ARTICLE III. BUILDINGS

DIVISION 1. GENERALLY

Sec. 4-136. State building code, existing buildings regulations adopted.

Wisconsin Administrative Code, SPS Chapters 330 – 366, are adopted by reference and made part of this article with the same force and effect as through set out in full in this article.

(Code 1965, §15.01; Ord 85-97, §1, 10-15-97; Ord 38-09, §1, 3-10-09; Ord 25-12, §1, 3-7-12)

Sec. 4-137. Fire limits designated.

All property located in the CBD central business district, the M-1 industrial park district and the M-2 general industrial district shall be considered as being within the fire limits of the City.

(Code 1965, §4.10(1); Ord 85-97, §1, 10-15-97; Ord 39-09, §1, 3-10-09)

Cross reference(s)--Fire prevention and protection, ch. 6.

Sec. 4-138. Construction in fire limits – certain remodeling, repairs prohibited.

(a) No wood frame unprotected building within the fire limits of the City shall be remodeled to the extent of fifty percent (50%) of the fair market value during the life of the building.

(b) No wood frame unprotected building within the fire limits which is damaged to the extent of fifty percent (50%) of the fair market value shall be repaired or rebuilt. The amount or extent of damage shall be determined by the Board of Building Inspection. The decision of the board shall be communicated to the building owner by the Inspections Division. If, within ten (10) days of the notification, the owner does not raze and remove the building condemned, it shall be considered a nuisance and the City shall proceed to have it removed and the cost thereof shall be collected by the Department of Finance in the same manner as the taxes of the City.

(Code 1965, §4.10(2); Ord 76-93, §1, 4-21-93; Ord 176-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Cross reference(s)--Fire prevention and protection, ch. 6.

Sec. 4-139. Same – construction standards generally.

(a) Restrictions.

(1) All buildings located in the fire limits of the City as described in §4-137 shall be constructed as set forth in the International Building Code (IBC) 602.2 – 602.4, as adopted by the
Wisconsin Administrative Code. All buildings of less than two-hour fire-resistive construction shall have ten (10) feet of clearance to the side and rear property lines and any other frame-type building. Pole buildings shall not be permitted in the fire limits.

(2) No permits will be issued for any remodeling of any frame building or part of frame building within the fire limits unless such remodeling will be in conformity with the requirements for new buildings within the fire limits. No frame building within the fire limits shall be raised or removed to any other place within the fire limits, nor shall any frame building be moved into fire limits; nor shall any frame building within such limits which may be damaged to the extent of fifty percent (50%) of the market value thereof be repaired or rebuilt. No such buildings where the damages are less than fifty percent (50%) of the market value shall be so repaired as to be raised higher than the highest point left standing after such damage has occurred or so as to occupy a greater space than before the damage thereto.

(3) No frame building or structure shall be erected within the fire limits except one- (1-) story frame buildings for the use of builders, stands, platforms, booths and tents, erected under temporary permits. Such structures shall be removed as soon as they have ceased to serve the original purpose for which they were permitted.

(b) Waiver of requirements. The Board of Building Inspection may in its discretion waive strict enforcement of the provisions of this section and may prescribe more liberal conditions for the erection, repair or enlargement of buildings within the fire limits.

(c) Applicability. The Uniform Dwelling Code adopted in this section shall apply to all construction of one- (1-) and two- (2-) family buildings, and shall apply to all such existing buildings, but only to the extent such existing buildings are remodeled, reconstructed or added to.

(Code 1965, §15.06; Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Sec. 4-141. Garages and accessory buildings.

(a) Unattached. Unattached one- or 2-family accessory buildings shall be constructed on concrete slabs and shall conform to UDC and American Concrete Institute (ACI) standards. No concrete slab shall be required for accessory buildings where the structure does not exceed one hundred (100) square feet in area and the building is securely anchored. Accessory buildings less than fifty (50) square feet are exempt from permits, however must comply with all zoning ordinance standards. Unattached accessory buildings shall maintain a fire separation distance that meets UDC standards. All one- or 2-family unattached buildings with overhead doors shall have at least one exit door that is a minimum of 32” in width. The overhead door shall not be used as an exit door. Accessory buildings that are 150 square feet or larger are considered a garage for the purposes of this section.

(b) Wall brace plans. Wall brace plans are required for accessory buildings greater in width or length than twelve (12) feet. Wall brace plans must meet UDC standards. Exterior walls and roofs shall meet UDC standards for design, structural requirements and covering. Stairs or stairways, handrails, guardrails or elevated areas inside and outside of the accessory building shall meet UDC standards.

(c) Attached. Attached garages, carports and shelters that are connected to a residence shall have footings and foundations to the established frost line. Attached garages with exterior siding shall be framed to meet all general requirements. Floor drains in garages shall not connect to the foundation drain tile or a clear water sump. Attached carports and unheated shelters that are designed to compensate for movement or flexing and meet all other general requirements may be erected or installed on concrete slabs without frost walls and footings, provided that detailed drawings of design and method of construction are submitted with the permit application.

(d) Construction time frame. Unattached garages or accessory buildings must be completed within one (1) year from the date that the building permit is issued. Failure to complete the construction of garages and accessory buildings will require a new permit. The permit fee for additional permits will be double the original permit fee.

(e) Garage door required. All attached and detached
garages, excluding carports, must have an operating garage door.
(Ord 10-98, §1, 2-18-98; Ord 174-08, §1, 12-9-08; Ord 9-19, §1, 03-03-19)

Sec. 4-142. Boarding of vacant buildings.

(a) Vacant Structures. Owners shall have the responsibility for maintaining all vacant dwelling units, structures, principal buildings and accessory buildings in a locked or closed condition so that they cannot be entered without an unlawful break-in. The Inspections Supervisor may, to assure compliance with this section, order an owner to board a structure.

(b) Owners prior to boarding of a structure under order of the Inspections Supervisor shall apply for a permit and pay a fee of thirty dollars ($30.00).

(c) Boarding of a structure shall be required for all doors and windows on ground level and those doors and windows accessible to grade by stairs or permanently fixed ladders or within ten (10) feet of grade.

(d) Boards shall be a minimum of ½ inch thick exterior grade plywood cut to fit door and window openings, and screws at least 1½ inches in length shall be used to fasten boards to a structure.

(e) All doors boarded at grade level shall be locked and maintained per State of Wisconsin and City of Appleton Building and Fire Codes. The use of padlocks to secure entry doors is strictly prohibited.

(f) Boards shall be painted to match the trim or siding color of the structure.

(g) Screening or alternate methods of boarding may be permitted when approved by the Inspection Supervisor.

(h) The owner of a structure boarded under subd. (a) shall be required, upon notification, to provide entry to the structure to the Inspections Supervisor or Fire Chief at least once every six (6) months, for inspection purposes, or at anytime when the structure has been unlawfully entered.

(i) The owner of a boarded structure shall notify the Inspections Supervisor in writing no later than ten (10) days after the sale of the structure or the unboarding of the property.

(j) If, after a reasonable notice, the owner fails to board the structure, the Inspections Supervisor may request the Department of Public Works, either by City personnel or by contract, to correct the situation and charge the cost thereof upon the tax rolls of the property.
(Ord 71-99, §1, 10-10-99, Ord 62-07, §1, 3-27-07)

Sec. 4-143. Maintenance generally.

(a) All commercial structures and buildings, or portions thereof, shall be maintained to comply with the following requirements:

(1) Every foundation, exterior wall and roof and gutter system shall be reasonably weather tight, waterproof and rodent-proof and shall be kept in a good state of maintenance and repair.

(2) Every interior partition wall, floor and ceiling shall be capable of affording privacy, kept in a reasonably good state of repair and maintained so as to be kept in a clean and sanitary condition.

(3) All rainwater shall be so drained and conveyed from every roof so as not to cause dampness in the walls, ceilings or floors of any habitable room, or any bathroom, or of any toilet room.

(4) Every inside and outside stairway, every porch and every appurtenance thereto shall be constructed in accordance with applicable building codes; and shall be kept in sound condition and a reasonably good state of maintenance and repair.

(5) Every supplied plumbing fixture and water or waste pipe shall be properly installed in accordance with the Wisconsin Plumbing Code and shall be maintained in good, sanitary working condition.

(6) Every chimney and every supplied smoke pipe shall be adequately supported, reasonably clean and maintained in a reasonably good state of repair.

(7) Every toilet room floor surface and bathroom floor surface shall be maintained so as to be impervious to water and so as to permit such floors to be kept in a clean and sanitary condition.

(8) Every supply facility, piece of equipment, or utility which is required under this article shall be so constructed or installed that it will function properly and shall be maintained in reasonably good working condition.

(9) Every parking lot, driveway and sidewalk shall be kept in good state of repair and shall be maintained in conformance with the approved
site plan when applicable. Handicap accessible parking stalls shall be provided in accordance with State building code at the time maintenance and repair work is done.  

(Ord 17-14, §1, 5-13-14)  

Secs. 4-144 – 4-160. Reserved.

DIVISION 2. PERMITS

Sec. 4-161. Permit fees.

(a) Generally. Before a permit is issued to a contractor, the owner or his agent for work described in this section, a fee shall be paid to the Director of Finance as follows:

(1) One- (1-) and two- (2-) family dwellings. The amount of the permit fee for one- (1-) and two- (2-) family dwellings shall be on file in the office of the City Clerk.

(2) Multifamily dwellings. The amount of the permit fee for multi-family apartment dwellings shall be on file in the office of the City Clerk.

(3) Offices and mercantile buildings. The amount of the permit fee for offices and mercantile buildings, including public occupancies such as garages, stores, taverns, theaters, churches, schools, restaurants, and the like, shall be on file in the office of the City Clerk.

(4) Factories; warehouses. The amount of the permit fee for factory and warehouse buildings shall be on file in the office of the City Clerk.

(5) Alterations. The amount of the permit fee for alterations to all existing buildings and structures, including installation of major equipment not covered under the mechanical code, and re-siding of residential structures and the like, shall be on file in the office of the City Clerk.

(6) Demolition. The amount of the permit fee for wrecking and razing of buildings and structures shall be on file in the office of the City Clerk.

(7) Moving of buildings. The amount of the permit fee for moving of buildings and structures shall be on file in the office of the City Clerk.

(8) Swimming pools. The amount of the permit fee for in-ground and aboveground swimming pools shall be on file in the office of the City Clerk.

(9) Fences. The amount of the permit fee for residential, commercial and industrial fences shall be on file in the office of the City Clerk.

(10) [Reserved.]
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(b) **Penalty for commencing work without permit.** The fee for failure to obtain a permit is triple the permit fee when a permit is obtained. Payment of any fee shall not relieve any person of the penalties that may be imposed for violation of this chapter.
(Code 1965, §15.02(1)(a)-(l); Ord 75-91, §1, 8-7-91; Ord 4-93, §1, 1-6-93; Ord 69-97, §1, 10-1-97; Ord 41-09, §1, 3-10-09)

Sec. 4-162. Miscellaneous fees.

(a) The amount of the one- (1-) and two- (2-) family residential building plan examination fee shall be on file in the office of the City Clerk.

(b) The fees for State Department of Safety and Professional Standards permits (uniform building permit seal) shall be the fees contained in Wisconsin Administrative Code, SPS §302.34, plus a five-dollar ($5.00) handling charge.

(c) A callback inspection charge shall be established at thirty-five dollars ($35.00) per callback for all work requiring inspection under permit requirements.
(Code 1965, §15.02(1)(m)-(o); Ord 69-97, §1, 10-1-97)

Sec. 4-163. Submission of plans to State Department of Safety and Professional Services.

In accordance with an agreement executed by and between the City and the State Department of Safety and Professional Services, and with W.S.A. §101.12, the Inspection Supervisor may examine essential drawings, calculations and specifications for new projects up to 50,000 cubic feet and remodels up to 100,000 cubic feet. The division will accept the examinations at no cost for projects of less than 1,000 square feet and with an estimated cost in cubic feet and remodels up to 100,000 cubic feet. The calculations and specifications for new projects up to 50,000 cubic feet and remodels up to 100,000 cubic feet. The Inspection Supervisor may examine essential drawings, calculations and specifications for that project shall be submitted to the Inspections Division along with the completed permit application. The Inspections Division, along with the Appleton Fire Department will have seven (7) business days to complete the project review. When final approval from the Project Review Team is given, only then will the building permit be issued to the building owner or their legal representative.
(Code 1965, §15.03; Ord 32-92, §1, 3-18-92; Ord 107-92, §1, 10-7-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 85-97, §1, 10-15-97; Ord 71-99, §1, 10-10-99; Ord 42-09, §1, 3-10-09; Ord 25-12, §1, 3-7-12; Ord 72-12, §1, 1-1-13)

Sec. 4-164. Restrictions on permit issuance – location of lot; platting.

(a) No building permit shall be issued unless the property on which the house is proposed to be built abuts a street that has been dedicated for street purposes.

(b) A scaled site plan shall be submitted with the application for a building permit showing at a minimum all existing and proposed buildings and property lines. In areas where drainage plans have been approved, the site plan shall also show elevations at both property and new building corners, direction of the drainage, location of any primary swales, lot line drainage, plus other sufficient details in order to review conformance to the subdivision drainage plan.

