

**47-16**

**AN ORDINANCE AMENDING CHAPTER 23 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON AND THE OFFICIAL ZONING MAP WHICH IS A PART THEREOF, BY MAKING THE FOLLOWING CHANGES IN THE DISTRICT AS NOW PROVIDED.**

(City Plan Commission 6-15-16)

The Common Council of the City of Appleton does ordain as follows:

**Section 1:** That Zoning Ordinance, Chapter 23 of the Municipal Code of the City of Appleton and the Official Zoning Map, which is a part thereof, is amended by making the following changes:

To rezone lands located at 5715 North Meade Street (north of the intersection of Edgewood Drive (JJ) and Meade Street) including to the centerline of adjacent right-of-way from R-1A Single-Family District to R-3 Multi-Family District. (Rezoning #4-16 – Primrose Retirement)

**LEGAL DESCRIPTION:**

SEC2 T21N R17E NE1/4 OF SE1/4 LESS S660FT M/L 20 AC and to the C/L of adjacent right-of-way (Tax Id. 31-6-6100-50)

**COMMON DESCRIPTION:**

5715 North Meade Street

**Section 2:** This Ordinance shall be in full force and effect from and after its passage and publication, and upon its passage and publication the Director of Community and Economic Development is authorized and directed to make the necessary changes to the Official Zoning Map in accordance with this Ordinance.

**48-16**

**AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN FOR THE CITY OF APPLETON.**

The Common Council of the City of Appleton does ordain as follows:

**Section 1:** The Comprehensive Plan 2010-2030 Comprehensive Land Use Map Amendment for the following area of the city be amended as follows:

**#2-16:** For land located at 5715 North Meade Street (north of the intersection of Edgewood Drive (JJ) and Meade Street), City of Appleton, Outagamie County, Wisconsin (31-6-6100-50) including to the centerline of the adjacent right-of-way to change from future one- and two-family residential land use to multifamily residential use and the Future Land Use Map be revised accordingly.

**Section 2:** This ordinance shall be in full force and effect from and after its passage and publication.

**49-16**

**AN ORDINANCE REPEALING AND RECREATING CHAPTER 24 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO EROSION AND SEDIMENT CONTROL.**

(Utilities Committee – 6-1-16)

The Common Council of the City of Appleton does ordain as follows:

**Section 1:** That Chapter 24 of the Municipal Code of the City of Appleton, relating to erosion and sediment control, is hereby repealed and recreated as follows:

Sec. 24-1. Authority.

(a) This ordinance is adopted under the authority granted by §62.234, Wis. Stats. This ordinance supersedes all provisions of any ordinance previously enacted under §62.23, Wis. Stats., that relates to erosion and sediment control. Except as otherwise specified in §62.234 Wis. Stats., §62.23, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.

(b) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the City of Appleton.

(c) The City of Appleton hereby designates the Director of Public Works or his/her designee as the administering authority to enforce the provisions of this ordinance.

(d) The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:

- (1) Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under §281.16 and §283.33, Wis. Stats.
- (2) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

(Ord 180-04, §1, 1-1-05)

## **Sec. 24-2. Purpose.**

The City of Appleton acknowledges that runoff from land disturbing construction activity and improper land management carries sediment and other pollutants to the waters of the state.

It is the purpose of this ordinance to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing activity to waters of the state within the City of Appleton.

It is also the purpose of this ordinance to meet the performance standards in subchapters III and IV of Ch. NR 151, Wis. Adm. Code and to meet the requirements for construction site pollutant control in the General Permit to Discharge under the Wisconsin Pollutant Discharge Elimination System WPDES Permit No. WI S050075-2 administered by the Wisconsin Department of Natural Resources (WDNR).

