

AGENDA
COMMITTEE OF THE WHOLE MEETING
CITY OF BERLIN
TUESDAY, JANUARY 3, 2017, 7:00 PM
CITY HALL COUNCIL CHAMBERS

1. Roll Call.
2. General Public Comments. Registration card required (located at podium in Council Chamber).
3. Consideration of Sign Code Fee Increase. RECOMMENDATION: Review Building Inspector recommendation on Sign Permit Fees and action as appropriate.
4. Bus Shelter Request by Boys and Girls Club. RECOMMENDATION: Listen to request by Boys and Girls Club and action as appropriate.
5. Update to Animal Ordinance. RECOMMENDATION: Review draft Ordinance Amending Code in Relation to Keeping of animals, Including New Provisions Relating to Vicious and Dangerous Dogs and action as appropriate.
6. Common Council Salary Review. RECOMMENDATION: Discuss and consider salary increases for Mayor and Alderpersons and action as appropriate.
7. 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: December 22, 2016

TO: Committee of the Whole

FROM: Jodie Olson, City Administrator

RE: Consideration of Sign Code Fee Increase

BACKGROUND: The Building Inspector is recommending an increase in Sign Permit fees as per the attached e-mail. I will request his presence at the COTW in case you have questions on the justification.

RECOMMENDATION: Review Building Inspector recommendation on Sign Permit Fees and action as appropriate.

Jodie Olson

From: David Nitz
Sent: Thursday, December 22, 2016 1:53 PM
To: Jodie Olson
Cc: Lindsey Kemnitz
Subject: RE: Annual Fee Schedule Update

Jodie

Proposed sign fee change, base fee of \$50/sign plus \$.50/square foot sign face. This is similar to what Ripon is using. With this fee schedule, the fees are more in line with what the inspection costs would be.

Thanks,

Dave

From: Jodie Olson
Sent: Wednesday, December 07, 2016 6:04 PM
To: David Nitz
Subject: RE: Annual Fee Schedule Update

Hi Dave – what did you come up with for sign permit fee recommendation?

Jodie

From: David Nitz
Sent: Tuesday, October 25, 2016 1:10 PM
To: Jodie Olson
Subject: RE: Annual Fee Schedule Update

Jodie

I had suggested to Evan about revising the permit fees for sign permits, the \$25 flat rate wouldn't even cover one inspection. In Ripon I charged a flat rate plus so much per square foot, that type of fee would cover more inspections than one. I'll do some checking and come up with a proposed fee schedule change if you wish.

Dave

From: Jodie Olson
Sent: Tuesday, October 25, 2016 11:17 AM
To: Laura Fultz (fultz@berlinlibrary.org); Brian Malnory; Dennis Plantz (dplantz@berlinpd.com); Gary Podoll; Karen Neuman; Scott Zabel; Vicki Murphy (vmurphy@berlinpd.com); Sandy Peschke; Susan Thom; David Nitz
Subject: Annual Fee Schedule Update

Hi All- please review the fees for your particular areas and let me know if you feel any of the fees should be considered for increases by the Common Council. This would go on the December council meeting. Thank you.

Jodie Olson
City Administrator/Clerk-Treasurer
City of Berlin
108 N. Capron Street, PO Box 272

DATE: December 22, 2016

TO: Committee of the Whole

FROM: Jodie Olson, City Administrator

RE: Bus Shelter Request by Boys and Girls Club

BACKGROUND: Jason Presto from the Boys and Girls Club contacted me regarding putting up a bus shelter for kids by the Club in the terrace area. He discussed sharing the cost with the City and then the city taking over ownership and future maintenance and liability. There are no bus shelters in the city and it is unknown if this would spark further requests.

Jason had also indicated the potential to open the club early for kids is a possibility if this isn't feasible; however, he would like to discuss a bus shelter possibility with you.

RECOMMENDATION: Listen to request by Boys and Girls Club and action as appropriate.

DATE: December 22, 2016

TO: Committee of the Whole

FROM: Jodie Olson, City Administrator

RE: Update on Animal Ordinance

BACKGROUND: Attached is a draft of an updated animal ordinance that we have been discussing over several months. There were outstanding questions on a few items including:

- Bottom of page 6 under (e) regarding April 1 date. It is suggested the date coincide with the license year for dog licenses of Jan 1.
- Discussion on inclusion of a dog being considered in violation when two formal written complaints are filed with the PD in 4 weeks for barking. Please see attached e-mail correspondence from the City Attorney.

RECOMMENDATION: Review draft Ordinance Amending Code in Relation to Keeping of animals, Including New Provisions Relating to Vicious and Dangerous Dogs and action as appropriate.