(c) In any new subdivision, prior to the issuance of any building permits, the developer shall submit two (2) copies of the subdivision drainage plan to the Inspections Division, certifying that the grades of primary swales have been adjusted to final grades. An exception is made to allow building permits to be issued for those lots in developments awaiting swale grading due to utility installation after October 1, in any year. Said grading must be completed by the following May 31 and certification received by the Inspection Supervisor by the following June 6.

(d) In areas with approved drainage plans, the Division of Inspections shall not issue further permits to builders or property owners who are in noncompliance with the drainage and grading requirements of the City on any lot.
(Code 1965, §15.04; Ord 98-92, §1, 9-2-92; Ord 176-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Sec. 4-165. Same – requirements for utilities and street improvements.

No building permit shall be issued for the construction of any residential building until sewer, water, grading and graveling are installed in the streets necessary to service the...
property for which the permit is required. No building permit shall be issued for the construction of any building other than residential until contracts have been let for the installation of sewer, water, grading and graveling in the streets necessary to service the property for which the permit is requested. Public buildings are exempt from this requirement. No person shall occupy any building until sewer, water, grading and graveling are installed in the streets necessary to service the property, and a certificate of occupancy shall not be issued until such utilities are available to service the property.

(Code 1965, §15.05; Ord 10-91, §1, 2-6-91)

Secs. 4-166 – 4-180. Reserved.

DIVISION 3. UNSAFE BUILDINGS*

Sec. 4-181. Right of condemnation.

(a) All buildings or structures that are or become unsafe, unsanitary or deficient in adequate exit facilities, which constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or which are detrimental to public health, safety and welfare by reason of illegal or improper use, occupancy or maintenance, shall be deemed unsafe buildings or structures. All unsafe buildings shall be taken down and removed or made safe and secure as the Inspection Supervisor may deem necessary and as provided in this division. A vacant building, unguarded or open at a door or window, shall be deemed a fire hazard and unsafe within the meaning of this section.

(b) State Statute §66.0413 Razing Buildings is adopted and incorporated into this code by reference.

(Code 1965, §15.09(1); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 26-09, §1, 2-10-09)

Sec. 4-182. Examination and record when building reported as unsafe.

The Inspection Supervisor shall examine every building or structure reported as dangerous, unsafe structurally or constituting a fire hazard, and he shall cause a report to be filed in a docket of unsafe structures and premises stating the use of the building and the nature and estimated amount of damages, if any, caused by collapse or failure.

(Code 1965, §15.09(2); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

Sec. 4-183. Notice of unsafe conditions.

(a) **Contents; time limits.**

(1) If an unsafe condition is found in a building or structure, the Inspection Supervisor shall serve on the owner, agent or person in control of the building or structure a written notice describing the building or structure deemed unsafe and specifying the required repairs or improvements to be made to render the building or structure safe and secure, or requiring the unsafe building or structure or portion thereof to be demolished within a stipulated time. Such notice shall require the person thus notified to declare within the specified time to the Inspection Supervisor his acceptance or rejection of the terms of the order.

(2) Where a building or structure has been damaged by fire, the owner has thirty (30) days...
from the date the Fire Department investigation is completed to begin cleanup work.

(3) Repair work or demolition work on the damaged building or structure shall be started within sixty (60) days of the date the Fire Department investigation is completed.

(b) Service by mail or posting. An order shall be served on the owner of record of the building that is subject to the order or on the owner's agent if the agent is in charge of the building in the same manner as a summons is served in circuit court. If the owner and the owner’s agent cannot be found or if the owner is deceased and an estate has not been opened, the order may be served by posting it on the main entrance of the building and by publishing it as a class I notice under ch. 985 before the time limited in the order begins to run. The time limited in the order begins to run from the date of service on the owner or the owner’s agent or, if the owner and agent cannot be found, from the date that the order was posted on the building. Such procedure shall be deemed the equivalent of personal service.

(Code 1965, §15.09(3), 5); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 43-09, §1, 33-10-09)

Cross reference(s)—Housing standards, §4-231 et seq.; vacation of certain buildings, §6-7; fire prevention and protection, Ch. 6; nuisances, Ch. 12; abandoned property, §12-101 et seq.

State law reference(s)—Unsafe, unsanitary, dilapidated buildings, W.S.A. §§66.0413, 823.21 et seq.

Sec. 4-184. Restoration of building.

A building or structure condemned by the Inspection Supervisor may be restored to safe condition. If the damage or cost of reconstruction or restoration is in excess of fifty percent (50%) of its fair market value, exclusive of foundations, such building shall be made to comply in all respects with the requirements for materials and methods of construction of new buildings.

(Code 1965, §15.09(4); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 43-09, §1, 33-10-09)

Sec. 4-185. Failure to comply with order.

Upon refusal or neglect of the person served with an unsafe notice to comply with the requirements of the order to abate the unsafe condition, the City Attorney shall be advised of all the facts and he shall institute the appropriate action to compel compliance.

(Code 1965, §15.09(6))

Sec. 4-186. Buildings, structures, dwelling unit, equipment which are unsafe or unfit for human habitation.

(a) Inspection. The Supervisor of Inspections may 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.

(Code 1965, §15.10(1); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96; Ord 71-99, §1, 10-
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.

(Code 1965, §15.10(2)-(4); Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 118-96, §1, 12-18-96)

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 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 will be secured from trespassers.

(f) Unguarded pits a nuisance. Open excavations or pits caused by the demolition of the building are declared a
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(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 (1/2) inch to one and one-half (1 1/2) 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.

(Ord 27-09, §1, 2-10-09; Ord 99-16, §1, 12-13-16)

**Secs. 4-189 – 4-205. Reserved.**

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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 by 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 Director of Public Works, it will not unreasonably 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).

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 and all property owners within 100 feet of the proposed relocation of the date and time of the Municipal Services meeting where the proposed relocation will be heard.

(d) No existing 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).

(e) No existing 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.

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, until the moving is completed, to cause the least possible obstruction to streets unless otherwise ordered by the Director of Public Works.

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

(d) The mover of the building shall report daily to the Police and Fire Departments the location of the building on the street.

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 instruct the Forestry Division to trim the necessary trees along the route. The costs of the inspector and tree trimmers may be billed at actual cost to the mover.

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.
Sec. 4-212. Police escort.

Whenever a permit is issued for the moving of a building, a police escort may be required. A fee of twenty dollars ($20.00) per hour per man assigned to the escort may be charged.
(Code 1965, §15.08(8); Ord 83-17, §1, 11-7-17)

Secs. 4-213 – 4-230. Reserved.

ARTICLE IV. HOUSING

Sec. 4-231. Definitions.

(a) 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:

Approved means approved by or in accordance with regulations under this code, regulations enforced and interpreted by the Inspection Supervisor or his designee or other regulations as indicated elsewhere in this article.

Basement means a story whose floor line is below grade at any exits and whose ceiling is not more than five (5) feet above grade at any entrance or exit.

Bath means a bathtub or shower.

Bedroom means a habitable room within the dwelling unit which is used or intended to be used primarily for the purpose of sleeping.

Cellar means basement.

Communal means used or shared by or intended to be used or shared by occupants of two (2) or more dwelling units.

Duplex means a structure with two (2) dwelling units.

Dwelling means any building or structure which is wholly or partially used or intended to be used for living or sleeping by human occupants.

Dwelling unit means a suite of habitable rooms, occupied by or intended to be occupied by not more than one (1) family as a residence and forming a single habitable unit with cooking, living, sanitary and sleeping facilities.

Extermination means the control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; or by poisoning, spraying, fumigating, trapping or any other approved pest extermination methods.

Family means one (1) or more individuals not necessarily related by blood, marriage, adoption, or guardianship, living together under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability.

Floor area. Floor area of rooms shall be measured by interior dimensions unless otherwise noted.
Garbage means animal and vegetable waste resulting from the handling, preparation, cooking or consumption of food, including spoiled food.

Habitable living area means the sum of the areas of all habitable rooms within a dwelling unit.

Habitable room means a room or enclosed floor area for living, sleeping, cooking or eating purposes, excluding bathrooms, toilet rooms, laundries, pantries, foyers, communicating corridors, closets, storage space, stairways and utility rooms for mechanical equipment for service in the building or other similar spaces not used by persons frequently or during extended periods.

Hotel, motel or motor hotel means any structure containing five (5) or more units wherein sleeping accommodations are offered for pay to transients. It does not include rooming houses.

Infestation means the presence of any insects, rodents or other pests within a dwelling or in the dwelling premises.

Kitchen means a room within a dwelling unit used for cooking or the preparation of meals.

Living room means a habitable room within a dwelling unit which is used or intended to be used primarily for general living purposes.

Multiple dwelling means any structure containing three (3) or more dwelling units or a structure containing one (1) or more dwelling units in combination with a nonresidential use.

Nondwelling structure means any structure except a dwelling.

Nursing home means a dwelling or part thereof within which shelter, meals and nursing care are supplied to three (3) or more patients who are not members of the family of the operator or supervisor of the home.

Occupant means any person over six (6) months of age, including an owner or operator, living, sleeping or cooking in or having actual possession of a dwelling unit.

Operator means any person who has charge, care, custody or control of the building or part thereof in which dwelling units are offered for rent or occupancy.

Owner means any person who alone or jointly or severally with others:

(1) Has legal title or equitable title of any dwelling unit; or

(2) Has charge, care or control of any dwelling or dwelling unit as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.

Plumbing includes all gas pipes, waste pipes, water pipes, water closets, sinks, lavatories, bathtubs, catch basins, drains, vents and any other provided fixtures together with the connections to the water, sewer or gas lines.

Premises means any platted lot or part thereof or parcel of land or plot of land either occupied or unoccupied by any dwelling or non-dwelling structure.

Roomer means an occupant, transient or permanent, of a dwelling unit, who is not a member of the family occupying the dwelling unit.

Rooming house means any dwelling or that part of any dwelling containing one (1) or more rooms in which space is let by the owner or operator to more than two (2) roomers.

Second-class dwelling means any multiple dwelling which contains three (3) or more second-class dwelling units, with second-class dwelling units being defined as dwelling units without the exclusive use of toilet facilities.

Temporary housing means any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utility system on the same premises.

Toilet means a water closet with a bowl and trap which is of such shape and form and which holds a sufficient quantity of water so that no waste will collect on the surface of the bowl and which is equipped with flushing rims which permit the bowl to be properly flushed and scoured when water is discharged through flushing rims.

(b) Whenever the words “dwelling”, “dwelling unit”, “rooming house”, “rooming unit”, “nursing home”, “nursing unit”, “hotel”, “hotel unit”, “motel”, “motel unit”, “motor hotel” or “motor hotel unit”, or “premises” are used in this article, they shall be construed as though they were followed by the words “or any part thereof”.

Cross reference(s)--Definitions and rules of construction generally, §1-2; Unsafe buildings, §4-181 et seq.; health and sanitation, Ch. 7; fair housing regulations, §8-26 et seq.; nuisances, Ch. 12.

Sec. 4-232. Purpose of article; declaration of nuisance.

The purpose of this article shall be to preserve and
ARTICLE IV. SMOKE FREE INDOOR AIR

Sec. 7-100. Smoking prohibited in certain areas.

(a) Definitions.

**Bed and breakfast establishment** has the meaning set forth in Sec. 9-321.

**Childcare facility** means any state licensed or county certified child care facility including, but not limited to, licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs and Head Start programs.

**City buildings** means all City-owned and operated buildings and those portions of buildings leased and operated by the City.

**Common areas of buildings** means all areas not part of a tenant’s leased premises, including, but not limited to, lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas and restrooms contiguous thereto.

**Common areas of malls** means those areas within a mall customarily accessible to patrons.

**Educational facility** means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.

**Electronic smoking device** means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component part, or accessory of such a device, whether or not sold separately. Electronic smoking device include any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

**Electronic smoking device paraphernalia** means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking device.

**Employee** means any person who is employed by any employer for direct or indirect monetary wages or profit, including those full time, part time, temporary or contracted for from a third party; employee also means any person who serves as a volunteer for a business or nonprofit entity.

**Employer** means any person, partnership, limited liability company, corporation, or other entity, including a public or
non-profit entity who employs the services of one (1) or more individual persons.

**Enclosed area** means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from floor to ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, ‘other landscaping’ or similar structures.

**Entrance** means a doorway and adjacent area which gives direct access to a building form a contiguous street, plaza, sidewalk or parking lot.

**Health care facility** has the meaning set forth in Sec. 155.01(6), Wis. Stats.

**Hotel and motel** has the meaning set forth in Sec. 9-341.

**Incidental** means so minor in significance and non-essential to the primary use, purpose or operation that if the incidental use is discontinued, the primary purpose would continue without harm.

**Mall** means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services.

**Medical services** has the meaning set forth in Sec. 647.01(6), Wis. Stats.

**Non-smoking** means smoking is prohibited.

**Person in charge** means the person who ultimately controls, governs or directs the activities aboard a public conveyance or within or at a place where smoking is regulated under this section, regardless of the person’s status as owner or lessee.

**Place of employment** means an enclosed area controlled by the employer, which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a ‘place of employment’ within the meaning of this ordinance unless used as a childcare facility.