(Ord 180-04, §1, 1-1-05)

## **Secs. 24-3 – 24-9. Reserved.**

## **Sec. 24-10. Applicability and jurisdiction.**

### **(a) *Applicability.***

- (1) This ordinance applies to all land disturbing activities within the City of Appleton except as provided under sub. (3).
- (2) Land disturbing activities meeting any one of the following are required to prepare a plan and obtain a permit:
  - a. Building on lots in subdivisions, certified survey maps or unplatted lands.
  - b. Land disturbing activities involving grading, removal of protective ground cover or vegetation, excavation, land filling, scraping or other land disturbing activity affecting a surface of two thousand (2,000) square feet or more.
  - c. Land disturbing activities involving excavation or filling or a combination of excavating and filling affecting two hundred (200) cubic yards or more of soil, dirt, sand or other excavation or fill material.
  - d. Land disturbing activities involving street, highway, road or bridge construction, enlargement, relocation or reconstruction.
  - e. Land disturbing activities involving the laying, repairing, replacing or enlarging of an underground pipe, wire, cable or facility for a distance of three hundred (300) feet or more.

- f. Land disturbing activities within protective areas as defined in City of Appleton Municipal Code Sec. 20-312(f).
- g. Routine ditch maintenance for a continuous distance of one hundred (100) feet or more.
  - h. Notwithstanding the previously listed applicability requirements, this ordinance applies to any sites which, in the opinion of the City of Appleton, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that cause undue erosion, that increases water pollution by scouring or the transportation of particulate matter, or that endangers property or public safety.

(3) This ordinance does not apply to the following:

- a. Land disturbing construction activity that includes the construction of one- (1-) and two- (2-) family residential dwellings that are not part of a larger common plan of development or sale and that result in less than one (1) acre of disturbance. These construction sites are regulated by the Wisconsin Department of Safety and Professional Services under s. SPS 321.125 Wis. Adm. Code.
- b. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under Chapter 40, Code of Federal Regulations, part 122, for land disturbing activity.
  - c. Nonpoint discharges from agricultural facilities and practices.
  - d. Nonpoint discharges from silviculture activities.
  - e. Activities conducted by a state agency, as defined under §227.01 (1), Wis. Stats., but also including the office of the district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under §281.33 (2), Wis. Stats.

(b) ***Jurisdiction.***

- (1) This ordinance applies to land disturbing activities located within the boundaries of the City of Appleton.
- (2) *County and Town Ordinances.* This ordinance supercedes any county or town erosion and sediment control ordinance for lands annexed to the City after the effective date of the county's or town's ordinance, except when the county's or town's ordinance is more restrictive than this ordinance; then the more restrictive provisions set forth in the county or town ordinance shall become part of this ordinance and apply to the annexed lands. In such cases, the City may grant a variance from the more restrictive requirements provided that the criteria for a variance as set forth in the county ordinance is met.

- (3) *Waivers.* Requests to waive the erosion and sediment control requirements, or a portion thereof, shall be submitted to the City of Appleton, in writing, with the application and fee, for review. Written waivers may be granted administratively by the City for erosion and sediment control requirements that are required by the City if it is demonstrated to the satisfaction of the City that it is reasonable to expect that the objectives of this ordinance will be met without an erosion and sediment control plan or portion thereof.
- (4) *Applicability of maximum extent practicable.* Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the City of Appleton's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other completing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

(Ord 180-04, §1, 1-1-05; Ord 181-11, §1, 1-1-12)

**Secs. 24-11 – 24-14. Reserved.**

**Sec. 24-15. Definitions.**

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

*Administering authority* means the Director of Public Works, or a designee.

*Agricultural facilities and practices* has the meaning in §281.16(1), Wis. Stats.

*Average annual rainfall* means a calendar year of precipitation, excluding snow, which is considered typical. An average annual rainfall for Green Bay, 1969 (March 29 - November 25) is applicable for the City of Appleton.

*Best management practice* or *BMP* means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff.

*Business day* means a day the offices of the City of Appleton are routinely and customarily open for business.

*Cease and desist order* means a court-issued order to halt land disturbing activity that is being conducted without the required permit or not in conformance with an existing permit.

*City* means the City of Appleton.

*Common plan of development or sale* means a development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one (1) plan. A common plan of development or sale includes, but is not limited

to, subdivision plats, certified survey maps, and other developments.

