

Sec. 9-870. Temporary establishments.

The practice of tattooing and body piercing is limited to permanent tattooing and/or body piercing establishments.

Sec. 9-871. Patrons consent.

A tattooist or body piercer may not tattoo or body pierce a patron without first obtaining the signed, informed consent of the person on a form approved by the Department.

Sec. 9-872. Minors.

(a) No person under sixteen (16) years of age may be body pierced.

(b) No person age sixteen (16) or seventeen (17) may be body pierced unless an informed consent form has been signed by his or her parent or legal guardian in the presence of the operator.

(c) No person under eighteen (18) years of age may be tattooed except by a physician in the course of the physician’s professional practice, as permitted under Sec. 948.70(3), Wis. Stats.

(d) A body piercing establishment shall post a notice in a conspicuous place in the establishment stating that it is illegal to body pierce a person under the age of eighteen (18) without the signed, informed consent of that person’s parent or legal guardian.

(e) A tattoo establishment shall post a sign in a conspicuous place in the establishment stating that no person under the age of eighteen (18) may be tattooed.

Sec. 9-873. Barriers to procedure.

A tattooist or body piercer may not tattoo or body pierce any of the following:

(1) A person who appears to be under the influence of alcohol or a mind-altering drug.

(2) A person who has evident skin lesions or skin infections in the area of the procedure.

Sec. 9-874. Records.

(a) Every tattooist and body piercer shall keep a record of each patron.

(b) A patron’s record shall include the patron’s name, address, age and consent form, the name of the practitioner doing the procedure and any adverse effects arising from the procedure.

(c) A patron’s record shall be retained for a minimum of two (2) years following the completion of the procedure.

Secs. 9-875 — 9-879. Reserved.
DIVISION 4. HEALTH AND SANITARY REQUIREMENTS

Sec. 9-880. Requirements.

Prior to approval, all practitioners shall provide proof that they are negative for Hepatitis B and C, as demonstrated by documentation of negative results for HbsAG and anti-HCV tests, as confirmed by a practicing physician. The expenses of the testing and examination shall be paid by the practitioner.

(Ord 63-09, §1, 5-26-09; Ord 93-16, §1, 11-8-16)

Sec. 9-881. Restrictions.

No tattooist or body piercer with an exposed rash, skin lesion or boil may engage in the practice of tattooing or body piercing.

Sec. 9-882. Hygienic procedure requirements.

(a) Tattooists and body piercers shall maintain a high degree of personal cleanliness and shall conform to good hygiene practices during procedures.

(b) Tattooists and body piercers shall thoroughly wash their hands and the exposed portions of their arms with dispensed soap and tempered water before and after each tattoo or body piercing procedure and more often as necessary to keep them clean.

(c) Tattooists and body piercers shall dry their hands and arms with individual single-service towels.

(d) If interrupted during a procedure, a tattooist or body piercer shall rewash his or her hands and put on new gloves if the interruption required the use of hands.

(e) Tattooists shall use single-use plastic covers to cover spray bottles or other reusable accessories to minimize the possibility of transmitting body fluids or disease during application of tattoos to successive patrons.

(f) Disposable-type razors shall be single-use only and disposed of in accordance with NR 526. Electric razors are prohibited.

(g) Body piercing and tattoo needles shall be disposable, sterile and for single patron use only. Body piercing jewelry shall be cleaned, individually packaged and sterilized prior to use.

Sec. 9-883. Clothing.

(a) All tattooists and body piercers shall wear clean, washable outer clothing.

(b) When preparing the skin and during a procedure, a tattooist or body piercer shall wear non-absorbent gloves which shall be disposed of after completing the procedure.

(Ord 64-09, §1, 5-26-09)

Sec. 9-884. Physical examinations of practitioners.

(a) The Health Officer shall have the power to require any practitioner to submit to a practicing physician for a physical examination whenever the practitioner is suspected of having any infectious or contagious disease that may be transmitted by the practice of tattooing or body piercing. The expenses of the physical examination shall be paid by the practitioner.

(b) Any practitioner notified to appear for a physical examination as may be required by the preceding subsection shall immediately cease working as a practitioner of tattoo or body piercing and shall not be allowed to work thereafter as a practitioner of tattoo or body piercing until he or she shall have first received a certificate in writing from a practicing physician that he or she is not infected with any infectious or contagious condition or disease that may be transmitted by the practice of tattoo or body piercing.

Sec. 9-885. Equipment.

(a) All surfaces, counters and general use equipment in the tattoo or body piercing area shall be cleaned and disinfected before a patron is seated.

(b) All inks and pigments shall be obtained from sources generally recognized as safe. Information indicating the sources of all inks and pigments shall be available to the local health department or agent upon request. Sterile single-use or sterile individual containers of pigment or ink shall be used for each patron. No pigment or ink in which needles were dipped may be used on another person. Pigment and ink cups shall be for single-patron use. All bulk materials used for the procedure shall be dispensed with single-use utensils. The remainder of dispensed portions shall be disposed of after application.

(c) Needles, bars and tubes shall be construed in a manner that permits easy cleaning and sterilizing.

(d) No tattooist shall use and no tattoo establishment shall permit the use of solder which contains lead to be used to fasten needles.

(e) Acetate tattoo stencils shall be single-use.

(f) No body piercer may use a piercing gun or similar device for body piercing a patron unless such piercing gun is disposable, sterile, and for single patron use only or is sterilized between each use as set forth in Wis. Admin. Code Sec. SPS 221.03(20).
DIVISION 5. PHYSICAL FACILITIES AND ENVIRONMENT

Sec. 9-890. Condition of premises.

(a) The premises and all facilities used in connection with the premises shall be maintained in a clean, sanitary and vermin-free condition.

(1) Floors in the area where tattoo or body piercing procedures are performed shall be constructed of smooth, durable and non-porous material and shall be maintained in a clean condition and in good repair. Carpeting is prohibited.

(2) Walls and ceilings in the area where tattoo and body piercing procedures are performed shall be light colored, smooth and easily cleanable.

Sec. 9-891. Physical facilities.

(a) Lighting. Tattoo and body piercing application areas shall maintain a minimum illumination of fifty (50) foot candles.

(b) Living areas. Tattoo and body piercing areas shall be completely separated from any living quarters by floor-to-ceiling partitioning and solid doors which are kept closed during business hours. A direct outside entrance to the tattoo or body-piercing establishment shall be provided.

(c) Toilet rooms.

(1) All tattoo and body piercing establishments shall have a public toilet and hand washing facility which is separated from any living area.

(2) Toilet room fixtures shall be kept clean and in good repair. Any easily cleanable covered waste receptacle shall be provided in the toilet room.

(d) Hand washing facilities.

(1) At least one hand washing facility shall be conveniently located in the tattoo or body piercing area, in addition to what is provided in the toilet room.

(2) Anti-bacterial soap in a dispenser and single-service towels for drying hands shall be provided at all hand washing facilities.

(3) Hot and cold potable water under pressure shall be available at all hand washing facilities except that tempered water rather than hot water may be provided.
Sec. 10-1. Penalty for violation of chapter; responsibility for costs of damage to public property; party to a violation and attempt.

(a) **Penalties.** Any person who shall violate any provision of this chapter shall upon conviction thereof be punished as provided in §1-16. If a conviction is based upon subsection (c) or (d), the person is subject to the same penalties provided in §1-16.

(b) **Damages.** In addition to any penalty imposed, in §1-16, any person who shall cause physical damage to or destroy any public property shall be liable for costs of replacing or repairing such damages or destroyed property. The parents of any unemancipated minor child who causes such damage may be held liable for the cost of replacing or repairing such damages or destroyed property in accordance with W.S.A. §895.035.

(c) **Parties to a violation.** Whoever is concerned in the commission of a violation of this chapter is a principal and may be charged with and convicted of the commission of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other offense based on the same act. A person is concerned in the commission of the violation if the person directly commits the violation, intentionally aids or abets the commission of or is a party to a conspiracy with another to commit it, or advises, hires, counsels or otherwise procures another to commit it.

(d) **Attempt.** Whoever attempts to commit a violation of this chapter may be charged with and convicted of the violation. An attempt to commit a violation of this chapter requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute such violation and that the actor does act toward the commission of the violation which demonstrates unequivocally, under all the circumstances, that the actor formed that intent and would commit the violation except for the intervention of another person or some extraneous factor.

(Code 1965, §8.15, Ord 29-03, §1, 2-25-03; Ord 105-06, §1, 9-12-06)

Sec. 10-2. Discharge of dangerous weapons.

(a) It is unlawful for any person, except a sheriff, constable, police officer or their deputies, to fire or discharge any firearm, rifle, spring or air gun of any description or tipped arrow within the City.

(b) **Exceptions.** Subsection (a) shall not apply to any of the following:

1. The maintenance and use of duly supervised rifle or pistol ranges or shooting galleries or archery ranges approved by the Chief of Police.

(2) Hunting with a bow and arrow or crossbow.

a. Hunting is not permitted within the city of Appleton except with a bow and arrow or crossbow. Hunting does not include target practice.

b. It shall be unlawful for a person to hunt with a bow and arrow or crossbow within a distance of one hundred (100) yards from any permanent structure used for human occupancy on another person’s land. This restriction shall not apply if the person who owns the land on which the building is located allows the hunter to hunt with a bow and arrow or crossbow within the specified distance of the building.

c. When hunting with a bow and arrow or crossbow, a person shall shoot or discharge the arrow or bolt from the respective weapon toward the ground.

d. When hunting with a bow and arrow or crossbow, no person shall shoot or discharge the arrow or bolt from the respective weapon in a manner that may endanger the life, limb or property of another or will traverse any part of any street, alley, trail, public grounds or parks.

e. It shall be unlawful for a person to hunt on any portion of land owned or leased by the City of Appleton.

f. When hunting with a bow and arrow or crossbow, a person shall follow all Wisconsin State Statute and DNR regulations pertaining to bow hunting.

(c) **Penalties.** Any person that violates any of the provisions of this section may be subject to a forfeiture of no more than five hundred dollars ($500) for the first offense and no more than one thousand dollars ($1,000) for the second and subsequent offenses. Each day that a violation occurs shall be considered a separate offense.

(Code 1965, §8.01(1); Ord 118-06, §1, 10-10-06; Ord 6-14, §1, 3-11-14)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18. State law reference(s) – Weapons, W.S.A. §941.20.
Sec. 10-3. Adoption of state law regarding carrying of weapons.

W.S.A. §939.22(10) and §941.23 regarding weapons, exclusive of the penalty, is hereby adopted and made an offense punishable as a violation of this Code.

(Code 1965, §8.01(2))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-4. Sale of dangerous weapons to minors.

No person shall buy for, sell or give away to any minor any dangerous weapon, without first having obtained the written consent of the parent or guardian of such minor. For purposes of this section, the term “dangerous weapon” shall mean and include the following instruments: blackjack, billy, sandclub, pistol, revolver, any instrument which impels a missile by compressed air, spring or other means, any weapon in which loaded or blank cartridges are used, cross knuckles of any metal, nunchaku or nunchuck sticks, throwing stars or shurikens.

(Code 1965, §8.01(4); Ord 38-16, §1, 3-22-16)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-5. Sale and discharge of fireworks.

(a) Adoption of state law. W.S.A. §167.10 regulating the sale and use of fireworks, exclusive of any penalty imposed thereby, is adopted by reference and made a part of this chapter as though set forth in full.

(b) Permits. Fireworks other than those prohibited by the laws of the state may be used and displayed in open fields, parks, lakes and ponds by public authorities, fair associations, amusement parks, park boards, civic organizations and other groups of individuals when a permit for such display has been granted by the Mayor. All applications shall be referred to the Fire Chief for investigation and no permit shall be granted unless the Mayor, from the report of the Fire Chief, determines that all reasonable precautions will be exercised with regard to the protection of the lives and property of all persons, and that the display shall be handled by a competent operator and conducted in a suitable, safe place and manner.

(Code 1965, §8.01(5))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-6. Operation of boats.

(a) Adoption of state law. Except as otherwise provided in this section, the provisions of W.S.A. §30.50 to §30.80 shall apply to the operation of boats on the navigable waters of the City and such statutes are adopted by reference and made a part of this section. A violation of such statutes shall be a violation of this Code. The navigable waters of the City are hereby determined to be those waters of the Fox River lying within the City limits.

(b) Speed of watercraft. No person driving, operating or using any power-propelled vessel, craft or float shall operate said vessel, craft or float at a speed in excess of slow no wake speed, on that portion of the Fox River from the Appleton Yacht Club south to the Appleton City limits.

(c) Reckless operation. No person shall drive, operate or use any vessel, craft or float on the navigable waters of the City in a careless, negligent or reckless manner so as to endanger the life, property or persons of others.

(d) Mufflers.

(1) No person shall drive, operate or use any vessel, craft or float propelled by an internal combustion engine using gas, gasoline, naphtha or other like fuel unless it is equipped with an underwater exhaust or other muffling device so constructed and used as to adequately muffle the noise of the explosion. Such internal combustion engine or motor shall be installed on such vessel in such a manner that any underwater exhaust shall exhaust under water at all times; provided, however, that the regulations of this subsection shall not apply when the Mayor issues a permit for a regatta, motorboat race, or exhibition speed boat trial.

(2) No person shall drive, operate or use any vessel, craft or float propelled by an internal combustion engine equipped with a muffling device which has been altered in any manner from the manufacturer's specifications so as to increase its emission of noise.

(3) Every boat propelled by gasoline or other motor power operated on the Fox River in the City shall be equipped with a muffler at all times in good working order sufficient to prevent excessive or unusual noise. It shall be unlawful to operate any such boat so propelled by gasoline or other motive power with the muffler off or cutout open on the Fox River in the City.

(e) Lights. No person shall drive, operate or use any vessel or craft from sunset to sunrise unless such vehicle or craft carries the lights prescribed by W.S.A. §30.61.

(f) Life preservers. No person shall drive, operate or use any vessel, craft or float unless it carries at least one (1) United States Coast Guard approved life preserver or life
belt or ring buoy or cushion or other similar United States Coast Guard approved device for each person on board, so placed as to be readily accessible.

(g) Overloading vessels. No person shall drive, operate or use any vessel, craft or float which is loaded with passengers or cargo beyond its safe carrying capacity.

(h) Permits. Permits for motorboat regattas, motorboat races, exhibition speedboat trials and water ski or aquaplane exhibitions shall be issued by the City through the Mayor upon application made in writing; provided that in the Mayor's opinion such particular use of the river can be carried out in an orderly fashion, safely and equally convenient, as near as may be, to all vessels and watercraft whatsoever. If the Mayor denies a request for a permit then such request shall, upon written demand of the applicant to the Mayor, be referred to the Common Council for final determination.

(Code 1965, §8.01(9); Ord 74-94, §1, 7-20-94)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-7. Operation of aircraft.

No person operating an aircraft over the City shall:

(1) Engage in trick or acrobatic flying.

(2) Except for the purpose of taking off or landing, operate at a height of less than three thousand (3,000) feet.

(3) Intentionally drop any object from the aircraft.

(Code 1965, §8.01(10))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-8. Residential picketing; unlawful assembly.

(a) Declaration. It is declared that the protection and preservation of the home is the keystone of democratic government; that the public health and welfare and the good order of the community require that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility and privacy, and when absent from their homes and dwellings, carry with them the sense of security inherent in the assurance that they may return to the enjoyment of their homes and dwellings; that the practice of picketing before or about residences and dwellings causes emotional disturbance and distress to the occupants, obstructs and interferes with the free use of public sidewalks and public ways of travel; that such practice has as its object the harassing of such occupants; that without resort to such practice full opportunity exists and under the terms and provisions of this section, will continue to exist for the exercise of freedom of speech and other Constitutional rights; and that the provisions enacted in this section are necessary for the public interest to avoid the detrimental results set forth in this section and are enacted by the Common Council pursuant to the provisions of W.S.A. §62.11(5).

(b) Picketing residence unlawful. It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual.

(c) Unlawful assembly. W.S.A. §947.06 is adopted and made a part of this chapter by reference as though fully set forth in this section.

(Code 1965, §8.13)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-9. Adoption of state law regarding crimes against public peace, order and other interest.

W.S.A. §947.01 et seq., regarding crimes against public peace, order and other interests, exclusive of the penalty, are hereby adopted and made an offense punishable as a violation of this Code.

(Code 1965, §8.02(1), Ord 29-03, §1, 2-25-03)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-10. Adoption of state law regarding resisting or obstructing officer.

W.S.A. §946.41 regarding resisting or obstructing officer, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §8.02(4)(a)–(c), Ord 29-03, §1, 2-25-03)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-11. Misuse of 911.

(a) No person shall use the 911 Emergency Telephone System for regular business or non-emergency calls.

(b) No person shall dial 911 Emergency Telephone number to report an emergency, knowing that the fact or situation reported does not exist.

(Ord 26-05, §1, 4-12-05; Ord 92-07, §1, 5-22-07)

Editor’s Note: This section, Sec. 10-11, Police dogs, was repealed due to the adoption of the new Animal Ordinance.

Editor’s Note: This new section, Misuse of 911, was created and adopted by the Common Council in May 2007.
Sec. 10-12. Adoption of state law regarding impersonation of peace officer.

W.S.A. §946.70 regarding impersonating a peace officer, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.
(Code 1965, §8.02(5))
Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-13. Adoption of state law regarding battery.

W.S.A. §940.19(1) regarding battery, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.
(Code 1965, § 8.02(6))
Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-14. Possession or consumption of alcoholic beverages on highway, public property lot, or school grounds.

No person shall drink from, open a container of, or have in his possession an open container of fermented malt beverage or intoxicating liquor on a public highway including the sidewalks adjacent thereto, in or on a publicly owned or privately owned parking lot to which the public is invited, or on any school grounds within the City, except when any of the following apply:

(a) The area has been temporarily licensed for consumption of intoxicating liquor or fermented malt beverages.

(b) A person licensed to serve fermented malt beverages or intoxicating liquor who, while working as an employee of a licensed establishment, is carrying an open container of a fermented malt beverage or intoxicating liquor between a licensed establishment and a sidewalk café for the sole purpose of serving patrons within the sidewalk café.
(Code 1965, §8.02(10); Ord 112-91, §1, 11-6-91; Ord 75-05, §1, 6-21-05)
Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18; alcoholic beverages, §9-51 et seq.; streets, sidewalks and other public places, ch. 16.

Sec. 10-15. Public grounds to be vacated during certain hours.

No person shall be in or lounge about any park, parkway, school ground or other public recreation ground or place between 11:00 p.m. and 6:00 a.m., and such areas shall be closed to the public during those hours.
(Code 1965, §8.03(2))

Sec. 10-16. Reserved.

Sec. 10-17. Adoption of state law regarding receiving stolen property.

W.S.A. §943.34 regarding receiving stolen property, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this code.
(Ord 98-10, §1, 7-13-10)
Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Editor’s Note: This section, Sec. 10-16, smoking in City-owned buildings, was repealed by the Smoke Free Indoor Air Ordinance, Ord 35-05, §1, effective 7-1-05.

Sec. 10-18. Adoption of state law regarding gambling.

W.S.A. §945.04 on offenses regarding gambling, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.
(Code 1965, §8.03(1))
Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-19. Adoption of state law regarding indecent conduct.

W.S.A. §944.20 regarding indecent conduct, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.
(Code 1965, §8.03(3), Ord 29-03, §1, 2-25-03)
Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.
Sec. 10-20. Adoption of state law regarding prostitution.

W.S.A. §944.30 prohibiting prostitution, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §8.03(4))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-21. Offering or engaging in sexual contact for compensation.

(a) It shall be unlawful and prohibited for any person to pay a fee or receive a fee, directly or indirectly, or to offer or ask for anything of value, for touching or offering to touch the sexual parts of another either directly or by employing a mechanical or electrically operated device for the purpose of arousing or gratifying the sexual desire of either party.

(b) It shall be unlawful for any person owning, managing or otherwise controlling any place of business to cause or to permit any agent, employee or other person under his control or supervision to participate in conduct prohibited in subsection (a) of this section.

(Code 1965, §8.09)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-22. Adoption of state law regarding obscene materials.

W.S.A. §948.11 regarding obscene materials, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §8.03(5))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-23. Adoption of state law regarding damage to property.

W.S.A. §943.01(1) regarding damage to property, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §8.04(1))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-24. Dumping, leveling of used building and fill material.

No person shall dump or leave used building or fill material on any lot within the City which cannot be leveled, and all such material which can be leveled shall be leveled. The owner of any such lot shall be responsible for removing or leveling such material.

(Code 1965, §8.04(3))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.


(a) No person shall operate a snowmobile on any school grounds or on any public property of any kind or nature belonging to the City or its departments, or on the property of any private person without the consent of the owner.

(b) No person shall operate motor-driven cycles or motor-driven scooters such as minibikes, mopeds, go-carts, motor-driven scooters, motor-driven in-line skates or similar type vehicles on school grounds or on any public property belonging to the City or on the property of any private person without the consent of the owner.

(Code 1965, §8.04(4); Ord 91-01, §1, 5-7-01)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18; streets, sidewalks and other public places, ch. 16; traffic and vehicles, ch. 19.

Sec. 10-26. Adoption of state law regarding trespass to land.

W.S.A. §943.13 regarding trespass to land, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §8.04(5))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-27. Adoption of state law regarding trespass to dwellings.

(a) W.S.A. §943.14 regarding trespass to dwellings, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(b) W.S.A. §943.15 regarding entry unto a construction site or into a lot, building, dwelling or room, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §8.04(6); Ord 40-92, §1, 4-15-92)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 10-28. Adoption of state law regarding theft.

(a) W.S.A. §943.20 regarding theft, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(b) W.S.A. §943.50 regarding theft, exclusive of the penalty, is hereby adopted by reference and made an
offense punishable as a violation of this Code.
(Code 1965, §8.06(1), (2); Ord 40-92, §2, 4-15-92)

**Cross reference(s)** – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Sec. 10-29. Defraud of merchant in return of merchandise.**

Whoever returns merchandise to a merchant for the purpose of claiming a cash refund or credit by intentionally deceiving the merchant with a representation that such merchandise was purchased by such person from such merchant at the price claimed where such merchandise was, in fact, not purchased by such person or was not purchased from such merchant or was purchased at a price lower than the price claimed shall be guilty of a violation of this chapter. The intentional giving of a false name or address to a merchant during the return of merchandise is evidence of intent to defraud a merchant.
(Code 1965, §8.06(3))

**Cross reference(s)** – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Sec. 10-30. Adoption of state law regarding theft of services.**

(a) W.S.A. §943.45 through §943.47 regarding theft of certain services, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(b) W.S.A. §943.21 regarding fraud on hotel or restaurant keeper, taxicab operator or gas station, exclusive of any penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §§8.07; Ord 137-91, §1, 12-4-91; Ord 88-96, §1, 9-18-96, Ord 47-04, §1, 4-13-04)

**Cross reference(s)** – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Sec. 10-31. Adoption of state law regarding theft of library material.**

W.S.A. §943.61 regarding theft of library material, exclusive of any penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §8.10)

**Cross reference(s)** – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Sec. 10-32. Adoption of state law regarding possession of marijuana.**

The provisions of W.S.A. Sec. 66.0107(1)(bm) as amended from time to time, regarding the possession of twenty-five (25) grams or less of marijuana as defined in W.S.A. Sec. 961.01(14), and subject to the exceptions in W.S.A. Sec. 961.41(3g)(intro), shall be punishable as a violation of this Code, except that any person charged with possession of more than twenty-five (25) grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of marijuana in the State of Wisconsin, shall not be charged under the paragraph.

(Code 1965, §8.08)

**Cross reference(s)** – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Sec. 10-33. Possession, sale of isobutyl nitrate.**

No person shall manufacture, possess, use, dispense, sell or hold for sale any isobutyl nitrate, or any compound or mixture or preparation containing significant amounts of isobutyl nitrate.

(Code 1965, §8.11)

**Sec. 10-34. Adoption of state law regarding controlled substances.**

(a) W.S.A. Sec. 961.573, as amended from time to time, regarding possession of drug paraphernalia, exclusive of penalties, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(b) W.S.A. Sec. 961.574, as amended from time to time regarding manufacture or delivery of drug paraphernalia, exclusive of any penalties, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(c) W.S.A. Sec. 961.575, as amended from time to time regarding delivery of drug paraphernalia to a minor, exclusive of any penalties, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Code 1965, §22.11; Ord 162-10, §1, 11-23-10)

**Cross reference(s)** – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

**Sec. 10-35. Harboring minors.**

No person shall, unless duly licensed under the Wisconsin Statutes or without having first obtained the permission of the parents or legal guardian of any minor or without first notifying the City Police Department of the existence of a minor described in (1) below on premises owned or operated by or under the control of such person:

(1) By any means conceal or shelter or assist in the concealing or sheltering of any minor under the age of eighteen (18) years while the minor is under the legal custody of a parent or legal guardian and while the minor is on report with any law enforcement as a “missing person”, a “runaway” or a “wanted” person; or

(2) Supply false information to or obstruct any
police officer in the performance of his duty to locate or take into custody any minor described in this Section.

(Ord 30-90, §1, 4-4-90)

Sec. 10-36. Loitering by minors.

(a) Definitions. As used in this Section:

Loitering means remaining idle in essentially one (1) location and shall include the concept of spending time idly; to be dilatory; to linger aimlessly; to stay; to saunter; to delay; to stand around and shall also include the colloquial expression, “hanging around”.

Minor means any person less than eighteen (18) years of age.

(b) Loitering of minors (curfew hours). It shall be unlawful for any minor to loiter in or upon the public streets, highways, roads, alleys, parks, public buildings, premises licensed for sale of alcoholic beverages under §9-51 et seq., of this Code, vacant lots, vacant buildings, playgrounds or school grounds in the City, either on foot or in or upon any conveyance being driven or parked thereon, between the hours of 10:00 p.m. and 5:00 a.m. of the following day, Sunday through Thursday, and between 11:00 p.m. and 5:00 a.m. Friday and Saturday, unless accompanied by his or her parent, guardian or adult person having legal custody or control.

(c) Responsibility of parents. It shall be unlawful for the parent, guardian or other adult person having legal custody or control of any minor to suffer or permit or by inefficient control to allow such minor to violate this section unless the minor is accompanied by his or her parent, guardian or other adult person having legal custody or control.

(d) Penalty, minor. Any minor who violates this section shall be penalized pursuant to section 1-18(b) of this Code.

(Ord 35-92, §1, 3-18-92)

Sec. 10-37. Possession or purchase of cigarettes and tobacco products by persons under the age of eighteen.

(a) The provisions W.S.A. §254.92 as amended regarding the possession or purchase of cigarettes and tobacco products by persons under the age of eighteen (18), exclusive of any penalty contained therein, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Ord 41-92, §1, 4-15-92; Ord 87-93, §1, 6-2-93; Ord 60-99, §1, 8-22-99; Ord 117-00, §1, 12-23-00)

Sec. 10-38. Defacement or damage of property by graffiti.

(a) Graffiti is hereby specifically declared to be a public nuisance, as defined in §12-27, affecting peace and safety.