**Private residence** means premises owned, rented or leased by temporary or permanent habitation.

**Restaurant** means an establishment defined in Sec. 9-236.

**Retail electronic delivery device store** means a business whose primary purpose is the sale of electronic delivery devices and accessories and in which the sale of other products is merely incidental.

**Retail tobacco store** means a business whose primary purpose is the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

**Room** means a space within a building completely enclosed with walls, partitions, floor and ceiling, except for openings for light, ventilation, ingress and egress.

**School board** means the school board in charge of the public schools, grades K-12, of a school district.

**Smokefree** means absence from the ambient air of the smoke by-product from the burning, inhaling, exhaling, or carrying of a lighted cigarette, cigar, pipe, weed or plant.

**Smoking** means to smoke or carry a lighted pipe, cigar, cigarette or tobacco-related products in any form.

**Sports arena** means sports pavilions, stadiums, gymnasiuums, health spas, boxing arenas, swimming pools, roller and indoor ice rinks, and bowling centers.

**Tavern** means any establishment whose primary purpose is the sale of fermented malt beverages or intoxicating liquors for consumption upon said premises and in which the sale of other products is merely incidental.

**Tobacco product** means a combustible cigarette, cigar, weed, plant or other combustible substance prepared in such a manner that it is suitable for smoking. This section shall not include smoke-free tobacco products.

**Use tobacco products** means to consume by burning, inhaling, exhaling or carrying a lighted cigarette, cigar, pipe, weed, plant, or any other combustible substance in any manner in any form.

(Ord 42-19, §1, 6-5-19)

(b) **Intent and purpose.**

(1) The Common Council of the City of Appleton hereby finds that:

- a. It is recognized that smoking of cigarettes and tobacco products is hazardous to an individual’s health and may affect the health of nonsmokers when they are involuntarily in the presence of smoking.

- b. Numerous scientific studies have found that tobacco smoke is a major contributor to indoor pollution.

- c. Reliable scientific studies, including studies conducted by the Surgeon General of the...
United States, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers; particularly to children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

d. Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm.

e. Reliable scientific studies assessed by the California Environmental Protection Agency have found that sidestream and secondhand tobacco smoke is a leading cause of premature death and disability among nonsmokers.

f. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to nonsmokers.

(2) This ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Appleton, especially recognizing the rights of nonsmokers who constitute a majority of the population; educating citizens affected by this ordinance; and assisting owners, operators; and managers in maintaining compliance.

(c) Prohibition of smoking in indoor public places. Except as otherwise provided, it shall be unlawful for any person to smoke tobacco products in indoor public places, including, but not limited to, the following:

(1) Elevators and enclosed stairwells, including those within City parking ramps.

(2) Public forms of transportation, including, but not limited to, motor buses, taxicabs, or other public passenger vehicles.

(3) Theaters, libraries, museums, auditoriums, sports arenas, convention halls which are used by or open to the public.

(4) Any childcare facility. Incorporated herein by reference are the following Wisconsin statutory and administrative code sections and any amendments or renumbering thereof: Sec. 101.123(1)(ad) and (2)(bm), Wis. Stats.; Secs. HFS 45.02(4), 45.06(8)(g), 46.03(13), 46.06(2)(h), and 46.08(2)(c), Wis. Adm. Code.

(5) Retail stores.

(6) Health care facilities.

(7) Waiting rooms, hallways, rooms of health care laboratories.

(8) Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.

(9) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes.

(10) Polling places.

(11) Service lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities.

(12) Self-service laundry facilities.

(13) Enclosed, indoor areas of restaurants.

(14) Common areas of malls.

(15) Public bus and transfer point shelters.

(16) Common areas of building which contain three (3) or more rental units. Written Rental Agreements shall include reference to this subdivision.

(17) City buildings.

(18) City-owned or leased motor vehicles.

(19) Sports arenas.

(20) Taverns.

(21) Common areas in bed and breakfast establishments, hotels and motels.

(d) Prohibition of smoking in outdoor areas. It shall be unlawful for any person to smoke or use tobacco products in the following outdoor areas.

(1) Within twenty (20) feet from all entry ways of City-owned buildings and structures. In the Blue Ramp, smoking or tobacco product use is strictly prohibited except in specifically designated areas.
Within the Red, Green, and Yellow Ramps, smoking or tobacco product use is strictly prohibited unless on the top floor of the ramp and at least twenty (20) feet from the entry way.

(Ord 59-17, §1, 9-12-17)

(2) Outside of the Appleton Public Library, on the sidewalk between the main entrance and public parking lot, extending from Appleton Street to Oneida Street.

(3) Outside of the Transit Center in the area, inclusive of sidewalk area, from the north edge of the Transit Center building to Washington Street and from Oneida Street to the west edge of the East Parking Ramp.

(4) City parks as posted and so designated by the Parks, Recreation and Facilities Management Department. Additionally, smoking, vaping, and use of all electronic nicotine devices shall be prohibited within twenty (20) feet of playground equipment located within city parks as well as at the Appleton Skate Park located within Telulah Park.

(Ord 71-18, §1, 8-7-18)

(e) **Prohibition of smoking in educational facilities.** It shall be unlawful for any person to smoke or otherwise use any tobacco products:

(1) In all educational facilities and in or upon all other premises owned, rented by or under the control of a school board.

(f) **Prohibition of smoking in places of employment:**

(1) It shall be unlawful for any person to smoke any tobacco products in all places of employment.

(2) Every building which is a place of employment shall have at least one (1) entrance which is smokefree.

(3) Each employer, operator, manager, lessee or other person having control of the place of employment shall make reasonable efforts to ensure a smokefree workplace for all employees and frequenters.

(4) Within ninety (90) days of the effective date of this ordinance, each employer having a place of employment located within the City of Appleton shall adopt, implement and communicate written notice of the provisions of this ordinance to each employee.

(g) **Exceptions.** The following areas shall not be subject to the smoking restrictions of this section:

(1) Retail tobacco stores.

(2) Any stage of any theater when used in connection with any theatrical performance and so noticed in the program.

(3) Bed and breakfast, hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that not more than twenty-five percent (25%) of the rooms rented to guests are designated as smoking.

(4) Retail electronic delivery device stores that are in existence on June 11, 2019 in which only persons age 21 or older are permitted to enter and in which only the sampling of an electronic delivery device product is allowed.

(Ord 42-19, §1, 6-5-19)

(h) **Enforcement.**

(1) The Health Officer or designee and the Chief of Police or designee shall have the power, whenever they may deem it necessary, to enter upon the premises named in this section to ascertain whether the premises are in compliance with this ordinance. A compliance time of not less than one (1) week shall be granted. Enforcement may be by citation, as permitted by Sec. 1-16.

(2) The proprietor, employer or other person in charge or premises regulated hereunder, upon either observing or being advised of a violation, shall make reasonable efforts to prevent smoking in prohibited areas by:

a. Approaching smokers who fail to voluntarily comply with this section and requesting that they extinguish their cigarette or tobacco product and refrain from smoking, or

b. Refusing service to anyone smoking in a prohibited area.

(3) Any person who desires to register a complaint under this section may contact the Health Department or the Police Department.

(4) Ashtrays, cigarette vending machines and other smoking paraphernalia shall not be located in areas where smoking is prohibited.

(i) **Retaliation prohibited.** No person shall discharge, refuse to hire, refuse to serve or in any other manner retaliate
against any employee, applicant for employment, customer, service user, business patron or any other person because that person exercises any rights afforded by this section.

(j) Violations and penalties.

(1) General. Any person who violates any of the provisions of this section may be subject to a forfeiture of no more than one hundred twenty-five dollars ($125) for the first offense and no more than five hundred dollars ($500) for the second and subsequent offenses. Each day that a violation occurs shall be considered a separate offense.

(k) Clean indoor air.

(1) Intent and construction. The City of Appleton finds that it is in the interests of the health, safety and welfare of the community to adopt by reference Sec. 101.123, Wis. Stats. and subsequent amendments, additions and recodifications. It is the intent of the Common Council that where there may be conflict between Sec. 101.123, Wis. Stats. and Sec. 7-100, that the most restrictive section shall apply. This ordinance shall not be construed to mean that progressive discipline of City employees for violations of laws, rules and regulations is only authorized where explicitly provided by ordinance.

(2) Penalty. The penalties provided by Sec. 101.123, Wis. Stats. shall be in addition to the penalties provided for violation of Sec. 7-100 when a person has violated both laws. In addition to the penalties provided by Sec. 7-100 and Sec. 101.123 Wis. Stats., any City employee who violates any provision of Sec. 7-100 or Sec. 101.123. Wis. Stats., may also be subject to progressive discipline by his or her employer.

(l) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein.

(m) The provisions of this ordinance, in its entirety, shall become effective on July 1, 2005.

(Ord 35-05, §1, effective 7-1-05)
Art. V. HEALTH IN ALL POLICIES

Sec. 7-200. Findings.

(a) Health starts where we live, learn, work and play, and everyday decisions within the City of Appleton can promote greater health and equity.

(b) All Appleton residents should have the opportunity to make the choices that allow them to live a long, healthy life, regardless of their job, neighborhood of residence, level of education, immigration status, sexual orientation, ethnic background or religion.

(c) Good health enhances quality of life, improves workforce productivity, increases the capacity for learning, strengthens families and communities, supports environmental sustainability and helps reduce overall economic and social insecurity.

(d) In the city of Appleton, those at greatest risk for poor health outcomes are low-income residents, who have a shorter life expectancy than other city residents.

(e) Appleton residents are primarily affected by heart disease, cancer and stroke.

(f) Recognizing the presence of critical health disparities in the community and the opportunity to intervene on health outcomes, the City has developed and defined public health broadly in the City Comprehensive Plan.

(g) Health in All Policies is fundamentally about creating systems-level change both within City departments and in the community.

(h) In developing strategies to address health disparities, it is important to recognize that at its heart, promoting equity is not just about providing more services.

(i) It is also about how services are developed, prioritized and delivered.

(j) The Health in All Policies strategy guides the City of Appleton on how to address the social determinants of health, or the root causes of current health disparities in the development, prioritization and delivery of these services and policies.

Sec. 7-201. Definitions.

The definitions in this section apply throughout this ordinance unless the context clearly requires otherwise:

(a) Health in All Policies (HiAP) is both a process and a goal.

(1) The goal of HiAP is to address inequities at the systems, policy and structural levels to eliminate the resulting health disparities.

(2) At the root of HiAP is an approach to improving health of all people by incorporating health considerations into collaborative decision-making across sectors, agencies, and departments. HiAP brings city departments and community groups together to identify ways in which all policies can take health outcomes into consideration. The HiAP process places health at the center of all work, and through discussion and compromise, gains stakeholder buy-in from all agencies, groups, and departments.

(3) Health in All Policies works to create a new policy and organizing framework within city government and beyond in the community. It emphasizes the consequences of public policies, plans, and programs on health determinants, and aims to improve health outcomes at all levels of government within the city and those agencies responsible for serving Appleton residents.

(4) Stakeholder engagement is essential for ensuring that Health in All Policies is responsive to community needs. Community-based knowledge provides important information about opportunities and barriers for health and insight into the ways in which policies may impede or promote health.

(b) Health is not simply the absence of disease, but the state of complete physical, mental, cultural and social well-being. HiAP is based on the premise that good health is fundamental for a strong economy and vibrant society, and that health outcomes are largely dependent on the social determinants of health, which in turn are shaped by decisions made within the health sector and internally and externally outside of the health sector.

(c) Health equity refers to efforts to ensure that all people have full and equal access to opportunities that enable them to lead healthy lives, while respecting differences that include but are not limited to culture, language, race, gender, sexuality, economic status, citizenship, ability, age and religion.

(1) Health equity entails focused societal efforts to address avoidable inequalities by equalizing the conditions for health for all groups, especially for those who have experienced socioeconomic disadvantage or historical injustices.
(2) These communities include, but are not limited to women, people of color, low-income individuals and families, individuals who have been incarcerated, individuals with disabilities, individuals with mental health conditions, youth and young adults, seniors, immigrants and refugees, individuals who are limited-English proficient (LEP), and lesbian, gay, bisexual, transgender, questioning, intersex and asexual (LGBTQIA) communities, or combinations of these populations.

(d) **Health disparities** are differences of presence of disease, health outcomes, or access to care among distinct segments of the populations, including differences that occur by race or ethnicity, gender identity, sexual orientation, education or income, immigration status, age, disability or functional impairment, or geographic location, or the combination of any of these factors.

(e) **Health inequities** are health disparities resulting from factors that are systemic and avoidable and, therefore, considered unjust or unfair.

(f) **Determinants of health equity include** the social, economic, geographic, political, institutional and physical environmental conditions that lead to the creation of a fair and just society.

(g) **Social determinants of health** refer to everything outside of direct health care services, such as the condition in the environment in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality of life outcomes and risks. The social determinants of health include, but are not limited to:

1. The availability of resources to meet our daily needs (e.g., safe housing, access to healthy and affordable food).

2. Access to educational, economic, and job opportunities that lead to sustainable employment.

3. Neighborhood safety and communities free of crime, violence, and social disorder (e.g., presence of trash and other forms of blight); and

4. Accessible built environments that promote health and safety, including improved pedestrian, bicycle, and automobile safety, parks and green space, and healthy school siting.

