

AGENDA
COMMITTEE OF THE WHOLE MEETING
CITY OF BERLIN
TUESDAY, JULY 10, 2018, 7:00 PM
CITY HALL COUNCIL CHAMBERS

1. Roll Call.
2. General Public Comments. Registration card required (located at podium in Council Chamber).
3. 2017 Audit Presentation. RECOMMENDATION: Listen to Hawkins Ash audit presentation and recommend to Common Council to accept the 2017 audit and place on file.
4. 2019-2023 Garbage and Recycling Request for Proposals. RECOMMENDATION: Discuss and action as appropriate.
5. P&L Insurance Renewal. RECOMMENDATION: Recommend to Common Council to accept and approve the renewal quote of \$203,319 from EMC Insurance for Property and Liability Insurance for policy year 7/23/18–7/23/19.
6. League of WI Municipalities Dark Store Elimination Campaign. RECOMMENDATION: Discuss League of Wisconsin Municipalities Dark Store Elimination Campaign and action as appropriate.
7. Motion to convene into closed session pursuant to Sec 19.85(1)(e), of the WI Statutes, to deliberate or negotiate the purchase of public property, investment of public funds or conduct other specified public business, whenever competitive or bargaining reasons require a closed session. (*EMS Contract with ThedaCare-CHN.*)
8. Reconvene into open session and take appropriate action as a result of closed session discussion.
9. Adjourn.

In adherence to the City of Berlin Public Meeting Participation Policy, public participation will be allowed under each agenda item at the discretion of the presiding officer, with the exception of the Consent Agenda. Attendees must register their intention to participate on either a general comments section or a specific agenda item prior to the meeting by filling out a Registration Card, which can be obtained from the Internet, City Clerk's office or in the City Hall Council Chambers at the podium. Registration Cards should be turned in prior to the meeting to either the presiding officer or City Clerk.

DATE: July 4, 2018

TO: Committee of the Whole

FROM: Jodie Olson

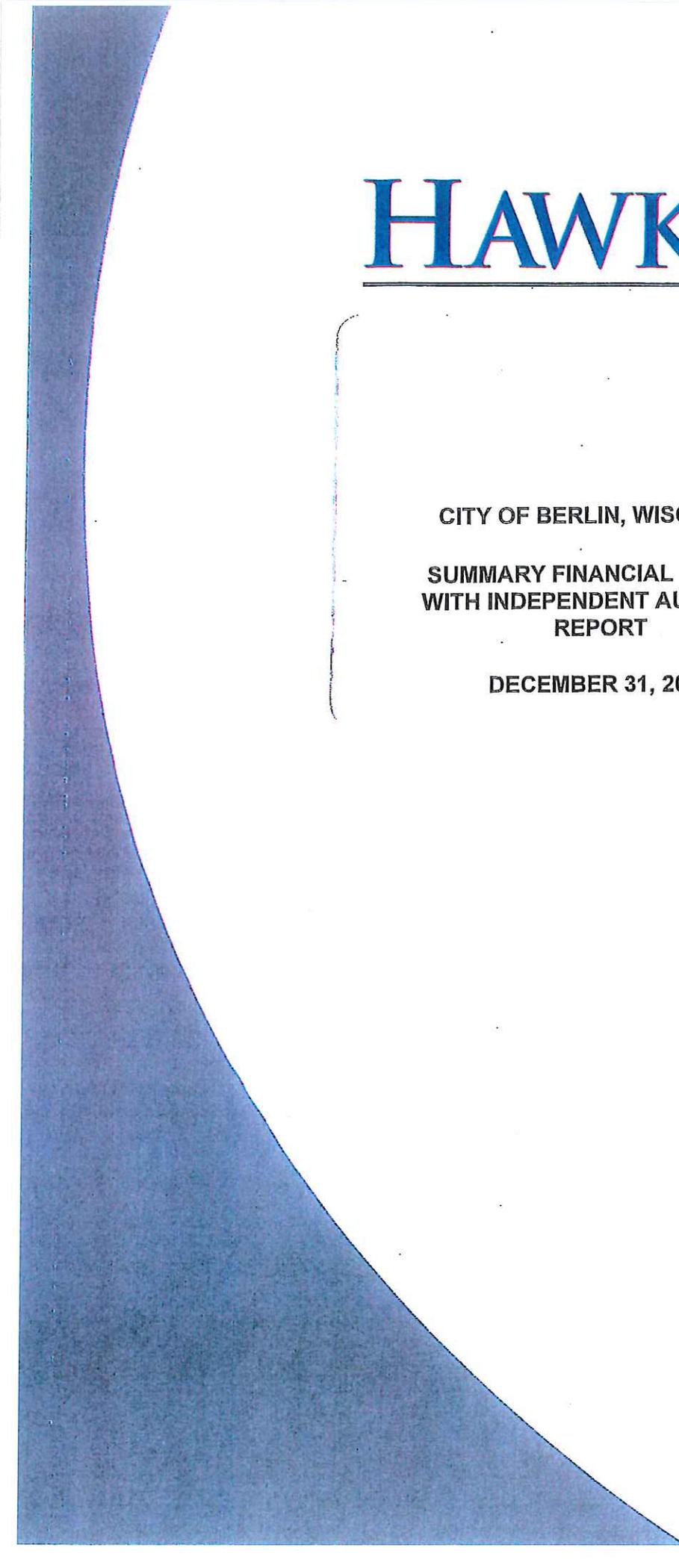
RE: 2017 Audit

BACKGROUND: Kevin Behnke, our lead auditor from Hawkins Ash, will present the 2017 audit results to the committee. Kevin will give you a brief presentation of the audit highlights and answer any questions you may have. The audit process went well, and we have again received an unqualified, clean opinion on our books, which is the highest opinion that can be achieved in an audit. Overall, the city finances are stable, general fund balance is in a good position, and all departments did a good job holding down expenses.

TID advances decreased by \$160k to \$1.5M due to the TID#10 payback. As of 12/31/17, there were three TIDs with advances owed to the general fund: TID# 10-NBP (\$1.33M), TID #9-North Riverblock (\$123K), and TID #01E (\$23K). The only TID at this point that is drawing money from the General Fund for advances is TID#01E, which draws approximately \$4.6k annually. This should continue thru 2023, for further draws totaling around \$30k. TID#9 & 10 are paying back advances at this point.