**Construction site** means an area upon which one (1) or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one (1) common plan of development.

**Design storm** means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall. Rainfall amounts for 24-hour design rainfall events in Appleton are: 100-year, 5.50 inches; 10-year, 3.51 inches; 5-year, 3.01 inches; 2-year, 2.45 inches, and 1-year 2.14 inches. The distribution shall be NOAA Atlas 14 MSE4.

**Erosion** means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

**Erosion and sediment control plan** means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

**Final stabilization** means that all land disturbing activities at the site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least seventy percent (70%) of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

**Land disturbing activity** means any man-made alteration resulting in a change in the topography, existing vegetative or non-vegetative soil cover, or drainage pattern, that may result in runoff and lead to an increase in soil erosion and movement of sediment. Land disturbing activities include, but are not limited to, clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, an unstable pipe outfall, or an unstable slope.

**Landowner** means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of stormwater BMPs on the property.

**Maximum extent practicable** means the highest level of performance that is achievable, but is not equivalent to a performance standard, taking into account the best available technology, cost effectiveness and other competing issues such as human welfare, endangered and threatened resources, historic properties, and geographic features, pursuant to Sec. 20-10(b)(4) of the Appleton Municipal Code.

**Performance standard** means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

**Permit** means a written authorization made by the City of Appleton to the applicant to conduct land disturbing activity.

**Pollutant** has the meaning given in §283.01(13), Wis. Stats.

**Pollution** has the meaning given in §281.01(10), Wis. Stats.

**Responsible party** means any person holding fee title to the property or other entity performing services to meet the requirements of this ordinance through a contract or other agreement.

**Runoff** means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

**Performance security** means cash, or an irrevocable letter of credit submitted to the City of Appleton by the responsible party to assure that requirements of the ordinance are carried out in compliance with the approved erosion and sediment control plan and to recover any costs incurred by the City for designing, engineering, preparation, checking and review of plans and specifications, regulations and ordinances, and legal, administrative and fiscal work undertaken to assure and implement such compliance.

**Permit application fee** means a sum of money paid to the City of Appleton by the responsible party for the purpose of recouping expenses incurred by the City in administering the permit.

**Sediment** means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

**Silviculture activity** means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.

**Site** means the entire area included in the legal description of the land on which the land disturbing activity is proposed in the permit application or has occurred.

**Stop work order** means an order issued by the City of Appleton, which requires that all construction activity on the site be stopped.

**Stormwater conveyance system** means any method employed to carry stormwater runoff within and from a land development or redevelopment activity to the waters of the state. Examples of methods include: swales, channels and storm sewers.

(Ord 182-11, §1, 1-1-12)

**Technical standard** means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

**Transportation facility** means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under §85.095(1)(b), Wis. Stats. Transportation facility does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to §281.33, Wis. Stats.

**Waters of the state** has the meaning in §283.01(20), Wis. Stat.  
(Ord 180-04, §1, 1-1-05)

**Secs. 24-16 – 24-19. Reserved.**

**Sec. 24-20. Technical standards.**

(a) ***Design criteria, standards and specifications.*** All BMPs required to comply with this ordinance shall meet the design criteria, standards and specifications based on any of the following:

- (1) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of Chapter NR 151, Wis. Adm. Code.
- (2) Soil loss prediction tools (such as the Universal Soil Loss Equation [USLE] or its successors RUSLE and RUSLE2) when using an appropriate rainfall or runoff factor (also referred to as the R factor) or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.

(b) ***Other standards.*** Other technical standards not identified or developed in sub. (a), may be used provided that the methods have been approved by the City of Appleton. (Ord 180-04, §1, 1-1-05; Ord 183-11, §1, 1-1-12)

**Secs. 24-21 – 24-23. Reserved.**

**Sec. 24-24. Performance standards for non-permitted sites.**

(a) ***Responsible party.*** The responsible party shall comply with this section.