Jodie Olson

From: Chier Law Office LLC <legalsolutions@chierlaw.com>
Sent: Wednesday, December 14, 2016 11:46 AM
To: Vicki Murphy
Cc: dplantz@berlinpd.com; kblock@berlinpd.com; Jodie Olson
Subject: RE: COB Ordinances Vicious Dogs

Vicki:

Sorry, I forgot to address that in my last email. I'm really not thrilled about the way the old ordinance was written. It seems so inflexible. I don't have a problem putting something in, but I usually don't like mandating warnings. I'd always prefer to leave warnings to officer discretion. Then, you could simply implement your own internal unwritten policy to give warnings on first offenses. But for certain cases you could also choose not to follow that policy too. In most cases, warnings might certainly be very appropriate, and possibly required by implication anyway, because to prove that the barking is "excessive or continuous" to the "annoyance of any reasonable complainant", that may require a showing of a problem over multiple days. If you simply ticket on the first offense, in many cases the person might be able to defend against that ticket by saying that is unreasonable. However, in some cases, the situation may be so severe that you want to ticket the person right away. Perhaps a neighbor is purposefully antagonizing a dog to get it to bark to disturb his neighbors, or perhaps you want to use the charge as leverage against an offender with multiple violations. Again, these are the reasons I just don't like mandating warnings on each and every case. Let me know if you agree or otherwise provide your further thoughts.

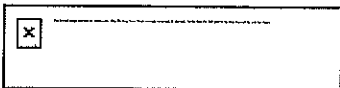
With all that said, Jodie, could you also add this topic in the background for further discussion at the meeting? I will otherwise make an internal note to cover it at the meeting. Vicki, Denny or Kevin, then you could just provide your comments on this at the meeting so the Council can decide.

Thanks!

--Matt

Sincerely,

Matthew G. Chier
Berlin City Attorney



CHIER LAW OFFICE LLC

137 E. Huron Street
Berlin, WI 54923
Telephone 1-920-361-9740
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AN ORDINANCE AMENDING CODE IN RELATION TO KEEPING OF ANIMALS,
INCLUDING NEW PROVISIONS RELATING TO VICIOUS AND DANGEROUS DOGS

NOW THEREFORE, the Common Council of the City of Berlin do ordain as follows:

Section 10-2 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 10-2. - Definitions.

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

...

At large means off the premises of an owner or on any public street, sidewalk, alley or any other public right-of-way, school grounds, public park or other public grounds or on private property without the specific permission or express invitation of such property's owner or legal possessor or other person in lawful control of the property, and not on a leash that is held or controlled by a human being. For the purposes of this section, the "premises" of an owner shall only mean that property that is owned in title or, if leased or otherwise legally possessed, only if leased or legally possessed exclusive of any other shared or common use by any other lessee, legal possessor or legal occupant other than a cotenant, cosigner or co-legal occupant to or under any lease pertaining to the premises. At large means to be off the premises of the owner and not under the control of a person by leash, but a dog within an automobile of its owner or of another person, with the consent of the owner, shall be deemed not at large.

...

Dog means a domesticated member of the *Canis familiaris* or *Canis lupis familiaris* species. Dog means any canine, regardless of age or sex.

...

Own means owning, possessing, harboring, maintaining charge of, sheltering or keeping, no matter the duration of owning, possessing, harboring, maintaining charge of, sheltering or keeping.

...

Person means any individual human being, firm, corporation, organization or other legal entity.

...

Prohibited Dangerous Dog means:

- (1) Any dog that has inflicted substantial bodily harm upon or caused or contributed to the death of any person on public or private property, whose owner, at the time of such infliction or involvement in fatal attack, failed to demonstrate sufficient provocation consistent with subsection (2)(a) to (g) of the definition of "vicious dog" below to an investigating law enforcement officer or a court of competent jurisdiction;
- (2) Any dog, caused to be present in this City, from another city, village, town, county or state, which has been declared or found to be dangerous, vicious or otherwise given a similar designation by that or any other jurisdiction via a judicial or quasi-judicial process, irrespective of whether or not such declaration or finding is in an appealable, final form;
- (3) Any dog that is, or has been, subject to being destroyed under §174.02(3), Wis. Stats., irrespective of whether such petition or action was disposed of in a manner ordering or otherwise requiring destruction of the dog;
- (4) Any rabid dog;
- (5) Any wild animal hybrid, including but not limited to wolf hybrids; or
- (6) Any dog trained, owned, sold, purchased or transferred for the purpose of dogfighting or similar activity.