Attached is an audit summary prepared by the auditors. If you would like to review the entire audit document, please feel free to contact me. If you have specific or detailed questions, please feel free to contact me prior to the meeting. Depending on your questions, I may need to do some research to get you the answer.

RECOMMENDATION: Listen to presentation by Hawkins Ash on 2017 audit and accept and place 2017 audit on file.



HAWKINS | ASH

CPAs

CITY OF BERLIN, WISCONSIN

**SUMMARY FINANCIAL REPORT
WITH INDEPENDENT AUDITORS'
REPORT**

DECEMBER 31, 2017

CITY OF BERLIN, WISCONSIN
SUMMARY FINANCIAL REPORT
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DECEMBER 31, 2017

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INDEPENDENT AUDITORS' REPORT

To the City Council
City of Berlin, Wisconsin

The accompanying summary financial statements of City of Berlin, Wisconsin as of and for the years ended December 31, 2017 and 2016, as listed in the table of contents are derived from the audited basic financial statements of the governmental activities, the business-type activities each major fund, and the aggregate remaining fund information of City of Berlin, Wisconsin as of and for the years ended December 31, 2017 and 2016, and the related notes, which collectively comprise the City's basic financial statements. We expressed unmodified audit opinions on those audited financial statements in our reports dated April 4, 2018 and April 25, 2017.

The summary financial statements do not contain all the disclosures required by the accounting principles generally accepted in the United States of America. Reading the summary financial statements, therefore, is not a substitute for reading the audited financial statements of City of Berlin, Wisconsin.

Management's Responsibility for the Summary Financial Statements

Management is responsible for the preparation of the summary financial statements on the same basis of accounting as the fund financial statements of the audited financial statements.

Auditors' Responsibility

Our responsibility is to express an opinion about whether the summary financial statements are consistent, in all material respects, with the audited financial statements based on our procedures, which were conducted in accordance with auditing standards generally accepted in the United States of America. The procedures consisted principally of comparing the summary financial statements with the related information in the audited financial statements from which the summary financial statements have been derived, and evaluating whether the summary financial statements are prepared in accordance with the basis described above.

Opinion

In our opinion, the summary financial statements of City of Berlin, Wisconsin as of and for the years ended December 31, 2017 and 2016 referred to above are consistent, in all material respects, with the audited financial statements from which they have been derived, on the basis described above.