(b) ***Requirements.*** Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

- (1) The deposition of soil from being tracked onto streets by vehicles.
- (2) The discharge of sediment from disturbed areas into on-site storm water inlets.
- (3) The discharge of sediment from disturbed areas.
- (4) The discharge of sediment from drainage ways that flow off the site.
- (5) The discharge of sediment by dewatering activities.
- (6) The discharge of sediment eroding from soil stockpiles existing for more than seven (7) days.
- (7) The transport by runoff of chemicals, cement and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.

(c) ***Location.*** The BMPs used to comply with this section shall be located so that treatment occurs before runoff leaves the site or enters a storm conveyance system, any drainage

channel or waters of the state.

(d) **Implementation.** The BMPs used to comply with this section shall be implemented as follows:

- (1) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
- (2) Erosion and sediment control practices shall be maintained until final stabilization.
- (3) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
- (4) Temporary stabilization activity shall commence when land disturbing activities cease and will not resume for a period exceeding fourteen (14) calendar days.
- (5) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.
- (6) All off-site deposits occurring as a result of a storm event shall be cleaned up by the end of the next working day. All other off-site deposits occurring as a result of land disturbing activities shall be cleaned up by the end of the workday. Flushing is not allowed.

(e) **Alternate requirements.** The City of Appleton may establish erosion and sediment control requirements more stringent than those set forth in this section if the City determines that an added level of protection is needed to protect resources.

(Ord 184-11, §1, 1-1-12)

#### **Sec. 24-25. Performance standards for permitted sites.**

(a) **Responsible party.** The responsible party shall implement an erosion and sediment control plan, developed in accordance with Sec. 24-35, that incorporates the requirements of this section.

(b) **Plan.** A written site specific erosion and sediment control plan shall be developed in accordance with Sec. 24-35 and implemented for each construction site.

(c) **Erosion and other pollutant control requirements.** The plan required under sub. (b) shall include the following:

- (1) Erosion and sediment control practices shall be used to prevent or reduce all of the following:
  - a. The deposition of soil from being tracked onto streets by vehicles.
  - b. The discharge of sediment from disturbed areas into on-site storm water inlets.

- c. The discharge of sediment from disturbed areas into adjacent waters of the state.
  - d. The discharge of sediment from drainage ways that flow off the site.
  - e. The discharge of sediment by dewatering activities.
  - f. The discharge of sediment eroding from soil stockpiles existing for more than seven (7) days.
  - g. The discharge of sediment from erosive flows at outlets and in downstream channels.
  - h. The transport by runoff of chemicals, cement and other building compounds and materials from the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.
  - i. The transport by runoff of untreated wash water from vehicle and wheel washing from the construction site. Wastewaters, such as concrete truck washout, shall be properly managed to limit the discharge of pollutants.
- (2) For permitted sites with less than one (1) acre disturbed activity, BMPs that, by design, achieve to the maximum extent practicable, a reduction of eighty percent (80%) of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the site has undergone final stabilization. No person shall be required to exceed an eighty percent (80%) sediment reduction to meet the requirements of this paragraph.
- (3) For permitted sites with one (1) acre or more disturbed area, BMPs that, by design, discharge no more than five (5) tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization, as determined by the WDNR construction site soil loss and sediment discharge guidance.
- (4) Erosion and Sedimentation BMPs may be combined to meet the requirements of this section. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing activity, or other appropriate mechanism. The method of calculating the percent reduction in sediment shall be a method approved by the City of Appleton.
- (5) No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with MEP.
- (6) Notwithstanding sub. (2) and (3), if BMPs cannot be designed and implemented to meet these requirements, the plan shall include a written and

site-specific explanation as to why the requirements are not attainable and how the sediment load shall be reduced to the maximum extent practicable.

- (7) *Preventative measures.* The plan shall incorporate all of the following:
  - a. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
  - b. Minimization of soil compaction and preservation of topsoil.
  - c. Minimization of land disturbing construction activity on slopes of twenty percent (20%) or more.
  - d. Development of spill prevention and response procedures.
- (8) All off-site deposits occurring as a result of a storm event shall be cleaned up by the end of the next working day. All other off-site deposits occurring as a result of land disturbing activities shall be cleaned up by the end of the workday. Flushing is not allowed.

