

AGENDA
COMMITTEE OF THE WHOLE MEETING
CITY OF BERLIN
TUESDAY, APRIL 2, 2019, 7:00 PM
CITY HALL COUNCIL CHAMBERS

1. Roll Call.
2. General Public Comments. Registration card required (located at podium in Council Chamber).
3. Approval of Minutes. RECOMMENDATION: Approve the minutes from the March 5, 2019 Committee of the Whole meeting.
4. American House Request for Designated Parking Stall. RECOMMENDATION: Listen to presentation and action as appropriate.
5. Review of Shared-Ride Taxi Service Program. RECOMMENDATION: Discussion and action as appropriate.
6. CDBG Commercial Revolving Loan Fund Update. RECOMMENDATION: Discuss and action as appropriate.
7. Discussion on John McGivern Visit to Berlin. RECOMMENDATION: Discuss and action as appropriate.
8. Wireless Telecommunications Facilities in the Right-of-Way. RECOMMENDATION: Discuss and recommend to Common Council approval and adoption of the Wireless Telecommunications Facilities in the Right-of-Way.
9. State Building Codes Update. RECOMMENDATION: Discuss and recommend to Common Council approval and adoption of the State Building Codes Update.
10. 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: 3/18/2019

TO: Mayor and Committee of the Whole

FROM: Scott Zabel

RE: Request from American Houses of Green Lake County for a designated parking stall at 123 S. Pearl Street.

BACKGROUND: American House located at 123 S. Pearl St. is requesting to have a designated parking stall in front of the building by the wheel chair ramp for pick up and drop off of patrons. Currently there is posted 15 minute parking in front of the building.

RECOMMENDATION: Listen to request, review request with discussion and action as appropriate.

DATE: April 2, 2019

TO: Committee of the Whole

FROM: Jodie Olson

RE: Review of Shared-Ride Taxi Service Program

BACKGROUND: We started with Running Inc. for the Shared-Ride Taxi service as of January 1. I thought it would be a good idea to have an overview of how the first quarter went. I have invited Karl Schulte, General Manager who handles our area to be present for the discussion.

We can review any concerns that we have heard and discuss if they can be addressed under the Federal Taxi Grant program and if so, ways to address them. Please keep in mind that this is a grant program with specific rules and regulations and any changes may have to have state approval.

RECOMMENDATION: Discussion and action as appropriate.

BERLIN PUBLIC TRANSIT

Running Inc. is in our third month providing taxicab service in the City of Berlin. Our volume (measured by one-way trips) is down from one year ago, but it is increasing. Revenue has stayed steady when compared to one year ago.

One Way Trips				
	2018 Trips - (data from Classic Cab)	2019 Trips		
January	1952	1548		
February	1952	1728		
March	1952			
April	1810			
May	1810			
June	1810			
July	1486			
August	1486			
September	1485			
October	1755			
November	1755			
December	1755			
	2018 Total	2019 YTD		
	21,008	3,276		

	Farebox Revenue Classic Cab 2018	Farebox Revenue 2019	
January	\$6,301	\$6,469	
February	\$6,301	\$6,360	
March	\$6,300		
April	\$6,339		
May	\$6,339		
June	\$6,338		
July	\$5,571		
August	\$5,571		
September	\$5,570		
October	\$6,011		
November	\$6,010		
December	\$6,010		
Totals	\$72,661	\$12,828	

The loss of trips is attributed to several factors: (1) in January our staffing levels were touch and go---we relied on Ripon Taxi drivers to keep enough drivers on the road; (2) we (drivers and dispatchers) and our consumers had a learning curve---we conducted business differently than our predecessor, and many customers who were accustomed to charging rides needed to adjust to our procedures; (3) we purposely ceased to provide trips which went deep out of town (more about this below).

Staffing levels have greatly improved, and our trip volume is ticking upwards.

PROBLEMS: Unfortunately drivers and dispatchers developed a habit of talking about Ripon. I think this was natural as they were processing (out-loud) the difference between how things are done in Ripon as opposed to Berlin. But it was an unfortunate habit. Berlin callers couldn't care less about how things work in Ripon---and commenting on the difference hurt our image. This bad habit has largely ceased.