5. Social norms and attitudes (e.g., discrimination and racism), socioeconomic conditions (e.g., concentrated poverty and the chronically stressful conditions that accompany it).

(h) **Toxic stress** refers to prolonged and repeated exposure to multiple negative factors, especially in early childhood. Contributing factors include, but are not limited to, racial profiling, poor air quality, residential segregation and economic insecurity. Toxic stress has known physical and mental health impacts and contributes to a host of chronic conditions such as heart disease and diabetes. Toxic stress has also been shown to have negative intergenerational health effects. Toxic stress does not refer to individual stressful events, but rather the unrelieved accumulation of these events over one’s life.

**Sec. 7-202. Health in All Policies implementation.**

To effectively implement and maintain Health in All Policies, the City shall:

(a) Utilize health equity practices to City actions and endeavor to integrate these practices into the city’s strategic, operational and business plans; management and reporting systems for accountability and performance; and budgets in order to eliminate inequities and create opportunities for all people and neighborhoods;

(b) Use the Health in All Policies Strategy Document as a guide for implementing Health in All Policies in the City. The strategy document will outline the vision, mission and goals, and identify a timeline as well as process to reach these goals. The strategy document will be a living plan that is designed to grow over time as progress is made and the needs of the community and city change;

(c) Establish the Interdepartmental Health in All Policies Team. The Interdepartmental Team will be comprised of representatives from departments within the City and are responsible for:

1. Selecting health and health equity indicators for each department to track as a way of prioritizing goals and measuring progress aligned with existing City guiding documents including, but not limited to the Comprehensive Plan and Green Tier Charter;

2. Attending regularly scheduled Interdepartmental Team meetings led by the Mayor’s Office;

3. Reporting to the Interdepartmental Team on progress and challenges from his or her respective department;

4. Working with his or her respective department to integrate and track health equity indicators for his or her department;

5. Committing to attending ongoing health equity training, such as health equity impact assessments; and
HEALTH AND SANITATION

(6) Assisting with the writing of the Tri-Annual HiAP Report and provide a report to committees.

(d) Design and publish a tri-annual report on the status of health and health equity in the city of Appleton and progress of HiAP implementation for the Common Council, City staff, community organizations, residents, businesses, and other governmental agencies within the city.

(1) Implementation will be measured based on health and health equity indicators selected by the Interdepartmental HiAP Team.

(2) In addition to reporting on indicators, the Tri-Annual Report will include any updates to the HiAP strategy document.

(e) Develop and implement an ongoing community engagement plan to work directly with stakeholders throughout the process of the HiAP strategy development and implementation to ensure that perspectives are consistently understood, considered, and reflected in decisions. The goal is to partner with stakeholders in each aspect of decision making in order to develop and implement collaborative solutions. (Ord 15-18, §1, 1-23-18)

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Chapter 16

Streets, Sidewalks and Other Public Places

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*Charter ordinance reference—Board of Public Works, §3-161.

Cross reference(s)—Library Board, §2-151 et seq.; Director of Public Works, §2-291 et seq.; Public Works Department, §2-366 et seq.; moving of buildings and structures, §4-206 et seq.; license required for persons constructing or repairing streets, sidewalks or other appurtenances, §9-33; possession of open container of alcoholic beverages on public property restricted, §10-14; operation of snowmobiles restricted, §10-25; special assessment procedure for public improvements, §18-101 et seq.

State law reference(s)—Art museums, W.S.A. §66.0917; civic centers, W.S.A. §66.0919; special assessments, W.S.A. §66.0703 et seq.; sidewalks, W.S.A. §66.0907; curb ramping, W.S.A. §66.0909.

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ARTICLE I. IN GENERAL.

Sec. 16-1. 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:

**Boulevard** means that part of a street or highway running down the middle thereof which consists of earth and the curb confining such earth and which is customarily planted with grass, trees and shrubs.

**Driveway apron** means that portion of any driveway between the traveled portion of the street and the property line.

**Terrace** means that part of the street right-of-way between the curbline and the property line.

(Code 1965, §5.18, Ord 166-02, §1, 8-27-02)

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

Sec. 16-2. Correction of damage or other condition caused by violation of chapter.

(a) **Authority to assess costs.** If any person violates any provision of this chapter and thereby damages any street, sidewalk, alley, park, public grounds, curb, barrier, barricade or tree, or litters any street, alley, park or public grounds, the City may summarily correct such damage or condition and assess the cost thereto to the offending person.

(b) **Violations.** If it is determined that a violation of this chapter exists, notice shall be given to the permit holder or his representative ordering compliance within twenty-four (24) hours. If compliance has not been accomplished within this time period, the City shall cause the violation to be corrected and all costs assessed.

(Code 1965, §5.07(2); Ord 4-93, §1, 1-6-93; Ord 120-06, §1, 10-10-06)

Sec. 16-3. Alteration of grade.

No person, except those duly authorized, shall alter or change, or cause to be altered or changed, the grade of any street, sidewalk, alley, park, or other public grounds within the City.

(Code 1965, §5.07(1)(a))

Sec. 16-4. Injury or destruction of trees.

No unauthorized person shall injure or destroy trees within or on any street, alley, sidewalk, park or other public grounds in the City.

(Code 1965, §5.07(1)(b))

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

Sec. 16-5. Interference with protective barriers.

No unauthorized person shall interfere with, break down or remove, or cause to be interfered with, broken down or removed, any guard protection, barrier or barricade placed in any street, sidewalk, alley or other public grounds as a protection of the City against damages or the traveling public against injury, or any work of improvement against damages.

(Code 1965, §5.07(1)(c))

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

Sec. 16-6. Removal or passing of street barrier.

No person shall do any act prohibited by W.S.A. §86.06. The provisions of W.S.A. §86.06, exclusive of any penalty imposed thereby, are adopted by reference as a part of this chapter.

(Code 1965, §5.07(1)(g))

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

Sec. 16-7. Driving vehicle over curb, sidewalk, etc.

No unauthorized person shall operate construction machinery or other vehicles over any curb, sidewalk, boulevard or terrace, except at authorized driveways, unless protected as required by the Common Council.

(Code 1965, §5.07(1)(e))

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18; traffic and vehicles ch. 19

Sec. 16-8. Littering.

No unauthorized person shall place, or cause to be placed, any debris of any nature whatsoever, junk, garbage, yard waste or any other waste material, other than refuse placed on the terrace for collection, upon the streets, alleys, highways, public parks or other property not owned by him, or upon any body of water within the City.

(Code 1965, §5.07(1)(f); Ord 70-92, §1, 7-8-92)

Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18; nuisances, ch. 12
Sec. 16-9. Obstructing passage.

(a) No unauthorized person shall stand, sit, lie, remain or otherwise occupy any street, sidewalk or other public way open for pedestrian or vehicular travel in such a manner as to annoy or molest any pedestrian thereon, or so as to obstruct or unreasonably interfere with the free passage of pedestrians, motor vehicles or other modes of travel. No person shall stand or remain at or near the entrance to any public or private building in such a manner as to annoy persons entering or leaving or passing such entrance. No person shall stand, sit, lie, remain or otherwise occupy any motor vehicle without permission of the owner.

(b) No kiosk, bulletin board or other decorative object shall be placed upon the street right-of-way except upon benches or other seating facilities provided for such purposes by the City.

(c) Sandwich board/temporary signs may be placed in the street right-of-way in conformance with the City of Appleton Sandwich Board/Temporary Sign Policy. (Code 1965, §5.07(1)(d), Ord 164-07, §1, 12-25-07) Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18

Sec. 16-10. Snow and ice removal.

(a) Every person shall, no later than thirty-six (36) hours following cessation of a snowfall, remove all snow and/or ice from the entire width of the sidewalk along the entire perimeter of the premises owned or occupied by him, including any handicap access ramps along the perimeter of the premises; provided that, immediately after the accumulation of ice on such sidewalk, it shall be treated with sand, salt or other substance to prevent it from being slippery. The ice shall continue to be so treated in such a manner as to prevent the ice from being dangerous until it can be removed and shall then be promptly removed. If the owner or occupant of such premises shall fail to remove and keep removed, such snow and ice or to sprinkle a sidewalk as required, the work shall be done under the direction of the Common Council and the expenses thereof made a special tax upon the lot along the entire perimeter of where such work was done.

(b) No person shall remove or cause to be removed any snow or ice from his premises, residence, parking lot, parking area, business property or other area onto any public right-of-way or property. Snow removed from public sidewalks shall not be stored in any manner which will obstruct or limit vehicular or pedestrian vision, movement or access. Snow accumulations on sidewalks and handicap ramps resulting from street snow plowing operations shall be removed by the owner of the abutting premises in accordance with the provisions of this section.

In those instances where insufficient space exists between the sidewalk and street for the storage of all snow removed, it shall be stored on the abutting premises. (Ord 25-17, §1, 3-21-17)

(c) The deposit of any snow or ice upon any sidewalk alley or street of the city contrary to the provisions of this section is a nuisance, and in addition to the penalty provided for violation of this chapter, the City may summarily remove any snow or ice so deposited and cause the cost of the removal to be charged to the owner of the property from which the snow or ice has been removed. (Code 1965, §5.10; Ord 155-10, §1, 10-26-10; Ord 98-13, §1, 11-26-13) Cross reference(s) – Citation for violation of certain ordinances, §1-17; schedule of deposits for citation, §1-18

Sec. 16-11. Compliance with City plans and specifications.

All streets and alleys shall be graded, graveled, paved or improved, all sidewalks shall be constructed or rebuilt, and all underground utilities in public streets, alleys and public grounds, all bridges, and all other public works of any kind whatever shall be built, constructed, erected or completed according to the plans and specifications kept on file in the office of the Director of Public Works. Such work shall be done in a manner and of the materials the specifications prescribe. Said work shall be completed in accordance with the requirements set forth in the City’s Temporary Traffic Control Manual for Street Construction and Maintenance Operations in the City of Appleton, latest edition. (Code 1965, §5.06; Ord 143-05, §1, 12-13-05)

Sec. 16-12. Work in public right-of-way – permit.

(a) Administrative authority. Permits shall be issued by the Engineering Division of the Department of Public Works.

(b) Fee; commencement of work without permit.

(1) An established permit fee in the amount which is on file in the Department of Public Works shall be paid for each permit issued under this section. If work is commenced before a permit is obtained and the permit request is denied, the Director of Public Works shall order the work ceased or the condition removed until a permit is obtained, for which the applicant shall pay a fee of four (4) times the established fee.

(2) If a permit is denied, the Director of Public Works or the Common Council may cause any offending conditions to be removed or
corrected and the expense thereof charged to the person responsible.

(c) Application; issuance. Permits may be applied for on forms provided in the Department of Public Works. Permits will be issued after the necessary bond, certificate of insurance and Common Council authorization have been provided.

(d) Processing of permit applications. With respect to any permitting process the City establishes under Wis. Stat. §182.017(1r) for use of City streets, the City shall approve or deny a permit application no later than sixty (60) days after receipt of the application. If the City fails to act on the application within that sixty- (60-) day period, the application shall be deemed granted and the City shall issue the permit to the applicant. If the City denies a permit application, the City shall provide the applicant with a written explanation of the reasons for the denial at the time the City denies the application. See Wis. Stat. §182.017(9).

(e) Exemption from fee. No person having a contract with the City for doing any work on any public right-of-way, park or other public grounds within the City shall be required to pay for a permit issued in accordance with this section.
(Code 1965, §5.08(1) – (4), (7), Ord 188-04, §1, 1-1-05; Ord 14-05, §1, 12-13-05; Ord 35-09, §1, 2-24-09)

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

Sec. 16-13. Same – safety requirements; temporary traffic control.

(a) Whenever a permittee receives a permit to excavate, construct or obstruct any public right-of-way open to travel, he shall have sole responsibility to furnish, erect and maintain substantial barricades and shall furnish, post and maintain warning signs prior to commencement of activity in accordance with the requirements set forth in the City’s Temporary Traffic Control Manual for Street Construction and Maintenance Operations in the City of Appleton, latest edition.

(b) Administrative authority. The Director of Public Works or his/her designee is authorized to adopt and periodically update the Temporary Traffic Control Manual for Street Construction and Maintenance Operations in the City of Appleton.

(c) Enforcement. The Traffic Engineer and/or his/her designee are empowered to take all necessary actions to enforce the provisions of §16-12 and §16-13, including, but not limited to, issuing citations.
(Code 1965, §5.08(5); Ord 145-05, §1, 12-13-05; Ord 93-07, §1, 5-22-07)

Sec. 16-14. Same – restoration of street surface.

The holder of a street excavation, construction or street occupancy permit shall have sole responsibility to restore the surface according to the street excavation standards of the City.
(Code 1965, §5.08(6))

Sec. 16-15. Utility installations.

(a) Prior to the installation of mains and pipes by utilities, all utilities shall submit three (3) sets of plans showing the location and depth of the proposed installation to the Department of Public Works for approval by the Common Council.

(b) All utilities occupying street rights-of-way shall locate all mains, pipes and other equipment in the manner directed by the Common Council to provide the most efficient use of the street right-of-way. Utilities shall be responsible for all restoration costs of the street surface resulting from street excavation or other installation work and shall promptly relocate all pipes, mains or other equipment at their sole expense upon notice from the City.
(Code 1965, §5.15; Ord 134-89, §1, 10-18-89)

Sec. 16-16. Approval of plans for parking lots, driveways, etc.

