

AGENDA
CITY OF BERLIN
PLAN COMMISSION MEETING
TUESDAY JANUARY 26TH, 2021 6:00 P.M.
CITY HALL COUNCIL CHAMBERS
MEETING IS OPEN TO THE PUBLIC & CITY HALL IS HANDICAPPED ACCESSIBLE
Zoom Link: <https://us02web.zoom.us/j/81481355640>
Call In: 312 626 6799
Meeting ID: 814 8135 5640

- 1) Call meeting to order - Roll Call
- 2) General Public Comments
- 3) Approval of Minutes –Plan Commission Meeting December 29th, 2020
- 4) Public Hearing for Live/Work Ordinance. RECOMMENDATION: Recommend to Common Council for approval of the live/work ordinance.
- 5) Ordinance Correction for Conditional Use Law Changes, A-2 Repeal, R-MH Repeal, & Short Term Residential Rental Regulations. RECOMMENDATION: Schedule Public Hearing for the February Plan Commission Meeting.
- 6) Sign Ordinance Relating to Multi-Tenant Properties. RECOMMENDATION: Action as Appropriate.
- 7) Accessory Structure Ordinance. RECOMMENDATION: Action as Appropriate.
- 8) DNR Lease Renewal for Berlin Locks Area. RECOMMENDATION: Recommend to Common Council for approval of DNR lease renewal for Berlin Locks area.
- 9) Old Business (To be used to request items of old business be put on a future agenda for further discussion or action; or used to make a motion for reconsideration of an item from the current meeting or immediately previous meeting; or to make a motion to take items off the table which were laid on the table only during the current meeting.)
- 10) New Business (To be used to request items of new business be put on a future agenda)
- 11) Public Appearances
- 12) Next meeting date –February 23, 2021
- 13) Adjourn

**CITY OF BERLIN PLAN COMMISSION MINUTES
DECEMBER 29TH, 2020
CITY OF BERLIN
BERLIN, WISCONSIN**

The December 29th, 2020 City Plan Commission meeting was called to order at 6:00 p.m. by acting chairman Erdmann. Roll call present were: Bobbie Erdmann, Ed Marks, Victoria Hill, Dick Schramer and Mary Kubiak. Also present was Lindsey Kemnitz and Attorney Chier.

First item was approval of the November 17th, 2020 Plan Commission minutes. Hill moved to approve the November 17th, 2020 Plan Commission minutes as corrected. Marks seconded the motion, which was carried by a voice vote.

Erdmann opened the public hearing for amending zoning regulations relating to pet services at 6:01pm. Erdmann asked three times for anyone to speak in favor of the amendment and three times for anyone to speak against the amendment. No one spoke in favor or against the amendment. The public hearing was closed at 6:03pm. Marks had one correction on page 4 (g) change from mut to must. Marks made a motion to recommend the approval of the amendment of the pet service ordinance to Common Council. Hill seconded the motion, which was carried by a voice vote.

The next item was to discuss was the live/work ordinance. Attorney Chier stated he drafted the changes as directed from the past meeting. One addition that was not discussed before was a condition that each dwelling unit must be a minimum of 950 sq ft. Kemnitz stated that currently it is required in R-1 and R-2 zoning district. Hill asked if there was a minimum square footage for units in R-3 district. The commission was concerned that 950 sq ft is a large amount for some downtown buildings. When reviewing the ordinance the 950 sq ft was for the primary structure not the dwelling unit. Marks were concerned with removing the minimum area for health standards for units. Kemnitz stated the health and housing code addresses the amount of daylight required and area per individual in the unit. Hill made a motion to schedule public hearing and to remove the 950 sq ft requirement. Marks seconded the motion, which was carried by voice vote.

Rodney & LeNae of 175 S. Johnson Street spoke in favor of amending the accessory structure ordinance due to them owning over an acre of land and pay extra taxes are have the same restrictions as single lot in the city. He stated it may interest adjacent land owners to buy the vacant land to build on. Marks asked if he had any proposals. Rodney requested additional structures and square footage.

Tom Malchetske 290 N. Washington Street stated he owns 2.5 acres and suggested a sliding scale or percentage base for accessory structures. He expressed the need for the accessory structures to be aesthetically pleasing for the adjacent neighbors too. Tom mentioned as a local broker several people are looking for a minimum of three car garage, which is 900 sq ft. Hill asked Tom advice on impact on new development. Tom did not have specific examples, but allowing flexibility but still continue the purpose of the ordinance.