HAWKINS ASH CPAS, LLP

Hawkins Ash CPAs, LLP

Manitowoc, Wisconsin
April 4, 2018

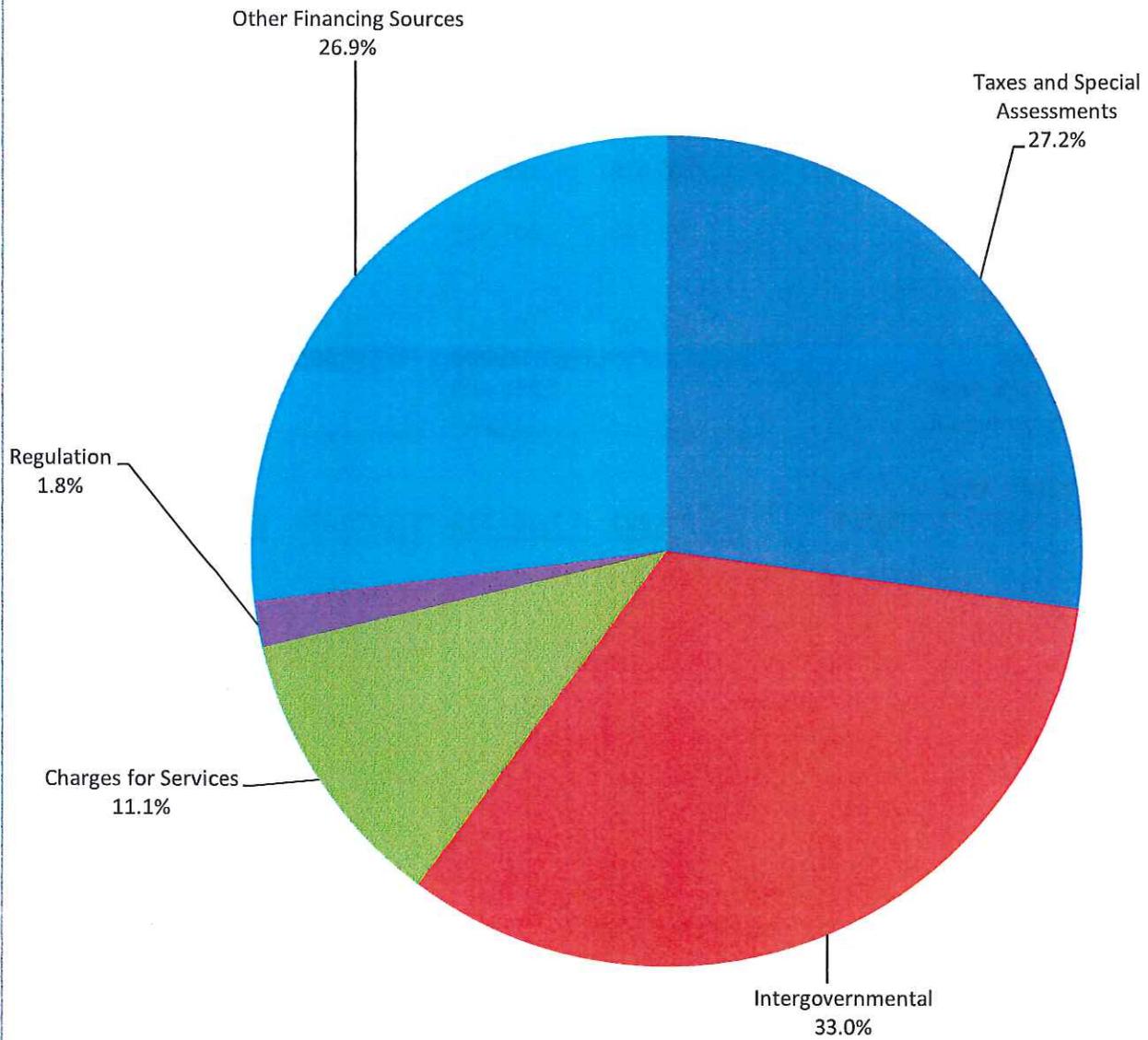
CITY OF BERLIN, WISCONSIN
COMBINED BALANCE SHEET
DECEMBER 31, 2017

	DECEMBER 31,	
	2017	2016
ASSETS		
Cash and cash equivalents	\$ 5,716,073	\$ 4,455,493
Investments	8,849,215	8,882,767
Receivables		
Taxes	4,314,251	4,314,057
Accounts and other	1,092,941	1,052,936
Special assessments	138,355	171,255
Loan	2,249,682	2,069,771
Due from other funds	96,853	667,314
Due from other governments	89,544	60,498
Inventories	35,071	35,261
Restricted Assets		
Cash and investments	1,759,226	1,746,203
Accrued interest	7,821	6,784
Advances to other funds	1,507,113	1,735,890
Capital assets, less accumulated depreciation	10,955,776	11,481,232
TOTAL ASSETS	36,811,921	36,679,461
DEFERRED OUTFLOWS OF RESOURCES		
Wisconsin Retirement System pension	174,097	223,343
TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES	36,986,018	36,902,804
LIABILITIES		
Accounts payable	237,111	286,339
Accrued liabilities		
Payroll	158,275	188,723
Other	83,526	49,570
Due to other funds	96,853	667,314
Due to other governments	4,052,366	4,180,861
Unearned revenue - other	2,276,782	2,090,701
Advances from other funds	1,507,113	1,735,890
Payable from restricted assets		
Accrued revenue bond interest	4,139	4,928
Current portion of revenue bonds	234,568	223,501
Noncurrent portion of long-term debt	907,663	1,162,303
TOTAL LIABILITIES	9,558,396	10,590,130
DEFERRED INFLOWS OF RESOURCES		
Unavailable revenue - tax roll	2,379,597	2,542,473
Unavailable revenue - special assessments	78,711	82,143
Wisconsin Retirement System pension	82,201	84,117
TOTAL DEFERRED INFLOWS OF RESOURCES	2,540,509	2,708,733
EQUITY		
Net position	17,782,251	17,165,222
General fund	4,355,084	3,862,289
Other funds	2,749,778	2,576,430
TOTAL EQUITY	24,887,113	23,603,941
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND EQUITY	\$ 36,986,018	\$ 36,902,804

CITY OF BERLIN, WISCONSIN
GENERAL FUND REVENUE
YEAR ENDED DECEMBER 31, 2017

	<u>2017</u>		<u>2016</u>	<u>CHANGE FROM</u>	
	<u>BUDGET</u>	<u>ACTUAL</u>	<u>ACTUAL</u>	<u>PRIOR YEAR</u>	
REVENUE					
Taxes	\$ 2,062,201	\$ 2,066,992	\$ 2,024,888	\$ 42,104	2%
Special assessments	-	3,489	121	3,368	2783%
Intergovernmental					
Federal, state and local government	2,480,272	2,513,196	2,478,020	35,176	1%
Regulation					
Licenses and permits	100,442	93,262	103,131	(9,869)	-10%
Fines, forfeits, and penalties	44,650	43,754	40,286	3,468	9%
Charges for services					
Public charges for services	984,900	654,094	660,036	(5,942)	-1%
Intergovernmental charges for services	195,315	188,923	196,527	(7,604)	-4%
Miscellaneous	93,143	807,535	267,316	540,219	202%
Other Financing Sources					
Operating transfers in	222,000	196,642	209,144	(12,502)	-6%
Sale of capital assets	-	5,900	225	5,675	2522%
Issuance of long-term debt	-	1,040,689	-	1,040,689	N/A
Premium on long-term debt	-	37,056	-	37,056	N/A
TOTAL REVENUE AND OTHER FINANCING SOURCES	<u>\$ 6,182,923</u>	<u>\$ 7,651,532</u>	<u>\$ 5,979,694</u>	<u>\$ 1,671,838</u>	28%

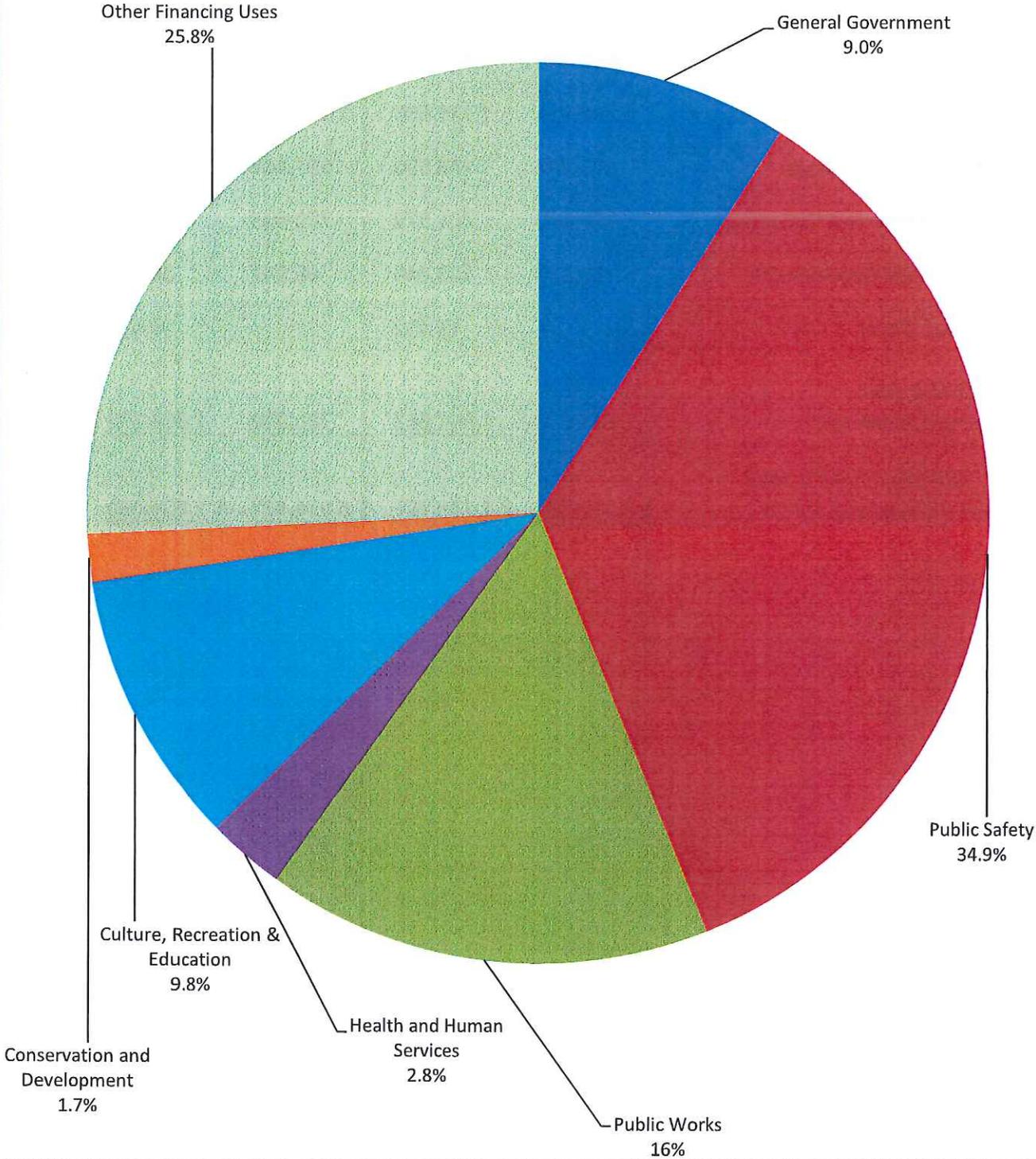
**CITY OF BERLIN, WISCONSIN
2017 GENERAL FUND REVENUE**