Plans for construction of parking lots, driveways and other areas providing access for vehicles or people and for storage of equipment, and abutting the public right-of-way, shall be approved by the Engineering Division of the Department of Public Works prior to commencement of construction. Such plans shall show proposed grades, curbs, drainage, parking arrangements and such other pertinent features as the Engineering Division shall require.
(Code 1965, §5.16)

Sec. 16-17. Driveway aprons.

Driveway aprons may be installed by the City when a resolution so requesting the installation is approved by the Common Council. This procedure shall be applicable in areas where the street to which the driveway is connecting has been improved.
(Ord 64-92, §1, 6-17-92, Ord 167-02, §1, 8-27-02)

Sec. 16-18. Yard waste.

No person, except during times permitted by the Department of Public Works, shall remove or cause to be removed any yard waste, brush, grass clippings, or other yard debris, from his premises, residence, parking lot, parking area, business property or other area onto any public street.
(Ord 83-92, §1, 8-5-92)
ARTICLE II. STREETS.

Sec. 16-36. Street naming system.

The intersection of College Avenue and Oneida Street shall be the base from which all street directions and numbers are measured. All streets running north and south and lying north of College Avenue and Newberry Street bordering on Block 57 east to the City limits shall bear the prefix “north”. All streets running north and south and lying south of College Avenue and Newberry Street bordering on Block 57 east to the City limits shall bear the prefix “south”. All streets running east and west and lying east of Oneida Street shall bear the prefix “east”. All streets running east and west and lying west of Oneida Street shall bear the prefix “west”.

Sec. 16-37. Official map.

(a) Established; parts. There is hereby established an Official Map of the City showing the location and width of streets, highways and parkways as laid out, adopted and established. This Official Map is hereby declared to consist of a street and subdivision map and a major street development plan.

(1) Street and subdivision map. The Department of Public Works shall maintain a quarter section atlas of the City which shall be on the street and subdivision map. This map shall be kept current for the area within the corporate limits of the City. It is intended that this map show all platted subdivision and public rights-of-way.

(2) Major street development plan. The Community Development Department shall maintain a map of the City and its extraterritorial jurisdiction area as defined in W.S.A. §62.23, with a certified copy of the map to be kept on file in the City Clerk’s Office. This map shall be kept current and shall show all proposed major street extensions which have been adopted by the Common Council.

(b) Plat approval. No land subdivision plat shall be approved unless such plat conforms to the Official Map.

(c) Permit required for erection of building in street bed. For the purpose of concerning the integrity of the Official Map, no building shall be erected within the bed of any street, highway or parkway shown on the Official Map unless a permit therefore shall first have been applied for and issued in accordance with W.S.A. §62.23(6)(d), (e), (f) and (g). The applicant for such a permit shall submit to the Inspections Supervisor, with his application, an accurate
plot plan, certified by a state registered surveyor, showing the location of the proposed building with reference to any street, highway or parkway shown on the Official Map.

(d) Changes and amendments. The Common Council may, whenever and as often as it may deem necessary for the public interest and after a public hearing as provided in W.S.A. §62.23(6)(b), change or add to the official map of the City so as to establish the exterior lines of planned new streets, highways and parkways, or to widen, narrow, extend or close existing streets, highways and parkways.

(e) Registration. The City Clerk shall file with the Register of Deeds of Outagamie County, Winnebago County and Calumet County certificates showing that the City has established an Official Map, and shall do likewise as to any changes or additions.

(Code 1965, §5.04; Ord 32-92, §1, 3-18-92; Ord 174-93, §1, 10-19-93; Ord 129-96, §1, 12-18-96)

Cross reference(s) – Street requirements in mobile home parks, §11-85; street requirements for subdivisions, §17-95; dedication of streets and pedestrian ways in subdivisions, §17-136; through streets designated, §19-41; one way streets designated, §19-42; left turns restricted, §19-43; no right turn on certain streets, §19-44; speed limits on specific streets, §19-56, et seq.

Sec. 16-38. Minimum width for certain streets.

Pursuant to W.S.A. §236.16(2), the minimum width of streets such as short courts, short extensions of existing streets and in cases where platting of land would not be practical if sixty- (60-) foot-wide streets were required shall be fifty (50) feet.

(Code 1965, §5.05)

Sec. 16-39. Authority to impose weight limitations or other restrictions on vehicles.

(a) The Director of Public Works is hereby named as the officer in charge of maintenance of streets maintained by the City and may:

(1) Impose special weight limitations on any city street or portion thereof which, because of weakness of the road bed due to deterioration or climatic conditions, or other special or temporary conditions, would be likely to be seriously damaged or destroyed in the absence of such special limitations.

(2) Impose special weight limitations on bridges or culverts when, in the Director’s judgment, such bridge or culvert cannot safely sustain the maximum weights specified by State Statutes.

(b) The special weight limitations authorized by subsection (a)(1) of this section shall be imposed by the Director of Public Works by erecting signs on or along the street on which it is desired to impose the limitation. The special weight limitation authorized by subsection (a)(2) of this section shall be imposed by erecting similar signs within one hundred (100) feet before each end of the bridge or culvert on which the weight limitation applies. All weight limitation signs shall comply with the rules of the State Department of Transportation.

(c) The Director of Public Works shall advise the City Inspections Supervisor and the alderperson of the ward of the streets that have been restricted and the dates on which they are being restricted. The Inspections Supervisor may withhold any permit or approval of work done on homes or construction projects in the area until the weight restrictions have been removed from the street.

Sec. 16-40. Filling and resurfacing of street excavations.

All street excavations shall be backfilled and
resurfaced in the manner prescribed by the street excavation standards on file in the office of the Department of Public Works.
(Code 1965, §5.14)

Sec. 16-41 – Sec. 16-55. Reserved.

ARTICLE III. SIDEWALKS*

Sec. 16-56. Awnings.

No person shall construct or maintain any awning which is not at least seven (7) feet at the lowest part thereof above the top of the sidewalk. Awnings shall be supported without posts, but by iron brackets or by an iron framework attached firmly to the building so as to leave the sidewalk wholly unobstructed. All awnings constructed in a manner different from that specified in this section and in any way obstructed to the public use of travel on the sidewalks shall be removed within ten (10) days after notice in writing, given by the authority of the Common Council, and personally served on the owner or occupant of the building to which such awning is attached.
(Code 1965, §5.09)

Sec. 16-57. Covering or barrier for subsurface areas.

Every person owning any building in the City having a subsurface area between the building and sidewalk or extending into the sidewalk shall keep the area covered by a closed iron or a closed iron and glass cover laid perfectly even with the surface of the sidewalk, or shall keep the area surrounded on all sides by a sufficient railing or barrier at least three (3) feet high, except in cases of stairways leading from the sidewalks to basements, which shall have a sufficient railing or barrier at least three (3) feet high on three (3) sides thereof.
(Code 1965, §5.11)

Sec. 16-58. Construction – standards.

Sidewalks shall be constructed according to the standards and specifications established by the Department of Public Works.
(Code 1965, §5.12)

Sec. 16-59. Same – permit required; suspension.

(a) Any person desiring to construct concrete sidewalk improvements shall secure a permit from the Department of Public Works. A charge as determined by the Common Council, which is on file in the City Clerk’s Office, is payable to the Director of Finance at the time the permit is secured. After the issuance of the permit, the Department of Public Works shall set stakes indicating the line and grade of the sidewalk.

(b) Suspension of issuance of permits. The Director of Public Works shall suspend the issuance of permits to any person who violates this section or §9-33 or who becomes delinquent in any of his obligations to the City under these sections. Such suspension shall continue until the delinquency is removed or until action is taken on the violation by the Finance Committee.
Sec. 16-60. Construction or repair by licensed cement finisher.

(a) Any property owner may hire a licensed cement finisher to repair or replace his sidewalk or driveway apron provided that the work is done under the supervision of the Department of Public Works and that the provisions of §16-58 are complied with. Such owner must obtain a permit. The permit fee shall be on file in the office of the City Clerk.

(b) Any property owner may hire a licensed cement finisher to construct a new sidewalk or driveway apron, provided that the work is done under the supervision of the Department of Public Works and that the provisions of §16-58 are complied with. Such owner must obtain a permit. The permit fee shall be on file in the office of the City Clerk.

Sec. 16-61. Marking of improvements.

All contractors shall mark, at the ends of each length of concrete sidewalk improvement constructed, the year in which constructed and the name of the contractor. No license shall be issued under this division until the Department of Public Works has verified that the contractor’s nameplate conforms with established standards.

Sec. 16-62 – Sec. 16-99. Reserved.
ARTICLE IV. RIGHT-OF-WAY MANAGEMENT

Sec. 16-100. Findings and purpose.

(a) In the exercise of its police powers, the City has priority over all other uses of the public rights-of-way. The City desires to anticipate and minimize the number of obstructions and excavations taking place in the public rights-of-way to ensure that the rights-of-way remain available for public services and safe for public use. The taxpayers of the City bear the financial burden for the upkeep of the rights-of-way and a primary cause for the early and excess deterioration of the public rights-of-way is the frequent excavation by Person who place facilities therein.

The City finds that there has been an increase in the use of the public rights-of-way and, as a result, increased costs to the taxpayers of the City and that these costs are likely to continue into the foreseeable future.

The City finds that excavation and occupancy of the public rights-of-way causes direct and indirect costs to be borne by the City and its taxpayers, including but not limited to:

1. Administrative costs associated with public rights-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.
2. Management costs associated with ongoing management activities necessitated by public right-of-way users.
3. Repair costs to the roadway associated with the actual excavation into the public right-of-way.

In response to the foregoing facts, the City hereby enacts this ordinance relating to the administration and permitting of excavation, obstruction and/or occupancy of the public rights-of-way, together with an ordinance making necessary revisions to other Code provisions. This ordinance imposes reasonable regulations on the placement and maintenance of facilities currently within in rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies and not conflict with regulations of those agencies.

The purpose of this ordinance is to provide the City a legal framework within which to regulate and manage the public rights-of-way, and to provide for recovery of costs. This ordinance provides for the health, safety and welfare of the residents of the City as they use the rights-of-way of the City, as well as to ensure the structural integrity of the public rights-of-way.

Under this chapter, all Persons who excavate, obstruct and/or occupy the public rights-of-way will reimburse the City’s administrative costs. Right-of-way users will bear a fair share of the financial responsibility for the integrity of the public rights-of-way.

Sec. 16-101. Definitions.

The following definitions apply in this ordinance. References hereafter to “sections” are, unless otherwise specified, references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.

Applicant means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.

City means the City of Appleton.

Department means the City’s Director of Public Works.

Department inspector means any person authorized by the Department to carry out inspections relating to the provisions of this chapter.

Emergency means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property or (2) requires immediate repair or replacement in order to restore service to a customer.

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Facilities means all equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.

In, when used in conjunction with “right-of-way”, means over, above, in, within, on or under a right-of-way.

Local representative means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

Obstruct means to place any object in a right-of-way as to hinder free and open passage over/under on or in that or any part of the right-of-way.

Occupy means to dwell or reside above, on, in, or below the boundaries of the public rights-of-way.
Permittee means any person to whom a permit to excavate or occupy a right-of-way has been granted by the City under this chapter.

Person means, municipality, corporation, company, including a “Company” defined as Wis. Stat. § 182.017(1g)(b), association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.

PSCW means the Public Service Commission of Wisconsin.

Public Utility has the meaning provided in Wis. Stat. § 196.01(5).

Registrant means any person who has registered with the City (1) to have its facilities located in any right-of-way or (2) to use or seek to occupy or use the right-of-way or any facilities in the right-of-way.

Repair means to perform construction work necessary to make the right-of-way useable for travel, according to department specifications, or to return facilities to an operable condition that is in as good or a better condition as the facilities were before the work commenced.

Repair Bond means a license or permit bond, a letter of credit, or cash deposit posted to ensure the ability of sufficient funds to assure that right-of-way excavation repair work is completed in both a timely and quality manner, per Department specifications.

Right-of-way means the surface and space above and below a public roadway, highway, street, bicycle lane, landscape terrace, shoulders, side slopes, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes.

Rights-of-way User means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way.

Service or utility service includes services such as municipal sewer and water services and services provided by a Public Utility or a Company subject to Wis. Stat. § 182.017 and other similar services.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that has already been issued.

Unusable facilities means facilities in the right-of-way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using them within the next twenty-four (24) months or a potential purchaser or user of the facilities.

Sec. 16-102. Administration.

The Department is responsible for the administration of the rights-of-way, and the permits and ordinances related thereto.

Sec. 16-103. Registration for right-of-way occupancy.

(a) Registration. Each service, utility service or right-of-way user who occupies, uses, or seeks to occupy or use, the right-of-way or any facilities in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, facilities located in any right-of-way shall register with the Department and pay the fee on file with the Department. Registration will consist of providing application information and paying a registration fee. This section shall not apply to those persons exclusively utilizing facilities provided by another right-of-way user.

(b) Registration prior to work. No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any right-of-way without first being registered with the Department.