(d) *Location.* The BMPs used to comply with this section shall be located so that treatment occurs prior to runoff leaving the site or entering the storm conveyance system, any drainage channel or waters of the state.

(e) *Implementation.* The BMPs used to comply with this section shall be implemented as follows:

- (1) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with plan developed under Sec. 24-35.
- (2) Erosion and sediment control practices shall be maintained until final stabilization.
- (3) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
- (4) Temporary stabilization activity shall commence when land disturbing activities cease and will not resume for a period exceeding fourteen (14) calendar days.
- (5) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

(f) *Alternate requirements.* The City of Appleton may establish erosion and sediment control requirements more stringent than those set forth in this section if the City determines that an added level of protection is needed to protect sensitive resources.

(Ord 180-04, §1, 1-1-05; Ord 185-11, §1, 1-1-12)

**Secs. 24-26 – 24-29. Reserved.**

**Sec. 24-30. Permitting requirements, procedures and fees.**

(a) ***Permit required.*** No responsible party may commence any land disturbing activity subject to this ordinance without first receiving approval of an erosion and sediment control plan for the site and a permit from the City of Appleton.

(b) ***Permit application and fees.*** The responsible party desiring to undertake a land disturbing activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of Sec. 24-35 and shall pay an application fee to the City of Appleton. By submitting an application, the applicant is authorizing the City of Appleton to enter the site to obtain information required for the review of the erosion and sediment control plan.

(c) ***Review and approval of permit application.*** The City of Appleton shall review any complete permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

- (1) Within twenty (20) business days of the receipt of a complete permit application, as required by sub. (b), the City of Appleton shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.
- (2) If the permit application and plan are approved, the City of Appleton shall issue the permit.
- (3) If the permit application or plan is disapproved, the City of Appleton shall state in writing the reasons for disapproval.
- (4) The City of Appleton may request additional information from the applicant. If additional information is submitted, the City of Appleton shall have twenty (20) business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
- (5) Failure by the City of Appleton to inform the permit applicant of a decision within twenty (20) business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

(d) ***Performance security.*** The City of Appleton may, at its discretion, require the submittal of a cash escrow, irrevocable letter of credit, or performance security prior to issuance of the permit to ensure that the practices are installed and maintained by the responsible party as required by the approved erosion and sediment control plan and any conditions attached to the permit. The amount of the installation performance security shall be determined by the City of Appleton, not to exceed the total estimated construction cost of the erosion and sediment control practices approved under the permit unless otherwise specified in the permit. The amount of any

required maintenance performance security shall be determined by the City of Appleton. Any performance securities shall contain forfeiture provisions for failure to complete work specified in the plan.

Conditions for the release of performance security are as follows:

- (1) The installation performance security shall be released in full only upon submission of “as built plans” and written certification by a professional engineer registered in the State of Wisconsin that the practice(s) were installed in accordance with the approved plan and other applicable provisions of this ordinance. The City of Appleton may make provisions for a partial pro-rata release of the performance security based on the completion of various development stages including the final inspection of landscaping material.
- (2) The maintenance performance security, minus any costs incurred by the City of Appleton to conduct required maintenance, design, engineering, preparation, checking and review of designs, plans and specifications; supervision and inspection to ensure that construction is in compliance with applicable plans, specifications, regulations and ordinances; and legal, administrative and fiscal work undertaken to assure and implement such compliance, shall be released at such time that the responsibility for practice maintenance is passed on to another private entity, via an approved maintenance agreement, or to the City of Appleton.