CITY OF BERLIN, WISCONSIN
GENERAL FUND EXPENDITURES
YEAR ENDED DECEMBER 31, 2017

	<u>2017</u>		<u>2016</u>	<u>CHANGE FROM</u>	
	<u>BUDGET</u>	<u>ACTUAL</u>	<u>ACTUAL</u>	<u>PRIOR YEAR</u>	
EXPENDITURES					
General Government	\$ 608,411	\$ 639,982	\$ 592,438	\$ 47,544	8%
Public Safety	2,592,185	2,494,507	2,411,009	83,498	3%
Public Works	1,236,714	1,139,685	1,152,220	(12,535)	-1%
Health and Human Services	220,799	198,530	201,888	(3,358)	-2%
Culture, Recreation and Education	799,620	701,579	700,865	714	0%
Conservation and Development	106,339	123,340	92,947	30,393	33%
Debt Service - Other	-	19,432	-	19,432	N/A
Other financing uses					
Operating transfer out	<u>801,512</u>	<u>1,841,682</u>	<u>783,310</u>	<u>1,058,372</u>	135%
TOTAL EXPENDITURES AND OTHER FINANCING USES	<u>\$ 6,365,580</u>	<u>\$ 7,158,737</u>	<u>\$ 5,934,677</u>	<u>\$ 1,224,060</u>	21%