Hill stated she liked the example that was included in the packet from the City of Oshkosh that increase the number of accessory structures and allowable size based on the lot size. Kubiak

stated there has been a couple of variance request recently to allow large accessory structures. Marks agreed with reviewing the allowable sizing and incorporating the aesthetic aspect. Marks directed staff to research and draft ordinance with sliding scale larger than current, increase number of structures, and include the aesthetics component. Hill seconded it. Schramer suggested 900 sq ft for 1 lot, 1200 sq for 2 lots, and sliding scale over acre.

Next item was to discuss the proposed amendments to the protective covenants to the north business park. Kemnitz stated that this review was initiated after the variance request from North Express Bus Service for the pole type structure. Kemnitz would prefer this amendment would include all parcels within the north business park, which requires all property owners to agree too. Second comment is retail/commercial trade is prohibited, but the CUP ordinance was amended to allow certain commercial trade as CUP in M-2 zoning district. This change would need to be approved by the Town of Aurora. Next change is reducing setback to right of way to 30 feet. Attorney Chier explained the next section about tax exempt. This section would require notice to the City of Berlin if the property was going to be sold or leased to party that would result portion or all land become tax exempt. The owner would enter a pilot agreement with the City to make payments in lieu of property taxes. The sign section was removed completely has the sign code has been updated. Kemnitz stated the next section addresses site plan approval, which is more restrictive in the zoning code. The final change is the covenants had timeline requirements for completion of construction that was not enforceable. Attorney Chier stated that the timeline requirements should be addressed in the deed restrictions similar to recent transaction with Northern Express Bus Service. This last section was changed to address the City's first right to purchase vacant land in the business park. The board agreed with the changes and asked staff to work with Town of Aurora and other property owners to review.

Last item was review site plan amendment for 824 Broadway. Kemnitz stated 824 Broadway is Tractor Supply. Tractor Supply is requesting to reduce the handicap stalls down to four. Kemnitz reviewed the original site plan with the City Engineer and did not find anything that addressed the number of handicap stalls required. Per City ordinance, they are only required three stalls. Marks did not see any issues with the amendment. Hill made a motion to approve the site plan amendment to reduce the handicap stalls for four for Tractor Supply at 824 Broadway. Kubiak seconded the motion, which was carried by voice vote.

No new or old business.

Next meeting date is January 26, 2021

Marks moved to adjourn at 7:10p.m. Hill seconded the motion, which carried by voice vote.

Lindsey Kemnitz, Community Development Director

AN ORDINANCE AMENDING THE ZONING CODE TO ALLOW LIVE-WORK
FUNCTIONAILITY IN BUILDINGS LOCATED IN B-1, B-2 AND M-1 ZONING DISTRICTS

WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance as set forth herein, on January 26, 2021; and

WHEREAS, the Plan Commission has recommended to the Common Council to approve the ordinance as set forth herein.

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

Sec. 82-360 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-360. - Use regulations.

The B-1 business district is intended to accommodate retail and office uses which are characteristic of the major shopping streets of the downtown area. To preserve the B-1 district for its primary intended use, ~~no residential occupancy of first floor or ground floor stories shall be permitted only as expressly or conditionally permitted in this Division 9.~~ The following are permitted uses in the B-1 district:

...

- (17) Residential occupancy on floors other than the first floor.

Sec. 82-361 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-361. - Conditional uses.

In the B-1 district, conditional uses shall be as follows:

...

- (5) Residential occupancy on the first floor of a building by the owner(s) of that building or proprietor(s) of a business occupying space on the first floor of that building so long as, (i) the floor area of first floor residential occupancy space of that building is not more than 50% of the total floor area of the first floor space of that building, and (ii) not more than 20% of the front façade of that building at street level is occupied by residential use.

Sec. 82-386 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-386. - Use regulations.

The B-2 business district is primarily intended to provide for the orderly and attractive grouping of commercial activities of a more general retail and wholesale nature. To preserve the B-2 district for its primary intended use, residential occupancy shall be permitted only as expressly or conditionally permitted in this Division 10. The following shall be permitted uses in the B-2 district:

...

Sec. 82-387 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-387. - Conditional uses.

In the B-2 district, conditional uses shall be as follows:

...

- (5) Residential occupancy on the first-floor of a building by the owner(s) of that building or proprietor(s) of a business occupying space on the first floor of that building so long as, (i) the floor area of first-floor residential occupancy space of that building is not more than 50% of the total floor area of the first-floor space of that building, and (ii) not more than 20% of the front façade of that building at street level is occupied by residential use.