(e) ***Permit requirements.*** All permits shall require the responsible party to:

- (1) Notify the City of Appleton no less than two (2) business days prior to commencing any land disturbing construction activity.
- (2) Notify the City of Appleton of completion of any BMPs within two (2) business days after their installation.
- (3) Obtain permission in writing from the City of Appleton prior to any modification pursuant to Sec. 24-35 of the erosion and sediment control plan.
- (4) Install all BMPs as identified in the approved erosion and sediment control plan.
- (5) Maintain and repair all road drainage systems, storm conveyance systems, BMPs and other facilities, both on and off site, identified in the approved erosion and sediment control plan.
- (6) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site erosion control log.
- (7) Inspect the BMPs within twenty-four (24) hours after each rain of 0.5 inches or more and at least once each week. Make needed repairs, install additional BMPs as necessary and document the findings of the inspections in an

erosion control log kept on site with the date of inspection, the name of the person conducting the inspection, a description of the present phase of the construction, a description of any repairs needed and documentation of the completed repairs.

- (8) *Winter dormant inspection requirements.* When a permitted construction site is shut down and dormant over the winter season, the applicant shall be exempt from weekly inspections as required in Sec. 24-30(e)(7) upon approval of the Director of Public Works. In order for a permitted site to be classified as winter dormant, the applicant must install erosion control measures to the satisfaction of the Director of Public Works, provide an inspection of these measures and then cease all construction activities except for minor maintenance activities. Once a site is classified as winter dormant by the Director of Public Works, inspections are only required within twenty-four (24) hours of a rain or thaw event as determined by the Director of Public Works. If at any time construction resumes or an erosion control failure occurs at the site, the site shall lose the winter dormant classification and the applicant must resume normal inspection.
- (9) *Documentation of inspection.* When required by the City of Appleton, erosion control inspections, including any repairs needed and/or actions taken at the site, shall be documented on the City of Appleton online erosion control self-reporting system. The permittee will be given access to this website, which contains documentation and forms for use in the erosion control inspections. Digital photographs of each of the erosion control practices and the site conditions shall be submitted and shall be required to meet the minimum inspection requirements of this section.
- (10) Allow the City of Appleton to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the plan. Keep a copy of the erosion and sediment control plan at the construction site.

(f) ***Permit conditions.*** Permits issued under this section may include conditions established by City of Appleton in addition to the requirements set forth in sub. (e), where needed to assure compliance with the performance standards in Sec. 24-25.

(g) ***Permit duration.*** Permits issued under this section shall be valid for a period of one (1) year, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance.

(h) ***Maintenance.*** The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization and final acceptance by the City of Appleton. Upon failure to perform the necessary maintenance of the erosion control practices, the City of Appleton retains the right to perform maintenance and/or repairs. The costs shall be assessed to the responsible party.

(i) All sites covered under this ordinance shall implement a long-term stormwater management plan per Wis. Adm. Code s. NR 216.47. For sites not subject to the Stormwater Management Standards and Planning Ordinance in Article VI of Chapter 20 of the Appleton

Municipal Code, a stormwater management acknowledgement form, accepting the long-term stormwater management requirements, shall be required prior to receiving an erosion and sediment control permit.

(Ord 180-04, §1, 1-1-05)

**Secs. 24-31 – 24-34. Reserved.**

**Sec. 24-35. Erosion and sediment control plan, statement and amendments.**

(a) *Erosion and sediment control plan.*

- (1) An erosion and sediment control plan shall be prepared and submitted to the City of Appleton Department of Public Works unless the project is required to also submit a site plan. If a site plan is required, the complete erosion and sediment control permit application and appropriate fee shall be submitted to the City of Appleton Community Development Department with the site plan submittal.
- (2) The complete erosion and sediment control plan shall be submitted in both hard copy and .pdf format.
- (3) The erosion and sediment control plan shall be prepared by a person who holds a registration issued by the Wisconsin Department of Regulation and Licensing in one (1) of the following categories:
  - a. Architect.
  - b. Engineer.
  - c. Land Surveyor.
  - d. Landscape Architect.
- (4) The erosion and sediment control plan shall be designed to meet the performance standards in Sec. 24-25 and other requirements of this ordinance.
- (5) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
  - a. The name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's contact at such firm. The application shall also include start and end dates for construction.
  - b. Description of the site and the nature of the land disturbing activity, Sites of one (1) acre or more shall include the limits of land

disturbance on a United States Geological Service 7.5 minute series topographic map.