Substantial Bodily Harm means a bodily injury that causes a laceration that requires stitches, staples or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a puncture of the skin; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

Vicious Dog means

- (1) Any dog with a propensity, tendency and/or disposition to attempt to attack, cause injury, contribute to the destruction of public or private property, or otherwise endanger the safety of human beings or other domestic animals, which is evidenced by overt actions of the dog, which may include, but not be limited to, habitual or repeated chasing, scratching, snapping or barking, snarling or growling in a reasonably perceived threatening manner.
- (2) Any dog that attacks, bites, attempts to attack or bite, or has attacked or bitten a human being or another domestic animal; however, a dog shall not be a "vicious dog" under this subsection or subsection (1) of the definition of "prohibited dangerous dog" above by sole reason of having engaged in any of the behavior described under this subsection, or subsection (1) of the definition of "prohibited dangerous dog" above, toward, or in relation to:
 - (a) Any person who attacked, attempted to attack or otherwise accosted such dog or who engaged in conduct that should be reasonably calculated to provoke such dog to attack or bite such person or another person or otherwise engage in behavior reasonably perceived as threatening, including but not limited to

directing such behavior towards the dog's owner or an acquaintance thereof;

- (b) Any person who engaged in provoking or inciting a dogfight or any form of altercation between such dog and another dog or other domestic animal;
- (c) Any person who engaged in stopping or dispersing an actual or reasonably believed to be imminent dogfight or any form of altercation involving the dog, so long as such dog, in response to any such intervention, was not the aggressing dog in the dogfight or other form of altercation;
- (d) Any person engaged in attacking or accosting or attempting to attack or accost any other person or domestic animal;
- (e) Any person engaged in unlawful entry into or upon the fenced or substantially or completely enclosed portion of the premises upon which such dog is kept or into or upon any automobile or other vehicle parked or stored in or upon the street adjacent to such premises;
- (f) Any dog or other domestic animal engaged in unauthorized entry into or upon the fenced or substantially or completely enclosed portion of the premises upon which such dog is kept; or
- (g) Any person engaged in unlawful or unauthorized entry into any automobile or other vehicle in which such dog is kept or confined.

Section 10-10 of the Code of Ordinances of the City of Berlin is hereby repealed and recreated as follows:

Sec. 10-10. – Keeping dogs and cats

- (a) *Impoundment vicious dog determination status.* Any law enforcement officer employed by the City may impound any dog found to be at large or reasonably believed, upon personal observation and/or thorough investigation, to have committed or involved itself in one or more of the acts or otherwise having a presence within the City in failed conformity with any provisions or requirements under this section and that poses a substantial risk to human health or safety. Any such dog may be conveyed to the custody of the City Animal Control Officer or other similar and suitable facility as designated by the Chief of Police. Any dog so impounded may be held for a period of not less than five days and, at the end of such period, become the property of the custodial facility unless the owner thereof shall reclaim such dog and pay the custodial facility the reasonable costs of keeping such dog and an impounding fee as set by the Common Council in the fee schedule kept on file in the City Clerk/Treasurer's office. Whenever acting under this subsection, a law enforcement officer may determine whether the dog is a "vicious dog" pursuant to the definition set forth in Section 10-2. In the event that the law enforcement officer determines that a dog is a vicious dog, the owner shall be advised of the same in writing by the law enforcement officer making such determination and provided a copy of this section and Subsection (1) and (2) below.

(1) *Appeal of vicious dog determination.* Any owner aggrieved by a determination of viciousness, as provided in Subsection 10-10(a) above, may appeal such determination within 15 calendar days following the law enforcement officer's personal service or first class mail issuance of the written determination of viciousness to the owner's last known address. Such appeal may only be taken by the owner's personal hand delivery to the City Clerk/Treasurer, with a copy to the City Attorney, of a written objection to the determination of viciousness, setting forth the specific reasons for contesting the determination. Upon receipt of a timely written objection, the matter shall be considered at the next available meeting of the _____ that is no less than five days from receipt of the written objection. The _____ shall act as a quasi-judicial body affording the owner reasonable opportunity to present evidence and argument as to why the investigating law enforcement officer's determination as to viciousness should not be affirmed. A nonrefundable administrative fee as set by the Common Council and provided in the fee schedule on file in the City Clerk/Treasurer's office, shall be tendered with an owner's timely written objection under this subsection.

Comment [FO1]: Watertown says "Public Safety and Welfare Committee". We need to determine what committee we want handling these matters.

Comment [FO2]: Same.