Sec. 82-411 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-411. - Use regulations.

The M-1 light manufacturing district is primarily intended to provide for light manufacturing uses which would not be detrimental to the surrounding area or to the community as a whole by reason of noise, smoke, odor, traffic, physical appearance or other factors deemed appropriate for the type of use involved; and subject to such regulatory controls as will reasonably ensure compatibility in such respect. To preserve the M-1 district for its primary intended use, residential occupancy shall be permitted only as expressly or conditionally permitted in this Division 11. The following shall be authorized uses in the M-1 district:

...

- (18) Residential occupancy on floors other than the first floor.

Sec. 82-412 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-412. - Conditional uses.

In the M-1 light manufacturing district, conditional uses shall be as follows:

- (9) Residential occupancy on the first-floor of a building by the owner(s) of that building or proprietor(s) of a business occupying space on the first-floor of that building so long as, (i) the floor area of first-floor residential occupancy space of that building is not more than 50% of the total floor area of the first-floor space of that building, and (ii) not more than 20% of the front façade of that building at street level is occupied by residential use.

This ordinance shall take effect the day after publication.

The numeric section numbers and headings of any portions of the Code of Ordinances affected by this Ordinance 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 _____, 2021.

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

To: Plan Commission

From: Lindsey Kemnitz

Subject: Ordinance Correction for Conditional Use Law Changes, A-2 Repeal, R-MH Repeal, & Short Term Residential Rental Regulations.

Background:

In 2019, the above listed sections of the zoning code were amended due to law changes. In Section 82-27(a) Special exceptions for area and construction regulations for historical lots, the amendment added additional language to include the historical society properties and provided more specifics on what is considered a historic lots. With that subsection three and four were added. When reviewing subsection two, the language is similar to subsection three. Attorney Chier questioned if subsection two is needed or should it be removed as it was addressed in subsection three. I have included the original ordinance and the approved ordinance from 2019. Attorney Chier has drafted an ordinance to remove subsection 2 and renumber that section.

Recommendation: Schedule public hearing for the February Plan Commission Meeting.

Original Ordinance

Sec. 82-27. - Special exceptions for area and construction regulations for historical lots.

- (a) The board of appeals shall be authorized to grant special exception permits to applicants authorizing deviation from any construction regulation or area regulation established under this chapter for lots which meet one of the following criteria:
 - (1) The lot is identified individually, or as part of a proposed district, as eligible for entry into the National Register of Historic Places in the Berlin Intensive Architectural/Historical Survey 1991-92 prepared by the East Central Wisconsin Regional Planning Commission dated September 1992, a copy of such document being on file in the zoning administrator's office; or
 - (2) The lot is located in a residential district under this chapter and currently contains, or contained within one year prior to application, a legal nonconforming structure and the application for special exception permit is solely for structural repair or replacement of that legal nonconforming structure.
- (b) The board of appeals is encouraged to grant such special exception permits where the applicant presents sufficient proof that complying with the applicable construction regulation or area regulation would be contrary to the stated purposes and spirit of this chapter. Specifically, the board is encouraged to grant a special exception permit if an applicant presents sufficient proof that deviating from a stated construction regulation or area regulation would cause the proposed finished structure to be more harmonious and appropriate in appearance with the existing or intended character of the general vicinity than if the applicable construction regulation or area regulation were strictly complied with. For example, if a nonconforming but historic accessory building, such as a carriage barn, is destroyed or is in need of substantial repairs, the board of appeals is encouraged to grant a special exception permit allowing the landowner to rebuild or repair the structure in a fashion which preserves the historic location and appearance of the former structure, so long as doing so would remain harmonious with the surrounding neighborhood and the application otherwise meets the requirements of this section.
- (c) The board of appeals shall not grant special exception permits under this section if the board finds that deviating from the applicable construction regulation or area regulation would:
 - (1) Be hazardous or disturbing to existing or future neighboring uses;
 - (2) Be detrimental to property in the immediate vicinity or the community as a whole;
 - (3) Cause the lot or structures on the lot to be inadequately served by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal and schools;
 - (4) Cause any interference with traffic, traffic safety, or traffic visibility, on surrounding public streets, alleys, roads or sidewalks;
 - (5) Be detrimental to or endanger the public health, safety, morals, comfort or general welfare;
 - (6) Impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district; or
 - (7) Violate any local, state or federal floodplain, floodfringe or wetland restrictions.
- (d) In granting special exception permits hereunder, the board of appeals may impose reasonable conditions upon the applicant in order to meet the standards of this section. Such conditions may include, but are not limited to, requirements pertaining to lot coverage, lot area, setbacks, off-street parking and loading, pedestrian and vehicular accessways, storage, fencing, screening, landscaping, open space, height limitations, lighting and hours of operation.