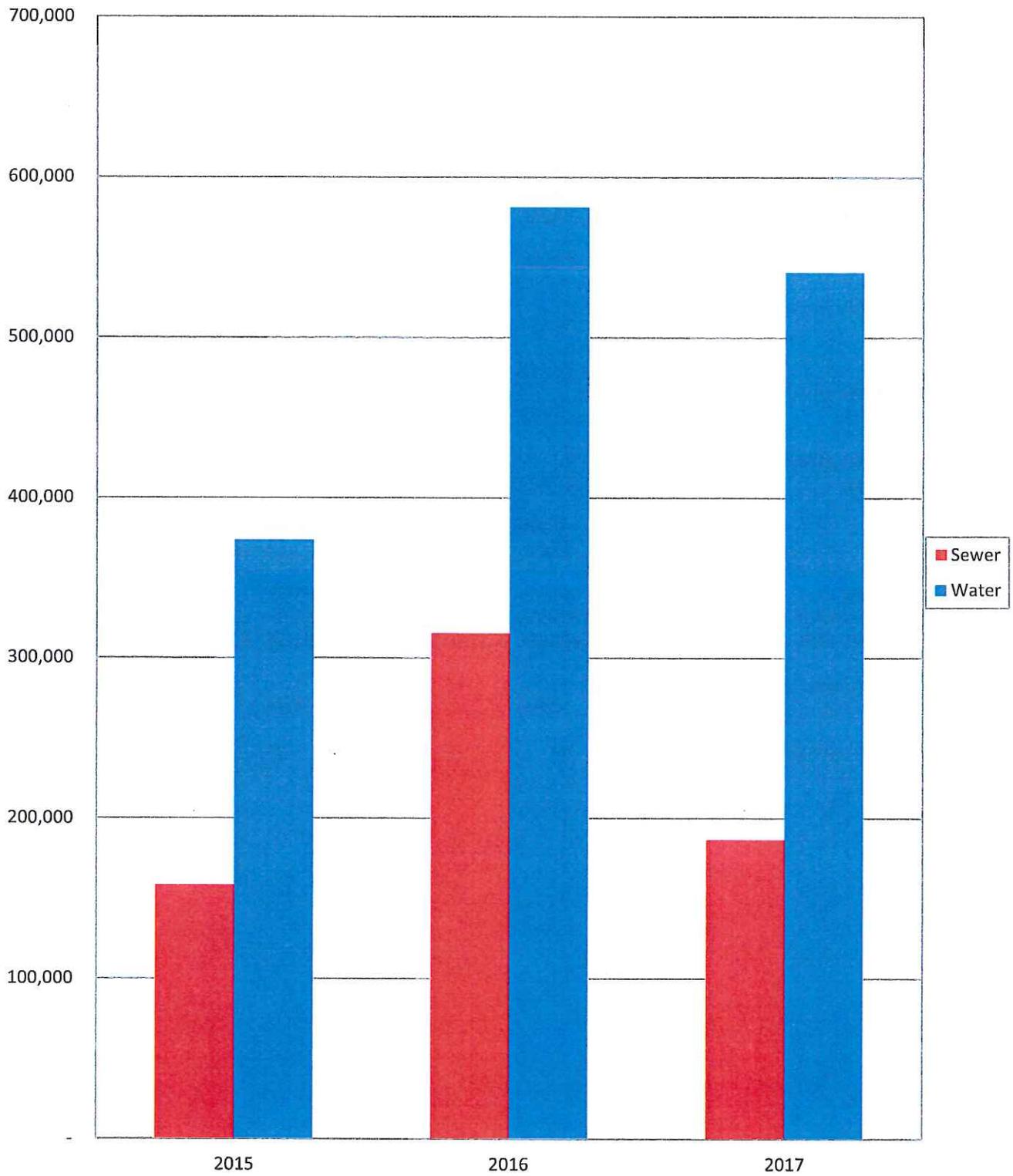
**CITY OF BERLIN, WISCONSIN
2017 GENERAL FUND EXPENDITURES**



CITY OF BERLIN, WISCONSIN
STATEMENT OF REVENUE, EXPENSES AND CHANGES IN NET POSITION
WATER AND SEWER UTILITY

	YEAR ENDED DECEMBER 31,							
	SEWER				WATER			
	2017	2016	CHANGE FROM PRIOR YEAR	%	2017	2016	CHANGE FROM PRIOR YEAR	%
OPERATING REVENUE								
Charges for services	\$ 1,288,454	\$ 1,312,087	\$ (23,633)	-2%	\$ 1,267,600	\$ 1,268,417	\$ (817)	0%
OPERATING EXPENSES								
Operations and maintenance	487,151	420,657	66,494	16%	269,703	269,307	396	0%
General and administrative	195,422	160,691	34,731	22%	165,126	128,257	36,869	29%
Depreciation	401,751	399,172	2,579	1%	279,421	277,610	1,811	1%
Taxes	17,387	16,361	1,026	6%	12,631	12,203	428	4%
TOTAL OPERATING EXPENSES	<u>1,101,711</u>	<u>996,881</u>	<u>104,830</u>	11%	<u>726,881</u>	<u>687,377</u>	<u>39,504</u>	6%
OPERATING INCOME	<u>186,743</u>	<u>315,206</u>	<u>(128,463)</u>	-41%	<u>540,719</u>	<u>581,040</u>	<u>(40,321)</u>	-7%
NONOPERATING REVENUE (EXPENSES)								
Interest income	41,254	28,177	13,077	46%	45,003	34,127	10,876	32%
Miscellaneous revenue	-	-	-		12,216	-	12,216	
Interest expense	(7,144)	(10,845)	(3,701)	-34%	(25,118)	(29,857)	(4,739)	-16%
TOTAL NONOPERATING REVENUE (EXPENSES)	<u>34,110</u>	<u>17,332</u>	<u>16,778</u>	97%	<u>32,101</u>	<u>4,270</u>	<u>27,831</u>	-652%
INCOME BEFORE TRANSFERS AND CONTRIBUTIONS	220,853	332,538	(111,685)	-34%	572,820	585,310	(12,490)	-2%
Operating transfers out	(2,642)	(2,868)	(226)	-8%	(174,000)	(186,276)	(12,276)	-7%
Capital contributions	-	37,863	(37,863)	100%	-	-	-	N/A
CHANGE IN NET POSITION	218,211	367,533	(149,322)	-41%	398,820	399,034	(214)	0%
NET POSITION AT BEGINNING OF YEAR	<u>7,007,586</u>	<u>6,640,053</u>	<u>367,533</u>	6%	<u>10,157,634</u>	<u>9,758,600</u>	<u>399,034</u>	4%
NET POSITION AT END OF YEAR	<u>\$ 7,225,797</u>	<u>\$ 7,007,586</u>	<u>\$ 218,211</u>	3%	<u>\$ 10,556,454</u>	<u>\$ 10,157,634</u>	<u>\$ 398,820</u>	4%
Operating rate of return on average capital assets and inventory	4.80%	7.68%			7.34%	7.69%		
Public Service Commission return on rate base	N/A	N/A			7.37%	7.58%		

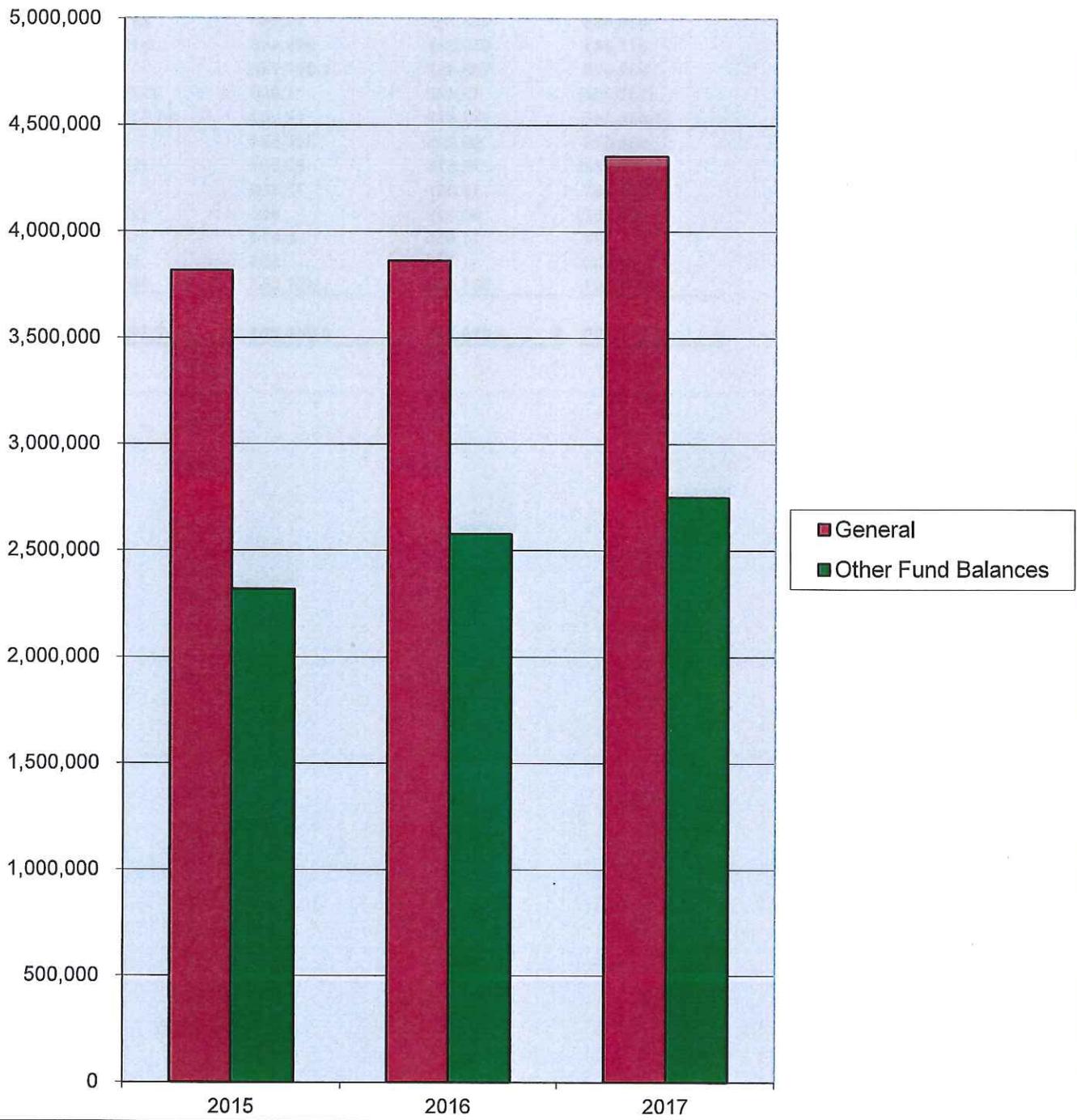
**CITY OF BERLIN, WISCONSIN
2015-2017 WATER AND SEWER UTILITY
OPERATING INCOME**