(2) *Compliance.* After 15 calendar days following personal service or first class mail issuance of the written determination of viciousness to the owner's last known address, or within 10 days of the _____ affirmation of the investigating law enforcement officer's determination of viciousness, if any, the owner of a vicious dog shall, in addition to all other requirements of this section, comply with all provisions under Subsection 10-10(c)(2) for the balance of such dog's life. Alternatively, the owner shall, within 10 days of the _____ affirmation of the investigating law enforcement officer's determination of viciousness, dispose or cause the disposal of the dog in such manner that humanely euthanizes the dog.

Comment [FO3]: Same.

Comment [FO4]: Same.

(b) *Owner's duty with respect to any dog or cat.*

(1) An owner shall see to it that his or her dog or cat does not go at large.

(2) No person may own a dog or cat that does any of the following:

- a. Damages or attempts to damage any public or private property, except the exclusive private property of the dog's owner. "Damage" shall include, but not be limited to, defacing, scratching, marring or any type of behavior that contributes to a diminution of value.
- b. Barks, whines or howls in excessive or continuous fashion to the annoyance of any reasonable complainant; but shall not apply to any veterinary facility, the City's Animal Control Officer impound facility, or other Wisconsin licensed animal shelter or animal control facility.
- c. Bites or attempts to bite a person or domestic animal.
- d. Attempts to scratch or otherwise promote harm or engage in any other form of accostment to a human being or domestic animal.

e. Puts any person in reasonable fear of attack or accostment.

- (3) Any dog or cat shall be rebuttably presumed to have engaged in any behavior described in Subsection 10-10(b)(2)(a. - e.) above without provocation. It shall be upon the owner to demonstrate sufficient provocation to preclude conviction under these subsections. Sufficient provocation for both dogs and cats shall be demonstrated consistent with the definition of "vicious dog" in Section 10-2(2)(a) to (g).

(c) *Restrictions on keeping of certain dogs.*

- (1) No person may own a prohibited dangerous dog. Any person present with, by any reasonably observed physical association or means of control whatsoever, or causing the presence of a prohibited dangerous dog within the City limits shall be irrefutably considered to own such prohibited dangerous dog.
- (2) No person may own a vicious dog except in conformity with the following requirements:

a. *Leash.*

1. No owner of a vicious dog may permit such a dog to go outside its premises or a form of secure confinement unless the dog is securely restrained with a chain, rope or other type of leash no longer than six feet in length. For the purposes of this subsection, the "premises" of an owner shall only mean that property that is owned in title, or, if leased or otherwise legally possessed, only if leased or legally possessed exclusive of any other shared or common use by any other lessee, legal possessor or legal occupant other than a cotenant, cosigner or co-legal occupant to or under any lease pertaining to the premises.

2. No person may permit a vicious dog to be kept on a chain, rope or other type of leash outside its premises or a form of secure confinement, unless a person who is 16 years of age or older, competent to govern the dog's behavior and capable of physically controlling and restraining the dog, is in physical control of the leash. For the purposes of this subsection, the "premises" of an owner shall only mean that property that is owned in title or, if leased or otherwise legally possessed, only if leased or legally possessed exclusive of any other shared or common use by any other lessee, legal possessor or legal occupant other than a cotenant, cosigner or co-legal occupant to or under any lease pertaining to the premises.

b. *Confinement.*

1. *Generally.* Except when an owner is in conformity with Subsection 10-10(c)(2)a.1. and 2. above, all vicious dogs shall be securely

Page 5 of 8

confined indoors or in a securely enclosed and locked pen, kennel or other structure that is located on the exclusive premises of the owner and constructed in a manner that does not allow the dog to exit the pen, kennel or other structure inadvertently or upon its own volition. The pen, kennel or other structure shall have secure sides and a secure top attached to all sides. Any structure used to confine a vicious dog shall be securely locked with a key or combination lock when the dog is within the structure. The structure shall have a secure bottom or floor attached to its sides or the sides of such structure must be embedded in the ground at a depth of no less than two feet. A dog may be confined as required under this subsection by its secured enclosure within an area entirely surrounded by a fence of such height, depth of installation, design, structural integrity and strength so as to confine a dog and prevent its uncontrolled egress from the confined area. All structures erected to house or confine vicious dogs shall comply with all zoning and building regulations of the City.