(b) No person shall write, spray, scratch or otherwise affix graffiti upon any property whether private or public without the consent of the owner or owners of said property. Any person who shall affix graffiti to any property without the consent of the owner shall be liable for the costs of removing or covering such graffiti in addition to any fines imposed for violating §12-31. The parents of any unemancipated minor child who affixes graffiti may be held liable for the cost of removing or covering said graffiti in accordance with W.S.A. §895.035.

(c) Every owner or occupant of a structure or property defaced by graffiti shall notify the Police Department of the graffiti before removing or covering such graffiti.

(d) Every owner of a structure or property defaced by graffiti shall comply with the terms of a written notice served upon them by the Police Department to remove or cover such graffiti within seventy-two (72) hours of such notice.

(e) In the event any owner fails to comply with the above-mentioned notice, the Police Department shall have the graffiti covered or removed and all costs, fees and expenses will be assessed to such owners’ real estate taxes.

(Ord 104-92, §1, 9-16-92; Ord 124-96, §1, 12-18-96)

Sec. 10-39. Chemical propellants.

The provisions of Wisconsin Statutes §941.26 regarding chemical propellants, exclusive of any penalty, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(Ord 14-93, §1, 1-20-93; Ord 138-94, §1, 11-16-94)

Sec. 10-40. Loitering.

(a) Definitions. As used in this section:

Loitering means remaining idle in essentially one (1) location and shall include the concept of spending time idly; to be dilatory; to linger aimlessly; to stay; to saunter; to delay; to stand around, and shall also include the colloquial expression, “hanging around”.

Roadway means that portion of a highway, as defined
in W.S.A. §340.01(22), between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel or parking.

(b) **Loitering in the roadway.** It shall be unlawful for any person to loiter in or upon any roadway.

(c) **Penalty.** Any person who violates this section shall be penalized pursuant to §1-16 of this Code.

(Ord 91-93, §1, 6-16-93)

**Sec. 10-41. Facsimile firearms.**

(a) In this section, “facsimile firearm” means any replica, toy, starter pistol or other object that bears a reasonable resemblance to or that reasonably can be perceived to be an actual firearm. “Facsimile firearm” does not include any actual firearm.

(b) No person may carry or display a facsimile firearm in a manner that could reasonably be expected to alarm, intimidate, threaten or terrify another person.

(c) No person may violate subsection (b) while on or otherwise within five hundred (500) feet of any private or public school premises.

(d) This section does not apply to any law enforcement officer acting in his or her official duties.

(Ord 98-94, §1, 7-20-94)

**Sec. 10-42. Truancy and habitual truancy.**

(a) **Definitions.** All terms herein, to the extent not specifically defined, shall have the same meanings as those terms used in context of the Wisconsin Statutes referred to below.

Acceptable excuse means permission of the parent/guardian/legal custodian of a pupil, within limits of policies on truancy established by the school in which the pupil is enrolled. Except in emergencies or unforeseeable circumstances, such permission is expected to be communicated in writing from the parent/guardian/legal custodian to the school, prior to the absence. In emergencies or unforeseeable circumstances, such communication is expected to be as soon as practicable following the absence.

Truant means a pupil who is absent from school without an acceptable excuse under Wisconsin Statutes §118.15 and §118.16(4) for part or all of any day on which school is held during a school semester.

Habitual truant means a pupil who is absent from school without an acceptable excuse under Wisconsin Statutes §118.15 and §118.16(4) for part or all of five (5) or more days on which school is held during the school semester.

(b) **Prohibited acts.** It shall be a violation of this section for a child to be a truant or habitual truant. Any child violating this section shall be subject to one (1) or more of the penalties provided in subsections (c) and (d) below respectively.

(c) **Truancy penalties.** For a child under the age of eighteen (18) who is found to be truant, all dispositions listed in W.S.A. §118.163(1m)(a)-(c), shall be available to the court.

(d) Habitual truancy penalties. For a child under the age of eighteen (18) who is found to be a habitual truant, all dispositions listed in W.S.A. §118.163(2)(a)-(L), shall be available to the court.

(Ord 1-11, §1, 1-11-11)

**Sec. 10-43. Adoption of state law regarding contributing to truancy.**

The provisions of W.S.A. §948.45, exclusive of any provisions relating to the penalty to be imposed or the punishment for the violations thereof, are hereby adopted and made part of this section by reference and made an offense punishable as a violation of this Code.

(Ord 66-97, §1, 7-17-97)

**Sec. 10-44. Adoption of state law regarding laser pointers.**

The provisions of W.S.A. §941.299, exclusive of any provisions relating to the penalty to be imposed or the punishment for the violations thereof, are hereby adopted and made part of this section by reference and made an offense punishable as a violation of this Code.

(Ord 115-00, §1, 11-18-00)

**Sec. 10-45. Urinating or defecating in public.**

No person shall urinate or defecate outside of any designated sanitary facilities, upon any sidewalk, street, alley, public parking lot or ramp, park, playground, cemetery, or other public area or upon any private property in open view of the public or in the halls, rooms without restroom facilities, stairways or elevators of public or commercial buildings.

(Ord 139-01, §1, 8-20-01)

**Sec. 10-46. Reserved.**
MISCELLANEOUS OFFENSES

(Ord 123-03, §1, 7-8-03)

Editor’s Note: This section, §10-46, smoking on City property, was repealed by the Smoke Free Indoor Air Ordinance, Ord 35-05, §1, effective 7-1-05.

Sec. 10-47. Animals at special events prohibited.

(a) Animals are prohibited on public property located within the Downtown District (Richmond Street to Drew Street/south side of Lawrence Street to north side of Washington Street) on the following special event days: Flag Day Parade, License to Cruise, Oktoberfest, Christmas Parade, and any day that a planned/permitted special event would close one or more blocks within the Downtown District to normal use or traffic, except by written permission from the event permit holder for special activities in accordance with the event.

(b) Exemption to the enforcement of this chapter are dogs specially trained to lead blind or deaf persons to provide support for mobility-impaired persons, or animals to assist with emergency personnel.

(c) Animal shall have the same meaning as set forth in Section 3-1.
(Ord 30-03, §1, 2-11-03)

Sec. 10-48. Firearms restricted in certain City buildings.

(a) Definitions.

(1) Firearm means a weapon that acts by force of gunpowder.

(2) Law enforcement officer means a person who is employed by a law enforcement agency as defined in Wisconsin Statutes Section 175.49(1)(f) for the purpose of engaging in, or supervising others engaging in, the prevention, detection, investigation or prosecution of, or the incarceration of any person for, any violation of law and who has statutory powers of arrest.

(3) Weapon means a handgun, an electronic weapon as defined as Wis. Stats. §941.295 (1c)(a), a knife, or a billy club.

(b) In addition to the provisions of Wis. Stats. §175.60 enumerating places where the carrying of a weapon or a firearm is prohibited, including exceptions thereto, it shall be unlawful for any person other than a law enforcement officer to enter any posted building, or portion of a posted building owned, occupied or controlled by the City of Appleton while carrying a firearm or concealed weapon.

(c) Signs meeting the requirements of Wis. Stats. §943.13(2)(bm)1 shall be posted in prominent places near all entrances of such buildings regarding such restriction.

(d) Any person who enters or remains in any aforementioned City building contrary to such signage shall be considered a trespasser subject to penalty as proscribed under §10-26 of this code.
(Ord 221-11, §1, 11-1-11; Ord 39-16, §1, 3-22-16)

10-49. Adoption of state law regarding possession of a firearm in a school zone.

W.S.A. §948.605 regarding possession of a firearm in a school zone, exclusive of the penalty, is hereby adopted by reference and made an offense punishable as a violation of this code.
(Ord 7-14, §1, 3-11-14)
# Chapter 13

## Parks and Recreation

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**Editor’s Note:** This chapter was repealed and recreated pursuant to Ordinance 5-14, adopted February 19, 2014, published February 24, 2014 and became effective February 25, 2014.

**Editor’s Note:** This chapter was repealed and recreated pursuant to Ordinance 77-16, adopted October 19, 2016, published October 24, 2016 and became effective October 25, 2016.
ARTICLE I. IN GENERAL

Sec. 13-1. Definitions and terms.

The following words, terms and phrases when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) **Committee** shall mean the City of Appleton Parks and Recreation Committee or the Utilities Committee, subject to each committee’s respective jurisdictions.

(b) **Director** shall mean either the Director of the Parks, Recreation and Facilities Management Department or the Director of the Public Works Department, or their respective designee, as their respective jurisdictions apply to the subject matter of this chapter.

(c) **Excessive, loud or unusual noises** shall mean use of a radio or other similar amplification device so that sound emitted from said radio or amplification device is audible under normal conditions from a distance of seventy-five (75) or more feet.

(d) **Park** shall mean the grounds, trails, buildings, waters and any other property under the jurisdiction of the Parks and Recreation Committee, as well as stormwater management facilities, which are under the jurisdiction of the Utilities Committee.

(e) **Permit** shall mean written authorization from the Director for specific uses of parks and Special Use Areas as required.

(f) **Special Use Areas** shall include properties and facilities, or portions thereof, under the jurisdiction of the Parks, Recreation and Facilities Management Department or the Department of Public Works that are regulated by contracts or agreements approved by the committee of jurisdiction. Special Use Areas may be exempt from certain regulations set forth in this chapter subject to the terms of the contract or agreement and uses permitted therein as approved by the committee of jurisdiction. Special Use Areas include, but may not be limited to:

(1) Appleton Family Ice Center-Appleton Memorial Park.

(2) Gardens of the Fox Valley-Appleton Memorial Park.

(3) Rowing Club-Telulah Park.

(4) USA Youth, Inc.-USA Youth Sports Complex.

(5) Appleton Yacht Club-Lutz Park.

(6) Privately leased areas of Houdini Plaza.

(g) **Stormwater management facilities** shall mean the areas in the City or owned by the City used to carry, manage and/or store stormwater, and includes stormwater detention ponds, drainage corridors and the adjacent landscaping.

(h) **Trails** shall mean paved routes, and five (5) feet on either side of the paved routes, that are designated as trails by the Parks, Recreation and Facilities Management Department and designed and intended specifically for non-motorized public travel, except as provided for in Sec. 13-10, through city-owned and/or managed areas, through property that is designated and operated as a public park for general recreational use, and/or through private property that is maintained by the property owner by agreement with the City.

Sec. 13-2. Committee rule making authority.

The Committee is authorized to adopt additional or revised rules for the conducting of activities within the parks and Special Use Areas. Any violation of the rules adopted by the Committee shall be incorporated herein and considered a violation of this chapter.

Sec. 13-3. Application to City of Appleton employees.

The prohibitions and limitations contained in this chapter shall not apply to City employees or agents when performed as part of their duties.

Sec. 13-4. Activities prohibited without a permit.

The following activities are prohibited in parks and in Special Use Areas without a permit. The denial of a permit may be appealed to the committee of jurisdiction. Other permits or permissions may also be required.

(a) Exclusive use or use beyond casual play.

(b) Public meetings, assemblies, entertainment, tournaments or speeches.

(c) Selling or offering for sale any tangible or intangible item, or offering services that require payment for participation, or soliciting for any trade, occupation, business or profession, except at stormwater management facilities where such activities are strictly prohibited.
(d) Taking off or landing of aircraft, including, but not limited to, hot air balloons, helicopters and the like, or dropping parachutists or any other object from the sky.

(e) Camping overnight, except at stormwater management facilities where the activity is strictly prohibited.

(f) Use during times when the area is otherwise closed to the public.

(g) Use of any sound amplification device, sound truck, loudspeaker or other device that produces excessive, loud or unusual noises.

(h) Launching of any watercraft or motorized vehicle, or parking in any area designated for parking, in any area where the Committee has established a fee for such act.

(i) Fireworks displays, conditioned upon prior issuance of a permit pursuant to Sec. 10-5.

(j) Hunting, feeding, trapping or disturbing birds or any wildlife, training animals for hunting purposes, releasing any animals or fish. Proper licensing or approval by the Department of Natural Resources may also be required.

(k) Possession of any glass container.

(l) Removing any object of archeological interest including any man-made article or implement originating from earlier cultures.

(m) Operating any solid or liquid fuel powered model, toy, or device including, but not limited to, powered devices operated by remote control.

(n) Bring in any animal not otherwise permitted under this chapter.

(o) Fires, except:

(1) Cooking fires contained to City provided grills or commercially produced barbeque grills or kettles, and

(2) At stormwater management facilities where fires are strictly prohibited.

(p) Hanging, suspending or placing any object on a tree including rope, cord, webbing or other material, or engaging in an activity that requires hanging or suspending an object or a person from a tree, except at stormwater management facilities where such activities are strictly prohibited.

(q) Skateboarding, except:

(1) At Telulah Park skateboard park and on trails, where no permit is required, and

(2) At stormwater management facilities where the activity is strictly prohibited.

(r) Bathing or swimming, including in fountains, except:

(1) In City-operated swimming pools or other areas posted for such use, where no permit is required, and

(2) At stormwater management facilities where the activities are strictly prohibited.

(s) Planting any turf, trees, shrubs, flowers or other vegetation, and digging, mowing, trimming, removing or otherwise altering or destroying any turf, trees, shrubs, flowers or other vegetation.

(Ord 121-07, §1, 8-7-07; Ord 5-14, §1, 2-25-14, Ord 77-16, §1, 10-25-16)

Sec 13-5. Prohibited items and uses.

In addition to otherwise illegal activities, the following shall be prohibited within the boundaries of any park and Special Use Area:

(a) Unless otherwise permitted by law, possession of any firearm, air gun, spring gun and the like or weapon of any kind except for archery as part of an authorized recreation program or at the archery range in Appleton Memorial Park.

(b) Operation of snowmobiles.

(c) Washing vehicles or pets.

(d) Removal of or harming any wildlife.

(e) Defacing, destroying or vandalizing any structure, sign, equipment or other City property.

(f) Operating or parking any motorized vehicle or device during closed hours.

(g) Littering.

(h) Bringing in trash to dispose of and disposing of trash not relating to normal use.

(i) Being abusive, boisterous or disorderly.
(j) Engaging in an activity for which a permit is required without first obtaining a permit.

(k) Failure to obtain and visibly display in or on the accompanying vehicle from which a watercraft is launched, in such locations on or in the vehicle as are directed by the Parks and Recreation Committee, a required permit for the launching of any watercraft.

(l) Affixing or setting upon any sign, notice, solicitation, literature, exhibit, display, flyer or pamphlet of whatever nature or to any tree, shrub, post, barrel, building or any other plant or structure.

(1) This subsection shall not be construed to prohibit distribution of literature by means of direct personal contact between distributor and recipient to the extent otherwise permitted by law, nor shall it prohibit the posting of signs and notices, in accordance with park rules, in connection with any permitted activity which is taking place in the location in which the sign or notice is erected or posted.

(m) Hitting any golf ball except as permitted at Reid Golf Course.

(n) Dogs, unless the dog is on a trail and restrained by a chain, rope or other type of leash no more than eight (8) feet in length and an individual competent to govern and physically control and restrain the dog is in physical control of the leash at all times.

Sec. 13-6. Park hours.

(a) Unless otherwise specified, parks, with the exception of trails, and Special Use Areas shall be open to the public from 5:00 a.m. to 11:00 p.m.

(b) Unless otherwise specified, trails shall be open 24 hours a day, 7 days a week.

(c) Persons launching or transporting a watercraft from park property may do so only within the park hours.

(d) The Director shall have full authority to open and close any park, Special Use Area, or any part thereof, because of season, condition, construction, or when in the interest of public safety if it is deemed necessary by the Director.

Sec. 13-7. Fees and charges.

(a) The Committee of jurisdiction shall have the authority to establish such fees as are deemed necessary for use of any park or Special Use Area or any portion thereof, and for the reservation of the park or Special Use Area or any portion thereof.

(b) Fee schedules shall be available upon request from the Parks, Recreation and Facilities Management Department.

(c) It shall be unlawful to use an area of a park or Special Use Area where a fee is required without first paying the fee.

Sec. 13-8. Possession of alcoholic beverages.

(a) No alcoholic beverages, other than fermented malt beverages and wine, are allowed in any park.

(b) No person shall drink from or possess an open container of permitted alcoholic beverage in any park before 10:00 a.m. or after 10:00 p.m.

(1) Time limitations in this section shall be extended in the posted areas of Appleton Memorial Park while organized league or tournament play is in progress.

(2) Time limitations in this section shall be extended to 9:00 a.m. at Reid Golf Course.

(c) No person shall drink from or possess an open container of permitted alcoholic beverage in any park other than Reid Golf Course without having a permit issued by the Appleton Police Department unless otherwise allowable by City Code or Policy.

(1) Permits shall be issued by the Appleton Police Department 24 hours a day, seven (7) days a week.

(2) Permits shall be valid for up to one year, with all permits expiring on March 1st annually.

(3) A person may use their permit for a group so long as the permit holder remains at the park with the permit the entire time there is any drinking from or possession of open containers of permitted alcoholic beverages.

(4) Permits shall only be issued to adults, 21 years old or older, and a Terms and Conditions Agreement must be agreed to and
signed by the applicant when the application is submitted.

(5) A permit application may be denied if the applicant has a verifiable history of code violations or criminal conduct relating to disorderly conduct, criminal damage to city property, or any other violation directly related to misuse of city parks or property. A decision to deny a permit may be appealed to the appropriate committee of jurisdiction.

(d) No alcoholic beverages of any kind may be carried into any area of Reid Golf Course at any time unless the alcoholic beverage was purchased at or provided by or on behalf of Reid Golf Course.

(e) A person violating this section and/or a permit holder who violates the Terms and Responsibility Agreement of the permit application may be subject to a forfeiture pursuant to Sec. 1-16 and Sec. 13-11 et. seq., and future permit requests may be denied.


Fishing in Appleton Memorial Park Pond and stormwater detention ponds is permitted but subject to certain limitations.

(a) Appleton Memorial Park Pond. Fishing is permitted during regular park hours, except when such waters are being used for City-sponsored activities, and is subject to Wisconsin Department of Natural Resources regulations for urban fishing waters. The pond has a year round season with no length limits, except only juveniles 15 years of age or younger and disabled anglers pursuant to Wisconsin Stat. s. 29.193(3)(a), (b) or (c), may fish from the second Saturday in March to, but not including, the last Saturday in April. There is a bag limit of three (3) trout, one (1) gamefish (largemouth bass, smallmouth bass, walleye, sauger or northern pike), and ten (10) panfish (bluegill, crappie, pumpkinseed, yellow perch and bullhead).

(b) Stormwater Detention Ponds. These ponds are considered “catch and release” ponds; therefore, all caught fish must be immediately returned to the pond. Regular fishing line and barb-free hooks must be used at all times. Fishing is permitted in these ponds from 5:00 a.m. to 11:00 p.m., except when such waters are being used for City-sponsored activities, subject to Wisconsin Department of Natural Resources regulations and licensing requirements.

Sec. 13-10. General regulations.

(a) Motor-driven vehicles and devices are restricted to designated roadways and parking areas in parks and Special Use Areas and are prohibited on trails and any other area, except for motor-driven vehicles and devices that are used by a physically disabled person as defined under s. 346.503(1), Wis. Stat., and in compliance with Title II and III of the Americans with Disabilities Act, or with prior written permission from the Director.

(b) The speed of motor-driven vehicles and devices shall be limited to a maximum of fifteen (15) miles per hour unless otherwise posted. Operating speeds shall be speeds that are reasonable, safe and prudent so as not to interfere with the safety of park users.

(c) It shall be unlawful to park, stop or leave standing any motor-driven vehicles or devices within any park between the hours of 11:00 p.m. and 5:00 a.m., unless otherwise posted and unless such motor vehicle is registered for overnight parking with the Director.

(d) Except for a motor vehicle used by a physically disabled person as defined under s. 346.503(1), Wis. Stat., no persons may park, stop or leave standing any vehicle, whether attended or unattended and whether temporarily or otherwise, upon any portion of any park or Special Use Area reserved by official traffic signs indication the restriction, for vehicles displaying special registration plates under s. 341.14(10), (1a), (1e), (1m), or (1r), Wis. Stat., or a special identification card issued under s. 343.51, Wis. Stat., or vehicles registered in another jurisdiction and displaying a registration plate, card or emblem issued by the other jurisdiction which designates the vehicle as a vehicle used by a physically disabled person.

(e) No person shall interfere in any manner with any City employee or agent in the performance of his or her assigned duties.


A person who violates any section of this chapter may be penalized pursuant to Sec. 1-16, and may also be evicted from parks and Special Use Areas pursuant to Sec. 10-26.

(a) At the time of eviction, or as soon as reasonably practical thereafter, the person evicted shall be provided an eviction notice from the Director or the Appleton Police
Department. The eviction notice shall specify the duration of the eviction and the area(s) of eviction.

(b) A person evicted may appeal the eviction by contacting the Director in writing within twenty-one (21) calendar days of the date of eviction and providing the Director with the reason for the appeal. The Director shall respond in writing to the appeal within twenty-one (21) calendar days with a decision. If the person is not satisfied with the Director’s decision, he or she may appeal to the committee of jurisdiction by requesting to be heard at the next committee meeting where the members of the committee will have a reasonable amount of time to review the matter prior to the meeting date. The decision of the committee shall be final.

(c) Any person evicted for more than two (2) consecutive calendar years may appeal the eviction once each calendar year by following the procedure in Sec. 13-11(b).

(Ord 121-07, §1, 8-7-07; Ord 5-14, §1, 2-25-14; Ord 77-16, §1, 10-25-16)

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ARTICLE I. IN GENERAL

Sec. 20-1. Utilities Committee.

The Utilities Committee shall consist of five (5) alderpersons. The alderpersons shall be appointed by the Mayor with the approval of the Common Council. A majority of the members of the Committee shall constitute a quorum. The Committee shall report directly to the Common Council and shall have jurisdiction over the operational policies for the stormwater, water and sewer utilities, subject to the rules and regulations of the Wisconsin Public Service Commission or other regulatory agencies as they may apply.

(Code 1965, §1.04(3); Ord 169-89, §1, 12-20-89; Ord 60-90, §1, 6-25-90; Ord 68-90, §1, 8-22-90; Ord 30-95, §1, 3-1-95; Ord 67-95, §1, 5-17-95; Ord 6-97, §1, 4-16-97)

Sec. 20-2. Connection to public sewers and water main required; use of privies.

(a) Connection to public water and sewer services shall be required as provided in §4-270.

(b) [Reserved]

(c) [Reserved]

(Code 1965, §7.04(5), (6); Ord 31-95, §1, 3-1-95)

Cross reference(s) – Plumbing standards 4-26 et seq.

Sec. 20-3. Sewer and water connection fee for properties not previously assessed.

No plumbing permit shall be issued authorizing a connection with the City water and sewer systems if the land to be benefited by such connection had not been specifically assessed for the water or sewer main extension in the street abutting the property for the reason that the property to be so benefited was not in the corporate limits of the City at the time the assessment was levied for the water or sewer main extensions, unless the owner thereof pays a connection fee to the City in the amount equal to the amount which the property would have been assessed on the basis of the prevailing cost for the water main and sewer main at the time connection is made computed in accordance with the special assessment policy in effect.

(Code 1965, §2.10)

Secs. 20-4 – 20-30. Reserved.
ARTICLE II. WATER UTILITY

Sec. 20-31. Penalty for violation of article.

Any person who shall violate any provision of this article shall be subject to a penalty as provided in §1-16.  
(Code 1965, §12.11)

Sec. 20-32. Service limits.

(a) The limits of utility service for other than the providing of wholesale water in unincorporated areas outside the corporate limits of the City are as on file in the City Clerk’s office.  
(b) This section delineates the area within which retail service will be provided, and the City Water Utility shall have no obligation to serve beyond the area so delineated.  
(Code 1965, §12.12)

Sec. 20-33. Meters and access to premises.

(a) Authorized employees of the Water Utility shall have free access to any premises supplied with water, at proper times, to inspect and ascertain the condition of the meters and fixtures, or for reading meters, and no owner or occupant shall refuse such employees such access. The Water Utility shall have the right to enter any premises to remove the meter for the purpose of examination and test after first notifying the owner or occupant, and may shut off the water from the premises where free access is prevented.  
(b) Remote reading devices may be installed on all structures supplied with water by the Water Utility. The remote reading device shall be located on the outside of the structure in such a way that it can be read and the owner or occupant shall be charged for the cost of the device. The remote reading device may not be obstructed by shrubs or obstacles and shall be at a readable height. Original installation shall be at the cost of the Water Utility, but any cost of defacing, vandalism or any other damage shall be charged to the owner or occupant. Water service may be discontinued for failure to comply with the requirements of this subsection.  
(c) The owner of any structure supplied with water shall provide a location of adequate size for installation of a water meter. Such location shall be adequately ventilated and shall not be a manhole, pit, vault, or other confined space as defined by the Wisconsin Department of Industry, Labor and Human Relations (DILHR), or the United States Department of Labor Occupational Safety and Health Administration (OSHA). The owner of any meter pit or vault considered a confined space (by definition) must be required to conform with this section at such time as any piping of structural modifications or repairs are made to the structure, within ninety (90) days of a determination that the structure is a level 2 confined space as defined by DILHR or OSHA or by January 1, 1997, whichever is sooner. Any additional costs incurred with reading or servicing a water meter is a confined space, including but not limited to, dewatering and confined space entry procedures, shall be billed to the customer.  
(Code 1965, §12.08; Ord 133-91, §1, 11-20-91)  
Cross reference(s) – Supervision of sewer and water services, §4-267; specifications for Water Utility use in mobile home parks, §11-75; hydrant requirements in mobile home parks §11-76.

Sec. 20-34. Authority to discontinue service.

The Water Utility shall discontinue water service on any premises where the water charge remains unpaid thirty (30) days after a statement is rendered. Where such service is discontinued, a connection charge shall be paid before service is rendered.  
(Code 1965, §12.06)

Sec. 20-35. Adoption of state public safety requirements.

The provisions of Wisconsin Administrative Code, PSC 185.37(4), regarding public safety involving water, are hereby adopted by reference.

Sec. 20-36. Fluoridation of water.

The Appleton Water Treatment Facility shall introduce into water being distributed in the water supply system of the City, and include the cost in the determination of water rates. The levels of fluoride in the water supply shall be set to correspond to the lower end of the recommended range as promulgated by the United States Department of Health and Human Services, and approved by the Wisconsin Department of Natural Resources.  
(Code 1965, §12.09; Ord 67-95, §1, 5-17-95; Ord 198-11, §1, 9-13-11)

Sec. 20-37. Tampering with equipment.

No person, without the written authority of the Water Utility manager, shall operate any valve connected with the street or supply main, or break or tamper with any seal of the water meter in service, or open any fire hydrant connected with the distribution system, whether the hydrant is the property of the City or has been placed by an owner for his own protection, except for purposes of extinguishing fire only, or wantonly injure or impair such equipment.  
(Code 1965, §12.04)  
Cross reference(s) – Citation for violation of certain ordinances, §1-17, schedule of deposits for citation, §1-18.

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Sec. 20-38. Unauthorized connection.

(a) No person not authorized in writing by the Water Utility Manager shall tap or make any connection with any water main or distribution plan belonging to or part of the municipal water utility plant of the city.