CITY OF BERLIN, WISCONSIN
STATEMENT OF REVENUE, EXPENSES AND CHANGES IN FUND BALANCE - OTHER FUNDS

	BALANCE JANUARY 1, 2017	REVENUE	EXPENDITURES	BALANCE DECEMBER 31, 2017
CDBG Housing Grant	\$ 75,394	\$ 51,436	\$ 21,748	\$ 105,082
Revolving Loan	417,213	93,860	300,469	210,604
Debt Service	121,159	1,715,069	566,940	1,269,288
Senior Special Account	41,911	71,856	52,772	60,995
Cemetery Expendable Trust	504,620	11,487	3,408	512,699
Library Expendable Trust	818,483	133,758	10,680	941,561
Capital Projects	577,842	850,289	909,443	518,688
TID #7 - Southeast Industrial Park	932,326	155,462	1,087,788	-
TID #9 - North River Block	(133,754)	12,470	1,995	(123,279)
TID #10 - North Industrial Park	(1,488,148)	172,622	17,287	(1,332,813)
TID #11 - Badger Mining	188,629	60,905	249,534	-
TID #01E - RAJ	(17,984)	78,574	83,607	(23,017)
TID #02E - David White Property	53,861	19,007	72,468	400
TID #14 - East Side Apartment Complex	(95,257)	68,329	463	(27,391)
TID #15 - Downtown	101,274	21,954	8,674	114,554
Library Endowment Principal	57,630	528	528	57,630
Internal Service	421,231	501,103	457,557	464,777
TOTAL	\$ 2,576,430	\$ 4,018,709	\$ 3,845,361	\$ 2,749,778

**CITY OF BERLIN, WISCONSIN
2015-2017 FUND EQUITY**



CITY OF BERLIN, WISCONSIN
OTHER FINANCIAL INFORMATION
DECEMBER 31, 2017

Independent Auditors' Report - An unmodified "clean" auditors' opinion was issued on the City's financial statements. Our opinion states that we found your statements present fairly, in all material respects, the financial activity of the City.

Cash and Investments - The City's cash and investments increased \$1,240,051 during 2017.

Fixed Assets - The City spent \$912,673 on general fixed assets and \$155,716 on sewer and water fixed assets during 2017.

Long-Term Debt - At year end, \$5,731,041 was outstanding of general obligation debt which is below the City's state statute debt limit of \$13,548,400. There was also \$987,480 of sewer and water debt and \$1,095,647 of employee benefits outstanding as of December 31, 2017.

Auditors' Reports on Compliance and Internal Control Over Financial Reporting - These reports conclude that the City's internal controls appear adequate for a City of your size.

Communications With Those Charged With Governance - This report discusses the scope and limitations of a financial audit and communicates any problems we had during the audit process. No significant problems were identified.

DATE: 6/19/2018

TO: Honorable Mayor and Committee of the Whole

FROM: Scott Zabel

RE: 2019-2023 Garbage and Recycling Request For Proposals

BACKGROUND: The contract for the weekly curbside pickup for garbage and recycling which the city currently has with Advanced Disposal ends on December 31st, 2018. With the permission of the City Council, city staff would like to send out RFP's to Waste Management and Advanced Disposal for discussion and consideration well before budget discussion. City staff would also like to know if there are any changes that the council would like to make in regards to the weekly curbside pickup and the annual spring cleanup. I have included the cost for the 2018 spring cleanup which you can compare to 2017 which was a typical spring cleanup.

RECCOMENDATION: Direct city staff to send out RFP'S for the weekly curbside pickup for a garbage and recycling contract effective on January 1st, 2019. Discussion and action as appropriate for any changes to the existing contract and the annual spring cleanup.

2017 RECYCLE GRANT FINAL TOTALS

SPRING CLEANUP

RUBBISH 224 HRS. 76 LOADS 94.54 TONS
BRUSH 160 HRS. 52 LOADS 51.3 TONS
MAN HRS. \$31.80 X 384=\$12,211.20

LOADER HRS.58 TRUCK HRS. 149
LOADER HRS. 45 TRUCK HRS. 116
\$47.40 X 103=\$4,882.20 \$24.66 X 265=\$6534.90

\$23,628.30

TIPPING \$5,030.52

TRUCK&SUCKER 40HRS.