(Ord. No. 04-08, 6-10-2008; Ord. No. 05-11, 8-9-2011)

Ordinance Approved in 2019

Section 82-22 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-22. - Height and yard exceptions.

- (a) The district height limitations set forth elsewhere in this chapter may be exceeded, but such modification shall be in accordance with the following:
 - (1) ~~Architectural projections, such as spires, belfries, parapet walls, cupolas, domes, flues and chimneys, which exceed height limitations, may be authorized as conditional uses under a conditional use permit granted pursuant to the provisions of article VI of this chapter.~~
 - (21) ~~Special structures, such as elevator penthouses, gas tanks, grain elevators, radio and television receiving antennas, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations and smoke stacks, which exceed height limitations, may be authorized as conditional uses under a conditional use permit granted pursuant to the provisions of article VI of this chapter.~~ Flag poles shall be exempt from the height limitations of this chapter.
 - (32) Essential services, utilities, water towers, electric power and communication transmission lines shall be exempt from the height limitations of this chapter.
 - (43) Communication structures, such as radio and television transmission and relay towers, aerials and observation towers shall not exceed in height three times their distance from the nearest lot line.
 - (54) Public or semi-public facilities, such as schools, churches, hospitals, monuments, sanitariums, libraries, governmental offices and stations may be erected to a height of 75 feet, provided, all required yards are increased not less than one foot for each foot the structure exceeds the district's maximum height requirement. On through lots, the height of the building may be measured from the mean elevation of the finished grade along the front of the building considering the end facing either street as the front.

...

Section 82-27 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-27. - Special exceptions for area and construction regulations for historical lots.

- (a) The board of appeals shall be authorized to grant special exception permits to applicants authorizing deviation from any construction regulation or area regulation established under this chapter for lots which meet one of the following criteria:
 - (1) The lot is within the Huron Street Historic District, the Nathan Strong Park Historic District, or is identified individually, or as part of a proposed district,

as eligible for entry into the National Register of Historic Places in the Berlin Intensive Architectural/Historical Survey 1991-92 prepared by the East Central Wisconsin Regional Planning Commission dated September 1992, a copy of such document being on file in the zoning administrator's office; or

(3) The lot is located in a residential district under this chapter, and currently contains, or contained within one year prior to application, a legal nonconforming structure originally designed for residential occupancy that was 100 years or more in age on January 1, 2019 and the application for special exception permit is solely for structural repair or replacement of that legal nonconforming structure.

(4) The lot is either of the following, and currently contains, or contained within one year prior to application, a legal nonconforming structure that was 100 years or more in age on January 1, 2019 and the application for special exception permit is solely for structural repair or replacement of that legal nonconforming structure:

The North ½ of Lot 8 and the South 32 feet of Lot 1 in Block 20 of the Original Plat of the City of Berlin, Green Lake County, Wisconsin, according to the recorded plat thereof; or

The South Eighty (80) feet of Lot No. Seven (7) in Block No. Twenty (20) of the original Plat of the City of Berlin, excepting however, the reservation of a right of way as reserved in that certain deed dated October 5, 1922 running from Andrew Wawrzyniak to L.P. Jensen and Rosannah Jensen which said deed was recorded in the office of the Register of Deeds for Green Lake County, State of Wisconsin on October 12, 1922 at 8:00 o'clock a.m. in volume 85 of Deeds on page 74 as Document No. 112018. And also excepting the land heretofore conveyed by that certain Warranty Deed dated August 6, 1934 running to Walter H. Wells and Helen C. Wells, conveying the East 15 feet, of the South 80 feet of said Lot 7, Block 20, Original Plat, City of Berlin, recorded in the office of the Register of Deeds for Green Lake County, Wisconsin on August 7, 1934 in volume 97 of deeds on page 173.