(b) The water shall be shut off from such unauthorized tap or connection until inspection thereof has been made and any forfeiture imposed for such offense paid. Such person shall be liable for all water estimated by the Water Utility to have been consumed or to have passed through such connection from the date when the connection was made up to the time such connection or tap was discovered. Charges shall be assessed against the property where the unauthorized tap was made and assessed as a special tax.

(Code 1965, §12.05)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 20-39. Leakage in water pipes.

Where a leak develops in the water pipe between the curb box and the meter, the Water Utility shall serve a written demand upon the property owner to repair the pipe within twenty-four (24) hours, and in the event of failure so to do the water service to the property shall be discontinued.

(Code 1965, §12.07)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 20-40. Use of sprinklers.

No owner or occupant of any lot or premises served by the Water Utility shall suffer, permit or allow the sprinkling of a lawn, garden or premises with water from the Water Utility servicing such lot or premises except between 5:00 p.m. and 8:00 p.m. on even-numbered days on lots and premises having even-numbered house and building numbers, and no owner or occupant shall suffer, permit or allow sprinkling of a lawn, garden or premises except between 5:00 p.m. and 8:00 p.m. on odd-numbered days on lots and premises having odd-numbered house and building numbers. The provisions of this section shall be in effect only upon proclamation of the Mayor.

(Code 1965, §12.10)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18.

Sec. 20-41. Cross connections.

(a) Definition. A cross connection shall be defined as any physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water from the City Water Utility, and the other containing water from a private source, water of unknown or questionable safety, or steam, gases or chemicals, whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two (2) systems.

(b) Cross connections prohibited. No person shall establish or permit to be established or maintain or permit to be maintained any cross connection. No interconnection shall be established whereby potable water from a private, auxiliary or emergency water supply other than the regular public water supply of the City may enter the supply or distribution system of the City, unless such private, auxiliary or emergency water supply and the method of connection and use of such supply shall have been approved by the City Water Utility and by the State Department of Natural Resources in accordance with Wisconsin Administrative Code, §NR 111.25(3).

(c) Inspections. In accordance with the Cross Connection Prevention Policy and its inspection requirements for different types of properties, it shall be the duty of the City Water Utility to inspect, to cause inspections to be made or require the submission of inspections reports from all properties serviced by the public water system where cross connection with the public water system is deemed possible. The frequency of inspections and reinspection, based on potential health hazards involved, shall be as established by the City Water Utility and as approved by the State Department of Natural Resources. Upon inspection, if a potential cross connection involving a health hazard exists, the City Water Utility’s inspector or authorized representative may order that an approved cross connection control device be installed for containment from the public water system.

(d) Right of entry. Upon presentation of credentials, the representative of the Water Utility shall have the right to request entry at any reasonable time to examine any property served by a connection to the public water system of the City for cross connections. If entry is refused, such representative shall obtain a special inspection warrant under W.S.A. §66.0119. On request, the owner, lessee or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system on such property.

(e) Authority to discontinue service. The Water Utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this section exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water system. Water service shall be discontinued only after reasonable notice and opportunity for hearing under W.S.A. Chapter 68, except as provided in subsection (f) of this section. Water service to such property shall not be restored until the cross
connection has been eliminated in compliance with the provisions of this section.

(f) Emergency discontinuance of service. If it is determined by the Water Utility that a cross connection or an emergency endangers public health, safety or welfare and required immediate action, and a written finding to that effect is filed with the City Clerk and delivered to the customer’s premises, service may be immediately discontinued. The customer shall have an opportunity for hearing under W.S.A. Chapter 68, within ten (10) days of such emergency discontinuance.

(Code 1965, §12.13, Ord 189-04, §1, 1-1-05; Ord 136-05, §1, 11-22-05)

Sec. 20-42. Private water wells.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them herein, except where context clearly indicates a different meaning:

Municipal water utility means a system for the provision to the public of piped water for human consumption when such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) year-round residents and is owned or operated by a city, village, county, town, town sanitary district, utility district or public institution as defined in W.S.A. §49.10(12)(f)(1), or a privately owned Water Utility serving any of the above.

Noncomplying means a well or pump installation which does not comply with the provisions of Wisconsin Administrative Code, Chapter NR 812, in effect at the time the well was constructed, a contamination source was installed, the pump was installed or work was done on either the well or pump installation.

Pump installation means the pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections, pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.

Unsafe means a well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances in excess of the standards of Wisconsin Administrative Code, chapters NR 109 or 140, or for which a health advisory has been issued by the State Department of Natural Resources.

Unused means a well or pump installation which is not in use or does not have a functional pumping system.

Well means an excavation or opening in the ground made by digging, boring, drilling, driving or other methods for the purpose of obtaining groundwater for consumption or other use.

Well abandonment means the filling and sealing of a well according to the provisions of Wisconsin Administrative Code, chapter NR 810.

(b) Purpose. The purpose of this section is to prevent contamination of groundwater and to protect public health, safety and welfare by assuring that unused, unsafe or noncomplying wells which may serve as conduits for contamination or wells which may be illegally cross connected to the municipal water utility are properly abandoned.

(c) Applicability. This section applies to all wells located on premises served by the municipal water utility.

(d) Abandonment required. All wells located on premises connected to the municipal water utility shall be abandoned in accordance with the terms of this section and Wisconsin Administrative Code, chapter NR 812, or no later than one (1) month from the date of connection to the municipal water utility, whichever occurs last, unless a well operation permit has been obtained by the well owner from the City plumbing inspector.

(e) Well operation permit. The plumbing inspector may grant a permit to a private well owner to operate a well for a period not to exceed five (5) years providing the conditions of this section are met. An owner may require renewal of a well operation permit by submitting information verifying that the conditions of this section are met. The plumbing inspector may conduct inspections or have water quality tests conducted at the applicant’s expense to obtain or verify information necessary for consideration of a permit application or renewal. Permit applications and renewals shall be made on forms provided by the plumbing inspector. The following conditions must be met for issuance or renewal of a well operation permit:

(1) The well and pump installation must meet or must be upgraded to meet the requirements of Wisconsin Administrative Code, chapter NR 812;

(2) The well construction and pump installation must have a history of producing bacteriologically and contaminant safe water as evidenced annually by at least two (2) samplings taken a minimum of two (2) weeks apart for bacteria testing; with one (1) of these samples also requiring arsenic testing. Results must meet Department of Natural Resources requirements for maximum contaminant levels for these parameters. No exception to this condition may be made for
unsafe wells, unless the State Department of Natural Resources approved, in writing, the continued use of the well;

(3) For residences, there must be no cross connections between the well and pump installation and the municipal water utility. A reduced pressure backflow preventer between the two (2) systems is acceptable for industrial use if the industry has the reduced pressure backflow preventer checked by a plumber certified for such tests, on a yearly basis;

(4) The proposed use of the well and pump installation must be justified as being necessary in addition to water provided by the municipal water utility;

(5) If well water is discharged to the sanitary sewer, a meter must be installed on the line to measure flow.

(f) Abandonment procedures.

(1) All wells abandoned under the jurisdiction of this section or rule shall be abandoned according to the procedures and methods of Wisconsin Administrative Code, Chapter NR 812. All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.

(2) The owner of the well, or the owner’s agent, shall notify the City plumbing inspector at least forty-eight (48) hours prior to commencement of any well abandonment activities. The abandonment of the well shall be observed by the City plumbing inspector, in accordance with §4-272(c).

(3) An abandonment report form, supplied by the State Department of Natural Resources, shall be submitted by the well owner to the City plumbing inspector (who will forward a copy to the City Clerk) and the State Department of Natural Resources within ten (10) days of the completion of the well abandonment.

(g) Extension requests. The Utilities Committee may extend the time for well permitting or may grant temporary relief where strict enforcement of this section would work an unnecessary hardship without corresponding public or private benefit.

Charter reference(s) – Sealing of abandoned wells § 4-271(c).

ARTICLE III. SEWERS AND WASTEWATER DISPOSAL

DIVISION 1. GENERAL PROVISIONS

Sec. 20-66. Purpose and policy.

This article sets forth uniform requirements for users of the publicly owned treatment works for the City of Appleton and enables the City to comply with all applicable state and federal laws, including the Clean Water Act (33 United States Code §1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The objectives of this article are:

1. To prevent this introduction of pollutants into the publicly owned treatment works that will interfere with its operation;
2. To prevent the introduction of pollutants into the publicly owned treatment works that will pass through the publicly owned treatment works, inadequately treated, into receiving waters, or otherwise be incompatible with the publicly owned treatment works;
3. To protect both publicly owned treatment works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
4. To promote reuse and recycling of industrial wastewater and sludge from the publicly owned treatment works;
5. To provide for fees for the equitable distribution of the cost of operation, maintenance and improvement of the publicly owned treatment works; and
6. To enable the City to comply with its Wisconsin Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the publicly owned treatment works is subject.

This article shall apply to all users of the publicly owned treatment works. This article authorizes the issuance of wastewater discharge permits; provided for monitoring, compliance and enforcement activities; establishes administrative review procedures; required user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(Ord 60-94, §1, 5-4-94)

Sec. 20-67. Administration.

Except as otherwise provided herein, the Director of Utilities shall administer, implement and enforce the provisions of this article. Any powers granted to or duties imposed upon the Director of Utilities may be delegated by the Director of Utilities to other City personnel.

(Ord 60-94, §1, 5-4-94)

Sec. 20-68. Abbreviations.

The following abbreviations, when used in this article, shall have the designated meanings:

- BOD – Biochemical Oxygen Demand
- CFR – Code for Federal Regulations
- COD – Chemical Oxygen Demand
- EPPA – U.S. Environmental Protection Agency
- gpd – gallons per day
- mg/l – milligrams per liter
- ug/l – micrograms per liter
- WPDES – Wisconsin Pollutant Discharge Elimination System
- POTW – Publicly Owned Treatment Works
- RCRA – Resource Conservation and Recovery Act
- SIC – Standard Industrial Classification
- TSS – Total Suspended Solids

(Ord 60-94, §1, 5-4-94)

Sec. 20-69. Definitions.

Unless a provision explicitly states otherwise the following terms and phrases, as used in this article, shall have the meanings hereinafter designated.

Act or “the Act”. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251 et seq.

Approval authority. The secretary of the Wisconsin Department of Natural Resources.
Authorized representative of the user.

1. If the user is a corporation:

   a. The president, secretary, treasurer or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

   b. The manager of one (1) or more manufacturing, production or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25,000,000) (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. If the user is a partnership or sole proprietorship, a general partner or proprietor, respectively.

3. If the user is a federal, state or local governmental facility, a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

4. The individuals described in paragraphs (1) through (3) above, may designate another authorized representative if the authorization is in writing, the authorization specified the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

Bypass. The intentional diversion of waste streams from any portion of an industrial user’s treatment facility.

Biochemical oxygen demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures or five (5) days at twenty (20) degrees centigrade, usually expressed as a concentration (e.g. mg/l).

Categorical pretreatment standard or categorical standard. Any regulation containing pollutant discharge limit promulgated by EPA in accordance with §§307(b) and (c) of the Act (33 U.S.C. §1317) which apply to a specified category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471 or promulgated under §147.07 Wis. Stats., by the Wisconsin Department of Natural Resources and set forth in Wis. Admin. Code NR 221 to 297.

City. The City of Appleton or the Common Council of the City of Appleton.

Director of Utilities. The person designated by the City to supervise the operation of the POTW and who is charged with certain duties and responsibilities by this article, or a duly authorized representative.

Environmental Protection Agency or EPA. The U.S. Environmental Protection agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.

Existing source. Any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such sources if the standard is thereafter promulgated in accordance with §307 of the Act.

Grab sample. A sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

Indirect discharge or discharge. The introduction of pollutants into the POTW from any nondomestic sources regulated under §307 (b), (c) or (d) of the Act.

Instantaneous maximum allowable discharge limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, directly or indirectly, both, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City’s WPDES permit (including an increase in the magnitude or duration of a violation), or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: §405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resources Conservation Recovery Act (RCRA); Chapters 144 and 147, Wis. Stats.; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection Research and Sanctuaries Act.

Medical waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes,
sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

**New source.**

(1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under §307(c) of the Act which will be applicable to such source if standards are thereafter promulgated in accordance with that section, provided that:

a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or

b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production of wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraph (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

a. Begun, or caused to begin, as part of a continuous on-site construction program,

   i. Any placement, assembly, or installation of facilities or equipment; or

   ii. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures,

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

**Noncontact cooling water.** Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

**Pass through.** A discharge which exits the POTW into waters of the state of Wisconsin in quantities or concentrations which, alone or in conjunction with a discharge of discharges from other sources, is a cause of violation of any requirement of the City’s WPDES permit, including an increase in the magnitude or duration of a violation.

**Person.** Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

**pH.** A measure of the acidity or alkalinity of a solution, expressed in standard units.

**Pollutant.** Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewer sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes and certain characteristics of wastewater (e.g. pH, temperature, TSS, turbidity, color, BOD, BOD, toxicity or odor).

**Pretreatment.** The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction of alteration can be obtained by physical, chemical or biological processes, by process changes or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

**Pretreatment requirements.** Any substantive or
procedural requirement related to pretreatment imposed on user, other than a pretreatment standard.

**Pretreatment standards or standards.** Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.

**Prohibited discharge standards or prohibited discharges.** Absolute prohibitions against the discharge of certain substances; these prohibitions appear in §20-81 of this article.

**Publicly owned treatment works.** A “treatment works” as defined by §212 of the Act (33 U.S.C. 1292) which is owned by the City of Appleton. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

**Septic tank waste.** Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.

**Severe property damage.** Substantial physical damage to property or substantial damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

**Sewage.** Human excrement and gray water (household showers, dishwashing operations, etc.).

**Significant industrial user:**

1. A user to categorical pretreatment standards; or

2. A user that:

   a. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

   b. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant.

   c. Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement.

3. Upon a finding that a user meeting the criteria in subsection (2) has no reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

**Slug load or slug.** Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in §20-81 of this article.

**Standard Industrial Classification (SIC) code.** A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

**Stormwater.** Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

**Suspended solids.** The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquid, and which is removable by laboratory filtering.

**User or industrial user.** A source of indirect discharge.

**Wastewater.** Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institution, where treatment or untreated, which are contributed to the POTW.

**Wastewater treatment plant or treatment plant.** That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

(Ord 60-94, §1, 5-4-94)

Sec. 20-70. Significant industrial use designation.

The City shall designate users as significant industrial users according to the definition in §20-69. The City shall maintain a list of significant industrial users. The City shall provide this list to the Department of Natural Resources and shall notify the Department of changes to the list and reasons for the changes.

(Ord 60-94, §1, 5-4-94)

Sec. 20-71. State and federal regulations.

In addition to complying with this article, users shall
comply with all applicable pretreatment standards and requirements established by the U.S. Environmental Protection Agency and the Department of Natural Resources that supplement or supersede this article.

The City shall enforce all applicable pretreatment standards and requirements according to the requirements of the general pretreatment regulations: 40 CFR Part 403.8(f)(1) and Wis. Admin. Code NR 211.22. The City shall perform the following functions:

(1) Deny or condition new or increased discharge of pollutants, or changes in the nature of pollutants discharged to the POTW by industrial users where such discharges do not meet applicable pretreatment standards and requirements or where such discharge causes the POTW to violate its WPDES permit.

(2) Require compliance with applicable pretreatment standards and requirements by industrial users.

(3) Control through permit, order or similar means the discharge to the POTW by each industrial user. Wastewater discharge permits shall be handled pursuant to division 4 of this article.

(4) Require the development by industrial users of compliance schedules pursuant to §20-141(b)(7) of this article.

(5) Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent information supplied by industrial users, whether industrial users are complying with applicable pretreatment standards and requirements. These procedures are outlined in division 7 of this article.

(6) Obtain remedies, including injunctive relief, for any industrial users

a. Noncompliance with any pretreatment standard or requirement;

b. Failure to allow the POTW to enter and to carry out inspections and monitoring activities;

c. Noncompliance with any reporting requirement imposed by the POTW or by Wis. Admin. Code NR 211.

(7) Have the authority to seek or assess civil or criminal penalties pursuant to division 10 of this article.

(8) After informal notice to the industrial user, immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appear to present an imminent danger to the health or welfare of persons pursuant to §20-183 and §20-184 of this article.

(9) After notice of the industrial user and an opportunity to respond, halt or prevent any discharge to the POTW which endangers or may endanger the environment or which threatens to interfere with the operation of the POTW pursuant to §20-184 and §20-184 of this article.

(10) Comply with confidentiality pursuant to division 8 of this article.

Sec. 20-72. Fees.

(a) The Director of Utilities may establish adequate and reasonable fees for the activities necessary to administer pretreatment standards and requirements or any other State or federal regulations. Fees may include, but are not limited to, fees for wastewater discharge permit application or renewal, fees for septage and other waste haulers permits, fees for discharging septage or other hauled waste and fees for industrial monitoring and laboratory analysis.

(b) The Director of Utilities and the Director of Finance for the City shall set forth the applicable fees in the City’s schedule of charges and fees jointly for approved by the Common Council.

DIVISION 2. GENERAL SEWER USE REQUIREMENTS

Sec. 20-81. Prohibited discharge standards.

(a) **General prohibitions.** No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state or local pretreatment standards for requirements.

(b) **Specific prohibitions.** No user shall introduce or cause to be introduced into the POTW the following pollutants, substances or wastewater.

(1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than one hundred forty degrees (140º) F (60º C) using the test methods specified in 40 CFR 261.21.

(2) Pollutants that will cause corrosive structural damage to the sewerage system, including but not limited to discharges with a pH lower than 5.0 s.u. or higher than 12.4 s.u.

(3) Solid or viscous substances in amounts which will cause obstruction of the flow in the sewerage system or otherwise interfere with the operation of the POTW resulting in interference;

(4) Pollutants, including oxygen-demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;

(5) Wastewater having a temperature greater than one hundred fifty degrees (150º) F (65º C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed one hundred four degrees (104º) F (40º C);

(6) Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in concentrations greater than twenty-five (25) mg/l;

(7) Pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Trucked or hauled pollutants, except at discharge points designated by the Director of Utilities in accordance with §20-194 of this article.

(9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with the other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

(10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts colors to the treatment plant’s effluent.

(11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations;

(12) Stormwater, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, deionized water and unpolluted wastewater, unless specifically authorized by the Director of Utilities.

(13) Sludge, screenings or other residues from the pretreatment of industrial wastes;

(14) Medical wastes, except as specifically authorized by the Director of Utilities in a wastewater discharge permit;

(15) Wastewater causing, along or in conjunction with other sources, the treatment plant’s effluent to fail a toxicity test;

(16) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;

(17) Fats, oils or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l; or

(18) Wastewater causing two (2) readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, or more than five percent (5%) or
any single reading over ten percent (10%) of the lower explosive limit of the meter.

(19) Condensate or non-contact cooling water except when generated by:

a. One- (1-) or Two- (2-) Family buildings, or

b. All other structures with non-conforming conditions under this section until such time that the structure undergoes repairs or renovations, the cost of which exceeds twenty percent (20%) of the structure’s fair market value.

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

(c) **Inspections and right of entry.** In the discharge of his or her duties, the Director of Public Works or Director of Utilities, or an authorized representative, thereof, shall have the authority to enter, during reasonable hours, any building, structure or premises in the City to inspect for any violations of this section and enforce the provisions of this section for the purpose of any public protection. In addition to the foregoing, such inspections may be conducted in any of the following circumstances:

(1) During such times that the City is in the process of replacing sanitary mains or laterals adjacent to a particular property;

(2) During such times when City personnel, including but not limited to the Water Meter Crew, are required to enter a property for other business.

(3) During such times when City personnel identify certain areas within the City that are experiencing unusually high levels of infiltration into the POTW.

(Ord 60-94, §1, 5-4-94, Ord 44-04, §1, 2-23-04, Ord 191-04, §1, 1-1-05)

Sec. 20-82. Categorical pretreatment standards.

(a) Categorical pretreatment standards for specific point source categories as set forth in 40 CFR Chapter I, subchapter N, or Wis. Admin. Code NR 221 to 297 shall apply. Limits in categorical pretreatment standards shall apply to the effluent from the process regulated by the standard, unless otherwise specified in the standard. Limits in categorical pretreatment standards shall apply to waste streams which are transported off-site for disposal as well as those discharged on site. Industrial users shall comply with applicable categorical pretreatment standards, in addition to complying with the general prohibitions established in §20-81(b) of this article, unless specifically noted otherwise in the categorical pretreatment standard.

(b) **Compliance dates.**

(1) All industrial users, except new sources, shall comply with the applicable categorical pretreatment standards within three (3) years from the effective date of the standard or within a shorter time period if specified in the applicable standard. A direct discharger which becomes an industrial user after promulgation of an applicable categorical pretreatment standard may not be considered a new source unless it falls within the definition of a “new source” contained in §20-69(p) of this article.

(2) New sources shall install, have in operating condition and start up of all the pollution control equipment required to meet the applicable pretreatment standards before beginning discharge. Within the shortest feasible time, not to exceed ninety (90) days, new sources shall meet all applicable pretreatment standards.

(c) When the categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Director of Utilities may impose equivalent concentration or mass limits in accordance within 40 CFR 403.6(c).

(d) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Director of Utilities shall impose an alternate limit using the combined wastestream formula in 40 CFR 4033.6(e).

(e) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

(f) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

(Ord 60-94, §1, 5-4-94)

Sec. 20-83. Local limits.

The following pollutant limits are established to
protect against pass through and interference. No person shall discharge wastewater containing in excess of the following:

- Aluminum, total 70.0 mg/l
- Arsenic, total 1.0 mg/l
- Cadmium, total 0.3 mg/l
- Chromium, total 7.0 mg/l
- Copper, total 3.5 mg/l
- Cyanide, total 0.3 mg/l
- Lead, total 2.0 mg/l
- Mercury, total 2.0 ug/l
- Nickel, total 2.0 mg/l
- Zinc, total 10.0 mg/l

(Ord 60-94, §1, 5-4-94; Ord 16-00, §1, 2-5-00)

Sec. 20-84. City’s right of revision.

The City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

(Ord 60-94, §1, 5-4-94)

Sec. 20-85. Dilution.

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Director of Utilities may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

(Ord 60-94, §1, 5-4-94)

Sec. 20-86. Bypass.

(a) A bypass that does not result in a violation of any pretreatment standard or requirement is prohibited except where the bypass is necessary for essential maintenance.

(b) A bypass that results in a violation of any pretreatment standard or requirement is prohibited unless:

1. Bypass is necessary to prevent loss of life, personal injury or severe property damage;

2. No feasible alternatives to the bypass exist, such as use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance; and

3. a. If an industrial user knows in advance of the need for a bypass, it notifies the control authority at least ten (10) days before the bypass if possible or otherwise as soon as possible; or
   
   b. An industrial user orally notifies the control authority of an unanticipated bypass within twenty-four (24) hours from the time the industrial user becomes aware of the bypass and provides a written submission, within five (5) days of the time the industrial user becomes aware of the bypass, containing:

   1. A description of the bypass and its cause;
   2. The duration of the bypass, including exact dates and times, and if the bypass has not been corrected, the time it is expected to end; and
   3. A description of the steps taken or planned to prevent recurrence of the bypass.

(Ord 60-94, §1, 5-4-94)

Sec. 20-87. Amalgam management at dental offices.

(a) Definitions. For the purposes of this section the following words and phrases shall be as defined herein.

1. Amalgam separator is a device that employs filtration, settlement, centrifugation, or ion exchange to remove amalgam and its metal constituents from a dental office vacuum system before it discharges to the sewer.

2. Amalgam waste means and includes non-contact amalgam (amalgam scrap that has not been in contact with the patient); contact amalgam (including, but not limited to, extracted teeth containing amalgam); amalgam sludge captured by chairside traps,
vacuum pump filters, screens, and other amalgam trapping devices; used amalgam capsules; and leaking or unusable amalgam capsules.

(3) **ISO 11143** is the International Organization for Standardization’s standard for amalgam separators. Amalgam separators meeting ISO 11143 standards accomplishes ninety-five percent (95%) or greater mercury removal efficiency.

(b) All owners and operators of dental facilities that remove or place amalgam fillings shall comply with the following waste management practices:

1. No person shall rinse chairside traps, vacuum screens, or amalgam separators equipment in a sink or other connection to the sanitary sewer.

2. Owners and operators of dental facilities shall ensure that all staff members who handle amalgam waste are trained in the proper handling, management and disposal of mercury-containing material and fixer-containing solutions, and shall maintain training records that shall be available for inspection by the Director of Utilities or designee during normal business hours.

3. Amalgam waste shall be stored and managed in accordance with the instructions of the recycler or hauler of such materials.

4. Bleach and other chlorine-containing disinfectants shall not be used to disinfect the vacuum line system.

5. The use of bulk mercury is prohibited. Only pre-capsulated dental amalgam is permitted.

(c) All owners and operators of dental vacuum suction systems shall comply with the following:

1. An ISO 11143 certified amalgam separator device shall be installed for each dental vacuum suction system on or before March 31, 2012; provided, however, that all dental facilities that are newly constructed on and after the effective date of this ordinance shall include an installed ISO 11143 certified amalgam separator device. The installed device must be ISO 11143 certified as capable of removing a minimum of ninety-five percent (95%) of amalgam. The amalgam separator system shall be certified at flow rates comparable to the flow rate of the actual vacuum suction system operation. Neither the separator device nor the related plumbing shall include an automatic flow bypass. For facilities that require an amalgam separator that exceeds the practical capacity of ISO 11143 test methodology, a non-certified separator will be accepted, provided that smaller units from the same manufacturer and of the same technology are ISO-certified.

2. Proof of certification and installation records shall be submitted to the Department of Utilities by May 31, 2012 or within thirty (30) days of installation for new sources.

3. Amalgam separators shall be maintained in accordance with manufacturer recommendations. Installation, certification, and maintenance records shall be maintained for a minimum of five (5) years and shall be made available to the Director of Utilities or designee during normal business hours.

4. From the contractors used to remove amalgam waste, dental offices shall obtain records for each shipment showing the following:
   a. The volume or mass of amalgam waste shipped.
   b. The name and address of the destination.
   c. The name and address of the contractor.

   These records shall be maintained for five (5) years and made available to the Department of Utilities for inspection and copying upon request.

5. Dental clinics shall allow the Director of Utilities or designee to inspect the vacuum system, amalgam separator, amalgam waste storage area, and other areas deemed necessary to determine compliance with this section. Inspections shall occur by appointment during the normal operating hours of the dental clinic as long as advance notice does not impede enforcement of this section.

(d) Failure to comply with sections (b) and (c) by September 1, 2012 shall result in the dental office obtaining a wastewater discharge permit as required by Article III, Chapter 20, Municipal Code of the City of Appleton.
(1) All regulations, reporting requirements, fees, and administrative enforcement remedies shall apply as stated in Article III, Chapter 20, Municipal Code of the City of Appleton.

(e) All dental facilities that handle amalgam wastes shall additionally comply with all additional state and federal regulations, as now exist or may be enacted in the future regarding the disposal of said wastes.

