

**ADOPTED: April 3, 2019**  
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Office of the City Clerk

**36-19**

**AN ORDINANCE AMENDING SECTION 19-5 OF CHAPTER 19 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO THE ERECTION OF OFFICIAL TRAFFIC SIGNS AND SIGNALS.**

(Municipal Services Committee 3/20/2019)

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

**Section 1:** That Section 19-5 of Chapter 19 of the Municipal Code of the City of Appleton, relating to the erection of official traffic signs and signals, is hereby created as follows:

**INSTALL STOP SIGNS ON:**

Washington Street at Bennett 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 Traffic Engineer is authorized and directed to erect and maintain the appropriate standard traffic signs, signals and markings, giving notice of the provisions of this Ordinance.

**37-19**

**AN ORDINANCE AMENDING SECTION 19-86 OF CHAPTER 19 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO PARKING RESTRICTIONS.**

(Municipal Services Committee 3/20/2019)

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

**Section 1:** That Section 19-86 of Chapter 19 of the Municipal Code of the City of Appleton, relating to parking restrictions, is hereby repealed:

*Ord. 18-78:* “15 minute parking from 9:00 a.m. to 9:00 p.m. on the east side of Wayne Street from 15' north of the north right-of-way line of Wisconsin Avenue extending north for 63'.)”

**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 Traffic Engineer is authorized and directed to make the necessary changes in the Parking District Map in accordance with this Ordinance.

### **38-19**

**AN ORDINANCE AMENDING SECTION 19-86 OF CHAPTER 19 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO PARKING RESTRICTIONS.**  
(Municipal Services Committee 3/20/2019)

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

**Section 1:** That Section 19-86 of Chapter 19 of the Municipal Code of the City of Appleton, relating to parking restrictions, is hereby repealed:

*Ord. 31-73:* “Parking be restricted to two hours on both sides of North Bennett Street from West College Avenue to West Franklin Street between the hours of 7:00 a.m. to 7:00 p.m., Sundays and Holidays excepted.”

**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 Traffic Engineer is authorized and directed to make the necessary changes in the Parking District Map in accordance with this Ordinance.

### **39-19**

**AN ORDINANCE AMENDING SECTION 19-5 OF CHAPTER 19 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO THE ERECTION OF OFFICIAL TRAFFIC SIGNS AND SIGNALS.**  
(Municipal Services Committee 3/20/2019)

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

**Section 1:** That Section 19-5 of Chapter 19 of the Municipal Code of the City of Appleton, relating to the erection of official traffic signs and signals, is hereby created as follows:

**INSTALL ALL-WAY STOP CONTROL:**

Cedar Street / Mason Street Intersection

**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 Traffic Engineer is authorized and directed to erect and maintain the appropriate standard traffic signs, signals and markings, giving notice of the provisions of this Ordinance.

**40-19**

**AN ORDINANCE AMENDING SECTION 19-86 OF CHAPTER 19 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO PARKING RESTRICTIONS.**

(Municipal Services Committee 3/20/2019)

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

**Section 1:** That Section 19-86 of Chapter 19 of the Municipal Code of the City of Appleton, relating to parking restrictions, is hereby created as follows. This ordinance supersedes and repeals any conflicting ordinance regarding parking in the designated area.

Parking be prohibited on Evergreen Drive from Haymeadow Avenue to 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 Traffic Engineer is authorized and directed to make the necessary changes in the Parking District Map in accordance with this Ordinance.

41-19

AN ORDINANCE CREATING DIVISION 2 OF CHAPTER 16 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY (SMALL CELL).

(Municipal Services Committee 3/20/2019)

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

**Section 1:** That Division 2 of Chapter 16 of the Municipal Code of the City of Appleton, relating to wireless telecommunications facilities in the right-of-way (small cell), is hereby created to read as follows:

**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.

#### **Sec. 16-136. Purpose.**

In the exercise of its police powers, the City has priority over all other uses of the right-of-way. Notwithstanding other Right-of-Way Management requirements of this Article, the purpose of this Chapter is to provide the City with a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the City's obligation to promote the public health, safety, and welfare; to manage the right-of-way; and to ensure that the public's use is not obstructed or incommoded by the use of the right-of-way for the placement of wireless telecommunications facilities. The City recognizes the

importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the City. The City also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Wis. Stat. § 182.017, and Wis. Stat. § 196.58, and this Chapter shall be interpreted consistent with those provisions.

**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 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.

**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.

**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.

**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.

#### **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.

#### **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.

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

### **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.

### **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.

**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.
- (2) 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.

**Section 2: This ordinance shall be in full force and effect from and after its passage and publication. 42-19**

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 7 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO SMOKE FREE INDOOR AIR.

(Board of Health – 3/20/2019)

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

**Section 1:** That Article IV of Chapter 7 of the Municipal Code of the City of Appleton, relating to smoke free indoor air, is hereby amended to read as follows:

**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 from 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 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 inhaling, exhaling, burning, or carrying any lighted, heated or ignited cigar, cigarettes, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.

**Sports arena** means sports pavilions, stadiums, gymnasiums, 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.

(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.

(ga) ***Exceptions related to electronic smoking:***

- (1) The restrictions of this section relating to electronic smoking, electronic smoking device and electronic smoking device paraphernalia shall not apply

to businesses which do all of the following:

- a. Identification is checked at the entrance;
- b. No one under 18 years of age is permitted to enter the business;
- c. Sampling is permitted exclusively for non-combustible products.

(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)

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