TABLETS & DISPATCH SOFTWARE: Our dispatchers are entering trip requests into software designed for dispatching. Drivers are receiving dispatch assignments on computer tablets which are connected to the dispatch software. Like all new software, it took dispatchers and drivers a bit of time to get comfortable with the new procedures.

STAFF HAS MET WITH SEVERAL KEY STAKEHOLDERS: Running Inc endeavors to be available to answer questions to key stakeholders. Representatives of Running Inc have participated in a phone conference with staff from the Hospital, and also met in person with the Senior Commission. As the year goes on we hope to meet with other organizations and individuals who have an interest in public transportation in the Berlin area.

PROPOSALS TO CONSIDER:

Previous to January 1st the public was able to use Berlin Public Transit to get to many locations far outside the City Limits. Beginning on January 1st Berlin Public Transit imposed a strict 5 mile limit on all out-of-town trips, and required that one end of the trip of the other must be within the City Limits.

Our dispatchers find that every week several people request a ride to/from Green Lake for either medical or county purposes. Ripon is also frequently requested (usually for medical reasons). Less frequently callers request to go to Redgranite, Neshkoro, or Wautoma. (These less frequent requests are generally from people leaving the hospital and heading to their homes, or their nursing homes.)

After three months of providing service Running Inc believes we could restore service to some out-of-town locations (but not all) to the benefit of City residents. We believe we could restore this limited service without creating in-City service delays.

SERVICE TO GREEN LAKE:

Because many residents of Berlin have business with county agencies or other agencies located in the City of Green Lake, it seems reasonable and a good idea to allow Berlin Public Transit to send cabs to and from Green Lake. But to ensure that this is cost effective and doesn't create unnecessary delays for people remaining in Berlin this service should be set up with the following rules:

1. Fare: each passenger will pay \$15.00 above and beyond the fare they normally would pay for in-town trips. (i.e. an elderly person would pay \$15.00 + \$2.00).
2. Must Call Two Hours in Advance: unlike in-town trips, all trips to and from Green Lake must be requested at least two hours in advance.
3. No Green Lake service during the busiest time periods. These are (on school-days) 7:30AM until 9:00AM; and again from 3:00PM until 4:00PM.
4. Southbound Trips will leave Berlin at (or near) the top of the hour. The dispatcher will endeavor to get all southbound travelers into the same taxicab. Southbound Trips will be scheduled only at 9AM, 10AM, 11AM, NOON, 1PM, 2PM and 4PM.
5. Northbound Trips will leave Green Lake at half-past the hour. The dispatcher will endeavor to get all northbound travelers into the same taxicab. Northbound trips will be scheduled only at 9:30AM; 10:30AM; 11:30AM; 12:30PM; 1:30PM; 2:30PM; and 4:30PM.

RECIPROCAL SERVICE BETWEEN BERLIN HOSPITAL AND RIPON MEDICAL CENTER:

Periodically a resident of Berlin must travel to Ripon Medical Center for medical services. Likewise, periodically a resident of Ripon must travel to Berlin Hospital to receive medical services. Previously a

reciprocal agreement existed between Ripon Taxi and Classic Cab wherein residents from one city could be transported to a clinic by their home cab company and returned home by the clinic's home cab company. A similar new agreement could be entered into. This service (if approved) only authorizes trips to and from medical facilities within these two cities. This agreement would eliminate the need for a cab driver to sit idle and wait for an appointment to finish up.

1. This agreement stipulates that whenever a Ripon resident is dropped off at Berlin Hospital, a Berlin Public Transit driver can return that Ripon resident to their home after their appointment. (So long as the trip is within normal Berlin Public Transit hours of operation.)
2. Likewise, anytime a Berlin resident is dropped off at a Ripon medical facility, a Ripon Taxi driver can return that Berlin resident to their home after their appointment. (So long as the trip is within normal Ripon Taxi hours of operation.)
3. No Ripon service during the busiest time periods. These are (on school-days) 7:30AM until 9:00AM; and again from 3:00PM until 4:00PM.
4. Each company will charge an appropriate fare according to its own City Council approved fare structure. Berlin Public Transit would charge \$20.00 above and beyond the fare normally charged for an in-town trip. (i.e. an elderly person would pay \$20.00 + \$2.00).