(Ord 168-11, §1, 8-9-11)

Secs. 20-88 – 20-90. Reserved.

DIVISION 3. PRETREATMENT OF WASTEWATER

Sec. 20-91. Pretreatment facilities.

Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in §20-81 of this article within the time limitations specified by EPA, the State or Director of Utilities, whichever is more stringent.

(1) Any facilities necessary for compliance shall be provided, operated and maintained at the user’s expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Director of Utilities for review, and shall be acceptable to the Director of Utilities before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility for modifying such facilities are necessary to produce a discharge acceptable to the City under the provisions of this article.

(2) The Department of Natural Resources has separate requirements for the review of plans, specifications and operating procedures of proposed pretreatment facilities. User shall comply with these requirements as well.

(Ord 60-94, §1, 5-4-94)

Sec. 20-92. Additional pretreatment measures.

(a) Whenever deemed necessary, the Director of Utilities may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate point of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user’s compliance with the requirements of this article.

(b) The Director of Utilities may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

(c) Grease, oil and sand interceptors shall be provided when, in the opinion of the Director of Utilities, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity
approved by the Director of Utilities and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly, as needed, by the user at their expense.

(d) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(Ord 60-94, §1, 5-4-94)

Sec. 20-93. Accidental discharge/slug control plans.

At least once every two (2) years, the Director of Utilities shall evaluate whether such significant industrial user needs an accidental discharge/slug control plan. The Director of Utilities may require any user to develop, submit for approval and implement such a plan. Alternatively, the Director of Utilities may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including non-routine batch charges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the Director of Utilities of any accidental or slug discharge, as required by §20-146 of this article; and

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures, or equipment measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(Ord 60-94, §1, 5-4-94)

Sec. 20-94. Hauled wastewater.

(a) Septic tank wastewater may be introduced into the POTW only at locations designated by the Director of Utilities, and at such times are established by the Director of Utilities. Such waste shall not violate division 2 of this article or any other requirements established by the City. The Director of Utilities may require septic tank waste haulers to obtain wastewater discharge permits. The Director of Utilities may collect samples of each hauled load to ensure compliance with applicable standards.

(b) The Director of Utilities shall require haulers of industrial waste to obtain wastewater discharge permits. The Director of Utilities may require generators of hauled industrial waste to obtain wastewater discharge permits. The Director of Utilities also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(c) Industrial waste haulers may discharge loads only at locations designated by the Director of Utilities. No load may be discharged without prior consent of the Director of Utilities. The Director of Utilities may collect samples of each hauled load to ensure compliance with applicable standards. The Director of Utilities may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(d) Industrial waste haulers must provide a wastetracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents and whether any wastes are RCRA hazardous wastes.

(Ord 60-94, §1, 5-4-94)

Secs. 20-95 – 20-100. Reserved.
DIVISION 4. WASTEWATER DISCHARGE PERMIT

Sec. 20-101. Wastewater discharge information requests.

When requested by the Director of Utilities, a user must submit information on the nature and characteristics of its wastewater within ninety (90) days of the request. The Director of Utilities is authorized to prepare a form for this purpose and may periodically require users to update this information.

(Ord 60-94, §1, 5-4-94)

Sec. 20-102. Wastewater discharge permit requirement.

(a) No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Director of Utilities, except that a significant industrial user that has filed a timely application pursuant to §20-103 of this article may continue to discharge for the time period specified therein.

(b) The Director of Utilities may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this article.

(c) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subject the wastewater discharge permittee to the sanctions set out in divisions 10 and 11 of this article. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state or local law.

(Ord 60-94, §1, 5-4-94)

Sec. 20-103. Wastewater discharging permitting – existing connections.

Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this article and who wishes to continue such discharges in the future, shall, within ninety (90) days after said date, apply to the Director of Utilities for a wastewater discharge permit in accordance with §20-105 of this article, and shall not cause or allow discharges to the POTW to continue after ninety (90) days of the effective date of this article except in accordance with a wastewater discharge permit issued by the Director of Utilities.

(Ord 60-94, §1, 5-4-94)

Sec. 20-104. Same – New connections.

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with §20-105 of this article, must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

(Ord 60-94, §1, 5-4-94)

Sec. 20-105. Wastewater discharge permit application contents.

All users required to obtain a wastewater discharge permit must submit a permit application. The Director of Utilities may require all users to submit as part of an application the following information:

1. All information required by §20-141(b) of this article;

2. Description of activities, facilities and plat processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

3. Number and type of employees, hours of operation and proposed or actual hours of operation;

4. Each product produced by type, amount, process or processes and rate of production;

5. Type and amount of raw materials processed (average and maximum per day);

6. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, and appurtenances by size, location and elevation and all points of discharge;

7. Time and duration of discharges; and

8. Any other information as may be deemed necessary by the Director of Utilities to elevate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

(Ord 60-94, §1, 5-4-94)

Sec. 20-106. Application signatories and certification.

All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:
“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(Ord 60-94, §1, 5-4-94)

Sec. 20-107. Wastewater discharge permit decisions.

The Director of Utilities will evaluate the data furnished by the user and may require additional information. Within ninety (90) days of receipt of a complete wastewater discharge permit application, the Director of Utilities will determine whether or not to issue a wastewater discharge permit. The Director of Utilities may deny any application for a wastewater discharge permit.

(Ord 60-94, §1, 5-4-94)


DIVISION 5. WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS

Sec. 20-116. Wastewater discharge permit duration.

A wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five (5) years, at the decision of the Director of Utilities. Each wastewater discharge permit will indicate a specified date upon which it will expire.

(Ord 60-94, §1, 5-4-94)

Sec. 20-117. Wastewater discharge permit contents.

A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Director of Utilities to prevent pass through or interference, protect the quality of the water body receiving the treatment plant’s effluent, protect worker health and safety, facilitate sludge management and disposal and protect against damage to the POTW.

(1) Wastewater discharge permits must contain:

a. A statement that indicates wastewater permit duration, which in no event shall exceed five (5) years;

b. A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance with §20-130 of this article, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

c. Effluent limits based on applicable pretreatment standards;

d. Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency and sample type based on federal, state and local law; and

e. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state and local law.
(2) Wastewater discharge permits may contain, but need not be limited to, the following conditions:

a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for low regulation and equalization;

b. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

c. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

e. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;

f. Requirements for installation and maintenance of inspection and sampling facilities and equipment;

g. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit; and

h. Other conditions as deemed appropriate by the Director of Utilities to ensure compliance with this article, and state and federal laws, rules and regulations.

(Ord 60-94, §1, 5-4-94)

Sec. 20-118. Wastewater discharge permit appeals.

The Director of Utilities shall provide public notice of the issuance of a wastewater discharge permit. Any person, including the user, may petition the Director of Utilities to reconsider the terms of a wastewater discharge permit within twenty (20) days of its issuance.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater permit.

(3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

(4) If the Director of Utilities fails to act within ninety (90) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater permit, or not to modify a wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.

(5) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the Circuit Court of Outagamie County, Wisconsin.

(Ord 60-94, §1, 5-4-94)

Sec. 20-119. Wastewater discharge permit modification.

The Director of Utilities may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

(1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

(2) To address significant alterations or additions to the user’s operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

(3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(4) Information indicating that the permitted discharge poses a threat to the public, the City’s POTW, personnel or the receiving waters;

(5) Violation of any terms or conditions of the wastewater discharge permit;

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reports;

(Ord 60-94, §1, 5-4-94)
(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;

(8) To correct typographical or other errors in the wastewater discharge permit; or

(9) To reflect a transfer of the facility ownership or operation to a new owner or operator.

Sec. 20-120. Wastewater discharge permit transfer.

Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least ninety (90) days advance notice to the Director of Utilities and the Director of Utilities approves the wastewater discharge permit transfer. The notice to the Director of Utilities must include a written certification by the new owner or operator which:

(1) States that the new owner and/or operator has no immediate intent to change the facility’s operations and processes;

(2) Identifies the specific date on which the transfer is to occur; and

(3) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of the facility transfer.

Sec. 20-121. Wastewater discharge permit revocation.

The Director of Utilities may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

(1) Failure to notify the Director of Utilities of significant changes to the wastewater prior to the changed discharge;

(2) Failure to provide prior notification to the Director of Utilities of changed conditions pursuant to §20-145 of this article;

(3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(4) Falsifying self-monitoring reports;

(5) Tampering with monitoring equipment;

(6) Refusing to allow the Director of Utilities timely access to the facility premises and records;

(7) Failure to meet effluent limitations;

(8) Failure to pay fines;

(9) Failure to pay sewer charges;

(10) Failure to meet compliance schedules;

(11) Failure to complete a wastewater survey or the wastewater discharge permit application;

(12) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

(13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this article.

Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

Sec. 20-122. Wastewater discharge permit reissuance.

A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with §20-105 of this article, a minimum of ninety (90) days prior to the expiration of the user’s existing wastewater discharge permit.

Sec. 20-123. Regulation of waste received from other jurisdictions.

(a) If another municipality, or user located within another municipality, contributes wastewater to the POTW, the Director of Utilities shall enter into an intermunicipal agreement with the contributing municipality.

(b) Prior to entering into an agreement required by paragraph (a), above, the Director of Utilities shall request the following information from the contributing municipality:

(1) A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;

(2) An inventory of all users located within the
contributing municipality that are discharging to the POTW; and

(3) Such other information as the Director of Utilities may deem necessary.

(c) An intermunicipal agreement, as required by paragraph (a), above, shall continue the following conditions:

(1) A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this article and local limits which are not at least as stringent as those set out in §20-84 of this article. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes to the City’s ordinance or local limits;

(2) A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis;

(3) A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Director of Utilities; and which of these activities will be conducted jointly by the contributing municipality and the Director of Utilities;

(4) A requirement for the contributing municipality to provide the Director of Utilities with access to all information that the contributing municipality obtains as part of its pretreatment activities;

(5) Limits on the nature, quality and volume of the contributing municipality’s wastewater at the point where it discharges to the POTW;

(6) Requirements for monitoring the contributing municipality’s discharge;

(7) A provision ensuring the Director of Utilities access to the facilities of users located within the contributing municipality’s jurisdictional boundaries for the purpose of inspection, sampling and any other duties deemed necessary by the Director of Utilities; and

(8) A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

(Ord 60-94, §1, 5-4-94)

Secs. 20-124 – 20-140. Reserved.
DIVISION 6. REPORTING REQUIREMENTS

Sec. 20-141. Baseline monitoring reports.

(a) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users subject to such standard currently discharging to or scheduled to discharge to the POTW shall submit to the Director of Utilities a report which contains the information listed in paragraph (b) below. At least ninety (90) days prior to commencement of their discharge, new sources and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the Director of Utilities a report which contains the information listed in paragraph (b) below. A new source shall also report the method of pretreatment it intends to use to meet applicable categorical standards and shall provide estimates of its anticipated flow and quality of pollutants to be discharged.

(b) Users described above shall submit the information set forth below.

1. Identifying information. The name and address of the facility, including the name of the operator and owner.

2. Environmental permits. A list of any environmental control permits held by or for the facility.

3. Description of operations. A brief description of the nature, average rate of production and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

4. Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

   a. The categorical pretreatment standards applicable to each regulated process.
   b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the Director of Utilities, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in §20-150 of this article.
   c. Sampling must be performed in accordance with procedures set out in §20-151 of this article.

6. Certification. A statement, reviewed by the user’s authorized representative and certified by a qualified professional, including whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O & M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

7. Compliance schedule. If additional pretreatment and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O & M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in §20-142 of this article.

8. Signature and certification. All baseline monitoring reports must be signed and certified in accordance with §20-106 of this article.

(Ord 60-94, §1, 5-4-94)

Sec. 20-142. Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by §20-141(b)(7) of this article:

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events including, but are not limited to, hiring an engineer, completing preliminary and final plans,
executing contracts for major components, commencing and completing construction and beginning and conducting routine operation);

(2) No increment referred to above shall exceed nine (9) months;

(3) The user shall submit a progress report to the Director of Utilities no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

(4) In no event shall more than nine (9) months elapse between such progress reports to the Director of Utilities.

(Ord 60-94, §1, 5-4-94)

Sec. 20-143. Reports on compliance with categorical pretreatment standard deadline.

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Director of Utilities a report containing the information described in §§20-141(b)(4) – (6) of this article. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user’s long-term production rate. For all other users subject to categorical pretreatment standards expressed terms of allowable pollutants discharge per unit of production (or other measure of operation), this report shall include the user’s actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with §20-106 of this article.

(Ord 60-94, §1, 5-4-94)

Sec. 20-144. Periodic compliance reports.

(a) All significant industrial users shall, at a frequency determined by the Director of Utilities but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with §20-106 of this article.

(b) All wastewater samples must be representative of the user’s discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(c) If a user subject to the reporting requirement in this section monitors any pollutant, more frequently than required by the Director of Utilities, using the procedures prescribed in §20-151 of this article, the results of this monitoring shall be included in this report.

(Ord 60-94, §1, 5-4-94)

Sec. 20-145. Reports of changed conditions.

Each user must notify the Director of Utilities of any planned significant changes to the user’s operation or system which might alter the nature, quality, or volume of its wastewater at least (90) days before the change. The list shall include the discharge of those listed or characterized hazardous wastes for which the user has submitted initial notification under 40 CFR 40.12(p) or §20-145 of this article.

(1) The Director of Utilities may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under §20-105 of this article.

(2) The Director of Utilities may issue a wastewater discharge permit under §20-107 of this article or modify an existing wastewater discharge permit under §20-109 of this article in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes including, but are not limited to, flow increases of twenty percent (20%) or greater, the discharge of any previously unreported pollutants, and long term production rate changes of twenty percent (20%) or more.

(Ord 60-94, §1, 5-4-94)

Sec. 20-146. Reports of potential problems.

(a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomarily batch discharge or slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the Director of Utilities of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and
corrective actions taken by the user.

(b) Within five (5) days following such discharge, the user shall, unless waived by the Director of Utilities, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties or other liability which may be imposed pursuant to this ordinance.

(c) A notice shall be permanently posted on the user’s bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph (a) above. Employers shall ensure that all employees who may cause a discharge to occur are advised of the emergency notification procedure. (Ord 60-94, §1, 5-4-94)

Sec. 20-147. Reports from unpermitted users.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Director of Utilities as the Director of Utilities may require. (Ord 60-94, §1, 5-4-94)

Sec. 20-148. Notice of violation/repeat sampling and reporting.

If sampling performed by a user indicates a violation, the user must notify the Director of Utilities within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director of Utilities within thirty (30) days after becoming aware of the violation. The user is not required to re-sample if the Director of Utilities monitors at the user’s facility at least once a month, or if the Director of Utilities samples between the user’s initial sampling and when the user receives the results of this sampling. (Ord 60-94, §1, 5-4-94)

Sec. 20-149. Notification of the discharge of hazardous waste.

(a) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director and DNR Bureau of Hazardous Waste Management, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under §20-145 of this article. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of §20-141, §20-143 and §20-144 of this article.

(b) Dischargers are exempt from the requirements of paragraph (a) above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous wastes do not require additional notification.

(c) In case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste, the user must notify the Director of Utilities, the EPA Regional Waste Management Waste Division Director, the State Hazardous Waste Authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable federal or state law. (Ord 60-94, §1, 5-4-94)
Sec. 20-150. Analytical requirements.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.

(Ord 60-94, §1, 5-4-94)

Sec. 20-151. Sample collection.

(a) Except as indicated in paragraph (b) below, the user must collect wastewater samples using flow proportional composite collection techniques. In the event low proportional sampling is infeasible, the Director of Utilities may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

(b) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides and volatile organic compounds must be obtained using grab collection techniques.

(Ord 60-94, §1, 5-4-94)

Sec. 20-152. Timing.

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

(Ord 60-94, §1, 5-4-94)

Sec. 20-153. Record keeping.

Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the result of each analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the Director of Utilities.

(Ord 60-94, §1, 5-4-94)

DIVISION 7. COMPLIANCE MONITORING

Sec. 20-161. Right of entry; inspection and sampling.

The Director of Utilities shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this article and any wastewater discharge permit or order issued hereunder. Users shall allow the Director of Utilities ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying and the performance of any additional duties.

(1) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards to that, upon presentation of suitable identification, the Director of Utilities will be permitted to enter without delay for the purposes of performing specific responsibilities.

(2) The Director of Utilities shall have the right to set up on the user’s property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user’s operations.

(3) The Director of Utilities may require the user to locate, construct, install and maintain monitoring equipment as necessary. The facility’s sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated to ensure their accuracy.

a. If a user is required by the Director of Utilities to locate, construct and install monitoring facilities, the user shall do so according to the requirements of the Director of Utilities and any other local building codes. A design of the monitoring facilities shall be submitted for the approval of the Director of Utilities prior to construction of the facilities.

(4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or samples shall be promptly removed by the user at the written or verbal request of the Director of Utilities and shall not be replaced. The costs of clearing such access shall be borne by the user.

(5) Unreasonable delays in allowing the Director of Utilities access to the user’s premises shall be a violation of this article.

Sec. 20-162. Search warrants.

If the Director of Utilities has been refused access to a building, structure or property, or any part thereof, the Director of Utilities may seek issuance of a special inspection warrant, pursuant to Chapter 66 of the Wisconsin Statutes, from the Circuit Court of Outagamie County, Wisconsin.

Secs. 20-163 – 20-165. Reserved.
DIVISION 8. CONFIDENTIAL INFORMATION

Sec. 20-166. Generally.

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits and monitoring programs, and from the Director of Utilities inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Director of Utilities, that the release of such information would divulge that the information, processes or methods of productions entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information shall be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available immediately upon request to governmental agencies for uses related to the WPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other “effluent data” as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

(Ord 60-94, §1, 5-4-94)


DIVISION 9. PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

Sec. 20-171. Generally.

The Director of Utilities shall publish annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

(1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken during a six- (6-) month period exceed the daily maximum limit for the same pollutant parameter by any amount;

(2) Technical review criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4) for BOD, TSS, fats, oils and grease, and (1.2) for all other pollutants except pH.

(3) Any other discharge violation that the Director of Utilities believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public.

(4) Any discharge of pollutants that has imminent endangerment to the public or the environment, or has resulted in the Director of Utilities’ exercise of its emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide within ninety (90) days after the due date, any required reports, including baseline monitoring report, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or
(8) Any other violation(s) which the Director of Utilities determines will adversely affect the operation or implementation of the local pretreatment program.

Secs. 20-172 – 20-175. Reserved.
Sec. 20-179. Show cause hearing.

The Director of Utilities may order a user which has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Director of Utilities and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(Ord 60-94, §1, 5-4-94)

Sec. 20-180. Compliance orders.

When the Director of Utilities finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, the Director of Utilities may issue an order to the user responsible for the discharge directing that the user come into compliance with a specified time. If the user does not come into compliance within the time provided, sewer service may be discounted unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(Ord 60-94, §1, 5-4-94)

Sec. 20-181. Cease and desist orders.

When the Director of Utilities finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, or that the user’s past violations are likely to recur, the Director of Utilities may issue an order to the user directing it to cease and desist all such violations and directing the user to:

1. Immediately comply with all requirements; and
2. Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge;
3. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(Ord 60-94, §1, 5-4-94)

Sec. 20-182. Administrative penalties.

(a) When the Director of Utilities finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement, the Director of Utilities may charge a penalty to such user in an amount not to exceed ten thousand dollars ($10,000) per day. Such penalties shall be assessed on a per violation, per day basis. In the case of monthly or other long-term average discharge limits, penalties shall be assessed for each day during the period of violation.

(b) Unpaid charges and penalties shall, after thirty (30) days, be assessed an additional penalty of one percent (1%) of the unpaid balance, and interest shall accrue thereafter at a rate of one percent (1%) per month. A lien against the user’s property will be sought for unpaid charges and penalties.

(c) Users desiring to dispute such penalties must file a written request for the Director of Utilities to reconsider the penalty along with full payment of the penalty amount within ten (10) days of being notified of the penalty. Where a request has merit, the Director of Utilities may convene a hearing on the matter. In the event the user’s appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The Director of Utilities may add the costs of preparing administrative enforcement actions, such as notices and orders, to the penalty.

(d) Issuance of an administrative penalty shall not be a bar against, or a prerequisite for, taking any other action against the user.

(Ord 60-94, §1, 5-4-94)

Sec. 20-183. Emergency suspensions.

The Director of Utilities may immediately suspend a user’s discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened
discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Director of Utilities may also immediately suspend a user’s discharge, after notice and opportunity to respond, that threaten to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

(1) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user’s failure to immediately comply voluntarily with the suspension order, the Director of Utilities may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream or endangerment to any individuals. The Director of Utilities may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Director of Utilities that the period of endangerment has passed, unless the termination proceedings in §20-183 of this article are initiated against the user.

(2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director of Utilities prior to the date of any show cause or termination hearing under §20-178 or §20-183 of this article. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

Sec. 20-184. Termination of discharge.

In addition to the provisions of §20-131 of this article, any user who violates the following conditions is subject to discharge termination:

(1) Violation of wastewater discharge permit conditions;

(2) Failure to accurately report the wastewater constituents and characteristics of its discharge;

(3) Failure to report significant changes in operations or wastewater volume, constituents and characteristic prior to discharge;

(4) Refusal of reasonably access to the user’s premises for the purpose of inspection, monitoring or sampling; or

(5) Violation of the pretreatment standards in division 2 of this article.

Such user shall be notified for the proposed termination of its discharge and be offered an opportunity to show cause under §20-178 of this article why the proposed action should not be taken. Exercise of this option by the Director of Utilities shall not be a bar to, or a prerequisite for, taking any other action against the user.

Sec. 20-185. Reserved.
UTILITIES

DIVISION 11. JUDICIAL ENFORCEMENT
REMEDIES

Sec. 20-186. Injunctive relief.

When the Director of Utilities finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued thereunder or any other pretreatment standard or requirement, the Director of Utilities may petition the Circuit Court for Outagamie County through the Appleton City Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order or other requirement imposed by this article on activities of the user. The Director of Utilities may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief, including a requirement for the user to conduct environmental remediation. A petition for relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(Ord 60-94, §1, 5-4-94)

Sec. 20-187. Civil penalties.

(a) A user who has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued hereunder or any other pretreatment standard or requirement shall be liable to the City of Appleton for a maximum civil penalty of ten thousand dollars ($10,000) per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(b) The Director of Utilities may recover reasonable attorneys’ fees, court costs and other expenses associated with enforcement activities including sampling and monitoring expenses and the cost of any actual damages incurred by the City of Appleton.

(c) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the users violation; corrective actions by the user, the compliance history of the user and any other factor as justice requires.

(d) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(Ord 60-94, §1, 5-4-94)

Sec. 20-188. Criminal prosecution.

Any user alleged to be in violation of the criminal laws of the state of Wisconsin shall be referred to the District Attorney’s Office for review and possible criminal prosecution.

(Ord 60-94, §1, 5-4-94)

Sec. 20-189. Remedies nonexclusive.

The remedies provided for in this article are not exclusive. The Director of Utilities may take any, all or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City’s enforcement response plan. However, the Director of Utilities may take other action against any user when the circumstances warrant. Further, the Director of Utilities is empowered to take more than one (1) enforcement action against any noncompliant user.

(Ord 60-94, §1, 5-4-94)

Secs. 20-190 – 20-200. Reserved.
ARTICLE IV. RATES AND CHARGES*

Sec. 20-201. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial user means any property used primarily for the conduct of business or for the purpose of buying or selling goods or services.

Debt retirement costs means the annual payment of principal and interest due for the retirement of revenue bonds issued to finance the cost of capital improvements to the sewage system.

Industrial user means any nongovernmental user of the City wastewater treatment works listed in Division A, B, D, E and I of the Standard Industrial Classification Manual of the Office of Management and Budget.

Municipal user means any facility owned and operated by the City municipal corporation or any other municipal agencies.

Operation and maintenance costs means all direct and indirect costs, exclusive of debt service costs, necessary to ensure adequate wastewater treatment on a continuing basis in conformance with state, federal and local requirements and to ensure optional long-term facility management.

Person means any and all persons, natural or artificial, including any individual, firm, company, municipal or private corporation, association, society, institution, enterprise, governmental agency or other entity.

Replacement costs means those expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance of which such works are designed and constructed, and shall be considered to be part of operation and maintenance costs.

Sanitary sewage means the combination of liquid and water-carried waste discharged from sanitary plumbing facilities.

Sanitary sewer service charge means a charge levied on users of the treatment works for the cost of retiring sewage system revenue bonds and the cost of operating, maintaining and repairing the sewage system and treatment works.

Sewage means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwater, surface water, stormwater and clear water as may be present.

User charge means a charge levied on users of the treatment works for the costs of operation and maintenance of such works as defined in §35.905-26, Title 40 U.S.C. and is contained within the sanitary sewer service charges as created by this article.

Wastewater treatment plant means any arrangement of devices and structures used for treating sewage.

Watercourse means a channel in which flow of water occurs, either continuously or intermittently.

Cross reference(s) – Definitions and rules of construction generally, §1-2.

Sec. 20-202. Imposed.

It is hereby determined and declared to be necessary for the protection of the health, safety and welfare of the public to allocate all of the cost of collection and treatment of sewage and use of the sewage system of the City to the property served. The cost of such service shall be imposed on the property served as a special charge for current serviced rendered and shall be known as sewer service charges and such charges are hereby imposed by the provisions of this article and W.S.A. §66.0627. For purposes of this article, sewage system shall include without limitation all facilities within or without the City for the collection, transportation, pumping, treatment and disposition of sewage and water-carried wastes created in and to be conducted away from residential, commercial and industrial establishments and public, private and charitable buildings of all kinds. The sewer service charge imposed by this article shall apply equally to all users of the sewer system and shall be such that each user shall pay in direct proportion to the service received. The sewer service charge shall take precedence over any other existing agreements.

Cross reference(s) – Definitions and rules of construction generally, §1-1.

Sec. 20-203. Basis.

The sewer service charges imposed by this article shall be based on either one of the following:

(1) The water meter readings of the City Department of Utilities Water Division, plus the water used by each industry or other user form of all other sources such as wells, rivers and the like. Measurement of any such additional water other than water division meter readings, shall be by meter, weir or other measuring device approved
by the Utilities Manager and installed by the industry or user at his own expense.

(2) The quantity and quality of sewage discharged into the sewage system. The quantity of sewage shall be measured by meter, weir or other measuring device approved by the Utilities Manager and installed by the industry or user at its own expense. The quality of sewage shall be measured by the pounds of suspended solids and the pounds of biochemical oxygen demand (BOD) contained therein. The determination of suspended solids and BOD contained in the waste shall be in accordance with guidelines approved by the EPA and DNR establishing test procedures for the analysis of pollutants. To determine the quality of the sewage and waste, samplings and analyses of twenty-four (24) composite samples shall be made daily by and at the expense of the industry or user and accumulated over the billing period. The City shall have the right to access all measurement and analytical facilities and shall cause sufficient tests to be made to establish the validity of the information being supplied.

The selection of either alternative basis of charges as set out in subsections (1) and (2) of this section shall be made upon the direction of the Utilities Manager.