- c. The intended sequence of land disturbing construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date when clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, establishment of permanent vegetation and removal of erosion and sediment controls.
  - d. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.
  - e. For sites less than one (1) acre of disturbed area, include BMPs meeting the provisions of Sec. 24-25(c)(2).
  - f. For sites with one (1) acre or more of disturbed area, provide calculations per WDNR Soil Loss Guidelines per Sec. 24-25(c)(3).
  - g. Location and description of the existing surface soil as well as subsoils, as indicated by USDA Natural Resource Conservation Service Soil Survey information.
  - h. Depth to groundwater, as indicated by USDA Natural Resources Conservation Department soil survey information.
  - i. Name of the immediate named receiving water.
- (6) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than one hundred (100) feet per inch and at a contour interval not to exceed two (2) feet.
- a. Existing topography, vegetative cover, natural and engineered drainage systems, roads, and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on the site and on adjacent lands shall be shown. Any identified 100-year flood plains, flood fringes, floodways, and flood storage areas shall also be shown.
  - b. Boundaries of the parcel and the construction site.
  - c. Drainage patterns and approximate slopes before and after major grading activities.
  - d. Areas of soil disturbance.
  - e. Location, dimensions and descriptions of major structural and non-structural controls identified in the erosion and sediment control plan.

- f. Location of areas where stabilization BMPs will be employed.
- g. Areas that will be vegetated following construction.
- h. Area(s) and location(s) of wetlands on the site and locations where stormwater is discharged to a surface water or wetland, within one-quarter mile downstream of the construction site.
- i. Water courses and wetlands that may affect or be affected by runoff from the site.
- j. On sites one (1) acre or larger an alphanumeric or equivalent grid overlying the entire construction site map.
- k. Topography and drainage network of enough of the contiguous properties to show runoff patterns onto, through, and from the site.
- l. Location, dimensions and description of utilities, structures and pavements.
- m. Area(s) used for infiltration of post-construction stormwater runoff.

(7) Each erosion and sediment control plan shall include a description of appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control BMPs will be implemented. The description of erosion and sediment control BMPs shall include, when appropriate, the following minimum requirements:

- a. Description of interim and permanent stabilization practices, including a BMP implementation schedule. Erosion and sediment control plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
- b. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the City of Appleton, structural measures shall be installed on upland soils.
- c. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
- d. Trapping of sediment in channelized flow.
- e. Staging land disturbing construction activities to limit exposed soil

areas subject to erosion.

- f. Protection of downslope drainage inlets where they occur.
- g. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
- h. Clean up of off-site sediment deposits.
- i. Proper disposal of building and waste materials, including but not limited to designated sites for concrete truck washout.
- j. Stabilization of drainage ways.
- k. Control of soil erosion from stockpiles.
- l. Installation of permanent stabilization practices within ten (10) days after final grading.
- m. Minimization of dust to the maximum extent practicable.

(Ord 187-11, §1, 1-1-12)

- (8) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel, as necessary, to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

(b) ***Erosion and sediment control plan statement.*** For each land disturbing construction site identified under Sec. 24-15, an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the City of Appleton. The control plan statement shall briefly describe the site, the development schedules and the best management practices that will be used to meet the requirements of the ordinance.

(c) ***Amendments.*** The applicant shall amend the plan if any of the following occur:

- (1) There is a change in design, construction, operation or maintenance at the site that has the reasonable potential for the discharge of pollutants and has not otherwise been addressed in the erosion and sediment control plan.
- (2) The actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.
- (3) The City of Appleton notifies the applicant of changes needed in the plan.