Running Inc is very proud to help the City provide this valuable service to its residents. We believe that adopting the two proposals above will enhance our service without negatively impacting the program's budget or overwhelming the program's capacity.

Please let me know if you have any concerns or questions.

Karl Schulte, General Manager
Running Inc Transit Services



DATE: March 26, 2019

TO: Mayor and Common Council

FROM: Lindsey Kemnitz & Scott Zabel

RE: Wireless Telecommunications Facilities in the Right-of-Way

BACKGROUND:

The League of Municipalities has recommended communities to have an ordinance regarding wireless telecommunication facilities in local rights-of-way. The Federal Communications Commission recently released "2018 Small Cell Order", which imposes new and significant limitations on a municipality's ability to regulate wireless facilities in the ROW. The league provided municipalities a draft ordinance that we can follow. Attorney Chier prepared the ordinance similar to the draft ordinance. If there are additional questions regarding the ordinance Attorney Chier will be present to ask questions.

AN ORDINANCE FOR WIRELESS TELECOMMUNICATIONS FACILITIES
IN THE RIGHT-OF-WAY

The Common Council of the City of Berlin do ordain as follows:

Chapter 58, Article VI. Section 58-274 of the Code of Ordinances is hereby created as follows:

ARTICLE VI. – WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY

Sec. 58-274. – Purpose; intent.

The common council has determined that in the exercise of its police powers, the city has priority over all other uses of the right-of-way. 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 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 incomed 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. 58-275. – Definitions.

As used in this section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Administrator. Administrator means the Superintendent of Streets or his or her designee.

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

Base Station. 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. 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. FCC means the Federal Communications Commission.

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

- (a) The structure on which antenna facilities are mounted:
 - (1) is 50 feet or less in height, or
 - (2) is no more than 10 percent taller than other adjacent structures, or
 - (3) 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;
- (b) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; 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;
- (c) The facility does not require antenna structure registration;
- (d) The facility is not located on Tribal lands; and
- (e) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law.

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

Tower. 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. Underground areas mean 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. 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. 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. 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. Wireless Regulations means those regulations adopted pursuant to Section 58-278(b)(1) to implement the provisions of this Chapter.

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

Wireless Telecommunications Equipment. 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. 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. 58-276. – Scope.

- (a) *Applicability.* Unless exempted by Section 58-276(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 Sections 58-283-287) 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 Section 58-286 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. 58-277. – 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. 58-278. – 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 Section 58-279(b)(8) of this Chapter.
 - (10) Subject to appeal as provided in Section 28-281(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. 58-279. – 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 58-279 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 pursuant to the fee schedule or file in the city clerk-treasurer's office, 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, in conjunction with the annual reviews of the city's entire fee schedule, 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. 58-280. – 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.

(4) |

4. *Standard permit conditions.* All wireless permits under this Chapter are issued subject to the following minimum conditions:

- a. *Compliance.* The permit holder shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules.
- b. *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 Section 58-282(b) of this Chapter.
- c. *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.
- d. *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.
- e. *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.
- f. *Adverse impacts on adjacent properties.* The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to

Comment [M21]: See Attachment C for further possible aesthetic standards that could be added if desired.

- adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.
- g. *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.
 - h. *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.
 - i. *Relocation.* At the request of the city pursuant to Section 58-283 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.
 - j. *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 Section 58-284 of this Chapter.
 - k. *Restoration.* A permit holder who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Section 58-285 of this Chapter.
 - l. *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.
 - m. *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.
 - n. *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. 58-281. – 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 Section 58-279(b)(8) 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 Section 58-280(d)), the Administrator shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.
 - (d) *Appeal to city council.* Any person adversely affected by the decision of the Administrator may appeal that decision to the City 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 Section 58-281(e)(1), above, must be filed within ten business days of the written decision of the Administrator, unless the Administrator extends the time therefor. An extension may not be granted where extension would result in approval of the application by operation of law.
 - (f) *Decision deadline.* All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.

Sec. 58-282. – 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 Section 58-276(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. 58-283. – 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. 58-284. – 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 Section 58-284(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 Section 58-285; 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 Section 58-285.
 - (3) Remove its facilities from the right-of-way within one year and perform the required restoration under Section 58-285, unless the Administrator waives this requirement or provides a later deadline.