2. *Indoor confinement.* No vicious dog may be kept on a porch, patio or similar curtilage upon any premises or in any part of a house, building or other structure that would allow the dog to exit the house, building or other structure inadvertently or upon its own volition. No vicious dog may be kept in a house, building or other structure when the windows are open or when screen windows or screen doors fail to prevent such dog from exiting the house, building or other structure.

c. *Warning signage.* The owner of a vicious dog shall display, in prominent places upon his or her premises near or about all entrances or possible access points to the premises, signs containing letters of not less than two inches in height and width against a pronounced and visible contrasting color field, warning that there is a vicious dog upon or about the property. An identical version of such sign is required to be posted on the kennel, pen or other confining structure of the dog. Language such as "Beware of Dog" or substantially similar and effective words shall be conforming to the requirements of this subsection.

d. *Spay and neuter requirements.* Any vicious dog must be spayed or neutered if it is known or reasonably believed or observed to be older than six months. The owner of any vicious dog shall possess written proof endorsed by a licensed veterinarian that the dog has been spayed or neutered.

e. *Insurance and special licensing/registration.* Any owner of any vicious dog shall, within 15 calendar days following personal service or first class mail issuance of the written determination of viciousness to the owner's last known address, or within 10 days of the [redacted] affirmation of the investigating law enforcement officer's determination of viciousness, if any, and annually thereafter on or before April 1 of each ensuing year, register such dog with the City

Comment [FO5]: Same.

Clerk/Treasurer as a vicious dog and, additionally, provide at the time of registration a high quality current color photograph of such dog, supply proof of spaying or neutering, and pay a special registration fee as set by the Common Council and provided under a separate fee schedule on file in the City Clerk/Treasurer's office. At the time of registration, each owner of any vicious dog kept within the City limits shall provide verifiable proof of an in-force and effective policy of liability insurance in amounts of at least \$100,000.00 to be paid for any acts of property damage, injury or other liability incurred by virtue of any injury or damage inflicted by such vicious dog. Such insurance shall name the City of Berlin as a coinsured solely for the purpose of notice of cancellation of such insurance policy. The City Clerk/Treasurer shall not issue a license for any such vicious dog except in conformity with the requirements of this subsection, and any license so otherwise issued shall be void.

- f. *Multifamily buildings.* No vicious dog may be owned or otherwise made present within, upon or about any portion of any multiple-living-unit dwelling building or upon the lands associated therewith. For the purposes of this subsection, a multiple-living-unit dwelling shall mean only such building that contains three or more separate living units such as, by nonlimiting example only, a building commonly known as a "triplex" or larger. Real property that has been declared a condominium pursuant to the Wisconsin Condominium Act shall not constitute a multiple-living-unit dwelling building under this subsection.
- g. *Notifications.* The owner of any vicious dog shall, as soon as practical, but not more than 24 hours after any of the following events occur, notify or cause notification to the Police Department that such dog:
1. Is at large.
 2. Has attacked a human being or domestic animal, whether provoked or not.
 3. Is dead.
 4. Has been sold, transferred or otherwise given away and to whom (with valid telephone number and valid mailing address), for what purpose and for what, if any, exchange of value.
- h. *Limit on number of vicious dogs.* The owner of any vicious dog shall not own more than one additional dog.
- i. *Orders of Municipal Court and agreements.* No owner may own any vicious dog contrary to any order issued by the Municipal Court or agreement reached with the City Attorney and/or the _____ relating to the ownership of such dog.

Comment [M16]: Same.

(d) *Liability for damage caused by dogs; penalties.* The provisions of Wis. Stats. § 174.02

Page 7 of 8

relating to the owner's liability for damage caused by dogs, together with the penalties set forth in such statute, are adopted and incorporated in this subsection by reference.

Section 10-16 of the Code of Ordinances of the City of Berlin is hereby repealed.

This ordinance shall take effect the day after publication.

The numeric section numbers and headings shall be subject to modification in the discretion of the codifier, and the approval of the City Attorney, during codification into the City's current Code of Ordinances.

Passed, approved and adopted this ____ day of _____, 20__.

ROLL CALL VOTE:

____ AYES
____ NAYS
____ ABSENT

CITY OF BERLIN

BY: _____
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

Matthew G. Chier, City Attorney

ATTEST: _____
Jodie Olson, City Clerk

DRAFT 11-30-2016

DATE: December 22, 2016

TO: Committee of the Whole

FROM: Jodie Olson, City Administrator

RE: Common Council Salary Review

BACKGROUND: At the December 13, 2016 Common Council meeting, discussion was held on increasing the Mayor and Alderpersons salaries. There was a mayoral recommendation to increase the Mayor's salary from \$5,000 to \$6,000 and Alderpersons from \$2,400 to \$3,000 with a \$50 reduction for every COTW and Council meeting missed. Further discussion was postponed to the January COTW and Council meetings.

RECOMMENDATION: Discuss and consider salary increases for Mayor and Alderpersons and action as appropriate.