(Code 1965, §2.11(2); Ord 59-94, §1, 5-4-94)

**Sec. 20-204. Rates.**

(a) The sewer service charges imposed by this article shall be based upon the rates adopted by the Common Council. The rates shall be reviewed at least once annually and shall be such that they produce sufficient revenue to meet all costs budgeted for their effective time period. The users of the sewer service shall be notified annually of the portion of user charges attributable to wastewater treatment services. Said rates shall be on file in the Office of the City Clerk.

(b) The City shall determine the strength of normal domestic waste from its non-monitored customers by subtracting the industrial monitored loading by parameter from the total loading treated by the City. The net pounds of biochemical oxygen demand (BOD) and total suspended solids from the non-monitored customers shall be divided by 8.34 (a conversion factor) and then divided by the net billable flow (expressed in millions of gallons) from those non-monitored customers to determine whether the strength of the waste is within a reasonable range for a normal domestic household. The City will consider normal domestic strength waste to have a BOD concentration of not more than three hundred (300) milligrams per liter. Should this calculation for BOD be higher than three hundred (300) milligrams per liter, a review will be done of the city users to determine if there are additional users that should be monitored for high strength water. This methodology shall be followed to assure that the charges are proportionately made to all customers. No users shall pay less per one thousand (1,000) gallons than the current effective rate associated with the per unit costs for environmental treatment based on the waste characteristics determined to be applicable for domestic or industrial users.

(Code 1965, §2.11(3); Ord 1-90, §1, 1-10-90; Ord 99-91, §1, 9-18-91; Ord 146-91, §1, 12-18-91; Ord 17-92, §1, 3-4-92; Ord 59-94, §1, 5-4-94; Ord 63-94, §1, 6-4-94, Ord 17-00, §1, 2-5-00)

**Sec. 20-205. Exceptions and modifications of charges.**

In cases where there is no water meter or acceptable water consumption record the quantity of water used shall be determined in such reasonable and accurate manner as the Utilities Manager may direct and the charge shall be computed. If any building discharging sanitary sewage, industrial wastes, water and other liquid, directly or indirectly, into the public sanitary sewerage system can show to the satisfaction of the Utilities Manager that a portion of the water used does not and cannot enter the public sanitary sewage system, the City may determine by a reasonable and accurate method, the amount of the water used or the percentage of water entering the public sanitary sewage system chargeable to such owner or user. Such amount or percentage, when so determined, shall then constitute the basis of sewer service charges. Any additional meter required to determine the quantity of water actually entering the sewage system shall be installed at the expense of the owner or other interested party.

(Code 1965, §2.11(5); Ord 59-94, §1, 5-4-94)

**Sec. 20-206. Collections.**

(a) The City Department of Finance is hereby authorized as the collection agency for the City and the industrial monitoring and sewer service charges shall be collected quarterly at the same time as water payments become due. Bills shall be prepared by the Department of Finance and sent to the owner or occupant of each premises served by a public sanitary sewer. If partial payment is made on any bill, the payment shall apply equally to the water and sewer portions of the bill. The Department of Finance shall allocate the actual cost of billing and collecting.

(b) The bills for water, industrial monitoring and sanitary sewer charges shall be mailed to the designated utility bill recipient, but this mailing shall not relieve the owner of the property from liability for rental property in the event payment is not made as required in this article. The owner of any property served which is occupied by tenants shall have the right to examine collection records of
the City for the purpose of determining whether such rates and charges have been paid for such tenants, provided that such examination shall be made at the office at which the records are kept and during the hours that such office is open for business. (Code 1965, §2.11(6); Ord 76-93, §1, 4-21-93; Ord 59-94, §1, 5-4-94)

**Sec. 20-207. Lien for delinquent charges.**

(a) Industrial monitoring and sewer service charges shall not be payable in installments. If industrial monitoring and sewer service charges remain unpaid after a period of thirty (30) days from the date of this invoice, such charge shall become a delinquent special charge and shall become a lien as provided in W.S.A. §66.0703(15) as of the date of delinquency and shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charge. Unpaid charges shall bear interest at the rate of one and one-half percent (1.5%) per month from the date of delinquency.

(b) Sewer service charges shall not be payable in installments. If sewer service charges remain unpaid after a period of twenty (20) days from the date of utility bill, such bill shall become a delinquent special charge and shall become a lien as provided in W.S.A. §66.0703(15). Said charges shall automatically be extended upon the current or next tax roll as a delinquent tax against the property; and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charges. Unpaid charges shall be assessed a one and one percent (1%) per month late payment charge to bills not paid within twenty (20) days of issuance. (Ord 30-00, §1, 4-22-00)

(c) All delinquent special charges shall be subject to a ten percent (10%) penalty in addition to other charges and prior penalties or interest when the delinquent special charge is extended upon the tax roll. (Code 1965, §2.11(7); Ord 131-92, §1, 12-2-92; Ord 28-94, §1, 1-5-94; Ord 59-94, §1, 5-4-94)

**Sec. 20-208. Sewage utility charges fund.**

(a) There is hereby created a special fund to be known as the City of Appleton Sewage Utility for the purpose of meeting all necessary expenses of operating, maintaining and repairing the sewage system and all costs of collection and treatment of sewage and for payment of revenue bonds issued for the improvements or expansion of the sewage system. All sewer service charges collected by the Director of Finance shall be entered into this fund together with all such charges which are collected as delinquent taxes pursuant §20-207 and all proceeds resulting from the same

of revenue bonds issued for improvement of expansion of the sewage system. Money in the fund shall be used solely for the purpose of paying principal and interest of sewage system revenue bonds and costs of collection and treatment of sewage and costs of operating, maintaining and repairing the sewage system, and the sanitary sewer service charge shall be the sole source of revenue for all such funds. The Department of Finance shall install and maintain records of the fund.

(b) No less than once each calendar year there shall be an audit of the fund to establish:

(1) The sufficiency of revenues generated to cover all operating, maintenance and debt retirement costs.

(2) That the charges to all classes of users are proportionate and equitable.

(3) The proper level of funding for replacement costs.

(c) The fund shall be divided into an operating and maintenance fund, a depreciation fund and a special redemption fund in a manner provided by W.S.A. §66.662(2). Each of these funds shall be maintained at sufficient levels to meet their respective needs and money allocated to operation, maintenance and replacement costs shall be used solely for that purpose. (Code 1965, §2.11(8); Ord 4-93, §1, 1-6-93; Ord 76-93, §1, 4-21-93; Ord 59-94, §1, 5-4-94)

**Sec. 20-209. Industrial monitoring charges.**

(a) **Purpose.** It is the purpose of this section to provide for the recovery of costs from the users of the City’s POTW for the implementation of the program established in this article. The applicable charges or fees shall be set forth in the City’s schedule of charges and fees, to be jointly prepared annually by the Utilities Manager and Director of Finance and approved by the Common Council.

(b) **Authorized; amount.** The City may adopt charges and fees which may include:

(1) **Permit fee.** The City will charge the industries that are required to have a wastewater discharge permit a permit fee for an original permit and a permit reissuance fee for permit reissuance. The amount of said fees will be on file in the City Clerk’s Office.

(2) **Sampling charge.** The City will assess the industries a sampling charge for sampling their wastewater with City equipment and manpower. The sampling charges will be on
(3) **Laboratory analysis charge.** The City will assess the industries a laboratory analysis charge to recover the City’s expense for analyzing the industrial wastewater discharge samples for specific pollutants. The fee schedule for analysis of specific pollutants will be on file in the City Clerk’s Office.

(c) **Collection.** The collection of industrial monitoring charges shall be pursuant to §20-206.

(d) **Lien for delinquent charges.** The administering of liens for delinquent charges under this section shall be pursuant to §20-207.

(Code 1965, §2.12; Ord 101-91, §1, 9-18-91; Ord 4-93, §1, 1-6-93; Ord 59-94, §1, 5-4-94)

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**ARTICLE V. STORMWATER MANAGEMENT SERVICES**

**DIVISION 1. GENERAL PROVISIONS**

**Sec. 20-226. Findings and necessity.**

The City of Appleton finds that the management of stormwater and other surface water discharge within and beyond the Fox River is a matter that affects the health, safety and welfare of the City, its citizens and businesses and others in the surrounding area. Failure to effectively manage stormwater affects the sanitary sewer utility operations of the City by, among other things, increasing the likelihood of infiltration and inflow in the sanitary sewer. In addition, surface water runoff may create erosion of lands, threaten businesses and residences with water damage and create sedimentation and other environmental damage in the Fox River. Those elements of the system which provide for the collection of and disposal of stormwater and regulation of groundwater are of benefit and provide services to all property within the City of Appleton, including property not presently served by the storm elements of the system. The cost of operating and maintaining the City stormwater management system and financing necessary repairs, replacements, improvements and extension thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom. In order to protect the health, safety and welfare of the public, the Common Council is exercising its authority to establish a stormwater utility and set the rates for stormwater management services. The City is acting under the authority of Chapters 62 and 66 of the Wisconsin Statutes, and particularly at least the following statutes: §62.04, §62.11, §62.16(2), §62.18, §66.0621, §66.0809 and §66.0821.

**Sec. 20-227. Establishment.**

There is hereby established a City of Appleton Stormwater Utility. The operation of the Stormwater Utility shall be under the supervision of the Common Council. The Director of Public Works will be in charge of the Stormwater Utility.

**Sec. 20-228. Authority.**

The City, through the Stormwater Utility, may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such facilities as are deemed by the City to be proper and reasonably necessary for a system of storm and surface water management. These facilities may include, without limitation by enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls and ponds and such other facilities as will support a stormwater management system.
Sec. 20-229. Definitions.

For the purpose of this ordinance, the following definitions shall apply; words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense; the work “shall” is mandatory and not discretionary; the work “may” is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster’s Dictionary.

**Director.** The term “Director” means the Director of Public Works or his designee.

**Equivalent Runoff Unit (ERU).** The term “ERU” means the statistical average horizontal impervious area of “single family homes” (single family and mobile homes) within the City of Appleton on the date of adoption of this ordinance. The horizontal impervious area includes, but is not limited to all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks.

**Impervious Area or Impervious Surface.** These terms mean a horizontal surface which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rain water. It includes, but is not limited to, semi-impervious surfaces such as compacted clay, as well as streets, roofs, sidewalks, parking lots and other similar surfaces.

**Duplex unit.** The term “duplex unit” means any residential space identified for habitation by members of the same family attached to only one other residential space or as classified by the City Building Code.

**Dwelling unit.** The term “dwelling unit” means any residential space identified for habitation by members of the same family or as classified by the City Building Code. A dwelling unit includes, but is not limited to, all duplexes, apartments, residential condominiums and townhouse living units.

**Multifamily unit.** The term “multifamily unit” means any residential space identified for habitation by members of the same family or as classified by the City Building Code. A dwelling unit includes, but is not limited to, all duplexes, apartments, residential condominiums and townhouse living units.

**Residential property.** The term “residential property” means any lot or parcel developed exclusively for residential purposes including, but not limited to, single family homes, manufactured homes, multifamily apartment buildings and condominiums.

**Non-residential property.** The term “non-residential property” means any developed lot or parcel not exclusively residential as defined herein, including, but not limited to, transient rentals (such as hotels and motels), commercial, industrial, institutional, governmental property and parking lots.

**Undeveloped property.** The term “undeveloped property” means that which has not been altered from its natural state by the addition of any improvements such as a building, structure, impervious surface, change of grade or landscaping. For new construction, a property shall be considered developed pursuant to this ordinance (a) upon issuance of a Certificate of Occupancy, or upon completion of construction or final inspection if no such certificate is issued or (b) where construction is at least fifty percent (50%) complete and construction is halted for a period of three (3) months.

Sec. 20-230. Connection.

(a) Property owners shall be required to connect to the City’s mini-sewer or storm sewer lateral within twelve (12) months of installation, pursuant to the provisions of §4-270.

(Ord 16-97, §1, 3-5-97)

Secs. 20-231 – 20-235. Reserved.
DIVISION 2. RATES AND CHARGES

Sec. 20-236. Rate charges.

(a) By this ordinance, the Common Council is establishing the rate charge upon each lot and parcel within the City of Appleton for services and facilities provided by the Stormwater Utility. The actual charges to be imposed, the establishment of formulas for calculations of the charges, the establishment of specific customer classifications and any future changes in those rates, formulas, rate charges, and customer classifications, may be made by resolution. All rates established pursuant to this ordinance will be fair and reasonable. The current rates will be on file with the City Clerk.

(b) Rate charges shall be issued to share the costs of the Stormwater Utility. These rate charges may include:

(1) **Base Charge (BC)** – The base charge may be imposed on all property in the city. The base charge will be designed to reflect the fact that all properties benefit from the stormwater management activities of the City and that all property contribute in some way to the stormwater discharge that must be managed by the City. The BC will be designed to collect the administrative costs of the storm sewer utility and the portion of capital costs not covered by special assessments. The BC may be based on the size of a parcel of property.

(2) **Equivalent Runoff Unit Charge (ERU)** – This charge may be imposed on all property that has any developed impervious area. The ERU will be designed on the basis of a typical residential unit of property. Other units of property will be charged multiples of the ERU based on the impervious area contributing to surface water runoff.

(3) **Special Charge (SC)** – This charge may be imposed on property that is in an area specially benefited by a particular stormwater management facility. The SC will be developed to reflect the benefits/services in a particular area that may not be appropriate to spread to property throughout the City. The SC will be calculated on an ERU basis.

(c) The Council may make such other and customer classifications as will be likely to provide reasonable and fair distribution of the costs of the Stormwater Utility. In so doing, the Council may provide credits against certain of the charges set forth above for facilities installed and maintained by the property owner for the purpose of lessening the stormwater flow from that given property.

(d) The City Department of Finance is hereby appointed as the collection agency for the City Stormwater Utility. Bills shall be prepared by the Department of Finance and sent to the owner or occupant of each premise served. The Department of Finance shall allocate the actual cost of billing and collecting.

(e) The bills for Stormwater Utility charges shall be mailed to the designated utility bill recipient, but this mailing shall not relieve the owner of the property from liability for rental property in the event payment is not made as required in this article. The owner of any property served which is occupied by tenants shall have the right to examine collection records of the City for the purpose of determining whether such rates and charges have been paid for such tenants, provided that such examination shall be made at the office at which the records are kept and during the hours that such office is open for business.

(f) Stormwater Utility charges shall not be payable in installments. If Stormwater Utility charges remain unpaid after a period of twenty (20) days from the date of utility bill, such bill shall become a delinquent special charge and shall become a lien as provided in W.S.A. §66.66(15). Said charges shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charges. Unpaid charges shall be assessed a one and one-half percent (1½%) per month late payment charge to bills not paid within twenty (20) days of issuance.

(g) All delinquent special charges shall be subject to a ten percent (10%) penalty in addition to all other charges and prior penalties or interest when the delinquent special charge is extended upon the tax roll.

Sec. 20-237. Customer classification.

(a) For purposes of imposing the stormwater charges, all lots and parcels within the City are classified as follows:

<table>
<thead>
<tr>
<th>Classification</th>
<th>Public Road</th>
<th>Private Road</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Detached Individual Condominiums</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Duplex</td>
<td>.5/unit</td>
<td>1/unit</td>
</tr>
<tr>
<td>Duplex Condominiums</td>
<td>.5/unit</td>
<td>1/unit</td>
</tr>
<tr>
<td>Multifamily Condominiums</td>
<td>Actual impervious area of the property using aerial photography</td>
<td></td>
</tr>
</tbody>
</table>
## ERUs imposed

<table>
<thead>
<tr>
<th>Classification</th>
<th>Public Road</th>
<th>Private Road</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile Homes</td>
<td>.5/unit</td>
<td>1/unit</td>
</tr>
<tr>
<td>Bed &amp; Breakfast (fewer than 5 units)</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Bed &amp; Breakfast (5 units or more)</td>
<td>.5/unit</td>
<td>1/unit</td>
</tr>
<tr>
<td>Multifamily rental</td>
<td>Actual impervious area of the property using aerial photography</td>
<td>ERU rate x impervious area / ERU</td>
</tr>
<tr>
<td>Non-Residential and Multi-Use</td>
<td>One (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU, rounded down to the nearest one-tenth (0.1), i.e.: ERU rate x impervious area / ERU</td>
<td>One (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU, rounded down to the nearest one-tenth (0.1), i.e.: ERU rate x impervious area / ERU</td>
</tr>
<tr>
<td>Undeveloped</td>
<td>One (1) ERU multiplied by a factor established by resolution then divided by the square footage for one (1) ERU established by resolution</td>
<td>One (1) ERU multiplied by a factor established by resolution then divided by the square footage for one (1) ERU established by resolution</td>
</tr>
</tbody>
</table>

(b) The Director shall prepare a list of lots and parcels within the City of Appleton and assign a classification to each lot or parcel.

(c) The average square footage of impervious area of ERU is established to be equivalent to 2,368 square feet.

(d) The Director shall be responsible for determining the impervious area based on the best available information, including, but not limited to, data supplied by the City Assessor, aerial photography, the property owner, tenant or developer. The Director may require additional information as necessary to make the determination. The billing amount shall be updated by the Director based on the building permit process and/or best available information.

(e) All unoccupied developed lots and parcels shall be subject to the stormwater utility charges.

(f) The minimum charges for any parcel shall be equal to the rate of four-tenths (0.4) of one (1) ERU.

Sec. 20-238. New construction.

(a) The property owner shall be responsible for completing the stormwater utility service application form any time a building permit is issued, exclusive of those issued to existing single family residences, or a site plan review is conducted. The form shall be provided by the Division of Inspections with each application for a building permit (exclusive of building permits for single family residences) or application for site plan review. Failure to submit a completed stormwater utility service application form or providing false information on said form, shall result in the penalty as provided in §1-18 of the Municipal Code.

(b) The owner shall also be liable for stormwater charges, under this ordinance, for the improvement from the date construction of the improvement began.

Sec. 20-239. Method of appeal.

(a) The Stormwater Utility charge may be appealed as follows:

1. A written appeal shall be filed with the City Clerk prior to the utility charge due date; or
2. Within thirty (30) days of payment, a written challenge to the stormwater charge must be filed with the City Clerk on behalf of the customer, specifying all bases for the challenge and the amount of the stormwater charge the customer asserts is appropriate. Failure to file a challenge within thirty (30) days of payment waives all rights to later challenge the charge.

(b) The committee of jurisdiction will determine whether the stormwater charge is fair and reasonable, or whether a refund is due the customer. The committee may act with or without a hearing, and will inform the customer in writing of its decision.

(c) The customer has thirty (30) days from the decision of the committee to file a written appeal to the Common Council.

(d) If the Council or the committee determine that a refund is due the customer, the refund will be applied as a credit on the customer’s next quarterly stormwater billing, if the refund will not exceed the customer’s next quarterly stormwater billing, or will be refunded at the discretion of the Director of Finance.
Sec. 20-240. Special assessment authority.

In addition to any other method for collection of the charges established pursuant to this ordinance for stormwater utility costs, the Common Council finds that these charges may be levied on property as a special charge pursuant to §66.0627, Wis. Stats. The charges established hereunder reasonably reflect the benefits conferred on property and may be assessed as special charges. The mailing of the bill for such charges to the owner will serve as notice to the owner that failure to pay the charges when due may result in them being charged pursuant to the authority of §66.0627, Stats. In addition, the City may provide notice each September of any unpaid charges to the Stormwater Utility, which charges, if not paid by November 15, may be placed upon the tax roll under §66.0627, Stats.

Sec. 20-241. Budget excess revenues.

The stormwater utility finances shall be accounted for in a separate Stormwater Enterprise Fund by the City. The Utility shall prepare an annual budget, which is to include all operation and maintenance costs, debt service and other costs related to the operation of the stormwater utility. The budget is subject to approval by the Common Council. The costs shall be spread over the rate classifications as determined by the Council. Any excess of revenues over expenditures in a year will be retained by the Stormwater Enterprise Fund for subsequent years’ needs.

Sec. 20-242. Severability.

If any provision of this ordinance be found illegal, the remaining provisions shall remain in effect.

(Ord 128-95, §1, 12-6-95)

Sec. 20-240. Special assessment authority.

In addition to any other method for collection of the charges established pursuant to this ordinance for stormwater utility costs, the Common Council finds that these charges may be levied on property as a special charge pursuant to §66.0627, Wis. Stats. The charges established hereunder reasonably reflect the benefits conferred on property and may be assessed as special charges. The mailing of the bill for such charges to the owner will serve as notice to the owner that failure to pay the charges when due may result in them being charged pursuant to the authority of §66.0627, Stats. In addition, the City may provide notice each September of any unpaid charges to the Stormwater Utility, which charges, if not paid by November 15, may be placed upon the tax roll under §66.0627, Stats.

Sec. 20-241. Budget excess revenues.

The stormwater utility finances shall be accounted for in a separate Stormwater Enterprise Fund by the City. The Utility shall prepare an annual budget, which is to include all operation and maintenance costs, debt service and other costs related to the operation of the stormwater utility. The budget is subject to approval by the Common Council. The costs shall be spread over the rate classifications as determined by the Council. Any excess of revenues over expenditures in a year will be retained by the Stormwater Enterprise Fund for subsequent years’ needs.

Sec. 20-242. Severability.

If any provision of this ordinance be found illegal, the remaining provisions shall remain in effect.

(Ord 128-95, §1, 12-6-95)
other urban pollutants.

(c) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.

(d) Reduce the quality of groundwater by increasing pollutant loads.

(e) Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other drainage facilities.

(f) Threaten public health, safety, property and general welfare by increasing major flood peaks, and volumes.

(g) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

Sec. 20-302. Purpose and intent.

(a) Purpose. The purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare, and the aquatic environment.

Specific purposes are to:

(1) Further the maintenance of safe and healthful conditions.

(2) Prevent and control the adverse effects of stormwater; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; manage building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

(3) Control exceedances of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.

(4) Minimize the amount of pollutants discharged from the separate storm sewer to protect waters of the state.

(b) Intent. It is the general intent of the City of Appleton that this ordinance achieve its purpose through:

(1) Regulating long-term, post-construction stormwater runoff from land development and redevelopment activities.

(2) Controlling the quantity, peak flow rates, and quality of stormwater runoff from land development and redevelopment activities.

(3) Providing services to maintain and enhance the quality of life within the community.

(c) Implementation.

To this end the City of Appleton will manage post-construction stormwater runoff to protect, maintain and enhance the natural environment; diversity of fish and wildlife; human life; property; and recreational use of waterways within the city of Appleton and its extraterritorial area.

This ordinance may be applied on a site-by-site basis. The City of Appleton recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the State of Wisconsin. Where such plans are in conformance with the performance standards developed under §281.16, Wis. Stat., for regional stormwater management measures, and have been approved by the City of Appleton, it is the intent of this ordinance that the approved plan be used to identify post-construction management measures acceptable for the community.

Sec. 20-303. Title.

This ordinance shall be known as the Stormwater Management Standards and Planning Ordinance for the City of Appleton.

Sec. 20-304. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adequate sod, or self sustaining vegetative cover* means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbes, sedges and duff layers of fallen
leaves and woody debris.

*Administering authority* means a governmental employee that is designated by the City of Appleton to administer this ordinance.

*Agricultural facilities and practices* has the meaning given in §281.16(1), Wis. Stats.

*Agricultural use* means bee keeping; commercial feed-lots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint, and seed crops; raising of fruits, nuts, and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least thirty-five (35) acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; participation in the mile production termination program under 7 USC 1446 (d); and vegetable raising (§91.01(1), Wis. Stat.).


*Average annual rainfall* means a typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8 or equivalent methodology. An average annual rainfall for Green Bay, 1969 (March 29-November 25) is applicable for the City of Appleton.

*Best Management Practice or BMP* means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.

*Business day* means a day that offices of the City of Appleton are routinely and customarily open for business.

*Cease and desist order* means a court issued order to halt land disturbing construction activity that is being conducted without the required permit or not in conformance with an existing permit.

*City* means the City of Appleton.

*Common plan of development or sale* means a development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A common plan of development or sale includes, but is not limited to, subdivision plans, certified survey maps, and other developments.

*Concentrated flow channel* means a channel produced by erosion from runoff, or by construction, that would not be removed by tillage operations typically needed to prepare a field for crop production.

*Connected imperviousness* means an impervious surface connected to the water of the state via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.

*Construction site* means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.

*Design storm* means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall. Rainfall amounts for 24-hour design rainfall events in Appleton are: 100-year, 5.50 inches; 10-year, 3.51 inches; 5-year, 3.01 inches; 2-year, 2.45 inches, and 1-year, 2.14 inches. The distribution shall be NOAA Atlas 14 MSE4.

*Development* means residential, commercial, industrial or institutional land uses and associated roads.

*Direct conduits to groundwater* means wells, sinkholes, swallets, fractured bedrock at the surface, sand or gravel surficial deposits, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

*Division of land* means the creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a 5-year period.

*Effective infiltration area* means the area of the infiltration system devoted specifically to active infiltration, excluding areas required for site access, berms, pretreatment, or other area required for the installation, operation, or maintenance of the infiltration device.

*Erosion* means the process by which the land’s surface is worn away by the action of the wind, water, ice or gravity.

*Exceptional resource waters* means waters listed in s. NR 102.11, Wisconsin Administrative Code.

*Existing land use condition* means the condition of the development site and the adjacent properties that are present at the time of the stormwater permit application.
Infiltration means soil that has at least a 3-foot deep layer with at least twenty percent (20%) fines; or at least a five- (5-) foot deep layer with at least ten percent (10%) fines; or an engineered soil with an equivalent level of protection as determined by the regulatory authority for the site.

Financial guarantee means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the City of Appleton by the responsible party to assure that requirements of the ordinance are carried out in compliance with the stormwater management plan.

Governing body means the Common Council of the City of Appleton.

Impervious surface means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. rooftops, sidewalks, driveways, parking lots, and streets are examples of surfaces that typically are impervious. Gravel surfaces are considered impervious unless specifically designed for infiltration.

In-fill means an undeveloped area of land located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur.

Infiltration means the entry of precipitation or runoff into or through the soil.

Infiltration system means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns, or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

Land disturbing construction activity means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities and parking lot reconstruction, but does not include agricultural facilities and practices, silviculture activities or parking lot resurfacing.

Land user means any person operating, leasing, renting, or having made other arrangements with the landowner by which the landowner authorizes use of his or her land.

Landowner means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of stormwater BMPs on the property.

Major Stormwater Management Plan means a Stormwater Management Plan for a subdivision or a plan that proposes the use of one or more devices to meet standards or a non-one or two family site that is not considered a Minor Stormwater Management Plan.

Maintenance agreement means a legal document that is filed with the County Register of Deeds as a property deed restriction, and that provides for long-term maintenance of stormwater management practices.

Maximum extent practicable (MEP) means the highest level of performance that is achievable, but is not equivalent to a performance standard, taking into account the best available technology, cost effectiveness and other competing issues such as human welfare, endangered and threatened resources, historic properties and geographic features, pursuant to Sec. 20-311(f) of this ordinance.