(b) *Abandoned facilities.* Facilities of a permit holder who fails to comply with Section 58-284(a) 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. 58-285. – 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 Section 58-283, 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 Section 58-285, 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. 58-286. – 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. 58-287. – 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.

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:

CITY OF BERLIN

_____ AYES
_____ NAYS
_____ ABSENT

BY: _____
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

ATTEST: _____
Jodie Olson, City Clerk

Matthew G. Chier, City Attorney

DRAFT 3-19-2019

DATE: March 26, 2019

TO: Mayor and Common Council

FROM: Lindsey Kemnitz & John Lust

RE: State Building Codes Update

BACKGROUND:

The building inspector reviewed the current municipal code and has recommended changes so the code is referencing the correct state building codes.

AN ORDINANCE AMENDING STATE CODES

The Common Council of the City of Berlin do ordain as follows:

Section 14-3 of the Code of Ordinances shall be amended as follows:

Sec. 14-3. - Construction standards; codes adopted.

- (a) *State building code.* ~~Wis. Admin. Code chs. Comm. 50—64~~ *Wis. Admin. Code Chapters SPS 360 Thru SPS 366 for commercial buildings, and Wis. Admin. Code Chapter SPS 320 Thru 325 for one and two family buildings* are adopted and made a part of this section with respect to those classes of buildings to which this building code specifically applies. Any future amendments, revisions and modifications of such chapters incorporated in this section are intended to be made a part of this Code. Also adopted are ~~Wis. Admin. Code chs. Comm. 160—164, existing buildings, and Wis. Admin. Code ch. Comm. 70, historic buildings.~~ *Wis. Admin. Code Chapter SPS 326 Manufactured Home Communities, Wis. Admin. Code Chapter SPS 327 Camping units, and Wis. Admin. Code Chapter SPS 328 Smokes and Carbon Monoxide Detectors.* A copy of all portions of the state building code and all amendments thereto which have been adopted by the city shall be kept on file in the office of the building inspector.
- (b) *State plumbing code.* The provisions and regulations of Wis. Stats. ch. 145, and *Wis. Admin. Code Chapters SPS 381 Thru SPS 387* are made a part of this section by reference and shall extend over and govern the installation of all plumbing installed, altered or repaired in the city. Any further amendments, revisions and modifications of such statutes and are intended to be made part of this chapter.
- (c) *State electrical code.*
- (1) The current edition of ~~the National Electrical Code~~ *Wis. Admin. Code Chapter SPS 316* is adopted by reference and made a part of this section and shall apply to the construction and inspection of new one- and two-family dwellings, and additions or modifications to one- and two-family dwellings in existence on the effective date of the ordinance from which this chapter is derived.
- (2) Subject to the exceptions set forth in this chapter, ~~the National Electrical Code, Volume 1, and Rules of Electrical Code, Volume 2, of the Wisconsin Administrative Code~~ *Wis. Admin. Code Chapter SPS 316* are adopted by reference and made a part of this section and shall apply to all buildings, except those covered in subsection (c)(1) of this section.

Section 14-5 of the Code of Ordinance shall be amended as follows:

Sec. 14-5. - Enforcement.

- (a) The building inspector and his delegated representatives are authorized and directed to administer and enforce all of the provisions of the Uniform Dwelling Code, commercial building code, HVAC, state and National Electrical Code and state plumbing code. The building inspector shall be certified for inspection purposes by the department in each of the categories specified in ~~Wis. Admin. Code § Comm. 26.06.~~ *Wis. Admin. Code Chapter SPS 305*

Section 14-7 of the Code of Ordinance shall be amended as follows:

Sec. 14-7. - Garages.

Private garages within the city shall be built in accordance with the general construction standards established in the state Uniform Dwelling Code Wis. Admin. Code Chapter SPS 320 Thru SPS 325.

Section 14-10 of the Code of Ordinance shall be amended as follows:

Sec. 14-10. - Building, plumbing, HVAC and electrical inspectors.

(3) *Certification and licensure.*

- b. The building inspector shall be certified by the state department of ~~commerce~~ of safety and professional services to administer and enforce all of the provisions of the state Uniform Dwelling Code and the commercial building code.
 - d. Possess licenses as noted in Wis. Admin. Code ~~ch. Comm. 5~~ Chapter SPS 305
-

Section 14-12 of the Code of Ordinance shall be amended as follows:

Sec. 14-12. - Buildings and inspection.