- (b) The board of appeals is encouraged to grant such special exception permits where the applicant presents ~~sufficient~~ proofsubstantial evidence that complying with the applicable construction regulation or area regulation would be contrary to the stated purposes and spirit of this chapter. Specifically, the board of appeals is encouraged to grant a special exception permit if an applicant presents ~~sufficient~~ proofsubstantial evidence that deviating from a stated construction regulation or area regulation would cause the proposed finished structure to be more harmonious and appropriate in appearance with the existing or intended character of the general vicinity than if the applicable construction regulation or area regulation were strictly complied with. For example, if a nonconforming but historic accessory building, such as a carriage barn, is destroyed or is in need of substantial repairs, the board of appeals is encouraged to grant a special exception permit allowing the landowner to rebuild or repair the structure in a fashion which preserves the historic location and appearance of the former structure, so long as doing so would remain harmonious

with the surrounding neighborhood and the application otherwise meets the requirements of this section.

- ...
- (d) In granting special exception permits hereunder, the board of appeals may impose reasonable and, to the extent practicable, measurable conditions upon the applicant in order to meet the standards of this section. Such conditions may include, but are not limited to, requirements pertaining to lot coverage, lot area, setbacks, off-street parking and loading, pedestrian and vehicular accessways, storage, fencing, screening, landscaping, open space, height limitations, lighting and hours of operation.

Section 82-28 of the Code of Ordinances of the City of Berlin shall be created as follows:

Sec. 82-28. – Mobile homes prohibited.

- (a) Mobile homes, excluding manufactured homes, shall be prohibited in the city.
- (b) Manufactured and mobile home communities shall be prohibited in the city.

Section 82-62 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-62. - Violations; penalties.

- ...
- (c) Any person who fails to comply with the provisions of this chapter, or any order of the zoning administrator issued in accordance with this chapter, or resists enforcement, upon conviction, shall be subject to a forfeiture and such additional penalties as provided for in section 1-16. ~~The penalties for violations of conditional use permits shall be as set forth in section 82-647.~~

Section 82-92 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-92. - Role of specific city officials in zoning administration.

- (a) *Plan commission.* The plan commission, together with its other statutory duties, shall make reports and recommendations relating to the plan and development of the city to the common council, other public officials and other interested organizations and citizens. The plan commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning. For the purposes of this chapter, the functions of the plan commission are primarily recommendatory to the common council, ~~except for issuance of conditional use permits~~, pursuant to guidelines set forth in this chapter as to various matters and, always, being mindful of the intent and purposes of this chapter. All

AN ORDINANCE CORRECTING AN ERROR IN PREVIOUSLY ADOPTED ORDINANCE 07-19

WHEREAS, Ordinance 07-19 adopted by the Common Council on September 10, 2019 among other things made various amendments to Subsection 82-27(a)) of the Code of Ordinances of the City of Berlin, and

WHEREAS, the Council's intention was that Subsection 82-27(a)(2) was to be repealed, in addition to the creation of the new Subsections (3) and (4), but Ordinance 07-19 as drafted and adopted only included the addition of the new Subsections and failed to show the repeal of Subsection 82-27(a)(2); and

WHEREAS, by this Ordinance, the Council intends to correct that prior error in Ordinance 07-19; and

WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance change, as set forth herein, on February 23, 2021; and

WHEREAS, the City of Berlin Plan Commission has recommended to the Common Council the approval of the ordinance change as set forth herein.

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

Subsection 82-27(a)(2) of the Code of Ordinances of the City of Berlin shall be repealed and subsequent subsections (3) and (4) shall be renumbered to (2) and (3) accordingly.

This ordinance shall then take effect the day after publication.

The numeric section numbers and headings of any portions of the Code of Ordinances affected by this Ordinance 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 _____, 2021.

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

To: Plan Commission

From: Lindsey Kemnitz

Subject: Sign Ordinance Relating to Multi-Tenant Properties

Background:

Recently I was approached by business requesting to put up new freestanding signage for their new location within a multi-tenant property. Per the current sign code, the property is allowed a total 100 sq ft due to it being less than one acre. The business asked if there was a minimum size each business would be allowed due to being a multi-tenant building. Currently the ordinance does not address multi-tenant properties. The ordinance does allow a minimum of 30 sq ft for on-building signage regardless of the length of the building frontage. When researching other communities, the signage for multi-tenant buildings should be approved at the time of the site plan and is divided between the numbers of tenants for example that occurred with the carwash/laundry mat/ Verizon store. So if the property was under an acre and had two tenants, the maximum square footage would be 100 sq ft and could be split 50 sq ft for each tenant. Other communities allow a minimum sq ft based on the total space of each tenant.