Minor Stormwater Management Plan means a Stormwater Management Plan for a site that has a regional stormwater facility in place that meets applicable standards, has a 100-year event conveyance system to the regional facility in place, and is free from unusual conditions, including but not limited to, contamination, critical site designation, change in land use, high impervious ratio, or floodplain.

Natural wetlands means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and that has soils indicative of wet conditions. These wetlands include existing, mitigated, and restored wetlands.

New development means development resulting from the conversion of previously undeveloped land or

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agricultural land uses.

*Non-structural measure* means a practice, technique, or measure to reduce the volume, peak flow rate, or pollutants, in stormwater that does not require the design or installation of fixed stormwater management facilities.

*NRCS* means the Natural Resources Conservation Service of the U.S. Department of Agriculture (USDA) formerly known as the SCS (Soil Conservation Service of the USDA).

*NRCS MSE4 distribution* means a specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.

*Off-site* means lands located outside the subject property boundary described in the permit application.

*On-site* means lands located within the subject property boundary described in the permit application.

*Ordinary high-water mark* has the meaning in s. NR 115.03(6), Wisconsin Administrative Code.

*Outstanding resource waters* means waters listed in s. NR 102.10, Wisconsin Administrative Code.

*Pervious surface* means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests, or other similar vegetated areas are examples of surfaces that typically are pervious.

*Performance standard* means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

*Permit* means a written authorization made by the City of Appleton to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

*Permit application fee* means a sum of money paid to the City of Appleton by the permit applicant for the purpose of recouping expenses incurred by the City in administering the permit.

*Post-construction site* means a construction site following the completion of land disturbing construction activity and final site stabilization.

*Pre-development condition* means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

*Pre-treatment* is the practice of reducing pollutants in stormwater before discharging the stormwater to another pollution control structure.

*Preventive action limit* has the meaning in s. NR 140.05(17), Wisconsin Administrative Code.

*Protective area* means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that it is the greatest of the widths as listed in Sec. 20-312(f), as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.

*Redevelopment* means areas where development is replacing older development.

*Residential land development* means development that
is created to house people, including the residential dwellings as well as all affected portions of the development including lawns, driveways, sidewalks, garages, and access streets. This type of development includes single-family, multi-family, apartment and trailer parks.

**Responsible party** means any person holding fee title to the property or other entity contracted or obligated by other agreement to implement and maintain post-construction stormwater BMPs, or other requirements of this ordinance.

**Runoff** means stormwater or precipitation including rain, snow, or ice melt or similar water that moves on the land surface via sheet or channelized flow.

**Runoff Curve Number or RCNs** means an index that represents the combination of: a hydrologic soil group, land use, land cover, impervious area, interception storage, surface storage, and antecedent moisture conditions. RCNs convert mass rainfall into mass runoff. The Natural Resources Conservation Service of the USDA defines RCNs in TR-55.

**Sediment** means settleable soil, rock fragments and other solids carried in runoff.

**Separate storm sewer** means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains, which meets all of the following criteria:

(a) Is designed or used for collecting water or conveying runoff.

(b) Is not part of a combined sewer system.

(c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

(d) Discharges directly or indirectly to waters of the state.

**Silviculture activity** means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.

**Site** means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application or has occurred.

**Stop work order** means an order issued by the City of Appleton that requires all construction activity on the site be stopped.

**Stormwater conveyance system** means any method employed to carry stormwater runoff within and from a land development or redevelopment activity to the waters of the state. Examples of methods include: swales, channels, and storm sewers.

**Stormwater management measure** means structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes and/or peak flow discharge rates.

**Stormwater management plan** means a comprehensive plan provided by the land developer, land owner or permit holder that identifies the measure to be taken to reduce the discharge of pollutants from stormwater, and control the peak flow and volume of runoff after the site has undergone final stabilization, following completion of construction activity.

**Stormwater management system plan** is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

**Targeted performance standard** means a performance standard that applies in a specific area that requires additional practices to meet water quality standards.

**Technical standard** means a document that specifies design, predicted performance, and operation and maintenance specifications for a material, device, or method

**Top of the channel** means an edge or point on the landscape landward from the ordinary high water mark of a surface water of the state, where the slope of the land begins to be less than twelve percent (12%) continually for at least fifty (50) feet. If the slope of the land is 12 percent (12%) or less continually for the initial fifty (50) feet landward from the ordinary high water mark, the top of the channel is the ordinary high water mark.

**Total maximum daily load or TMDL** means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.

**TP** means total phosphorus.

DIVISION 2. STORMWATER MANAGEMENT

Sec. 20-311. Applicability and jurisdiction.

(a) Applicability. This ordinance applies to all post-construction land development, redevelopment, and infilling sites with one (1) acre or more of land disturbing construction activities, except:

(1) A post-construction site with less than ten percent (10%) connected imperviousness of the total area based on area of land disturbance, provided the cumulative area of all parking lots, roads, and rooftops is less than one (1) acre. However, the exemption of this paragraph does not include exemption from the protective area standards of this ordinance.

(2) Agricultural facilities and practices.

(3) Nonpoint discharges from silviculture activities.

(4) Underground utility construction such as water, sewer, and fiberoptic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.

Notwithstanding these applicability requirements, this ordinance applies to any post-construction site of any size that, in the opinion of the City of Appleton, is likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

(b) Jurisdiction. This ordinance applies to post-construction land development and redevelopment sites within the boundaries of the City of Appleton and to all lands located within three (3) miles of the corporate limits pursuant to the City’s extraterritorial plat approval jurisdiction as set forth in §236.45(2), Wis. Stat., even if plat approval is not involved.

(c) County and town ordinances. This ordinance supersedes any county or town stormwater management ordinance for lands annexed to the City after the effective date of the county or town ordinance, except when the county or town ordinance is more restrictive than this ordinance; then the more restrictive provisions set forth in the county or town ordinance shall become part of this ordinance and apply to the annexed lands. In such cases, the City may grant a variance from the more restrictive
requirements, provided that the criteria for a variance as set forth in the county or town ordinance is met.

(d) **State agency.** This ordinance is not applicable to activities conducted by a state agency, as defined under §227.01(1), Wis. Stat., and the office of the district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under §281.33(2), Wis. Stat.

(e) **Waivers.** Requests to waive the stormwater management plan requirements shall be submitted to the City of Appleton for approval. Written waivers may be granted administratively by the City for stormwater requirements that are required only by the City if it is demonstrated to the satisfaction of the City that it is reasonable to expect that the objectives of this ordinance will be met by the proposed post-construction land development and redevelopment activity without a stormwater management plan or portion thereof.

(f) **Applicability of maximum extent practicable.**

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the City’s satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

(Ord 188-03, §1, 10-21-03; Ord 66-10, §1, 4-13-10; Ord 42-16, §1, 5-1-16)

Sec. 20-312. **Performance standards.**

Unless otherwise provided for in this ordinance, all post-construction land development, redevelopment, and in-filling activities subject to this ordinance shall establish on-site management practices to control the peak flow rates of stormwater discharged from the site, the quality of the discharged stormwater, and the volume of the discharged stormwater as described in this ordinance. Technical standards identified, developed, or disseminated by the WDNR under subchapter V of Chapter NR 151, Wisconsin Administrative Code, shall be used. Where technical standards have not been identified or developed by the WDNR, other technical standards may be used provided that the methods have been approved by the City of Appleton. The responsible party shall implement a post-construction stormwater management plan that incorporates the requirements of this section.

Exceptions to these standards are listed in Sec. 20-312(l) of this ordinance.

(a) **Maintenance of effort.** For redevelopment sites where the redevelopment will be replacing older development that was subject to post-construction performance standards of NR 151 in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration, and protective areas standards applicable to the older development or meet the redevelopment standards of this ordinance, whichever is more stringent.

(b) **Off-site drainage.** When designing best management practices for (c), (d) and (e) of this section, runoff draining to the best management practices from off-site shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.

(c) **Peak discharge**

(1) The proposed post-construction land use shall not increase peak flow rates of stormwater runoff from that which would have resulted from the same design storm occurring over the site with the land in its pre-development, woodland condition, as defined in Table 1 of this ordinance for storms of twenty-four (24) hour duration and recurrence intervals of one (1), two (2), five (5), ten (10), and one hundred (100) years. Appropriate curve numbers, as described in TR-55 and weighted based on the proposed land cover, shall be used in TR-55 calculations. The composite RCNs as defined in TR-55 should not be used.

<table>
<thead>
<tr>
<th>Runoff Curve Number</th>
<th>Hydrologic Soil Group</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
</tr>
<tr>
<td>Woodland</td>
<td>30</td>
</tr>
<tr>
<td>Grassland</td>
<td>39</td>
</tr>
<tr>
<td>Cropland</td>
<td>55</td>
</tr>
</tbody>
</table>

Where the pre-development condition is a combination of the Table 1 land uses, the runoff curve number shall be weighted based on area of land cover.

(2) All stormwater conveyance systems within the post-construction site shall be designed to completely contain the peak storm flows as described herein. Calculations for determining peak flows for conveyance...
system sizing shall use RCNs based on the existing or future proposed land use for off-site areas (whichever results in the highest peak flows), and the proposed land use for on-site areas.

a. For open channel conveyance systems the peak flow from the 100-year, 24-hour storm shall be completely contained within the channel bottom and banks.

b. For storm sewer conveyance systems the peak flow from the 5-year storm shall be completely contained within the storm sewers with no surcharging.

c. For storms greater than the five- (5-) year event, and up to the 100-year, 24-hour event, conveyance of flow to the appropriate waters of the state shall be within existing or proposed street right-of-ways or recorded drainage easements. In no case shall the depth of water exceed twelve (12) inches at the outer edge of pavement or six (6) inches at the road crown, whichever is less.

d. The 100-year storm runoff flow path outside of the storm sewer conveyance system must not impact structural improvements on property.

e. Existing flow onto the site cannot be restricted or modified to impact adjacent properties without a written agreement between property owners.

(3) Determination of peak flow rates and volume of runoff for purposes of meeting the requirements of Sec. 20-312(c)(1) of this ordinance shall be computed by procedures based on the principals and procedures described in TR-55. Other proposed calculation methods must have prior written approval of the City of Appleton.

(4) The rainfall distributions for the storm events shall be NOAA Atlas 14 MSE4, unless otherwise approved by the City of Appleton. On a case-by-case basis, the City of Appleton may allow the use of TP-40 precipitation depths and the Type II distribution.

(5) Existing wetlands shall not be incorporated in the proposed stormwater management practice for peak flow control. Peak flow shall be managed prior to discharge to an existing wetland. Should any changes to natural wetlands be proposed, the impact of the proposal on wetland functional values shall be assessed and significant changes to wetland functional values shall be avoided (as defined by s. NR 103, Wisconsin Administrative Code).

(6) Peak stormwater discharge reductions do not apply for a site meeting any one of these requirements:

a. Redevelopment post-construction sites less than five (5) acres in size.

b. In-fill development areas less than five (5) acres in size.

c. Sites that directly discharge to the Fox River without flowing over or through a municipally owned separate storm sewer or stormwater conveyance system.

(d) Stormwater discharge quality. Unless otherwise provided for in this ordinance, all post-construction land development and redevelopment activities subject to this ordinance shall establish on-site management practices to control the quality of stormwater discharged from the post-construction site. On-site management practices shall be used to meet the following minimum standards:

(1) Total suspended solids (TSS). BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:

a. For new development, by design, reduce to the maximum extent practicable, the total suspended solids load by eighty percent (80%), based on the average annual rainfall, as compared to no runoff management controls.

b. For redevelopment less than five (5) acres of disturbed land, by design, reduce to the maximum extent practicable, the total suspended solids load by forty percent (40%), based upon the average annual rainfall, as compared to no runoff management controls.

c. For redevelopment five (5) acres or greater of disturbed land, reduce to the maximum extent practicable, the total suspended solids load by eighty percent (80%), based on the average annual rainfall, as compared to no runoff
management controls.

d. For in-fill development by design, reduce to the maximum extent practicable, the total suspended solids load by eighty percent (80%), based on the average annual rainfall, as compared to no runoff management controls.

(2) **Total phosphorus (TP).** All new development, redevelopment, and infill sites shall calculate the total phosphorus load and the amount of phosphorus removed with the proposed on-site practices with an appropriate computer model. Both the load and the amount of removal shall be reported in the plan narrative and included in the computer model submitted for the project.

(3) Effectiveness of the stormwater management measures shall be evaluated using the latest version of the Source Loading and Management Model (WinSLAMM). Other models may be used with prior written approval of the City.

(4) Discharge of urban stormwater pollutants to natural wetlands without pre-treatment shall be avoided to the maximum extent practicable. Where such discharges are proposed, the impact of the proposal on wetland functional values shall be assessed using a method such as the WDNR’s Rapid Wetland Functional Value Assessment, or other methods acceptable to the City of Appleton and the WDNR. Changes to wetland functional values because of stormwater pollutant loads shall be avoided.

(e) **Infiltration.** Unless otherwise provided for in this ordinance, all post-construction land development and redevelopment sites subject to this ordinance shall design, install, and maintain on-site best management practices to infiltrate runoff in accordance with the following, to the maximum extent practicable.

1. **Low imperviousness.** For development up to 40 percent (40%) connected imperviousness, such as parks, cemeteries, and low density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent (90%) of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than one percent (1%) of the post-construction site is required as an effective infiltration area.

2. **Moderate imperviousness.** For development with more than forty percent (40%) and up to eighty percent (80%) connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least seventy-five percent (75%) of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than two percent (2%) of the post-construction site is required as an effective infiltration area.

3. **High imperviousness.** For development with more than eighty percent (80%) connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least sixty percent (60%) of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than two percent (2%) of the post-construction site is required as an effective infiltration area.

4. **Pre-development.** The pre-development condition shall be as specified in Table 1.

5. A model that calculates runoff volume, such as WinSLAMM, P8, or an equivalent methodology shall be used. Other models may be used with prior written approval of the City.

6. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial, and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance in accordance with Sec. 20-314 of this ordinance.

Pretreatment may include, but is not limited to, oil/grease separation, sedimentation,
biofiltration, filtration, treatment swales or filter strips. It is desirable to infiltrate the cleanest runoff to meet the infiltration standard. To achieve this, the design may propose greater infiltration of runoff from some sources such as roofs, and lesser from dirtier sources such as parking lots.

(7) For the purpose of this section, turf grass swales are not counted towards the one percent (1%) or two percent (2%) infiltration areas described in subsections (1) and (2).

(8) Source areas.

a. Prohibitions. Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of this section unless demonstrated to meet the conditions identified in Sec. 20-312(e)(11):

i. Areas associated with a tier 1 industrial facility identified in s. NR 216.21(2)(a), Wisconsin Administrative Code, including storage, loading and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.

ii. Storage and loading areas of a tier 2 industrial facility identified in s. NR 216.21(2)(b), Wisconsin Administrative Code.

NOTE TO USERS: Runoff from the employee and guest parking and rooftop areas of a tier 2 facility may be infiltrated but runoff from the parking area may require pretreatment.

iii. Fueling and vehicle maintenance areas. Runoff from rooftops and fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.

b. Exemptions. Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:

i. Parking areas and access roads less than 5,000 square feet for commercial development.

ii. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the prohibitions under par a.

iii. Redevelopment post-construction sites, except as provided under Sec. 20-312(a), Maintenance of effort.

iv. In-fill development areas less than five (5) acres.

v. Roads on commercial, industrial and institutional land uses, and arterial residential roads.

(9) Location of practices.

a. Prohibitions. Infiltration practices may not be located in the following areas:

i. Areas within 1,000 feet upgradient or within 100 feet downgradient of direct conduits to groundwater.

ii. Areas within 400 feet of a community water system well as specified in s. NR 811.16(4), Wisconsin Administrative Code or within the separation distances listed in s. NR 812.08, Wisconsin Administrative Code for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial and institutional land uses, or regional devices for one- and two-family residential development.

iii. Areas where contaminants of concern, as defined in s. NR 720.03 (2), Wisconsin Administrative Code, are present in the soil through which infiltration will occur.

b. Separation distances.

i. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock
are in accordance with Table 2.

Table 2
Separation Distances and Soil Characteristics

<table>
<thead>
<tr>
<th>Source Area</th>
<th>Separation Distance</th>
<th>Soil Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial, Commercial, Institutional Parking Lots and Roads</td>
<td>5 feet or more</td>
<td>Filtering layer</td>
</tr>
<tr>
<td>Residential Arterial Roads</td>
<td>5 feet or more</td>
<td>Filtering layer</td>
</tr>
<tr>
<td>Roofs Draining to Subsurface Infiltration Practices</td>
<td>1 foot or more</td>
<td>Native or Engineered soil with particles finer than coarse sand</td>
</tr>
<tr>
<td>Roofs Draining to Surface Infiltration Practices</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>All Other Impervious Source Areas</td>
<td>3 feet or more</td>
<td>Filtering layer</td>
</tr>
</tbody>
</table>

ii. Notwithstanding par. b., applicable requirements for injection wells classified under ch. NR 815, Wisconsin Administrative Code shall be followed.

c. Infiltration rate exemptions. Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under these conditions is at the Developer’s option:

i. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.

ii. Where the least permeable soil horizon to five (5) feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.

(10) Alternate use. Where alternate uses of runoff are employed, such as for toilet flushing, laundry, or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.

(11) Groundwater standards.

a. Infiltration systems designed in accordance with this section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with s. NR 140, Wisconsin Administrative Code. However, if site-specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP shall not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

b. Notwithstanding paragraph (a), the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(f) Protective areas. Protective area means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the widths described below, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section, protective area does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

(1) Protective areas are:

a. For outstanding resource waters and exceptional resource waters, seventy-five (75) feet.

b. For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, fifty (50) feet.

c. For lakes, 50 feet.

d. For wetlands not subject to par. e. or f.,
50 feet.

e. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.

f. For less susceptible wetlands, ten percent (10%) of the average wetland width, but no less than ten (10) feet nor more than thirty (30) feet. Less susceptible wetlands include: degraded wetland dominated by invasive species such as reed canary grass; cultivated hydric soils, and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.

g. In pars. d. to f., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03, Wisconsin Administrative Code.

h. Wetland boundary delineation shall be made in accordance with s. NR 103.08(1m), Wisconsin Administrative Code. This paragraph does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.

i. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

j. Notwithstanding pars. a. to i., the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.

(2) This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to sub. 5.

(3) The following requirements shall be met:

a. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. The stormwater management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.

b. Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining native vegetative cover of seventy percent (70%) or greater shall be established and maintained. The self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.

c. Best management practices such as filter strips, treatment swales, or wet detention basins, that are designed to control pollutants from nonpoint sources may be located in the protective area.

(4) A protective area established or created after the adoption date of this ordinance shall not be eliminated or reduced, except as allowed in subd. 5.b, c, or d below.

(5) Protective areas do not apply to:

a. Redevelopment post-construction sites, provided the minimum requirements within subd. 4 above are satisfied.

b. Structures that cross or access surface waters such as boat landings, bridges and culverts.

c. Structures constructed in accordance with §59.692(1v), Wis. Stat.

d. Post-construction sites from which
runoff does not enter the surface water, including wetlands, without first being treated by a BMP, except to the extent that vegetative ground cover is necessary to maintain bank stability.

e. Infill development less than five (5) acres.

(Ord 66-10, §1, 4-13-10; Ord 42-16, §1, 5-1-16)

(g) Fueling and vehicle maintenance areas. Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed, and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen. A combination of the following BMPs may be used: oil and grease separators, canopies, petroleum spill cleanup materials, or any other structural or non-structural method of preventing or treating petroleum in runoff.

(1) This ordinance applies to:

a. New fueling and vehicle maintenance areas approved after the effective date of this ordinance.

b. Any modifications to existing fueling and vehicle maintenance areas regardless of the size of the disturbed area. BMPs installed as part of a site modification shall, to the maximum extent practicable, be designed and operated to treat all stormwater leaving the site so that the stormwater contains no visible petroleum sheen.

(2) A stormwater management plan per Sec. 20-313 of this ordinance, a maintenance agreement per Sec. 20-314 of this ordinance and a stormwater permit per Sec. 20-321 of this ordinance are required.

(Ord 66-10, §1, 4-13-10; Ord 42-16, §1, 5-1-16)

(h) General considerations for stormwater management measures. The following considerations shall be observed in on-site and off-site runoff management.

(1) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.

(2) Overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

(3) Overland flow paths from adjoining properties to an offsite facility must be maintained.

(4) Low impact development techniques and green infrastructure should be included to the extent possible. These techniques include but are not limited to: increasing the time of concentration by lengthening the flow path and increasing the roughness of the flow path, using native, deep rooted vegetation instead of turf grasses and deep tilling onsite compacted soil.

(Ord 66-10, §1, 4-13-10; Ord 42-16, §1, 5-1-16)

(i) Location and regional treatment option.

(1) The BMPs may be located on-site or off-site as part of a regional stormwater device, practice or system, but shall be installed in accordance with s. NR 151.003 Wisconsin Administrative Code.

(2) Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this ordinance. Post-construction BMPs may be located in non-navigable surface waters.

(3) Post-construction runoff shall meet the post-construction performance standards prior to entering navigable surface water.

a. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.

b. Post-construction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state and local regulations such as s. NR 103, Wisconsin Administrative Code and Chapter 30, Wis. Stat.

(4) The City of Appleton may approve off-site management measures provided that all of the following conditions are met:

a. The post-construction runoff is covered by a stormwater management system
plan that is approved by the City of Appleton and that contains management requirements consistent with the purpose and intent of this ordinance.

b. The off-site facility meets all of the following conditions:

i. The facility is in place.

ii. The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.

iii. The facility has a legally obligated entity responsible for its long-term operation and maintenance.

iv. Permittee must demonstrate that the proposed post-construction land development or redevelopment activity has received permission to use the off-site facility.

v. Permittee must also demonstrate the flow path to the off-site facility will not result in negative impacts to structural improvements on the property.

vi. Permittee must provide easements of all overland flow paths up to and including the overland flow path of the 100-year storm

(5) Where a regional treatment option exists such that the City of Appleton exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant may be required to pay a one-time fee in an amount determined by the City of Appleton. In determining the fee for post-construction runoff, the City may consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

(6) The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs, is subject to this ordinance.

(j) Additional requirements. The City of Appleton may establish stormwater management requirements more stringent than those set forth in this ordinance if the City determines that the requirements are needed to control stormwater quantity or control flooding, comply with federally approved total maximum daily load requirements, or control pollutants associated with existing development or redevelopment.

(k) Swale treatment for transportation facilities.

(1) Applicability. Except as provided in Sec. 20-312(h)(2) of this ordinance, transportation facilities that use swales for runoff conveyance, pollutant removal and infiltration meet the stormwater discharge quality requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:

a. Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams. It is preferred that tall and dense vegetation be maintained within the swale because of its greater effectiveness at enhancing runoff pollutant removal.

b. Swales shall comply with sections V.F. (Velocity and Depth) and V.G. (Sale Geometry Criteria) with a swale treatment length as long as that specified in section V.C. (Pre-Treatment) of the Wisconsin Department of Natural Resources technical standard 1005 “Vegetated Infiltration Swales”, dated May 2007, or a superseding document. Transportation facility swale treatment does not have to comply with other sections of technical standard 1005.

(2) Other requirements.

a. The City of Appleton may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with average daily traffic of vehicles greater than two thousand five hundred (2,500) per day and where the initial surface water of the state that the runoff directly enters is any of the following:

i. An outstanding resource water.

ii. An exceptional resource water.
iii. Waters listed in s. 303(d) of the Federal Clean Water Act that are identified as impaired in whole or in part, because of nonpoint source impacts.

iv. Waters where targeted performance standards are developed under s. NR 151.004, Wisconsin Administrative Code, to meet water quality standards.

b. The transportation facility authority shall contact the City to determine if additional BMPs beyond a water quality swale are needed under this subsection.

(Ord 66-10, §1, 4-13-10; Ord 42-16, §1, 5-1-16)

(l) Innovative stormwater management systems that do not meet Sec. 20-312(c), (d) or (e) of this ordinance must be reviewed and accepted by the City before installation.

(Ord 188-03, §1, 10-21-03; Ord 42-16, §1, 5-1-16)

Sec. 20-313. Stormwater management plans.

(a) Plan requirements.

(1) The stormwater management plan required under Sec. 20-321 of this ordinance shall contain any such information the City of Appleton may need to evaluate the characteristics of the area affected by land development and redevelopment activities, the potential impacts of the proposed activity upon the quality and quantity of stormwater discharges, the potential impacts upon water resources and drainage systems and the effectiveness and acceptability of proposed stormwater management measures in meeting the performance standards set forth in this ordinance.

(2) All initial and final site investigations, plans, designs, computations and drawings for stormwater management measures and plans submitted for review shall be stamped by a professional engineer registered in the State of Wisconsin and be prepared in accordance with accepted engineering practice and in accordance with criteria set forth by the City of Appleton.

(Ord 66-10, §1, 4-13-10; Ord 42-16, §1, 5-1-16)

(b) Minimum content. The stormwater management plan shall contain at a minimum the following information:

(1) Name, address and telephone number for the following and their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of stormwater management practices; and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility to another party.

(2) A proper legal description of the property proposed to be developed in Outagamie County Coordinate System and referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.

(3) Pre-development site conditions, including:

a. One or more site maps of current site conditions at a scale of not less than one (1) inch equal one hundred (100) feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100-year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to s. NR 811.16, Wisconsin Administrative Code.

b. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
(4) Post-construction site conditions, including:

a. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.

b. Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.

c. One or more site maps at a scale of not less than one (1) inch equals one hundred (100) feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures and pavement; post-construction topographic contours of the site; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all stormwater conveyance sections; location and type of all stormwater management conveyance and treatment practices; locations and dimensions of tributary drainage areas; locations of all stormwater conveyance and treatment practices, including the on-site and off-site tributary drainage area; locations of maintenance easements specified in the maintenance agreement; and design of stormwater management measures.

d. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

e. Results of investigations of soil and groundwater required for the placement and design of stormwater management measures.

f. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.

(5) A description and installation schedule for the stormwater management practices needed to meet the performance standards in Sec. 20-312 of this ordinance.

(6) A maintenance plan developed for the life of each stormwater management practice including the required maintenance activities and maintenance activity schedule.

(7) Other information requested in writing by the City of Appleton to determine compliance of the proposed stormwater management measures with the provisions of this ordinance.

(c) Alternate requirements. The City of Appleton may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under Secs. 20-312(c), (d) or (e) of this ordinance.

(d) Modifications. When a change in land use or stormwater management practice occurs at a site with an approved stormwater management plan, a modified stormwater management plan must be submitted to the City for review and approval before those changes in practice occur. Plan modifications shall be modeled in the latest version of WinSLAMM unless otherwise approved by the City.

(Ord 188-03, §1, 10-21-03; Ord 66-10, §1, 4-13-10; Ord 42-16, §1, 5-1-16)

Sec. 20-314. Maintenance agreement.

(a) Maintenance agreement required. The maintenance agreement required for stormwater management practices under Sec. 20-321(b) of this ordinance shall be an agreement between the City of Appleton and the responsible party to provide for perpetual maintenance of stormwater practices. The agreement shall be recorded with the appropriate (Outagamie, Winnebago, or Calumet) County Register of Deeds, as a property deed restriction so that it is binding upon all subsequent owners of land served by the stormwater management practices.