(a) *Permit required.*

f. Except for an electrical wiring project described in s. 101.875 (2), Stats., and as provided in par. (g), no electrical wiring project may commence unless the owner of the premises where the installation is to occur or their agent holds a permit from the designated inspection agency if the project involves the installation of new or an addition to any electrical service, feeder, or branch circuit serving any of the following:

- A farm.
- A public building, structure, or premises.
- A place of employment.
- A campground.
- A manufactured home community.
- A public marina, pier, dock, or wharf.
- A recreational vehicle park.

g. Under emergency conditions, the necessary electrical wiring may commence without obtaining a permit, provided the owner of the premises where the installation is to occur or their agent submits a permit application to the inspection agency designated by the department to provide electrical inspections for the installation no later than the next business day after commencement of the installation.

(b) *Application.*

(2) The application for an electrical permit required under sub. (f) shall contain all of the following information:

- The name of the applicant.

The name of the building or property owner.
The location of the electrical wiring installation.
The scope and extent of the electrical wiring installation.
The name of the person responsible for the installation.
The name and license number of the master electrician, residential master electrician, or registered master electrician under SPS 305.437 responsible for the installation, unless exempted under s. 101.862 (4), Stats.

- (3) a. The issuing inspection agency shall indicate on the electrical permit the date of issuance.
b. A permit required under sub. (2) shall expire 12 months after the date of issuance, if installation of the electrical wiring has not commenced.

Section 14-13 of the Code of Ordinance shall be amended as follows:

Sec. 14-13. - Plan approval fees.

Fees for the examination and approval of all plans submitted in accordance with the requirements of Wis. Admin. Code ~~chs. Comm 61-65~~ Wis. Admin. Code Chapter SPS 360 Thru SPS 366 shall be determined in accordance with the following:

- (1) *Building, heating and ventilation.* Fees for plan examination shall be determined on square footage as shown in ~~table 2.31-2 of the current Application for Review (SBD-118)~~ as provided by the state department of commerce. Per published fee schedule.

Section 14-14 of the Code of Ordinance shall be amended as follows:

Sec. 14-14. - Permit fees.

- (a) The following fees shall be as provided in the fee schedule on file in the clerk-treasurer's office:
- ~~(4)~~ Electrical license.
 - ~~(4)~~ ~~(5)~~ Heating, ventilating and air condition permits.
 - ~~(5)~~ ~~(6)~~ Sign permits.
 - ~~(6)~~ ~~(7)~~ Moving permits.
 - ~~(7)~~ ~~(8)~~ Razing permits.
 - ~~(8)~~ ~~(9)~~ Driveway permits.

Section 14-17 of the Code of Ordinance shall be amended as follows:

Sec. 14-17. - Violations; penalties.

- (b) (1) If an inspection reveals a noncompliance with the provisions of this chapter or the Uniform Dwelling Code or the commercial building code, the building inspector shall notify the applicant and the owner in writing of the violation to be corrected. All cited violations

shall be corrected within 30 days after written notification unless an extension of such time period is granted pursuant to Wis. Admin. Code § ~~Comm 20.21~~, Chapter SPS 320.21

Section 26-1 of the Code of Ordinance shall be amended as follows:

Sec. 26-1. - Adoption of state codes.

The following orders, rules and regulations of the Department of Safety and Professional Services (SPS), all of which are set forth in the Wisconsin Administrative Code, as amended from time to time, are incorporated in this section by reference and adopted as part of this chapter:

Wis. Admin. Code ch. SPS 305: LICENSES, CERTIFICATIONS AND REGISTRATIONS.

Wis. Admin. Code ch. SPS 327: Camping Units.

This ordinance shall then 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.

This ordinance shall take effect the day after publication

Passed, approved and adopted this _____ day of _____, 2019.

ROLL CALL VOTE:

CITY OF BERLIN

_____AYES

BY: _____

_____NAYS

Richard D. Schramer, Mayor

_____ABSENT

APPROVED AS TO FORM:

ATTEST: _____

Jodie Olson

City Clerk-Treasurer

Matthew G. Chier

City Attorney