(c) Exceptions. Nothing herein shall be construed to repeal or amend the provisions of a City ordinance requiring persons to plant or maintain the tree lawn in the area of the right-of-way between their property and the street curb, construct sidewalks, install street signs or perform other similar activities. Persons performing such activities shall not be required to obtain any permits under this chapter.

Sec. 16-104. Registration information.

(a) Information required. The information provided to the Department at the time of registration shall include, but not be limited to:

(1) Each registrant’s name, Diggers Hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
(3) All right-of-way users shall demonstrate to the satisfaction of the City the financial capability to cover any liability that might arise out of their presence in the right-of-way. If the person is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified to the Secretary of State and shall be included with the registration.

(4) A copy of the person’s certificate of authority from PSCW or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.

(5) Execution of an indemnification agreement in a form prescribed by the Department, which is consistent with, and shall not exceed the obligations provided in, Sec. 16-126 herein.

(b) Notice of changes. The registrant shall keep all of the information listed above current at all times by providing to the Department information as to changes within fifteen (15) working days following the date on which the registrant has knowledge of any change.

Sec. 16-105. Registration fee.

(a) Annual registration fee. Each registrant shall annually renew its registration or discontinue and properly abandon its facilities. The Department shall establish the registration fee in an amount sufficient to recover the costs incurred by the City for processing registrants. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration.

(b) Fee computation. The Department may recalculate and establish a new registration fee each year and said fee shall be on file with the Department.

Sec. 16-106 – Sec. 16-109. Reserved.

Sec. 16-110. Excavation permit requirement.

(a) Excavation permit required. Except as otherwise provide in this chapter or other chapters of the Municipal Code, no person shall excavate any right-of-way or place facilities in a right-of-way without first having obtained an excavation permit from the department.

No person shall excavate right-of-way or maintain an excavation in the right-of-way beyond the date or are specified in the permit unless such person makes a supplementary application for another excavation permit before the expiration of the initial permit, pursuant to Sec. 16-118, and a new permit or permit extension is granted.

(b) Permit display. A copy of any permit issued under this chapter shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the department upon request.

Sec. 16-111. Excavation permit application.

(a) Application for a permit shall be made to the Department. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(1) Registration with the Department as required by this Chapter;

(2) Submission of a completed permit application form, including the following:

a. If the proposed project involves the installation of a pole or tower in the right-of-way, the applicant must submit scaled drawings of the proposed pole or tower and all proposed attachments.

b. the applicant shall identify in detail the location of the proposed project and any affected right-of-way, public utility easements, and the location of all existing and proposed facilities within the project area in addition to installation details, traffic control plans and other details requested by the Department;

c. If the proposed project involves the installation of a pole or tower in the right-of-way, the applicant may be required to submit evidence sufficient to demonstrate that the applicant is prohibited from using an existing pole or tower (either owned by the applicant or a third party) because such use is technically infeasible, economically
STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

prohibitive, or prohibited by law.

d. If the proposed project involves the installation of a pole or tower in the right-of-way that is greater than 10 feet taller than existing poles or towers in nearby right-of-way, the applicant may be required to submit evidence sufficient to demonstrate that:

1. the greater height is required to accomplish the applicant’s purposes;

2. the applicant is prohibited from using existing poles or towers (either owned by applicant or a third party) to accomplish its purposes because such use is technically infeasible, economically prohibitive, or prohibited by law; and

3. the pole or tower, due to its height and size, poses no greater danger to the health, safety, and welfare of the public than existing poles in nearby right-of-way.

(3) Payment of all money due to the City for:

a. applicable permit fees and costs as set forth below;

b. unpaid fees or costs due for prior excavations; or

c. any loss, damage, or expense suffered by the City because of applicant’s prior excavations of the right-of-way or any emergency actions taken by the City.

(4) A statement on forms provided by the Department that the registrant will comply with all local, state, and federal codes including, but not limited to, safety, building, traffic control codes, and the Manual of Uniform Traffic Control Devices (MUTCD).

(5) Furnish a certificate of liability insurance compliant with standards of the Department.

(6) Post a permit bond unless waived by the Department. When an excavation permit is requested for purposes of installing additional facilities, and the posting of a repair bond for the additional facilities is insufficient, the posting of an additional or larger repair bond for the additional facilities may be required.

(7) The Department shall not deny a registrant an excavation permit because of a dispute between the City and the registrant, related to Sec. 16-111(a)(3)(b) and/or Sec. 16-111(a)(3)(c) if:

a. the dispute has been adjudicated in favor of the registrant;

b. the dispute is the subject of an appeal filed by the registrant an no decision in the matter has at yet been rendered.

Sec. 16-112. Excavation permit fee.

(a) Fee calculation. The excavation permit fee shall be established by the Department annually in an amount sufficient to recover the costs incurred by the City. This fee may recover costs incurred by the City for each of the following categories as provided herein:

(1) Administrative: The general formula for computing the administrative fee shall be the average per-permit costs for labor plus indirect and other costs.

(2) Repair: No repair fee shall be collected by the City. However, the permittee shall be required to repair the public right-of-way to Department specifications, subject to inspection and acceptance by the Department, as per Sec. 16-113.

(b) City exemption. The City shall not pay administrative fees nor shall any person performing work in the right of way pursuant to a contract with the City.

(c) Payment of permit fees. No excavation permit shall be issued without payment of applicable fees, unless the applicant shall agree to pay such fees within thirty (30) days of billing therefor.

(d) Fee computation. The Department may recalculate and establish a new fee structure each year.

(e) Non-refundable. Permit fees paid for a permit that the Department has revoked for a breach as stated in Sec. 16-120 are not refundable.

Sec. 16-113. Right-of-way repair.

(a) The work to be done under the excavation permit, and the repair of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done
because of circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable under Sec. 16-120.

(b) A Permittee may request to have the City repair the right-of-way.

(1) City repair. If the Permittee requests to have the City repair the right-of-way, the City may accept or reject the request at its sole option. If the City accepts, the Permittee shall be billed for the City’s costs, and shall pay the amount thereof within thirty (30) days of billing.

(2) Permittee repair. If the Permittee repairs the right-of-way, it shall, unless waived by the Department, at the time of application for an excavation permit, post a repair bond in an amount determined by the Department to be sufficient to cover the cost of repairing the right-of-way to Department specifications. If, twenty-four (24) months after completion of the repair of the right-of-way, the Department determines that the right-of-way has been properly repaired, the surety on the repair bond shall be released.

(c) Standards. The Permittee shall perform repairs according to the specifications of the Department and/or in accordance with the conditions specified in the permit. The Department shall have the authority to prescribe the manner and extent of the repair and may do so in written procedures of general application or on a case-by-case basis.

(d) Guarantees. The Permittee guarantees its work and shall maintain it for twenty-four (24) months following its completion, except for organic material, which shall be maintained for twelve (12) months. During either period, the Permittee shall, upon notification from the Department, correct all repair work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Sec. 16-119.

(e) Failure to repair. If the Permittee fails to repair the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all repair required by the Department, the Department at its option may do such work. In that event the Permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing the right-of-way. If the Permittee fails to pay as required, the City may exercise its rights under the repair bond.

Sec. 16-114. Reserved.

Sec. 16-115. Inspection.

(a) Notice of completion. When the work under any permit issued hereunder is completed, the Permittee shall notify the Department.

(b) Site inspection. The Permittee shall make the work site available to the Department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

(c) Authority of department. At the time of inspection, the City may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The City may issue an order to the registrant for any work that does not conform to the applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the Department that the violation has been corrected. If such proof has not been presented within the required time, the Department may revoke the permit pursuant to Sec. 16-120.

Sec. 16-116. Fall radius/breakaway requirements.

(a) Poles and other utility structures over 60 feet in height shall be located so that all residential, commercial, retail or other occupied buildings are outside the fall radius of the structure.

(b) Rigid non-breakaway poles shall be located a minimum of 10’ from roadway curbs or shoulders and behind existing or future sidewalks.
Sec. 16-117. Joint applications.

(a) **Joint application.** Registrants may jointly apply for permits to excavate the right-of-way at the same place and time.

(b) **Shared fees.** Registrants who apply for permits for the same excavation, which the Department does not perform, may share in the payment of the excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

Sec. 16-118. Supplementary applications.

(a) **Limitations on area.** An excavation permit is valid only for the area of the right-of-way specified in the permit. Facilities must be installed within eighteen inches (18") of the area shown on the approved permit. No Permittee may perform any work or excavate outside the area specified in the permit, except as provided herein. Any Permittee which determines that an area greater than that specified in the permit must be excavated shall, before working in that greater area (1) make application for a permit extension and pay any additional fees required thereby and (2) be granted a new permit or permit extension.

(b) **Limitation on dates.** An excavation permit is valid only for the dates specified in the permit. No Permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a Permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs and receive the new permit or an extension of the old permit before working after the end date of the previous permit.

(c) **Fees for supplementary applications.** A Permittee shall pay administration costs for any additional permits.

Sec. 16-119. Other obligations.

(a) **Compliance with other laws.** Obtaining a permit to excavate and/or occupy the right-of-way does not relieve a Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, county, State, or Federal rules, laws or regulations. A Permittee shall comply with all requirements of local, state, and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(b) **Prohibited work.** Except in an emergency, or with the approval of the Department, no right-of-way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

Sec. 16-120. Revocations, suspensions, refusals to issue or extend permits.

(a) **Grounds.** The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

1. The applicant or Permittee is required by Sec. 16-103 to be registered and has not done so or the permit application is otherwise incomplete;
2. The applicant or Permittee is seeking to perform work not included in its construction and major maintenance plan; which work was reasonably foreseeable by the applicant or Permittee at the time said plan was filed;
3. Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;
4. Misrepresentation of any fact by the applicant or Permittee;
5. Failure of the applicant or Permittee to complete work in a timely manner;
6. Failure of the applicant or Permittee to maintain required bonds and/or insurance;
7. The proposed activity is contrary to the public health, safety or welfare;
8. The extent to which space is available in the right-of-way for which the permit is sought;
9. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the Permittee or applicant;
10. If the Permittee or applicant proposes to install a new pole or tower in the right-of-way, the availability of other existing poles or towers owned by the Permittee or applicant or by a third party;
11. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
12. The condition and age of the right-of-way or whether and when it is scheduled for total or
(13) The applicant or Permittee is otherwise not in full compliance with the requirements of this chapter or state or federal law.

(b) **Discretionary issuance.** Notwithstanding Sub. (a)(2), the Department may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the Permittee or applicant, or (b) to allow such customer to materially improve its Public Utility service, or (c) to allow the Permittee or applicant to comply with state or federal law or City ordinance or an order of a court or administrative agency.

(c) **Appeals.** Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or to allow the Permittee or applicant to comply with state or federal law or City ordinance or an order of a court or administrative agency.

(d) **Time limit to act and written denial.** The City shall approve or deny a permit application no later than sixty (60) days after receipt of the application. If the City fails to act on the application within that sixty (60) day period, the application shall be deemed granted and the City shall issue the permit to Applicant. If the City denies a permit application, the City shall provide Applicant with a written explanation of the reason for the denial at the time the City denies the application. See Wis. Stat. § 182.017(9).

**Sec. 16-121. Work done without a permit.**

(a) **Emergency situations.** Each registrant shall immediately notify the City, by verbal notice, of any event regarding its facilities that it considers an emergency. The registrant may take whatever actions are necessary to respond to the emergency. Within two business days after the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and otherwise fully comply with the requirements of this Chapter. If the City becomes aware of an emergency regarding a registrant’s facilities, the Department may attempt to contact the local representative of each registrant affected. The City may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(b) **Non-emergency situations.** Except in an emergency, any person who, without first having obtained the necessary permit, excavates a right-of-way must subsequently register and apply for an excavation permit, and shall in addition to any penalties prescribed by ordinance, pay four times the normal fee for said permit, pay double all other fees required by this chapter or other chapters of the City Code, deposit with the Department the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter. If a subsequent permit is denied or is not approved, the registrant shall discontinue and abandon its facilities and the Department may cause any offending conditions to be removed or corrected and the expense thereof charged to the person responsible.

**Sec. 16-122. Supplementary notification.**

If the excavation of the right-of-way begins later or ends sooner than the date given on the permit, the Permittee shall notify the Department of the accurate information as soon as this information is known.

**Sec. 16-123. Location of facilities.**

(a) **Corridors.** The Department may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the City expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the City involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the Department’s assignment.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the City shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the right-of-way, unless this requirement is waived by the City for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

(b) **Limitation of space.** To protect health, safety, and welfare, or when necessary to protect the right-of-way and its current use, the Department may prohibit or limit the placement of new, replacement or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of Persons to occupy and use the right-of-way. In making such decisions, the Department/City shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public’s needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future City plans...
for public improvements and development projects which have been determined to be in the public interest.

Sec. 16-124. Relocation of facilities.

Except as prohibited by State or Federal law, a registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently relocate its facilities in the right-of-way whenever the Department requests such relocation, and shall restore the right-of-way to the same condition it was in prior to said relocation. The Department may make such request to prevent interference by the Company’s facilities with (i) a present or future City use of the right-of-way, (ii) a public improvement undertaken by the City, (iii) when the public health, safety and welfare require it, or (iv) when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

Notwithstanding the foregoing, a person shall not be required to relocate its facilities from any right-of-way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

Sec. 16-125. Interference with other facilities during municipal construction.