(Ord 66-10, §1, 4-13-10; Ord 42-16, §1, 5-1-16)

(b) Agreement provisions. The responsible party shall maintain stormwater management practices in
accordance with the stormwater practice maintenance provisions contained in the approved stormwater management plan submitted under Sec. 20-321(b) of this ordinance. This maintenance agreement includes:

1. Identification of the stormwater facilities and designation of the drainage area served by the facilities.

2. A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan as required under Sec. 20-321 of this ordinance.

3. Identification of the responsible party(ies), organization or city, county, town or village responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan as required under Sec. 20-321 of this ordinance.

4. Requirement that the responsible party(ies), organization(s), or city, county, town or village shall maintain stormwater management practices in accordance with the schedule included in Sec. 20-314(b)(2) of this ordinance.

5. Authorization for the City of Appleton to access the property to conduct inspections of stormwater practices as necessary to ascertain that the practices are being maintained and operated in accordance with the approved stormwater management plan. The City of Appleton shall maintain public records of the results of the site inspections, shall inform the responsible party for maintenance of the inspection results and shall specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition and a reasonable time frame during which the corrective action must be taken.

6. Authorization for the City of Appleton to perform the corrected actions identified in the inspection report if the responsible party does not make the required corrections in the specified time period. The City of Appleton shall charge the responsible party(ies) identified in the maintenance agreement for the cost of such work and shall place a lien on the property by the City of Appleton, which may be collected as special charges pursuant to subchapter VII, §66(16).

(c) Modification of agreement. This maintenance agreement may be modified by mutual agreement of the responsible party and the City of Appleton. The modification date shall be the date the modified maintenance agreement is recorded with the appropriate (Outagamie, Winnebago, or Calumet) County Register of Deeds, as a property deed restriction so that the modified agreement is binding upon all subsequent owners of the land served by the stormwater management practices.

The maintenance agreement shall be modified when there are changes in land use or stormwater management practices at the site. The modified plan shall be submitted and approved by the City before changes in practices occur. (Ord 66-10, §1, 4-13-10)

(d) Termination of agreement. The maintenance agreement shall be terminated at such time that responsibility for maintenance of the stormwater management practice is legally transferred to the City of Appleton or agency acceptable to the City of Appleton, through a written, binding agreement. The termination date of the maintenance agreement required under Sec. 20-314(a) of this ordinance shall be the date upon which the legal transfer of maintenance responsibility to the City of Appleton or agency is made effective. (Ord 188-03, §1, 10-21-03; Ord 66-10, §1, 4-13-10; Ord 42-16, §1, 5-1-16)

DIVISION 3. PERMITTING AND FEES

Sec. 20-321. Permitting requirements, procedures, and fees.

(a) Permit required. No responsible party may undertake a land disturbing construction activity except One- and Two-family residential lots, without receiving a post-construction runoff permit from the City of Appleton prior to commencing the proposed activity.

(b) Permit application and fee. Unless specifically excluded by this ordinance, any responsible party desiring a permit (permit holder) shall submit to the City of Appleton a permit application made on a form provided by the City of Appleton for that purpose.

1. Unless otherwise excepted by this ordinance, a permit application must be accompanied by a stormwater management plan, grading plan, utility plan, landscape plan, non-refundable permit review fee and an operation and maintenance plan and agreement as set forth in Table 3. The initial submittal and the final approved plan shall be stamped by an engineer licensed in the State of Wisconsin in a hard copy format.

2. The stormwater management plan shall be prepared to meet the requirements of Sec. 20-313 of this ordinance and the maintenance agreement shall be prepared to meet the requirements of Sec. 20-314 of this ordinance.

3. Plan revisions occurring after initial plan approval shall be submitted for review with an application, applicable changes to drawings, calculations, and the Operation and Maintenance Agreement. Fees shall be per (4) below.

4. Fees for the above-noted permits will include a non-refundable one hundred dollar ($100) application fee and will be the actual costs incurred by the City. The application fee shall be credited toward the actual costs incurred by the City. Fees shall be payable within thirty (30) days of receipt of an invoice from the City. An invoice will be sent any time an applicant fails to resubmit a plan revision for ninety (90) days or more.

(c) Review and approval of permit application. The City of Appleton will review any complete permit application that is submitted with the required fee. The following procedure will be used:

1. For a Major Stormwater Management Plan, within thirty (30) business days of the receipt of a complete permit application, including all documents as required by Sec. 20-321(b)(1) of this ordinance, the City of Appleton shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved. The City of Appleton shall base the decision on requirements set forth in Secs. 20-312, 20-313 and 20-314 of this ordinance.

2. For a Minor Stormwater Management Plan, within fifteen (15) business days of receipt of a complete permit application, including all documents as required by Sec. 20-321(b)(1) of this ordinance, the City of Appleton shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved. The City of Appleton shall base the decision on requirements set forth in Secs. 20-312, 20-313 and 20-314 of this ordinance.

3. If the stormwater permit application, stormwater management plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices are paid, the City of Appleton shall issue the permit.

4. If the stormwater permit application, stormwater management plan or maintenance agreement are disapproved, the applicant may revise the stormwater management plan or agreement, or may appeal the decision of the City of Appleton as provided for in Sec. 20-327 of this ordinance.

5. If additional information is submitted, the
City of Appleton shall have thirty (30) business days from the date the additional information is received for a Major Stormwater Management Plan and fifteen (15) business days for a Minor Stormwater Management Plan to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

(6) Failure by the City of Appleton to inform the permit applicant of a decision within the timelines listed above shall be deemed to mean approval of the submittal and applicant may proceed as if permit has been issued.

(Ord 157-11, §1, 1-1-12; Ord 42-16, §1, 5-1-16)

(d) Stormwater practice installation and maintenance performance security. The City of Appleton may, at its discretion, require the submittal of a cash escrow, letter of credit, or performance security prior to issuance of the permit to ensure that the stormwater practices are installed and maintained by the responsible party as required by the stormwater management plan. The amount of the installation performance security shall be determined by the City of Appleton, not to exceed the total estimated construction cost of the stormwater management practices approved under the permit unless otherwise specified in the permit.

The amount of the maintenance performance security shall be determined by the City of Appleton, not to exceed ten- (10-) years of the maintenance costs estimated in the stormwater plan. The performance security shall contain forfeiture provisions for failure to complete work specified in the stormwater management plan.

Conditions for the release of performance security are as follows:

(1) The installation performance security shall be released in full only upon submission of “as built plans” and written certification by the design engineer that the stormwater practice(s) were installed and function as intended in accordance with the approved plan and other applicable provisions of this ordinance. The City of Appleton may make provisions for a partial pro-rata release of the performance security based on the completion of various development stages including the final inspection of landscaping material.

(2) The maintenance performance security, minus any costs incurred by the City of Appleton to conduct required maintenance, design, engineering, preparation, checking and review of designs, plans and specifications; supervision and inspection to ensure that construction is in compliance with applicable plans, specifications, regulations and ordinances; and legal, administrative and fiscal work undertaken to assure and implement such compliance, shall be released at such time that the responsibility for practice maintenance is passed on to another private entity, via an approved maintenance agreement, or to the City of Appleton.

(e) Permit conditions. All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The City of Appleton may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the City of Appleton to suspend or revoke this permit may be appealed in accordance with Sec. 20-327 of this ordinance.

(1) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state and local laws and regulations.

(2) The responsible party shall design, install, and maintain all structural and nonstructural stormwater management measures in accordance with the approved stormwater management plan, maintenance agreement, and this permit.

(3) The responsible party shall notify the City of Appleton at least three (3) business days before commencing any work in conjunction with the stormwater management plan, and within five (5) business days upon completion of the stormwater management practices.

If required as a special condition, the permit holder shall make additional notification according to a schedule set forth by the City of Appleton so that practice installations can be inspected during construction.

(4) Completed stormwater management practices must pass a final inspection to determine if they are in accordance with the approved stormwater management plan and ordinance. The inspection must be made by the City of Appleton, or other competent professionals. The City of Appleton shall notify the permit holder in writing of any changes required in such practices to bring them into compliance.
with the conditions of this permit. The responsible party is further required to submit an as-built plan and a certificate of completion, stating the completion of the permitted work is in accordance with the stormwater management plan, City of Appleton, state and federal requirements. The certificate must be signed by the design engineer.

(5) The responsible party shall notify the City of any significant modifications it intends to make to an approved stormwater management plan. The City of Appleton may require that the proposed modifications be submitted for approval prior to incorporation into the stormwater management plan and execution by the responsible party.

(6) The responsible party shall maintain all stormwater management practices specified in the approved stormwater management plan until the practices either become the responsibility of the City of Appleton, or are transferred to a subsequent responsible party as specified in the approved maintenance agreement.

(7) The responsible party authorizes the City of Appleton to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to placing associated costs upon the tax roll as a special lien against the property which may be collected as special charges pursuant to §66.0627, Wis. Stat., by the City of Appleton or to charging such costs against the letter of credit or cash bond posted for the project.

(8) If so directed by the City of Appleton, the responsible party shall repair at the permit holder’s own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.

(9) The responsible party shall permit property access to the City of Appleton or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.

(10) Where necessary, it shall be the responsibility of the permit holder to obtain any appropriate easements or other necessary property/interests with affected property owners concerning the prevention of endangerment to property or public safety. Issuance of this permit does not create or affect any such rights.

(11) The owner is subject to the enforceable actions detailed in Sec. 20-326 of this ordinance if the responsible party fails to comply with the terms of this permit.

(Ord 66-10, §1, 4-13-10; 42-16, §1, 5-1-16)

(f) Permit duration. The responsible party must start the permit activities within one (1) year of the date the permit is issued. An extension of one (1) year may be granted by the Director, provided a written request is submitted to the Director prior to the expiration date for the initial permit. If permit activities are not started, then a new permit application and fee may be required.

(Ord 66-10, §1, 4-13-10)

(g) Fee in lieu of on-site stormwater management practices. Where the City of Appleton waives all or part of the minimum on-site stormwater management requirements under Sec. 20-313(c) of this ordinance, or where the waiver is based on the provision of adequate stormwater facilities provided by the City of Appleton downstream of the proposed development or redevelopment, as provided for under Sec. 20-312 of this ordinance, the applicant shall be required to pay a fee in an amount as determined by the City of Appleton pursuant to §66.0617, Wis. Stat. and any other applicable law.

(Ord 188-03, §1, 10-21-03; Ord 42-16, §1, 5-1-16)

Secs. 20-322 – 20-325. Reserved.
DIVISION 4. ENFORCEMENT AND APPEALS

Sec. 20-326. Enforcement and penalties.

(a) Any land disturbing construction activity or any post-construction runoff initiated after the effective date of this ordinance by any person, firm, association or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.

(b) The City of Appleton shall notify the responsible party or owner by certified mail of any non-complying land disturbing construction activity or post construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action and additional enforcement action, which may be taken.

(c) Upon receipt of written notification from the City of Appleton, the responsible party or owner shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party or owner shall make corrections as necessary to meet the specifications and schedule set forth by the City of Appleton in the notice.

(d) If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the City of Appleton may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City of Appleton plus interest and legal costs shall be billed to the responsible party or owner.

(e) The City of Appleton is authorized to post a stop work order on all land disturbing construction activity that is in violation of this ordinance, or to request the Appleton City Attorney to obtain a cease and desist order.

(f) The City of Appleton may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.

(g) Any permit revocation, stop work order or cease and desist order shall remain in effect unless retracted by the City of Appleton or by a court of competent jurisdiction.

(h) The City of Appleton is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance to the Appleton City Attorney for the commencement of further legal proceedings.

(i) Any person, firm, association or corporation who does not comply with the provisions of this ordinance shall be subject to the general penalty provisions of the Appleton Municipal Code Sec. 1-16. Each day that the violation exists shall constitute a separate offense.

(j) Violations of this ordinance deemed to be a public nuisance shall be subject to abatement under Sec. 12-32 of the City of Appleton Municipal Code or compliance with this ordinance may be enforced by injunctive order in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

(k) When the City of Appleton determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the stormwater management plan submitted and approved pursuant to Sec. 20-321 of this ordinance, or has failed to comply with schedules set forth in said stormwater management plan, the City of Appleton or a party designated by the City of Appleton may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The City of Appleton shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any performance or maintenance security posted pursuant to Sec. 20-321 of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property. (Ord 188-03, §, 10-21-03; Ord 42-16, §1, 5-1-16)

Sec. 20-327. Appeals.

(a) Appeals. The Utilities Committee of the Appleton Common Council shall hear and recommend to Council appeals where it is alleged that there is error in any order, decision or determination made by the City of Appleton in administering this ordinance. The Committee shall use the rules, procedures, duties and powers authorized by statute in hearing and recommending appeals.

Upon appeal, the Committee may recommend to Council relief from the provisions of this ordinance that are not contrary to the public interest or provisions of state regulations, and where owing to special conditions a literal enforcement of this ordinance will result in unnecessary hardship.

(b) Who may appeal. Appeals to the Utilities Committee of the City of Appleton may be taken by any aggrieved person or by an officer, department, board or bureau of the City of Appleton affected by any decision of the City of Appleton. Written appeals shall be filed with the City Clerk. The Utilities Committee will make a recommendation within forty-five (45) calendar days of filing of the appeal. If the Utilities Committee takes no action within forty-five (45) calendar days, the appeal will
automatically be sent to Council with a recommendation for approval. Either party may file a written request for a time extension with the City Clerk.
(Ord 188-03, §, 10-21-03; Ord 42-16, §1, 5-1-16)


DIVISION 5. SEVERABILITY

Sec. 20-331. Severability.

If any section or portion thereof shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and not affect the validity of all other provisions, sections or portion thereof of the ordinance which shall remain in full force and effect.
(Ord 188-03, §1, 10-21-03 ; Ord 42-16, §1, 5-1-16)

DIVISION VI. EFFECTIVE DATE.

Sec. 20-332. Effective date.

This ordinance is in full force and effect on May 1, 2016.
(Ord 188-03, §1, 10-21-03; Ord 42-16, §1, 5-1-16)
ARTICLE VII. ILLICIT DISCHARGES AND CONNECTIONS

DIVISION 1. IN GENERAL

Sec. 20-400. Purpose and intent.

(a) The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of City of Appleton through the regulation of non-stormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit process. The objectives of this ordinance are:

1. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
2. To prohibit illicit connections and discharges to the MS4.
3. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

(Ord 67-08, §1, 3-25-08)

Sec. 20-401. Definitions.

For the purposes of this ordinance, the following shall mean:

Authorized enforcement agency. City of Appleton Director of Public Works and/or designees thereof.

Best Management Practices (BMPs). Structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or other pollutants carried in runoff to waters of the state.

Contaminated stormwater. Stormwater that comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts or industrial machinery in the source areas listed in NR 216 (effective August 1, 2004).

Department (DNR). The Wisconsin Department of Natural Resources.

Discharge. As defined in Wisconsin Statute 283 (November 1, 2005), means any addition of any pollutant to the waters of the state from any point source.

Discharge of pollutants. As defined in Wisconsin Statute 283 (November 1, 2005), means any addition of any pollutant to the waters of the state from any point source.

Hazardous materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit discharge. Any discharge to a municipal separate storm sewer system or waters of the state that is not composed entirely of stormwater except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit such as landscape irrigation, individual residential car washing, fire fighting, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, flows from riparian habitats and wetlands, and similar discharges.

Illicit connections. An illicit connection is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the MS4 or waters of the state including, but not limited to, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, or wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

2. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial activity. Activities subject to WPDES Industrial Permits per NR 216 (effective August 1, 2004) and Wisconsin Statute 283 (November 1, 2005).

Municipality. Any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district, the Wisconsin Department of Transportation or any other public entity created pursuant to law and having authority.
to collect, treat or dispose of sewage, industrial wastes, stormwater or other wastes.

_Municipal Separate Storm Sewer System (MS4)._ As defined in Wisconsin Administrative Code NR 216 (effective August 1, 2004), means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:

1. Owned or operated by a municipality.
2. Designed or used for collecting or conveying stormwater.
3. Which is not a combined sewer conveying both sanitary and stormwater.
4. Which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

_Non-stormwater discharge._ Any discharge to the MS4 that is not composed entirely of stormwater.

_Owner._ Any person holding fee title, an easement or other interest in property.

_Outfall._ The point at which stormwater is discharged to waters of the state or to a storm sewer or to an adjacent municipality.

_Person._ An individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

_Pollutant._ As defined in Wisconsin Statute 283 (November 1, 2005), means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt, yard waste and industrial, municipal and agricultural waste discharged into water.

_Pollution._ As defined in Wisconsin Statute 283 (November 1, 2005), means any man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

_Pollution prevention._ Taking measures to eliminate or reduce pollution.

_Premises._ Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks.

_Stormwater._ Runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface.

_Stormwater Management Plan/Stormwater Pollution Prevention Plan._ A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, MS4s, and/or waters of the State to the Maximum Extent Practicable.

_Wastewater._ Any water or other liquid, other than uncontaminated stormwater, discharged from a property.

_Watercourse._ A natural or artificial channel through which water flows. These channels include: all blue and dashed blue lines on the USGS quadrangle maps, all channels shown on the soils maps in the NRCS soils map for Outagamie, Winnebago and Calumet Counties, all channels identified on the site, and new channels that are created as part of a development. The term watercourse includes waters of the state as herein defined.

_Waters of the state._ As defined in Wisconsin Statute 283 (November 1, 2005), means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

_Wisconsin Pollutant Discharge Elimination System (WPDES) Stormwater Discharge Permit._ A Wisconsin pollutant discharge elimination system permit issued pursuant to Wisconsin Statute 283 (November 1, 2005). (Ord 67-08, §1, 3-25-08; Ord 55-15, §1, 6-23-15)

Sec. 20-402. Applicability.

This ordinance shall apply to all pollutants, substances or wastewater entering the MS4 unless explicitly exempted by an authorized enforcement agency. (Ord 67-08, §1, 3-25-08)

Sec. 20-403. Responsibility for administration.

The authorized enforcement agency and/or its agents shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Director of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.
Sec. 20-404. Compatibility with other regulations.

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Sec. 20-405. Severability.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

Sec. 20-406. Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.


DIVISION 2. DISCHARGE PROHIBITIONS.

Sec. 20-411. Prohibition of illicit discharges.

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater.

Sec. 20-412. Allowed discharges.

(a) Water line flushing, irrigation, diverted stream flows, ground waters, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, springs, water from crawl space pumps, footing drains, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges.

(b) Discharges or flow from firefighting, and other discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

(c) Discharges associated with dye testing, provided verbal notification is given to the authorized enforcement agency and the Department of Natural Resources a minimum of three (3) days prior to the time of the test.

(d) Any non-stormwater discharge permitted under an WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Wisconsin Department of Natural Resources. Any person subject to such an WPDES stormwater discharge permit shall comply with all provisions of such permit.

Sec. 20-413. Prohibition of illicit connections.

(a) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

(b) This prohibition includes, but is not limited to, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage or any other pollutant to the MS4, or allows such a connection to continue.

Sec. 20-414. Watercourse protection.

Every person owning property through which a
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watercourse passes, or such person’s lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Ord 67-08, §1, 3-25-08)


DIVISION 3. COMPLIANCE MONITORING

Sec. 20-421. Right of entry: inspecting and sampling.

(a) The authorized enforcement agency shall be permitted to enter and inspect any property subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

(1) If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(2) Property operators shall allow the authorized enforcement agency ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.

(3) The authorized enforcement agency shall have the right to set up on any property such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the property’s stormwater discharge.

(4) The authorized enforcement agency has the right to require the discharger to install monitoring equipment as necessary. The property’s sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the property to be inspected, sampled or monitored shall be promptly removed by the operator at the written or oral request of the authorized enforcement agency and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the authorized enforcement agency access to a property is a violation. A person who is the operator of a property commits an offense if the person denies the authorized enforcement agency reasonable access to the property for the purpose of conducting any activity authorized or required by this ordinance.
Sec. 20-422. Special inspection warrant.

If the authorized enforcement agency has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect, sample or monitor as part of a routine inspection, sampling or monitoring program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a special inspection warrant per state statute §66.0119.

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Sec. 20-423. Requirement to prevent, control and reduce stormwater pollutants by the use of best management practices.

The owner or operator of any activity, operation, or property which may cause or contribute to pollution or contamination of stormwater, the MS4, watercourses, or waters of the State shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a property or premise, that is, or may be, the source of an illicit discharge, may be required to implement, at said person’s expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of stormwater associated with industrial activity, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a Stormwater Management Plan (SWMP)/Stormwater Pollution Prevention Plan (SWPPP) as necessary for compliance.

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Sec. 20-424. Notification of spills

Notwithstanding other requirements of law, as soon as any person responsible for a property or operation, or responsible for emergency response for a property or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the MS4, or waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency within seventy-two (72) hours of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least seven (7) years.

Failure to provide notification of a release as provided above is a violation of this ordinance.

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DIVISION 4. VIOLATIONS, ENFORCEMENT AND PENALTIES

Sec. 20-431. Violations.

(a) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

(b) In the event the violation constitutes an immediate danger to public health, public safety or the environment the authorized enforcement agency is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The authorized enforcement agency is authorized to seek costs of the abatement as outlined in §20-440.

(c) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the authorized enforcement agency.

(d) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the authorized enforcement agency requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the authorized enforcement agency.

(Ord 67-08, §1, 3-25-08; Ord 55-15, §1, 6-23-15)

Sec. 20-432. Warning notice.

When the authorized enforcement agency finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the authorized enforcement agency may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in the subsection shall limit the authority of the authorized enforcement agency to take action, including emergency action or any other enforcement action without first issuing a Warning Notice.

(Ord 67-08, §1, 3-25-08)

Sec. 20-433. Notice of violation.

(a) Whenever the authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person.

(b) The Notice of Violation shall contain:

(1) The name and address of the alleged violator;

(2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;

(3) A statement specifying the nature of the violation;

(4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;

(5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

(6) A statement that the determination of violation may be appealed to the authorized enforcement agency by filing a written notice of appeal within three (3) days of service of notice of violation; and

(7) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator.

(b) Such notice may require without limitation:

(1) The performance of monitoring, analyses, and reporting;

(2) The elimination of illicit connections or discharges;

(3) That violating discharges, practices,
operations shall cease and desist;

(4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

(5) Payment of a fine to cover administrative and remediation costs; and

(6) The implementation of BMPs.

(Ord 67-08, §1, 3-25-08)

Sec. 20-434. Suspension of MS4 access.

(a) Reserved.

(b) Emergency cease and desist orders.

(1) When the authorized enforcement agency finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person’s past violations are likely to recur, and/or that the person’s violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the State which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the authorized enforcement agency may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

a. Immediately comply with all ordinance requirements; and

b. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

(c) Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger’s failure to immediately comply voluntarily with the emergency order, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the State, and/or endangerment to persons or to the environment, including immediate termination of a property’s water supply, sewer connection, or other municipal utility services. The authorized enforcement agency may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the authorized enforcement agency that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the authorized enforcement agency within seventy-two (72) hours of receipt of the orders to cease and desist all violations.

(Ord 67-08, §1, 3-25-08; Ord 55-15, §1, 6-23-15)

Sec. 20-435. Suspension due to illicit discharges in emergency situations.

The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4, or to minimize danger to persons.

(Ord 67-08, §1, 3-25-08; Ord 55-15, §1, 6-23-15)

Sec. 20-436. Suspension due to detection of illicit discharge.

(a) Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration hearing and the violator shall have an opportunity for hearing under Wis. Stats. Ch. 68, except when termination is necessary to abate an imminent threat to the public health, safety, welfare or environment. The violator may have a hearing under Wis. Stats. Ch. 68, within ten (10) days of such emergency discontinuance.

(b) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

(Ord 67-08, §1, 3-25-08; Ord 55-15, §1, 6-23-15)

Sec. 20-437. Prosecution and penalties.

(a) Any person that has violated or continues to violate this ordinance shall be liable to prosecution to the fullest extent of the law. In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within the set time period specified by the

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authorized agency, after the authorized enforcement agency has taken one or more of the actions described above, the authorized enforcement agency may impose a penalty not to exceed $1,000 for each day the violation remains unremedied after receipt of the notice of violation. For second and subsequent offenses, the penalty shall not exceed $5,000 per day.

(b) **Prosecution of violation.** If the notice of violation is not complied with promptly, the authorized enforcement agency shall request the City Attorney to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation. Upon conviction the violator shall be fined as provided hereinbefore for each violation together with the costs of prosecution. Each day that a violation continues shall be deemed a separate offense.

(c) **Abatement of violation.** The imposition of the penalties herein prescribed shall not preclude the City Attorney from instituting appropriate action to prevent, correct or abate a violation, or to stop an unlawful or illegal act.

(Ord 67-08, §1, 3-25-08)

**Sec. 20-438. Enforcement measures.**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then representatives of the authorized enforcement agency are authorized to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(Ord 67-08, §1, 3-25-08)

**Sec. 20-439. Cost of abatement of the violation.**

Within Sixty (60) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid by the date determined by the municipal authority, the charges shall become a special charge against the property and shall constitute a lien on the property.

(Ord 67-08, §1, 3-25-08)

**Sec. 20-440. Violations deemed a public nuisance.**

Any condition in violation of any of the provisions of this ordinance and declared and deemed a nuisance, may be summarily abated or restored at the violator’s expense.

(Ord 67-08, §1, 3-25-08)

**Sec. 20-441. Remedies not exclusive.**

(a) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

(b) The authorized enforcement agency may recover all attorney’s fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

(Ord 67-08, §1, 3-25-08)

**Sec. 20-442. Obligations of authorized enforcement agency and City of Appleton.**

Nothing contained in this Illicit Discharge and Connection Ordinance shall require the City of Appleton or the authorized enforcement agency to engage in any enforcement obligations that exceed the obligations required under the Laws of the State of Wisconsin, including, but not limited to, NR Section 216.

(Ord 67-08, §1, 3-25-08)
Chapter 24

Erosion and Sediment Control

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Sec. 24-1. Authority.

(a) This ordinance is adopted under the authority granted by §62.234, Wis. Stats. This ordinance supersedes all provisions of any ordinance previously enacted under §62.23, Wis. Stats., that relates to erosion and sediment control. Except as otherwise specified in §62.234 Wis. Stats., §62.23, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.

(b) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the City of Appleton.

(c) The City of Appleton hereby designates the Director of Public Works or his/her designee as the administering authority to enforce the provisions of this ordinance.

(d) The requirements of this ordinance do not preempt more stringent erosion and sediment control requirements that may be imposed by any of the following:

(1) Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under §281.16 and §283.33, Wis. Stats.

(2) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

(Secs. 24-3 – 24-9. Reserved.

Secs. 24-3 – 24-9. Reserved.

Sec. 24-2. Purpose.

The City of Appleton acknowledges that runoff from land disturbing construction activity and improper land management carries sediment and other pollutants to the waters of the state.