\$28,658.82

SPRING LEAVES 120 HRS. 8 LOADS 22 TONS

2018 RECYCLE GRANT TOTALS

SPRING CLEANUP

RUBBISH	440 HRS.	154 LOADS	156 TON	LOADER HRS.190	TRUCK HRS.310	
BRUSH	200 HRS.	86 LOADS	85 TON	LOADER HRS.50	TRUCK HRS. 150	
MAN HRS.	\$32.58 X 640			\$48.90 X 240	=\$11,736.00	\$25.06 X 460=\$11,527.60
						TIPPING
<u>SPRING LEAVES</u>	126 HRS.	9 LOADS	24.75 TON		TRUCK AND SUCKER HRS. 42	TOTAL
						\$44,114.60
						\$8,169.88
						\$52,284.48

DATE: July 10, 2018

TO: Mayor and Common Council

FROM: Jodie Olson

RE: Property and Liability Insurance Renewal

BACKGROUND: Our annual property and liability insurance renewal is due 7/23/18. The City currently carries \$6 million in coverage through EMC Insurance with the Diedrich Agency here in Berlin. The 7/23/17-7/23/18 premium paid to EMC was \$214,121 with a 17% workman's comp dividend. EMC quoted a renewal for 7/23/18-7/23/19 at \$203,319 with a 17% flat Workman's Comp dividend. Our Workman's Compensation modification factor decreased from a 1.09 to a 1.05 from last year. The Workman's Compensation quoted line item premium is set by the state, so looking at other carriers will not do us any good. Travelers Insurance also quoted at \$204,630.

Approximately 20% of the insurance bill is passed onto the Water and Sewer Utility.

My recommendation is to renew with EMC thru our local agent. We have been with EMC since 2006, and I have been very pleased with EMC's handling of our claims and am extremely satisfied with the service received from our local Diedrich Agency.

RECOMMENDATION: Recommend to Common Council to accept and approve the renewal quote of \$203,319 from EMC Insurance for Property and Liability Insurance for policy year 7/23/18-7/23/19.

City of Berlin

PREMIUM SUMMARY

<u>DESCRIPTION</u>	<u>2017-18 PREMIUM</u>	<u>2018-19 PREMIUM</u>
Property	\$44,819.00	\$46,434.00
General Liability	\$10,734.00	\$11,383.00*
Crime	\$349.00	\$349.00
Inland Marine	\$1,866.00	\$1,866.00
Automobile	\$25,428.00	\$27,593.00
Linebacker	\$4,040.00	\$4,116.00
Data Compromise/Cyber Coverage	\$942.00	\$992.00
Law Enforcement Liability	\$2,895.00	\$3,029.00
Umbrella	\$6,136.00	\$6,166.00
<i>Sub-Total</i>	<i>\$97,209.00</i>	<i>\$101,928.00</i>
Workers Compensation	\$116,912.00	\$101,391.00
Total	\$214,121.00	\$203,319.00

*Includes abuse or molestation coverage (\$165 included in premium above)

Option – Increase umbrella limits from \$4,000,000/\$4,000,000 to \$4,000,000/\$8,000,000 - \$599 annual additional premium

Option – Increase the medical payments limit on the hired/non-owned auto from \$1,000 to \$10,000 - \$11 annual additional premium



City of Berlin Premium Summary Page 2

	2017-18	2018-19
Property –		
Blanket building, business personal property and property in the open	\$49,798,323	\$49,928,818
General liability –		
Sewer miles	61	61
Town liability population	5,524	5,524
Employee benefit employees	164	164
Water companies payroll	\$218,007	\$218,007
Swimming Pool	1	1
Emergency Medical Services	94	94
Worker's compensation –		
Code 5507 – Street or Road Construction	If Any	If Any
Code 7720 – Police Officers	\$830,000	\$830,000
Code 8810 – Clerical	\$283,000	\$283,000
Code 8810 – Public library	\$186,000	\$186,000
Code 9412 – Municipal operations	\$893,000	\$893,000
Code 7710 – Civil defense workers	\$500,000	\$500,000
Code 7520 – Waterworks operations	\$218,007	\$218,007
Code 7709 – Fire Department-Volunteer	9,000	9,000
Experience modification	1.09	1.05
Dividend	17% Flat	15% Flat



DATE: July 4, 2018

TO: Committee of the Whole

FROM: Jodie Olson

RE: League of Wisconsin Municipalities-Dark Store Elimination Campaign

BACKGROUND: We received the attached request from the League asking for financial support in the campaign to combat the Dark Store and Walgreens loopholes in WI tax law. They are requesting a minimum contribution of \$1,200 from each community to help fight the cause. Attached is a brief on the issue.

There has been a legislative Dark Store Study Committee selected for this issue. There is a great deal of information on this issue on the League website at www.lwm-info.org. Many municipalities are passing resolutions urging the legislature to close these loopholes to avoid shifting the tax burden from commercial to residential. If committee members would like, I can prepare a resolution and bring it forth to the council next week.

RECOMMENDATION: Discuss League of Wisconsin Municipalities-Dark Store Elimination Campaign and action as appropriate.



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

June 22, 2018

Wisconsin Mayors, City Managers,
Village Presidents and Administrators

Good afternoon:

This letter is being sent on behalf of the Board of Directors of the League of Wisconsin Municipalities, asking for your city or village's support for a campaign to keep the Dark Store and Walgreens tax shift in front of candidates for the Governorship and Legislature this year.

As you know, the Dark Store and Walgreens loopholes in Wisconsin tax law are slowly but surely shifting the share of property taxes paid by commercial properties onto home owners, renters, independent businesses and manufacturers. We estimate that communities affected by these shifts will see property tax bills for homeowners and others increase by an average of 8%; significantly more in some communities.

The League worked with a huge bipartisan majority within the Legislature to craft a fair solution to this tax scheme. Unfortunately, we were not able to convince legislative leaders to put the bills up for a vote. After reviewing the impact of this tax shift on the residents and independent businesses of Wisconsin, the League Board has directed us to implement an issue advocacy campaign to ensure that this problem is discussed and addressed by the Legislature. You are a key part of that effort.

Your city or village has already started to receive regular updates on this challenge and will also receive a toolkit of resources that you can use at the local level. Those tools will include an explanatory video that can be shown at municipal meetings and meetings of civic organizations. The League, in collaboration with the Wisconsin Counties Association, has drafted language that you can use to put this to an advisory vote in August or November. We will also provide you with background information that will be helpful when legislative and gubernatorial candidates ask about issues impacting your community.