This property did not have a preplanned business signage for the multi-tenant space. The property has three tenant spaces and currently one business has a sign 72 sq ft.

Recommendation: Action as appropriate

To: Plan Commission

From: Lindsey Kemnitz

Subject: Review and discuss accessory structure ordinance

Background:

Below is a summary of surrounding community's ordinances. I am including the full ordinances if you wish to review. Attorney Chier also drafted a simple ordinance for a starting point.

Oshkosh- 3 buildings total of 1200 sq. ft. with 800 sq ft maximum per structure. Accessory Structure footage shall not exceed ground floor area of principal building used for residence. For lots larger than 1 acre the maximum floor area may be increased by 1 square for every 100 square feet over the lot area of 1 acre.

Ripon- Cannot cover more than 30% is the only limit for size. R-1 only allows one detached structure.

Omro- The total of accessory building shall not occupy more than 25 percent of the rear and side yards or exceed 1,200 square feet in size, whichever is more restrictive. The 1,200 square foot limit includes attached and detached garages, storage buildings and sheds, boathouses, play structures, and decks, kennels and any other structures.

Princeton- no detached accessory building shall be larger than 1,200 square feet or occupy more than 20% of the required rear yard (whichever is more restrictive). Detached garages shall not exceed the area requirements found in the standards for each zoning district. R-1 and R-2 allows for one private garage with not more than three stalls for each residential parcel.

Green Lake- Detached accessory buildings and private garages shall not be closer than ten (10) feet to the principal structure, exceed fifteen (15) feet in height, occupy more than twenty percent (20%) of the rear yard area, and be closer than three (3) feet to any lot line nor five (5) feet to any alley line.

Waupun- Accessory buildings and structures include, but are not limited to, utility storage buildings less than 144 square feet in area, carports, greenhouses, screened enclosures, decks, swimming pools, bathhouse and filter equipment sheds, playhouses, gazeboes and satellite dish antennas. Utility buildings exceeding 144 square feet in area will require a building permit and shall be included in the calculation of the allowable square footage for a detached private garage. Detached private garage shall not occupy more than 1,400 sq ft of area and comply with setback for accessory structures per section.

Wautoma- accessory buildings and structures shall not occupy more than 20% of the rear yard.

Recommendation: Action as appropriate

AN ORDINANCE AMENDING THE ZONING CODE ALLOWING
LARGER ACCESSORY STRUCTURES ON LARGER LOTS

WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance as set forth herein, on [insert applicable date]; and

Comment [MC1]: Will be inserted once known.

WHEREAS, the Plan Commission has recommended to the Common Council to approve the ordinance as set forth herein.

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

This ordinance shall take effect the day after publication.

Sec. 82-553 of the Code of Ordinances of the City of Berlin shall be amended as follows:

Sec. 82-553. - Residential district placement restrictions.

An accessory use or structure in a residential district within the city may be established subject to the following restrictions:

- (1) *Accessory building/structure number limits.* In addition to the principal building (which includes any attached garage), a detached garage, one additional accessory building and four play structures may be placed on a lot. However, the limitation of four play structures per lot shall not be applicable to public parks and playgrounds, schools (excluding home schools) and state licensed daycare centers.
- (2) *Attached accessory buildings are part of principal building.* All accessory buildings which are attached to the principal building shall be deemed part of the principal building and shall therefore comply with all area regulations and construction regulations relating to the principal building as set forth in this chapter.
- (3) *Detached accessory buildings/structures.*
 - a. Except as hereafter provided, detached garages and accessory buildings shall not exceed 15 feet in height. However, such 15-foot height restriction may be exceeded if both of the following conditions are met:
 1. The roof pitch of the detached garage or accessory building architecturally matches the roof pitch of the principal structure; and
 2. The height of the detached garage or accessory building does not exceed the height of the principal structure.
 - b. For lots of one acre or less, detached garages and accessory buildings shall not exceed 900 square feet, except that if there is more than one detached garage or accessory building on that same lot, the second such building shall not exceed 500 square feet. On lots greater than one acre, detached garages and accessory

buildings may exceed such square footage limitations only with a conditional use permit and subject to the following:

1. A detached garage or accessory building shall not exceed 900 square feet plus 2 square feet for every 100 square feet of lot area over one acre, except that if there is more than one detached garage or accessory building on that same lot, the second such building shall not exceed 500 square feet plus 1.1 square feet for every 100 square feet of lot area over one acre.
 2. Any detached garage or accessory building over 900 square feet, and any secondary detached garage or accessory building over 500 feet, must be architecturally match the principal structure from an aesthetic perspective, meaning the siding, window style and appearance, roofing material, and roof pitch shall match.
- c. Detached garages or accessory buildings up to 100 square feet in size shall not be located closer than three feet to any side or rear lot line. Detached garages or accessory buildings over 100 feet and up to 500 square feet in size shall not be located closer than six feet to any side or rear lot line. Detached garages or accessory buildings over 500 square feet in size shall have the same side and rear yard setbacks as required in this chapter for the principal structure on such lot.
- d. A detached garage or accessory building shall not be closer than ten feet to the principal structure, unless the applicable building code regulations in regard to one-hour fire-resistive construction are complied with.
- e. Detached accessory buildings or structures shall not be located in the front yard of any lot, except that one play structure shall be allowed in the front yard of corner lots which have rear yards of 20 feet or less.
- f. Play structures shall not be located closer than three feet to any lot line.

The numeric section numbers and headings of any portions of the Code of Ordinances affected by this Ordinance 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 _____, 2021.

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

Sec. 82-553. - Residential district placement restrictions.

An accessory use or structure in a residential district within the city may be established subject to the following restrictions:

- (1) *Accessory building/structure number limits.* In addition to the principal building (which includes any attached garage), a detached garage, one additional accessory building and four play structures may be placed on a lot. However, the limitation of four play structures per lot shall not be applicable to public parks and playgrounds, schools (excluding home schools) and state licensed daycare centers.
- (2) *Attached accessory buildings are part of principal building.* All accessory buildings which are attached to the principal building shall be deemed part of the principal building and shall therefore comply with all area regulations and construction regulations relating to the principal building as set forth in this chapter.
- (3) *Detached accessory buildings/structures.*
 - a. Except as hereafter provided, detached garages and accessory buildings shall not exceed 15 feet in height. However, such 15-foot height restriction may be exceeded if both of the following conditions are met:
 1. The roof pitch of the detached garage or accessory building architecturally matches the roof pitch of the principal structure; and
 2. The height of the detached garage or accessory building does not exceed the height of the principal structure.
 - b. Detached garages and accessory buildings shall not exceed 900 square feet, except that if there is more than one detached garage or accessory building on a lot, the second such building shall not exceed 500 square feet.
 - c. Detached garages or accessory buildings up to 100 square feet in size shall not be located closer than three feet to any side or rear lot line. Detached garages or accessory buildings over 100 feet and up to 500 square feet in size shall not be located closer than six feet to any side or rear lot line. Detached garages or accessory buildings over 500 square feet in size shall have the same side and rear yard setbacks as required in this chapter for the principal structure on such lot.
 - d. A detached garage or accessory building shall not be closer than ten feet to the principal structure, unless the applicable building code regulations in regard to one-hour fire-resistive construction are complied with.
 - e. Detached accessory buildings or structures shall not be located in the front yard of any lot, except that one play structure shall be allowed in the front yard of corner lots which have rear yards of 20 feet or less.
 - f. Play structures shall not be located closer than three feet to any lot line.

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- (ii) Does not significantly increase the cost of the system or significantly decrease its efficiency.
 - (iii) Allows for an alternative system of comparable cost and efficiency.

Section 30-86: Accessory Land Uses and Structures

- (A) Residential Accessory Structure: Structures accessory to a residential use including but not limited to structures used to shelter parked passenger vehicles (including garages and carports), structures used to store residential maintenance equipment of the subject property, workshops, kennels, boathouses, and pool houses.

Regulations:

- (1) Three total structures shall be permitted by right. Attached garages shall not count toward this total.
 - (2) A combined total of 1,200 square feet of gross floor area of all accessory structures on the property is permitted by right. For lots larger than one acre, the maximum permitted combined total of gross floor area of all accessory structures on the property shall be increased by one square foot for every 100 square feet of lot area over one acre. In no instance shall the accessory structure area exceed the ground floor area of the principal building used for residence. An individual detached accessory structure shall not exceed 800 square feet of gross floor area. The measurement of accessory structure size shall include the total of all detached or attached accessory buildings on the lot except as conditional uses.
 - (3) See Article II for accessory structure maximum building heights.
 - (4) Detached garages are permitted in the rear yard and side yards only. (Detached garages are not permitted in waterfront yards.)
- (B) Recreational Facility: This land use includes all active outdoor recreational facilities located on a private lot which are not otherwise described in this Article. Common examples include swing sets, tree houses, play houses, basketball courts, tennis courts, swimming pools, recreation-type equipment, pavilions and detached decks and patios. *[Revised 4/24/18]*

Regulations:

- (1) All private recreation facilities and their attendant structures shall comply with the bulk requirements for accessory structures.