When the City performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant’s facilities, the City shall notify the local representative. The registrant shall meet with the City’s representative within 24-hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant’s facilities. The registrant shall accomplish the needed work within 72 hours, unless the City agrees to a longer period. In the event that the registrant does not proceed to maintain, support, shore, or move its facilities, the City may arrange to do the work and bill the registrant for costs it incurs as well as damages of $100 per day beyond the registrant’s 72 hour deadline to accomplish the needed work, said bill to be paid within thirty (30) days.

Sec. 16-126. Indemnification.

By registering with the City, or by accepting a permit under this chapter, a registrant or Permittee, as the case may be, agrees to indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents (collective, “Indemnified Parties”), from and against all loss or expense (including liability costs and attorney’s fees) by reason of any claim or suit, or of liability imposed by law upon an Indemnified Party for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the permittee’s acts or omissions in the exercise of its rights under this permit, whether caused by or contributed to by the City or its agents or employees except in such cases where caused by the sole negligence or willful misconduct of the City.

Sec. 16-127. Abandoned facilities.

(a) Discontinued operations. A registrant who discontinues its operations in the City must either:

(1) Provide information satisfactory to the Department that the registrant’s obligations for its facilities under this chapter have been lawfully assumed by another registrant; or

(2) Submit to the Department a proposal and instruments for dedication of its facilities to the City. If a registrant proceeds under this clause, the City may, at its option:

a. accept the dedication for all or a portion of the facilities; or

b. require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or aboveground; or

(c) require the registrant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

However, any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from the right-of-way within two years, unless the Department waives this requirement.

(b) Abandoned facilities. Facilities of a registrant who fails to comply with Sec. 16-127 subd (a), and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities may be deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option (i) abate the nuisance, (ii) take possession of the facilities, and/or (iii) require removal of the facilities by the registrant, or the registrant’s successor in interest.

Sec. 16-128. Reservation of regulatory and police powers.

The City, by granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a person
under this chapter does not surrender or to any extent lose, 
waive, impair, or the lawful powers and rights, which it has 
now or maybe hereafter granted to the City under the 
Constitution and statutes of the State of Wisconsin to 
regulate the use of the right-of-way by the Permittee; and 
the Permittee by its acceptance of a permit to excavate, 
obstruct and/or occupy the right-of-way or of registration 
under this chapter agrees that all lawful powers an rights, 
regulatory power, or police power, or otherwise as are or 
the same may be from time to time vested in or reserved to 
the City, shall be in full force and effect and subject to the 
exercise thereof by the City at any time. A Permittee or 
registrant is deemed to acknowledge that its rights are 
subject to the regulatory and police powers of the City to 
adopt and enforce general ordinances necessary to the 
safety and welfare of the public and is deemed to agree to 
comply with all applicable general law, and ordinances 
enacted by the City pursuant to such powers.

Sec. 16-129. Severability.

If any section, subsection, sentence, clause, phrase, or 
portion of this article is for any reason held invalid or 
constitutional by any court or administrative agency of 
competent jurisdiction, such portion shall be deemed a 
separate, distinct, and independent provision and such 
holding shall not affect the validity of the remaining 
portions thereof.

Editor's Note: Article IV. was created by Ord. 23-17, 
adopted on February 15, 2017 and becoming effective on 
February 21, 2017.
DIVISION 2. WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY (SMALL CELL)

Sec. 16-135. Definitions.

For the purposes of this Chapter, the terms below shall have the following meanings:

**Administrator** means the Director of Public Works or his or her designee.

**Application** means a formal request, including all required and requested documentation and information, submitted by an Applicant to the City for a wireless permit.

**Applicant** means a person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.

**Base Station** means the same as in 47 C.F.R. § 1.6100(b)(1), which defines the term to mean a structure or wireless telecommunications equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This definition does not include towers.

**Eligible Facilities Request** means the same as in 47 C.F.R. § 1.6100(b)(3), which defines the term to mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

**FCC** means the Federal Communications Commission.

**Right-of-way** means the surface of, and the space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the City exercises any rights of management and control or in which the City has an interest.

**Small Wireless Facility** consistent with 47 C.F.R. § 1.6002(l), means a facility that meets each of the following conditions:

1. The structure on which antenna facilities are mounted:
   i. is 50 feet or less in height, or
   ii. is no more than 10 percent taller than other adjacent structures, or

iii. is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities;

2. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume;

3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;

4. The facility does not require antenna structure registration;

5. The facility is not located on Tribal lands; and

6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law.

**Support structure** means any structure capable of supporting wireless telecommunications equipment.

**Tower** means the same as in 47 C.F.R. § 1.6100(b)(9), which defines the term as any structure built for the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

**Underground areas** means those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right-of-way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages more than 35,000 volts.

**Utility pole** means a structure in the right-of-way designed to support electric, telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole.
**Wireless Infrastructure Provider** means a person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.

**Wireless permit or permit** means a permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way, and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

**Wireless regulations** means those regulations adopted pursuant to Sec. 16-139(b)(1) to implement the provisions of this Chapter.

**Wireless Service Provider** means an entity that provides wireless services to end users.

**Wireless Telecommunications Equipment** means equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

**Wireless Telecommunications Facility or Facility** means a facility at a fixed location in the right-of-way consisting of a base station, antennas and other accessory equipment, and a tower and underground wiring, if any, associated with the base station.

Definitions in this section may contain quotations or citations to 47 C.F.R. §§ 1.6100 and 1.6002. In the event that any referenced section is amended, creating a conflict between the definition as set forth in this chapter and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

(Ord 41-19, §1, 4-3-19)

**Sec. 16-137. Scope.**

(a) **Applicability.** Unless exempted by Section (b), below, every person who wishes to place a wireless telecommunications facility in the right-of-way or modify an existing wireless telecommunications facility in the right-of-way must obtain a wireless permit under this Chapter.

(b) **Exempt Facilities.** The provisions of this Chapter (other than Secs. 16-144 to 16-148) shall not be applied to applications for the following:

(1) Installation of a small wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and provided further that the installation does not require replacement of the strand, or excavation, modification, or replacement of either of the utility poles.

(2) Installation of a mobile cell facility (commonly referred to as “cell on wheels” or “cell on truck”) for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

(3) Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the City. See Sec. 16-147 of this Chapter.

(4) Placement or modification of a wireless telecommunications facility by City staff or any person performing work under contract with the City.

(5) Modification of an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or

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impede traffic in the traveled portion of a street, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

(Ord 41-19, §1, 4-3-19)

Sec. 16-138. Nondiscrimination.

In establishing the rights, obligations, and conditions set forth in this Chapter, it is the intent of the City to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situation, and legal status of each applicant or request for use of the right-of-way.

(Ord 41-19, §1, 4-3-19)

Sec. 16-139. Administration.

(a) Administrator. The Administrator is responsible for administering this Chapter.

(b) Powers. As part of the administration of this Chapter, the Administrator may:

(1) Adopt wireless regulations governing the placement and modification of wireless telecommunications facilities in addition to but consistent with the requirements of this Chapter, including regulations governing collocation, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards.

(2) Interpret the provisions of the Chapter and the wireless regulations.

(3) Develop forms and procedures for submission of applications for wireless permits consistent with this Chapter.

(4) Collect any fee required by this Chapter.

(5) Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.

(6) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations.

(7) Issue notices of incompleteness or requests for information in connection with any wireless permit application.

(8) Select and retain an independent consultant or attorney with expertise in telecommunications to review any issue that involves specialized or expert knowledge in connection with any permit application.

(9) Coordinate and consult with other City staff, committees, and governing bodies to ensure timely action on all other required permits under Sec. 16-140(b)(8) of this Chapter.

(10) Subject to appeal as provided in Sec. 16-142(d) of this Chapter, determine whether to grant, grant subject to conditions, or deny an application.

(11) Take such other steps as may be required to timely act upon wireless permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

(Ord 41-19, §1, 4-3-19)

Sec. 16-140. Application.

(a) Format. Unless the wireless regulations provide otherwise, the applicant must submit both a paper copy and an electronic copy (in a searchable format) of any application, as well as any amendments or supplements to the application or responses to requests for information regarding an application, to the Administrator. An application is not complete until both the paper and electronic copies are received by the Administrator.

(b) Content. In order to be considered complete, an application must contain:

(1) All information required pursuant to the wireless regulations.

(2) A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.

(3) The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless
telecommunications facility must also be provided.

(4) A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.

(5) A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each facility.

(6) Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the City for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include (i) the proposed location of the facility, (ii) a description and scale image of the proposed facility, and (iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

(7) A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.

(8) To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.

(9) A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.

(10) Payment of all required fees.

(11) If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the City from complying with any deadline for action on an application.

(12) If the application is an eligible facilities request, the application must contain information sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R. § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the City. Before and after 360-degree photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.

(c) **Waivers.** Requests for waivers from any requirement of this section shall be made in writing to the Administrator. The Administrator may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the City will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.

(d) **Fees.** Applicant must provide an application fee and shall be required to pay all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically and raised or lowered based on the costs the City expects to incur.

(e) **Public Records.** Applications are public records that may be made publicly available pursuant to state and federal public records law. Notwithstanding the foregoing, the applicant may designate portions of the application materials that it reasonably believes contain proprietary or
confidential information by clearly marking each portion of such materials accordingly, and the City shall endeavor to treat the information as proprietary and confidential, subject to applicable state and federal public records law and the Administrator’s determination that the applicant’s request for confidential or proprietary treatment of the application materials is reasonable. The City shall not be required to incur any costs to protect the application from disclosure.
(Ord 41-19, §1, 4-3-19)

Sec. 16-141. General Standards.

(a) Generally. Wireless telecommunications facilities shall meet the minimum requirements set forth in this Chapter and the wireless regulations, in addition to the requirements of any other applicable law or regulation.

(b) Regulations. The wireless regulations and decisions on wireless permits shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of a telecommunications or personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.

(c) Standards.

(1) Wireless telecommunications facilities shall be installed and modified in a manner that:

a. Minimizes risks to public safety;

b. Ensures that placement of facilities on existing structures is within the tolerance of those structures;

c. Avoids placement of aboveground facilities in underground areas, installation of new support structures or equipment cabinets in the public right-of-way, or placement in residential areas when commercial areas are reasonably available;

d. Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;

e. Ensures that installations are subject to periodic review to minimize the intrusion on the right-of-way;

f. Ensures that the City bears no risk or liability as a result of the installations; and

g. Ensures that applicant’s use does not inconvenience the public, interfere with the primary uses of the right-of-way, or hinder the ability of the City or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.

(2) No wireless permit shall be issued unless (i) the wireless service provider applicant has immediate plans to use the proposed facility or (ii) the wireless infrastructure applicant has a contract with a wireless service provider that has immediate plans to use the proposed facility.

(3) In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic and at all times must comply with the requirements of the Americans with Disabilities Act of 1990.

(d) Standard Permit Conditions. All wireless permits under this Chapter are issued subject to the following minimum conditions:

(1) Compliance. The permit holder shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules.

(2) Term. A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance unless revoked pursuant to Sec. 16-143(b) of this Chapter.

(3) Contact Information. The permit holder shall at all times maintain with the City accurate contact information for the permit holder and all wireless service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.

(4) Emergencies. The City shall have the right to support, repair, disable, or remove any
elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.

(5) **Indemnities.** The permit holder, by accepting a permit under this Chapter, agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the “Indemnified Parties”) from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys’ fees, costs, and expenses of whatsoever kind or nature in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the permit holder or anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and hold harmless the Indemnified Parties shall be applicable even if the liability results from an act or failure to act on the part of one or more of the Indemnified Parties. However, the obligation does not apply if the liability results from the willful misconduct of an Indemnified Party.

(6) **Adverse Impacts on Adjacent Properties.** The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.

(7) **General maintenance.** The wireless communications facility and any associated structures shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

(8) **Graffiti Removal.** All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the City.

(9) **Relocation.** At the request of the City pursuant to Sec. 16-144 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.

(10) **Abandonment.** The permit holder shall promptly notify the City whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Sec. 16-145 of this Chapter.

(11) **Restoration.** A permit holder who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Sec. 16-146 of this Chapter.

(12) **Record Retention.** The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder’s files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.

(13) **Radio Frequency Emissions.** Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emissions, and failure to comply with such regulations shall be treated as a material violation of the terms of the permit.

(14) **Certificate of Insurance.** A certificate of insurance sufficient to demonstrate to the satisfaction of the Administrator that the applicant has the capability to cover any liability that might arise out of the presence of the facility in the right-of-way.

(Ord 41-19, §1, 4-3-19)

Sec. 16-142. Application Processing and Appeal.

(a) **Rejection for Incompleteness.** Notices of incompleteness shall be provided in conformity with state, local, and federal law, including 47 C.F.R. § 1.6003(d), as amended.

(b) **Processing Timeline.** Wireless permit applications (including applications for other permits under Sec. 16-140 necessary to place or modify the facility) and appeals will be processed in conformity with the shot clocks set forth in state, local, and federal law, as amended.
(c) **Written Decision.** In the event that an application is denied (or approved with conditions beyond the standard permit conditions set forth in Sec. 16-141(d), the Administrator shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.