(Ord 180-04, §1, 1-1-05)

**Secs. 24-36 – 24-39. Reserved.**

**Sec. 24-40. Fee schedule.**

Fees for the erosion and sediment control permits will be in such amount as may be established by the City of Appleton Common Council from time to time by separate resolution. Fees will be on file with the City Clerk.  
(Ord 180-04, §1, 1-1-05)

**Secs. 24-41 – 24-44. Reserved.**

**Sec. 24-45. Site inspections.**

Whenever land disturbing activities are being carried out, the City of Appleton may enter the land pursuant to the provisions of §§66.0119(1), (2), and (3), Wis. Stats.  
(Ord 180-04, §1, 1-1-05; Ord 188-11, §1, 1-1-12)

**Secs. 24-46 – 24-49. Reserved.**

**Sec. 24-50. Enforcement and penalties.**

(a) Any land disturbing activity initiated after the effective date of this ordinance by any person, firm, association or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with these ordinance provisions.

(b) The City of Appleton shall notify the responsible party in writing of any non-complying activity. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action and additional enforcement action, which may be taken.

(c) Upon receipt of written notification from the City of Appleton, the responsible party shall make the necessary corrections within the time period established by the City of Appleton.

(d) If the violations issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the City of Appleton may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City of Appleton plus interest and legal costs shall be billed to the responsible party.

(e) The City of Appleton is authorized to post a stop work order on all land development or redevelopment activity in violation of this ordinance, or to request the Appleton City Attorney to obtain a cease and desist order.

(f) The City of Appleton may revoke a permit issued under this ordinance for noncompliance with ordinance provisions.

(g) Any permit revocation, stop work order or cease and desist order shall remain in effect unless retracted by the City of Appleton or by a court of competent jurisdiction.

(h) The City of Appleton is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the Appleton City Attorney for the commencement of further legal proceedings.

(i) Any person, firm, association or corporation who does not comply with the provisions of this ordinance shall be subject to the general penalty provisions of the Appleton Municipal Code

Sec. 1-16. Each day that the violation exists shall constitute a separate offense.

(j) Violations of this ordinance deemed to be a public nuisance shall be subject to abatement under Sec. 12-32 of the Appleton Municipal Code or compliance with this ordinance may be enforced by injunctive order in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture before resorting to injunctive proceedings.

(k) When the City of Appleton determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the erosion and sediment control plan submitted and approved pursuant to this ordinance, or has failed to comply with schedules set forth in said erosion and sediment control plan, the City of Appleton or a party designated by the City of Appleton may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The City of Appleton shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any performance or maintenance security posted pursuant to this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property.

(l) No building occupancy may be issued if there is noncompliance of any provision herein.

(m) No building permit may be issued in any subdivision when the subdivision is not in compliance with the requirements of this chapter.  
(Ord 180-04, §1, 1-1-05)

**Secs. 24-51 – 24-54. Reserved.**

### **Sec. 24-55. Appeals**

(a) The Utilities Committee of the Appleton Common Council shall hear and recommend to Council appeals where it is alleged that there is error in any order, decision or determination made by the City of Appleton in administering this ordinance except for cease and desist orders obtained under Sec. 24-50(e).

Upon appeal, the Committee may recommend to Council relief from the provisions of this ordinance that are not contrary to the public interest or provisions of state regulations, and where owing to special conditions a literal enforcement of this ordinance will result in unnecessary hardship.

(b) *Who may appeal.* Appeals to the Utilities Committee of the City of Appleton may be taken by any aggrieved person or by an officer, department, board or bureau of the City of Appleton affected by any decision of the City of Appleton. Written appeals shall be filed with the City Clerk. The Utilities Committee will make a recommendation within forty-five (45) calendar days of filing of the appeal. If the Utilities Committee takes no action within forty-five (45) calendar days, the appeal will automatically be sent to Council with a recommendation for approval. Either party may file a written request for a time extension with the City Clerk.  
(Ord 180-04, §1, 1-1-05)

**Secs. 24-56 – 24-59. Reserved.**

**Sec. 24-60. Severability.**

If any section or portion thereof shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and not affect the validity of all other provisions, sections or portion thereof of the ordinance which shall remain in full force and effect. (Ord 180-04, §1, 1-1-05)

**Section 2:** This ordinance shall be in full force and effect from and after its passage and publication.