We can't do this without your help. The Board has authorized a withdrawal of \$75,000 from League reserves for this effort. We are partnering with the Wisconsin Counties Association, Wisconsin Towns Association, League of Wisconsin Municipal Mutual Insurance and others. But we also need your support. We realize that resources are limited, but please consider contributing what seems reasonable, based on the impact that this tax shift will have on your community, and what it will cost to fight the steady stream of big box and Walgreens tax appeals that have begun throughout the state.

(continued)

YOUR VOICE. YOUR WISCONSIN.



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

Issue Briefing: Dark Store and Walgreens Decision Tax Shift

Court rulings giving tax cuts to chain stores result in tax increases for homeowners

Property taxes for homeowners and main street businesses are increasing in Wisconsin as national retailers pay less. A carefully-orchestrated wave of 100s of lawsuits in Wisconsin is forcing assessors to slash the market value of thriving national retail stores, shifting their tax burden to local mom and pop shops and to their home-owning customers. If the Legislature fails to close these loopholes, we estimate that millions of dollars in property taxes will shift from large commercial properties to homeowners and other taxpayers over the next few years.

The table below shows what assessors estimate the tax increases that homeowners in select communities will experience when the Dark Store strategy and Walgreens' decision is fully implemented. Calculations are based on amount of national chain retail, 2015 mill rates, and median home values:

City	Estimated Tax Increase	Average increase per home per year
Brockfield	5%	\$233.50
Hudson	9%	\$374.58
La Crosse	7%	\$197.12
Oconomowoc	8%	\$360.96
Pleasant Prairie	17%	\$892.50
Wauwatosa	7%	\$382.12
West Bend	8%	\$253.89

This is not a new problem, nor is it exclusive to Wisconsin. Wisconsin is merely the latest state to experience this coordinated legal attack on in-state taxpayers. Indiana and Michigan have already experienced it. In Indiana, the Legislature promptly slammed the door on this court-created loophole. A similar legislative fix is pending in Michigan. Wisconsin must do the same.

Loophole #1: It's just a big empty box. Tax attorneys for Target, Meijer, and other big box chains are using what is known as the "**Dark Store Theory**" to argue that the assessed value of a new, thriving store should be based on the value of vacant or abandoned buildings of similar size. They argue that regardless of their new location or how updated their building is the value for 'property tax purposes' should be based on the value of the buildings and locations they abandoned prior to moving into the new store at their new location.

Real World Example from Wauwatosa: The Lowe's store at 12000 W. Burleigh St. is currently challenging the city's assessed valuation. The City assessed the property at \$13.6 million. The City's expert believes the market value is actually \$17.7 million. Lowe's argues the property's current value is \$7.1 million of which \$3 million is attributed to land. Yet, the land was purchased in 2007 for \$9,012,800. Lowe's built a 140,000 square foot building in 2006 for approximately \$7 million, they then subsequently purchased the land after constructing the building. Altogether, Lowe's spent in excess of \$16 million to acquire the land and build the structure. Now, Lowe's argues that the land was devalued from \$9

million to \$3 million because the big box store was constructed. Lowe's insists that under Wisconsin law (based on the *Walgreens* decision) only vacant dark stores, such as the vacated big box stores near the former Northridge shopping area, can be used as comparables. The City disagrees, but their only options are costly litigation or settling with the property owner on a compromise value.

To learn more about the dark store tax strategy and its impact on other tax payers visit the League's Dark Store Loophole Resource page: <http://www.lwm-info.org/1279/Dark-Store-Tax-Loophole>

Loophole #2: Gold box on Wall Street, cardboard box on Main Street. Walgreens and CVS stores use a different, but related strategy, to argue that the assessed value of their properties should be less than half of actual sale prices on the open market. The two have already sued more than 100 Wisconsin communities, claiming the rent they pay for their newly-constructed, highly-visible corner locations doesn't accurately reflect its fair market value for property tax purposes. Walgreens and CVS have won dramatic assessment reductions since a 2008 Wisconsin Supreme Court decision, *Walgreens v. City of Madison*, upheld this tax strategy. These properties are developed to the retailer's specifications and leased to them with no landlord responsibility other than collecting rent. More than 80% of Walgreen stores and 95% of CVS stores operate under a lease arrangement. Drugstores have become the most popular single-tenant properties in the national real estate investment market. But attorneys for Walgreen and CVS argue that their actual sale prices don't represent market value and the underlying leases are the wrong tool for determining the property's value for 'property tax purposes.' Instead, they say, the assessments should hinge on the amount the landlord could get if the drugstore moved out and a different retailer moved in.

Real World Example from Oshkosh: Walgreens challenged the City of Oshkosh's assessments of two of its stores. The city based its assessment on the actual amounts for which the properties were sold. The court rejected the city's approach and ordered that the two Walgreens be refunded for several tax years. The total amount of the refunds equaled \$305,672. Other taxpayers in Oshkosh now have to pick up Walgreen's former share of the tax burden. There are over 200 Walgreens located in Wisconsin's cities and villages.

To learn more about the need to overturn the *Walgreens v. Madison* decision and that decision's impact on other tax payers visit the League's Overturn the Walgreens Decision Web Page: <http://www.lwm-info.org/1468/Overturn-the-Walgreens-Decision>

Other states have stopped this tax shift. The Republican-controlled Indiana Legislature overwhelmingly passed bipartisan legislation in 2015 and 2016 prohibiting assessors from valuing new big box stores the same as abandoned stores in a different market segment. The Michigan legislature is considering similar proposals. In May 2016 the Michigan house passed a dark store fix bill by a vote of 97-11. The bill died in the Michigan Senate.

Solution: Follow Indiana's lead and pass legislation in Wisconsin closing off these tax strategies and stopping the tax shift to home owners. Pass legislation clarifying that:

1. Reverse the *Walgreens v. City of Madison* decision by clarifying that leases are appropriately factored into the valuation of leased properties. *Rep. Rob Brooks (R-Saukville) and Sen. Duey Stroebel (R-Saukville) are circulating LRB-0372 to accomplish this goal.*
2. When using the comparable sale method of valuation, assessors shall consider as comparable only those sales within the same market segment exhibiting a similar highest and best use rather than similarly sized but vacant properties in abandoned locations. *Rep. Rob Brooks and Sen. Roger Roth (R-Appleton) are circulating LRB-0373 to accomplish this goal.*