(d) **Appeal to Common Council.** Any person adversely affected by the decision of the Administrator may appeal that decision to the Common Council, which may decide the issues de novo, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.

(e) **Deadline to Appeal.**

1. Appeals that involve eligible facilities requests must be filed within three business days of the written decision of the Administrator.

2. All other appeals not governed by Sec. 16-142(e)(1), above, must be filed within ten business days of the written decision of the Administrator, unless the Administrator extends the time therefor. An extension may not be granted where extension would result in approval of the application by operation of law.

(f) **Decision Deadline.** All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.

(Ord 41-19, §1, 4-3-19)

**Sec. 16-143. Expiration and Revocation.**

(a) **Expiration.** A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance. Upon expiration of the wireless permit, the permit holder must either:

1. Remove the wireless telecommunications facility; or,

2. Submit an application to renew the permit at least 90 days prior to its expiration. The facility must remain in place until the renewal application is acted on by the City and any appeals from the City’s decision are exhausted.

(b) **Revocation for Breach.** A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations. Upon revocation, the wireless telecommunications facility must be removed within 30 days of receipt of written notice from the City. All costs incurred by the City in connection with the revocation, removal, and right-of-way restoration shall be paid by the permit holder.

(c) **Failure to Obtain Permit.** Unless exempted from permitting by Sec. 16-137(b) of this Chapter, a wireless telecommunications facility installed without a wireless permit must be removed within 30 days of receipt of written notice from the City. All costs incurred by the City in connection with the notice, removal, and right-of-way restoration shall be paid by entities who own or control any part of the wireless telecommunications facility.

(Ord 41-19, §1, 4-3-19)

**Sec. 16-144. Relocation.**

Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate any of its wireless telecommunications facilities in the right-of-way whenever the City requests such removal and relocation. The City may make such a request to prevent the facility from interfering with a present or future City use of the right-of-way; a public improvement undertaken by the City; an economic development project in which the City has an interest or investment; when the public health, safety, or welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder.

(Ord 41-19, §1, 4-3-19)

**Sec. 16-145. Abandonment.**

(a) **Cessation of Use.** In the event that a permitted facility within the right-of-way is not in use for a continuous period of 60 days or longer, the permit holder must promptly notify the City and do one of the following:

1. Provide information satisfactory to the Administrator that the permit holder’s obligations for its facilities under this Chapter have been lawfully assumed by another permit holder.
Submit to the Administrator a proposal and instruments for dedication of the facilities to the City. If a permit holder proceeds under this Sec. 16-145(a)(2), the City may, at its option:

a. Accept the dedication for all or a portion of the facilities;

b. Require the permit holder, at its own expense, to remove the facilities and perform the required restoration under Sec. 16-146; or

c. Require the permit holder to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Sec. 16-146.

(3) Remove its facilities from the right-of-way within one year and perform the required restoration under Sec. 16-146, unless the Administrator waives this requirement or provides a later deadline.

(b) Abandoned Facilities. Facilities of a permit holder who fails to comply with Sec. 16-145 and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option:

(1) abate the nuisance and recover the cost from the permit holder or the permit holder’s successor in interest;

(2) take possession of the facilities; and/or

(3) require removal of the facilities by the permit holder or the permit holder’s successor in interest.

Sec. 16-146. Restoration.

In the event that a permit holder removes or is required to remove a wireless telecommunications facility from the right-of-way under this Chapter (or relocate it pursuant to Sec. 16-144), the permit holder must restore the right-of-way to its prior condition in accordance with City specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restorations required by this Sec. 16-146, the City at its option may do such work. In that event, the permit holder shall pay to the City, within 30 days of billing therefor, the cost of restoring the right-of-way.

Sec. 16-147. Placement on City-Owned or -Controlled Structures.

The City may negotiate agreements for placement of wireless telecommunications facilities on City-owned or -controlled structures in the right-of-way. The agreement shall specify the compensation to the City for use of the structures. The person or entity seeking the agreement shall reimburse the City for all costs the City incurs in connection with its review of and action upon the request for an agreement.

Sec. 16-148. Severability.

If any section, subsection, clause, phrase, or portion of this Chapter is for any reason held to be illegal or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion shall be severable and shall not affect or impair any remaining portion of this Chapter, which shall remain in full force and effect.

Secs. 16-149 – Sec. 16-150. Reserved.

(The next page is 1103.)
propelled motor vehicle, excluding golf carts, that has successfully completed the Neighborhood Electric Vehicle America Test Program conducted by the Federal Department of Energy and that conforms to the definition and requirements for low-speed vehicles as adopted in the Federal Motor Vehicle Safety Standards for Low-speed Vehicle under 49 CFR 571.3(b) and 571.500 and which is authorized under Wis. Stat. §349.26.

(b) Low-speed vehicles may be operated on any highway within the city of Appleton where the maximum speed limit is thirty-five (35) miles per hour or less.

(c) All operators of low-speed vehicles shall conform to all regulations contained in this chapter, including the provisions of the state motor vehicles laws incorporated herein, except those provisions which by their express terms have no application to a low-speed vehicle.

(d) All operators of low-speed vehicles shall have a valid driver’s license that allows them to operate in the State of Wisconsin.

(e) **Penalty.** Any person who violates any provision of this section shall be punished by a forfeiture not to exceed one thousand dollars ($1,000) per occurrence.

Secs. 19-12 – 19-40. Reserved.
Front Street at South Memorial Drive, eastbound traffic.

Northbound Appleton Street at the alley located between College Avenue and Washington Street.

Northbound traffic entering Calumet Street from the private driveway located on the south side of Calumet Street (approximately 705 feet west of Kensington Drive).

Northbound traffic entering College Avenue from the driveway located on the south side of College Avenue, approximately 200 feet east of Badger Avenue.

Northbound traffic entering College Avenue from the driveway located on the south side of College Avenue, approximately 250 feet east of Linwood Avenue.

Northbound traffic entering Lake Park Road from the driveway located on the west side of Lake Park Road, at a location 110 feet south of Calumet Street.

South Badger Avenue at Memorial Drive, southbound traffic.

South Memorial Drive at Front Street, northbound traffic.

South Memorial Drive at Prospect Avenue, southbound traffic.

Southbound traffic entering College Avenue from the driveway located on the north side of College Avenue (approximately 250 feet west of Badger Avenue).

Southbound traffic entering Edgewood Drive (CTH “JJ”) from the driveway located 650 feet east of Ballard Road (CTH “E”).

Southbound traffic entering Edgewood Drive (CTH “JJ”) from the driveway located 300 feet east of Ballard Road (CTH “E”).

State Street at the West College Avenue south alley, southbound traffic, from 10:00 p.m. to 3:00 a.m., except for police vehicles.

Westbound Calumet Street at private the driveway located on the south side of Calumet Street approximately 705 feet west of Kensington Drive.

Westbound traffic entering Kensington Drive from the private driveway located on the east side of Kensington Drive, at a location 180 feet south of Calumet Street.

(Code 1965, §10.14; Ord 158-89, §1, 12-6-89; Ord 29-91, §1, 3-20-91; Ord 106-02, §1, 7-9-02; Ord 37-04, §1, 3-23-04, Ord 13-07, §1, 2-13-07, Ord 14-07, §1, 2-13-07; Ord 100-07, §1, 6-26-07; Ord 72-08, §1, 4-8-08; Ord 71-17, §1, 10-10-17, Ord 67-191 §1, 6-5-19)

Cross reference(s) - Streets, §16-36 et seq.

Sec. 19-44. No right turn intersections.

No operator of a vehicle shall turn right on the following streets:

Lawrence Street at South Morrison Street, eastbound traffic.

Lawrence Street at South Morrison Street, westbound traffic.  

(Code 1965, §10.22; Ord 159-89, §1, 12-6-89; Ord 102-92, §1, 9-2-92, Ord 15-07, §1, 2-13-07, Ord 16-07, §1, 2-13-07, Ord 17-07, §1, 2-13-07, Ord 18-07, §1, 2-13-07; Ord 56-07, §1, 3-13-07)

Sec. 19-45. No turn on red light; intersections where.

No operator of a vehicle shall turn on a red traffic signal at the following locations:

(1) Southbound Mason at Badger and Packard Streets.
(2) Northbound Mason at Badger and Packard Streets.
(3) Westbound Packard at Badger and Mason Streets.
(4) Eastbound Packard at Badger and Mason Streets.
(5) Northbound Badger at Mason and Packard Streets.
(6) Southbound Badger at Mason and Packard Streets.
(7) Southbound Story at Badger and College Avenue.
(8) Northbound Story at Badger and College Avenue.
(9) Northbound Badger at College and Story Streets.
(10) Southbound Badger at College and Story Streets.
(11) Westbound College at Badger and Story Streets.
(12) Eastbound College at Badger and Story Streets.
TRAFFIC AND VEHICLES

DIVISION 2. SPEED LIMITS

Sec. 19-56. State speed limits adopted.

The provisions of W.S.A. §346.57(4)(e), (f), (g), §346.58 and §346.59 relating to the maximum and minimum speed of vehicles are hereby adopted as part of this chapter as if fully set forth herein, except that the speed limits are increased or decreased upon the streets enumerated in this division to the limits designated.
(Code 1965, §10.02(1))

Sec. 19-57. Speed limits designated – fifteen (15) miles per hour.

The speed limit shall be fifteen (15) miles per hour on the following streets:

- Alley, south of Franklin Street between Story Street and Summit Street.
- Ashbrook Street.
- City Center Street between Appleton Street and Oneida Street.
- Friendly Street.
- Ivy Street.
- Johnston Street, west 500 block and east 200 block.
- Juniper Lane.
- Oneida Street between City Center Street and Washington Street.
- Primrose Lane.
- Shasta Lane.
- Vermillion Lane.

(Code 1965, §10.02(2); Ord 67-89, §1, 6-7-89; Ord 92-94, §1, 7-20-94; Ord 109-94, §1, 8-17-94)

Sec. 19-58. Same – twenty (20) miles per hour.

The speed limit shall be twenty (20) miles per hour on the following streets:

- Canvasback Circle; entire length.

(Ord 109-06, §1, 9-12-06)
Sec. 19-59. Same – thirty (30) miles per hour.

The speed limit shall be thirty (30) miles per hour on the following streets:

- Alliance Drive from Milis Drive to Vantage Drive.
- Badger Avenue, from Wisconsin Avenue to Memorial Drive.
- Calumet Street, from Memorial Drive to seven hundred fifty (750) feet east.
- Calumet Street, from Oneida Street to three hundred forty (340) feet east of Lake Park Road.
- Capitol Drive from Ballard Road (CTH E) to Zuehlke Drive.
- Conkey Street from Pershing Street to Venture Drive.
- County Trunk Highway BB, from its intersection with Riverdale Street southwest to a point 0.20 mile west of its intersection with Seminole Drive.
- East College Avenue, from the west end of East College Avenue Bridge to three hundred (300) feet east of Matthias Street.
- Endeavor Drive from Lakeland Drive to Eisenhower Drive.
- Executive Drive from Goodland Drive to Venture Drive.
- Glendale Avenue from Sandra Street to a point 530 feet west of Sandra Street.
- Goodland Drive from Conkey Street to Zuehlke Drive.
- John Street, from College Avenue to Calumet Street.
- Kensington Drive, from Calumet Street to Lake Park Road.
- Lake Park Road, from Calumet Street to Plank Road.
- Lakeland Road from Plank Road to Vantage Drive.
- Lyndale Drive, from Spencer Street south to the railroad tracks.
- Marshall Road from Winslow Avenue to Capitol Drive.

Milis Drive from Quest Drive to Alliance Drive.

Newberry Street, from the east City limits to Joseph Street.

North Meade Street, from Wisconsin Avenue to Capitol Drive.

North Richmond Street, from 0.1 mile north of Marquette Street to College Avenue.

Oneida Skyline, from Prospect Avenue south to Oneida Street.

Oneida Street, from Oneida Skyline to U.S. 441.

Pensar Drive from Roemer Road, westerly to cul-de-sac.

Pershing Street from Conkey Street to Sandra Street.

Pointer Road from Pensar Drive to Capitol Drive.

Progress Drive from Winslow Avenue to Capitol Drive.

Quest Drive from Plank Road to Midway Road.

Roemer Road from Northland Avenue (CTH OO) to Capitol Drive.

Sandra Street from Pershing Street to Glendale Avenue.

South Memorial Drive, from College Avenue to Calumet Street.

Vantage Road from Quest Drive to Lakeland Drive.

Venture Drive from Conkey Street to Executive Drive.

West College Avenue, from Linwood Avenue to Badger Avenue.

West Wisconsin Avenue, from Richmond Street to Badger Avenue.

Winslow Avenue from Roemer Road to Zuehlke Drive.

Zuehlke Drive from Winslow Avenue to Goodland Drive.

(Code 1965, §10.02(3), Ord 8-96, §1, 2-7-96; Ord 6-98, §1, 2-4-98; Ord 11-01, 1-22-01, Ord 106-04, §1, 8-10-04; Ord 126-05, §1, 11-8-05; Ord 127-05, §1, 11-8-05; Ord 128-05, §1, 11-8-05; Ord 129-05, §1, 11-8-05; Ord 122-06, §1, 10-