It is the purpose of this ordinance to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing activity to waters of the state within the City of Appleton.

It is also the purpose of this ordinance to meet the performance standards in subchapters III and IV of Ch. NR 151, Wis. Adm. Code and to meet the requirements for construction site pollutant control in the General Permit to Discharge under the Wisconsin Pollutant Discharge Elimination System WPDES Permit No. WI S050075-2 administered by the Wisconsin Department of Natural Resources (WDNR).

(Org 180-04, §1, 1-1-05; Ord 49-16, §1, 6-21-16)
Sec. 24-10. Applicability and jurisdiction.

(a) Applicability.

(1) This ordinance applies to all land disturbing activities within the City of Appleton except as provided under sub. (3).

(2) Land disturbing activities meeting any one of the following are required to prepare a plan and obtain a permit:

a. Building on lots in subdivisions, certified survey maps or unplatted lands.

b. Land disturbing activities involving grading, removal of protective ground cover or vegetation, excavation, land filling, scraping or other land disturbing activity affecting a surface of two thousand (2,000) square feet or more.

c. Land disturbing activities involving excavation or filling or a combination of excavating and filling affecting two hundred (200) cubic yards or more of soil, dirt, sand or other excavation or fill material.

d. Land disturbing activities involving street, highway, road or bridge construction, enlargement, relocation or reconstruction.

e. Land disturbing activities involving the laying, repairing, replacing or enlarging of an underground pipe, wire, cable or facility for a distance of three hundred (300) feet or more.

f. Land disturbing activities within protective areas as defined in City of Appleton Municipal Code Sec. 20-312(f).

g. Routine ditch maintenance for a continuous distance of one hundred (100) feet or more.

h. Notwithstanding the previously listed applicability requirements, this ordinance applies to any sites which, in the opinion of the City of Appleton, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that cause undue erosion, that increases water pollution by scouring or the transportation of particulate matter, or that endangers property or public safety.

(3) This ordinance does not apply to the following:

a. Land disturbing construction activity that includes the construction of one- (1-) and two- (2-) family residential dwellings that are not part of a larger common plan of development or sale and that result in less than one (1) acre of disturbance. These construction sites are regulated by the Wisconsin Department of Safety and Professional Services under s. SPS 321.125 Wis. Adm. Code.

b. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under Chapter 40, Code of Federal Regulations, part 122, for land disturbing activity.

c. Nonpoint discharges from agricultural facilities and practices.

d. Nonpoint discharges from silviculture activities.

e. Activities conducted by a state agency, as defined under §227.01 (1), Wis. Stats., but also including the office of the district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under §281.33 (2), Wis. Stats.

(b) Jurisdiction.

(1) This ordinance applies to land disturbing activities located within the boundaries of the City of Appleton.

(2) County and town ordinances. This ordinance supercedes any county or town erosion and sediment control ordinance for lands annexed to the City after the effective date of the county’s or town’s ordinance, except when the county’s or town’s ordinance is more restrictive than this ordinance; then the more restrictive provisions set forth in the county or town
ordinance shall become part of this ordinance and apply to the annexed lands. In such cases, the City may grant a variance from the more restrictive requirements provided that the criteria for a variance as set forth in the county ordinance is met.

(3) Waivers. Requests to waive the erosion and sediment control requirements, or a portion thereof, shall be submitted to the City of Appleton, in writing, with the application and fee, for review. Written waivers may be granted administratively by the City for erosion and sediment control requirements that are required by the City if it is demonstrated to the satisfaction of the City that it is reasonable to expect that the objectives of this ordinance will be met without an erosion and sediment control plan or portion thereof.

(4) Applicability of maximum extent practicable. Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the City of Appleton’s satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

Sec. 24-15. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Administering authority** means the Director of Public Works, or a designee.

**Agricultural facilities and practices** has the meaning in §281.16(1), Wis. Stats.

**Average annual rainfall** means a calendar year of precipitation, excluding snow, which is considered typical. An average annual rainfall for Green Bay, 1969 (March 29 - November 25) is applicable for the City of Appleton.

**Best management practice** or BMP means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff.

**Business day** means a day the offices of the City of Appleton are routinely and customarily open for business.

**Cease and desist order** means a court-issued order to halt land disturbing activity that is being conducted without the required permit or not in conformance with an existing permit.

**City** means the City of Appleton.

**Common plan of development or sale** means a development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one (1) plan. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.

**Construction site** means an area upon which one (1) or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one (1) common plan of development.

**Design storm** means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall. Rainfall amounts for 24-hour design rainfall events in Appleton are: 100-year, 5.50 inches; 10-year, 3.51 inches; 5-year, 3.01 inches; 2-year, 2.45

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inches, and 1-year 2.14 inches. The distribution shall be NOAA Atlas 14 MSE4.

Erosion means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.

Erosion and sediment control plan means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

Final stabilization means that all land disturbing activities at the site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least seventy percent (70%) of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

Land disturbing activity means any man-made alteration resulting in a change in the topography, existing vegetative or non-vegetative soil cover, or drainage pattern, that may result in runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing activities include, but are not limited to, clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, an unstable pipe outfall, or an unstable slope.

Landowner means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of stormwater BMPs on the property.

Maximum extent practicable means the highest level of performance that is achievable, but is not equivalent to a performance standard, taking into account the best available technology, cost effectiveness and other competing issues such as human welfare, endangered and threatened resources, historic properties, and geographic features, pursuant to Sec. 20-10(b)(4) of the Appleton Municipal Code.

Performance standard means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

Permit means a written authorization made by the City of Appleton to the applicant to conduct land disturbing activity.

Pollutant has the meaning given in §283.01(13), Wis. Stats.

Pollution has the meaning given in §281.01(10), Wis. Stats.

Responsible party means any person holding fee title to the property or other entity performing services to meet the requirements of this ordinance through a contract or other agreement.

Runoff means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

Performance security means cash, or an irrevocable letter of credit submitted to the City of Appleton by the responsible party to assure that requirements of the ordinance are carried out in compliance with the approved erosion and sediment control plan and to recover any costs incurred by the City for designing, engineering, preparation, checking and review of plans and specifications, regulations and ordinances, and legal, administrative and fiscal work undertaken to assure and implement such compliance.

Permit application fee means a sum of money paid to the City of Appleton by the responsible party for the purpose of recouping expenses incurred by the City in administering the permit.

Sediment means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

Silviculture activity means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.

Site means the entire area included in the legal description of the land on which the land disturbing activity is proposed in the permit application or has occurred.

Stop work order means an order issued by the City of Appleton, which requires that all construction activity on the site be stopped.

Stormwater conveyance system means any method employed to carry stormwater runoff within and from a land development or redevelopment activity to the waters of the state. Examples of methods include: swales, channels and storm sewers. (Ord 182-11, §1, 1-1-12)

Technical standard means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
Transportation facility means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under §85.095(1)(b), Wis. Stats. Transportation facility does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to §281.33, Wis. Stats.

Waters of the state has the meaning in §283.01(20), Wis. Stat.
(Ord 180-04, §1, 1-1-05; Ord 49-16, §1, 6-21-16)

Secs. 24-16 – 24-19. Reserved.

Sec. 24-20. Technical standards.

(a) Design criteria, standards and specifications. All BMPs required to comply with this ordinance shall meet the design criteria, standards and specifications based on any of the following:

(1) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of Chapter NR 151, Wis. Adm. Code.

(2) Soil loss prediction tools (such as the Universal Soil Loss Equation [USLE] or its successors RUSLE and RUSLE2) when using an appropriate rainfall or runoff factor (also referred to as the R factor) or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.

(b) Other standards. Other technical standards not identified or developed in sub. (a), may be used provided that the methods have been approved by the City of Appleton.
(Ord 180-04, §1, 1-1-05; Ord 183-11, §1, 1-1-12; Ord 49-16, §1, 6-21-16)

Secs. 24-21 – 24-23. Reserved.
Sec. 24-24. Performance standards for non-permitted sites.

(a) **Responsible party.** The responsible party shall comply with this section.

(b) **Requirements.** Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

(1) The deposition of soil from being tracked onto streets by vehicles.

(2) The discharge of sediment from disturbed areas into on-site storm water inlets.

(3) The discharge of sediment from disturbed areas.

(4) The discharge of sediment from drainage ways that flow off the site.

(5) The discharge of sediment by dewatering activities.

(6) The discharge of sediment eroding from soil stockpiles existing for more than seven (7) days.

(7) The transport by runoff of chemicals, cement and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.

(c) **Location.** The BMPs used to comply with this section shall be located so that treatment occurs before runoff leaves the site or enters a storm conveyance system, any drainage channel or waters of the state.

(d) **Implementation.** The BMPs used to comply with this section shall be implemented as follows:

(1) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.

(2) Erosion and sediment control practices shall be maintained until final stabilization.

(3) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.

(4) Temporary stabilization activity shall commence when land disturbing activities cease and will not resume for a period exceeding fourteen (14) calendar days.

(5) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

(6) All off-site deposits occurring as a result of a storm event shall be cleaned up by the end of the next working day. All other off-site deposits occurring as a result of land disturbing activities shall be cleaned up by the end of the workday. Flushing is not allowed.

(e) **Alternate requirements.** The City of Appleton may establish erosion and sediment control requirements more stringent than those set forth in this section if the City determines that an added level of protection is needed to protect resources.

(Ord 184-11, §1, 1-1-12; Ord 49-16, §1, 6-21-16)

Sec. 24-25. Performance standards for permitted sites.

(a) **Responsible party.** The responsible party shall implement an erosion and sediment control plan, developed in accordance with Sec. 24-35, that incorporates the requirements of this section.

(b) **Plan.** A written site specific erosion and sediment control plan shall be developed in accordance with Sec. 24-35 and implemented for each construction site.

(c) **Erosion and other pollutant control requirements.** The plan required under sub. (b) shall include the following:

(1) Erosion and sediment control practices shall be used to prevent or reduce all of the following:

   a. The deposition of soil from being tracked onto streets by vehicles.

   b. The discharge of sediment from disturbed areas into on-site storm water inlets.

   c. The discharge of sediment from disturbed areas into adjacent waters of the state.
d. The discharge of sediment from drainage ways that flow off the site.

e. The discharge of sediment by dewatering activities.

f. The discharge of sediment eroding from soil stockpiles existing for more than seven (7) days.

g. The discharge of sediment from erosive flows at outlets and in downstream channels.

h. The transport by runoff of chemicals, cement and other building compounds and materials from the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.

i. The transport by runoff of untreated wash water from vehicle and wheel washing from the construction site. Wastewaters, such as concrete truck washout, shall be properly managed to limit the discharge of pollutants.

(2) For permitted sites with less than one (1) acre disturbed activity, BMPs that, by design, achieve to the maximum extent practicable, a reduction of eighty percent (80%) of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the site has undergone final stabilization. No person shall be required to exceed an eighty percent (80%) sediment reduction to meet the requirements of this paragraph.

(3) For permitted sites with one (1) acre or more disturbed area, BMPs that, by design, discharge no more than five (5) tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization, as determined by the WDNR construction site soil loss and sediment discharge guidance.

(4) Erosion and Sedimentation BMPs may be combined to meet the requirements of this section. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing activity, or other appropriate mechanism. The method of calculating the percent reduction in sediment shall be a method approved by the City of Appleton.

(5) No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with MEP.

(6) Notwithstanding sub. (2) and (3), if BMPs cannot be designed and implemented to meet these requirements, the plan shall include a written and site-specific explanation as to why the requirements are not attainable and how the sediment load shall be reduced to the maximum extent practicable.

(7) Preventative measures. The plan shall incorporate all of the following:

a. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.

b. Minimization of soil compaction and preservation of topsoil.

c. Minimization of land disturbing construction activity on slopes of twenty percent (20%) or more.

d. Development of spill prevention and response procedures.

(8) All off-site deposits occurring as a result of a storm event shall be cleaned up by the end of the next working day. All other off-site deposits occurring as a result of land disturbing activities shall be cleaned up by the end of the workday. Flushing is not allowed.

(d) Location. The BMPs used to comply with this section shall be located so that treatment occurs prior to runoff leaving the site or entering the storm conveyance system, any drainage channel or waters of the state.

(e) Implementation. The BMPs used to comply with this section shall be implemented as follows:

(1) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in
accordance with plan developed under Sec. 24-35.

(2) Erosion and sediment control practices shall be maintained until final stabilization.

(3) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.

(4) Temporary stabilization activity shall commence when land disturbing activities cease and will not resume for a period exceeding fourteen (14) calendar days.

(5) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

(f) Alternate requirements. The City of Appleton may establish erosion and sediment control requirements more stringent than those set forth in this section if the City determines that an added level of protection is needed to protect sensitive resources.

Sec. 24-30. Permitting requirements, procedures and fees.

(a) Permit required. No responsible party may commence any land disturbing activity subject to this ordinance without first receiving approval of an erosion and sediment control plan for the site and a permit from the City of Appleton.

(b) Permit application and fees. The responsible party desiring to undertake a land disturbing activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of Sec. 24-35 and shall pay an application fee to the City of Appleton. By submitting an application, the applicant is authorizing the City of Appleton to enter the site to obtain information required for the review of the erosion and sediment control plan.

(c) Review and approval of permit application. The City of Appleton shall review any complete permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

(1) Within twenty (20) business days of the receipt of a complete permit application, as required by sub. (b), the City of Appleton shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.

(2) If the permit application and plan are approved, the City of Appleton shall issue the permit.

(3) If the permit application or plan is disapproved, the City of Appleton shall state in writing the reasons for disapproval.

(4) The City of Appleton may request additional information from the applicant. If additional information is submitted, the City of Appleton shall have twenty (20) business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.

(5) Failure by the City of Appleton to inform the permit applicant of a decision within twenty (20) business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

Secs. 24-26 – 24-29. Reserved.
(d) **Performance security.** The City of Appleton may, at its discretion, require the submittal of a cash escrow, irrevocable letter of credit, or performance security prior to issuance of the permit to ensure that the practices are installed and maintained by the responsible party as required by the approved erosion and sediment control plan and any conditions attached to the permit. The amount of the installation performance security shall be determined by the City of Appleton, not to exceed the total estimated construction cost of the erosion and sediment control practices approved under the permit unless otherwise specified in the permit. The amount of any required maintenance performance security shall be determined by the City of Appleton. Any performance securities shall contain forfeiture provisions for failure to complete work specified in the plan.

Conditions for the release of performance security are as follows:

1. The installation performance security shall be released in full only upon submission of “as built plans” and written certification by a professional engineer registered in the State of Wisconsin that the practice(s) were installed in accordance with the approved plan and other applicable provisions of this ordinance. The City of Appleton may make provisions for a partial pro-rata release of the performance security based on the completion of various development stages including the final inspection of landscaping material.

2. The maintenance performance security, minus any costs incurred by the City of Appleton to conduct required maintenance, design, engineering, preparation, checking and review of designs, plans and specifications; supervision and inspection to ensure that construction is in compliance with applicable plans, specifications, regulations and ordinances; and legal, administrative and fiscal work undertaken to assure and implement such compliance, shall be released at such time that the responsibility for practice maintenance is passed on to another private entity, via an approved maintenance agreement, or to the City of Appleton.

(e) **Permit requirements.** All permits shall require the responsible party to:

1. Notify the City of Appleton no less than two (2) business days prior to commencing any land disturbing construction activity.

2. Notify the City of Appleton of completion of any BMPs within two (2) business days after their installation.

3. Obtain permission in writing from the City of Appleton prior to any modification pursuant to Sec. 24-35 of the erosion and sediment control plan.

4. Install all BMPs as identified in the approved erosion and sediment control plan.

5. Maintain and repair all road drainage systems, storm conveyance systems, BMPs and other facilities, both on and off site, identified in the approved erosion and sediment control plan.

6. Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site erosion control log.

7. Inspect the BMPs within twenty-four (24) hours after each rain of 0.5 inches or more and at least once each week. Make needed repairs, install additional BMPs as necessary and document the findings of the inspections in an erosion control log kept on site with the date of inspection, the name of the person conducting the inspection, a description of the present phase of the construction, a description of any repairs needed and documentation of the completed repairs.

8. **Winter dormant inspection requirements.** When a permitted construction site is shut down and dormant over the winter season, the applicant shall be exempt from weekly inspections as required in Sec. 24-30(e)(7) upon approval of the Director of Public Works. In order for a permitted site to be classified as winter dormant, the applicant must install erosion control measures to the satisfaction of the Director of Public Works, provide an inspection of these measures and then cease all construction activities except for minor maintenance activities. Once a site is classified as winter dormant by the Director of Public Works, inspections are only required within twenty-four (24) hours of a rain or thaw event as determined by the Director of Public Works. If at any time construction resumes or an erosion control failure occurs
at the site, the site shall lose the winter dormant classification and the applicant must resume normal inspection.

(9) **Documentation of inspection.** When required by the City of Appleton, erosion control inspections, including any repairs needed and/or actions taken at the site, shall be documented on the City of Appleton online erosion control self-reporting system. The permittee will be given access to this website, which contains documentation and forms for use in the erosion control inspections. Digital photographs of each of the erosion control practices and the site conditions shall be submitted and shall be required to meet the minimum inspection requirements of this section.

(10) Allow the City of Appleton to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the plan. Keep a copy of the erosion and sediment control plan at the construction site.

(f) **Permit conditions.** Permits issued under this section may include conditions established by City of Appleton in addition to the requirements set forth in sub. (e), where needed to assure compliance with the performance standards in Sec. 24-25.

(g) **Permit duration.** Permits issued under this section shall be valid for a period of one (1) year, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance.

(h) **Maintenance.** The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization and final acceptance by the City of Appleton. Upon failure to perform the necessary maintenance of the erosion control practices, the City of Appleton retains the right to perform maintenance and/or repairs. The costs shall be assessed to the responsible party.

(i) All sites covered under this ordinance shall implement a long-term stormwater management plan per Wis. Adm. Code s. NR 216.47. For sites not subject to the Stormwater Management Standards and Planning Ordinance in Article VI of Chapter 20 of the Appleton Municipal Code, a stormwater management acknowledgement form, accepting the long-term stormwater management requirements, shall be required prior to receiving an erosion and sediment control permit.

(Ord 180-04, §1, 1-1-05; Ord 49-16, §1, 6-21-16)

Secs. 24-31 – 24-34. Reserved.
Sec. 24-35. Erosion and sediment control plan, statement and amendments.

(a) Erosion and sediment control plan.

(1) An erosion and sediment control plan shall be prepared and submitted to the City of Appleton Department of Public Works unless the project is required to also submit a site plan. If a site plan is required, the complete erosion and sediment control permit application and appropriate fee shall be submitted to the City of Appleton Community Development Department with the site plan submittal.

(2) The complete erosion and sediment control plan shall be submitted in both hard copy and .pdf format.

(3) The erosion and sediment control plan shall be prepared by a person who holds a registration issued by the Wisconsin Department of Regulation and Licensing in one (1) of the following categories:

a. Architect.
b. Engineer.
c. Land Surveyor.
d. Landscape Architect.

(4) The erosion and sediment control plan shall be designed to meet the performance standards in Sec. 24-25 and other requirements of this ordinance.

(5) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:

a. The name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant’s contact at such firm. The application shall also include start and end dates for construction.
b. Description of the site and the nature of the land disturbing activity. Sites of one (1) acre or more shall include the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.

c. The intended sequence of land disturbing construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date when clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, establishment of permanent vegetation and removal of erosion and sediment controls.
d. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.
e. For sites less than one (1) acre of disturbed area, include BMPs meeting the provisions of Sec. 24-25(c)(2).
f. For sites with one (1) acre or more of disturbed area, provide calculations per WDNR Soil Loss Guidelines per Sec. 24-25(c)(3).
g. Location and description of the existing surface soil as well as subsoils, as indicated by USDA Natural Resource Conservation Service Soil Survey information.
h. Depth to groundwater, as indicated by USDA Natural Resources Conservation Department soil survey information.
i. Name of the immediate named receiving water.

(6) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than one hundred (100) feet per inch and at a contour interval not to exceed two (2) feet.

a. Existing topography, vegetative cover, natural and engineered drainage systems, roads, and surface waters. Lakes, streams, wetlands, channels,
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ditches and other watercourses on the site and on adjacent lands shall be shown. Any identified 100-year flood plains, flood fringes, floodways, and flood storage areas shall also be shown.

b. Boundaries of the parcel and the construction site.

c. Drainage patterns and approximate slopes before and after major grading activities.

d. Areas of soil disturbance.

e. Location, dimensions and descriptions of major structural and non-structural controls identified in the erosion and sediment control plan.

f. Location of areas where stabilization BMPs will be employed.

g. Areas that will be vegetated following construction.

h. Area(s) and location(s) of wetlands on the site and locations where stormwater is discharged to a surface water or wetland, within one-quarter mile downstream of the construction site.

i. Water courses and wetlands that may affect or be affected by runoff from the site.

j. On sites one (1) acre or larger an alphanumeric or equivalent grid overlying the entire construction site map.

k. Topography and drainage network of enough of the contiguous properties to show runoff patterns onto, through, and from the site.

l. Location, dimensions and description of utilities, structures and pavements.

m. Area(s) used for infiltration of post-construction stormwater runoff.

(7) Each erosion and sediment control plan shall include a description of appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control BMPs will be implemented. The description of erosion and sediment control BMPs shall include, when appropriate, the following minimum requirements:

a. Description of interim and permanent stabilization practices, including a BMP implementation schedule. Erosion and sediment control plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.

b. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the City of Appleton, structural measures shall be installed on upland soils.

c. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.

d. Trapping of sediment in channelized flow.

e. Staging land disturbing construction activities to limit exposed soil areas subject to erosion.

f. Protection of downslope drainage inlets where they occur.

g. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.

h. Clean up of off-site sediment deposits.

i. Proper disposal of building and waste materials, including but not limited to designated sites for concrete truck washout.

j. Stabilization of drainage ways.
k. Control of soil erosion from stockpiles.

l. Installation of permanent stabilization practices within ten (10) days after final grading.

m. Minimization of dust to the maximum extent practicable.

(Ord 187-11, §1, 1-1-12)

(8) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel, as necessary, to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

(b) Erosion and sediment control plan statement. For each land disturbing construction site identified under Sec. 24-15, an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the City of Appleton. The control plan statement shall briefly describe the site, the development schedules and the best management practices that will be used to meet the requirements of the ordinance.

(c) Amendments. The applicant shall amend the plan if any of the following occur:

(1) There is a change in design, construction, operation or maintenance at the site that has the reasonable potential for the discharge of pollutants and has not otherwise been addressed in the erosion and sediment control plan.

(2) The actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.

(3) The City of Appleton notifies the applicant of changes needed in the plan.

(Ord 180-04, §1, 1-1-05; Ord 49-16, §1, 6-21-16)

Sec. 24-40. Fee schedule.

Fees for the erosion and sediment control permits will be in such amount as may be established by the City of Appleton Common Council from time to time by separate resolution. Fees will be on file with the City Clerk.

(Ord 180-04, §1, 1-1-05; Ord 49-16, §1, 6-21-16)

Secs. 24-41 – 24-44. Reserved.

Secs. 24-45. Site inspections.

Whenever land disturbing activities are being carried out, the City of Appleton may enter the land pursuant to the provisions of §§66.0119(1), (2), and (3), Wis. Stats.

(Ord 180-04, §1, 1-1-05; Ord 188-11, §1, 1-1-12; Ord 49-16, §1, 6-21-16)

Secs. 24-46 – 24-49. Reserved.

Sec. 24-50. Enforcement and penalties.

(a) Any land disturbing activity initiated after the effective date of this ordinance by any person, firm, association or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with these ordinance provisions.

(b) The City of Appleton shall notify the responsible party in writing of any non-complying activity. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action and additional enforcement action, which may be taken.

(c) Upon receipt of written notification from the City of Appleton, the responsible party shall make the necessary corrections within the time period established by the City of Appleton.

(d) If the violations issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the City of Appleton may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City of Appleton plus interest and legal costs shall be billed to the responsible party.

(e) The City of Appleton is authorized to post a stop work order on all land development or redevelopment activity in violation of this ordinance, or to request the Appleton City Attorney to obtain a cease and desist order.

(f) The City of Appleton may revoke a permit issued under this ordinance for noncompliance with ordinance provisions.

(g) Any permit revocation, stop work order or cease and desist order shall remain in effect unless retracted by the City of Appleton or by a court of competent jurisdiction.

(h) The City of Appleton is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the Appleton City Attorney for the commencement of further legal proceedings.

(i) Any person, firm, association or corporation who does not comply with the provisions of this ordinance shall be subject to the general penalty provisions of the Appleton Municipal Code Sec. 1-16. Each day that the violation exists shall constitute a separate offense.

(j) Violations of this ordinance deemed to be a public nuisance shall be subject to abatement under Sec. 12-32 of the Appleton Municipal Code or compliance with this ordinance may be enforced by injunctinal order in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture before resorting to injunctional proceedings.

(k) When the City of Appleton determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the erosion and sediment control plan submitted and approved pursuant to this ordinance, or has failed to comply with schedules set forth in said erosion and sediment control plan, the City of Appleton or a party designated by the City of Appleton may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The City of Appleton shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any performance or maintenance security posted pursuant to this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property.

(l) No building occupancy may be issued if there is noncompliance of any provision herein.

(m) No building permit may be issued in any subdivision when the subdivision is not in compliance with the requirements of this chapter.

(Ord 180-04, §1, 1-1-05; Ord 49-16, §1, 6-21-16)

Secs. 24-51 – 24-54. Reserved.
Sec. 24-55. Appeals

(a) The Utilities Committee of the Appleton Common Council shall hear and recommend to Council appeals where it is alleged that there is error in any order, decision or determination made by the City of Appleton in administering this ordinance except for cease and desist orders obtained under Sec. 24-50(e).

Upon appeal, the Committee may recommend to Council relief from the provisions of this ordinance that are not contrary to the public interest or provisions of state regulations, and where owing to special conditions a literal enforcement of this ordinance will result in unnecessary hardship.

(b) Who may appeal. Appeals to the Utilities Committee of the City of Appleton may be taken by any aggrieved person or by an officer, department, board or bureau of the City of Appleton affected by any decision of the City of Appleton. Written appeals shall be filed with the City Clerk. The Utilities Committee will make a recommendation within forty-five (45) calendar days of filing of the appeal. If the Utilities Committee takes no action within forty-five (45) calendar days, the appeal will automatically be sent to Council with a recommendation for approval. Either party may file a written request for a time extension with the City Clerk.

(Ord 180-04, §1, 1-1-05; Ord 49-16, §1, 6-21-16)

Sec. 24-56 – 24-59. Reserved.

Sec. 24-60. Severability.

If any section or portion thereof shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and not affect the validity of all other provisions, sections or portion thereof of the ordinance which shall remain in full force and effect.

(Ord 180-04, §1, 1-1-05; Ord 49-16, §1, 6-21-16)

*Editor’s Note: Chapter 24 was repealed and recreated by ordinance 180-04. This ordinance is effective as of January 1, 2005.

*Editor’s Note: Chapter 24 was repealed and recreated by ordinance 49-16. This ordinance is effective as of June 21, 2016.

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