(2) Materials and lighting at the property line shall comply with Section 30-190.

- (C) Landscape Feature: This land use includes features such as ponds, mailboxes, statuary/art objects, Little Free Libraries, clotheslines, seasonal decorations, arbors, trellises, fountains, birdhouses, birdbaths, birdfeeders, lawn furniture, raised garden beds and similar landscaping containment materials, retaining walls, and similar manmade lawn and landscaping elements as determined by the Director of Community Development, or designee.

Regulations:

- (1) Landscape Features shall meet maximum heights for accessory buildings in each district.
- (D) Residential Kennel: An enclosed structure designed for the keeping of dogs that is accessory to a residential use.

Regulations:

- (1) Outdoor containments for dogs shall be subject to the setback requirements for accessory structures for the district in which they are located.
- (E) Home Occupation: Economic activities performed within a residential dwelling unit. Examples include personal and professional services, handicrafts, and retail conducted online. Home Occupations are intended to provide a means to accommodate a small home-based family or professional business without the necessity of a rezoning from a residential to a business district. Home Occupations are limited to low intensity businesses and businesses with limited overlap of customer visits.

Regulations:

- (1) The Home Occupation shall be conducted only within the enclosed area of the dwelling unit. *[revised 6/11/19]*
- (2) The Home Occupation shall be conducted by a resident who uses the location of the Home Occupation as their principal residence.
- (3) No more than two clients shall be seen at any given time.
- (4) No Home Occupations shall have outside employees or clients between the hours of 8:00 p.m. and 8:00 a.m.
- (5) There shall be no exterior evidence of the Home Occupation and no exterior alterations which change the character of the structure as a single family dwelling unit.

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20.12.010 - Use regulations.

Single-Family District (R-1), residence district 1, is intended to provide a quiet, pleasant and relatively spacious living area protected from traffic hazards and the intrusion of incompatible land uses. In residence district 1, no building or land shall be used and no building shall be erected or structurally altered, unless otherwise provided in this chapter, except for the following uses:

- A. One-family dwellings excepting mobile homes;
- B. Churches, rectories, funeral homes and convents as conditional uses;
- C. Schools and colleges, (public, parochial and private), including dormitories and sororities and fraternities, which provide sleeping quarters, are permitted as conditional uses;
- D. Museums, libraries, parks, playgrounds or community centers not conducted for profit, are permitted as conditional uses;
- E. Bed and breakfast or rooming house as a conditional use;
- F. Accessory buildings, including one private residential garage;
- G. Uses customarily incidental to the above uses. Home occupations are permitted by right provided that such uses are situated within the dwelling. Residential business activities are permitted as conditional uses provided such uses are situated within the main or accessory buildings;
- H. Signs limited to the following: professional or announcement signs not over one square foot in area. Public and quasi-public institutions may have for their own use an announcement sign or bulletin board not over eight square feet in area and it may be lighted; signs not over six square feet in area unlighted pertain to the lease, hire or sale of building or premises; provided further, that all permitted signs shall be located within the lot lines and at least fifteen feet from the inside sidewalk line;
- I. Group child care facilities are permitted as a conditional use.
- J. Stormwater management facilities, including but not limited to retention ponds or any stormwater management structures as required by city ordinance or the State of Wisconsin Department of Natural Resources' rules and regulations.
- K. Assisted living facilities and nursing homes are permitted as conditional use.

(Ord. 1193, 2004; Ord. 1136, 1999; Ord. 1127 (part), 1998).

(Ord. No. 1456, 11-28-2016; Ord. No 1463, 3-14-2017)

20.12.020 - Height regulations.

Maximum height permitted shall be the lessor of thirty-five feet or two and one-half stories; provided, however, that this height limit may be increased one foot for each additional foot that each yard exceeds the minimum required. Accessory buildings shall not exceed fifteen feet in height.

(Ord. 1127 (part), 1998).

20.12.030 - Area regulations.

- A. Front Yard Requirements for Lots that are at Least Eighty Feet Wide. Minimum front yard setback shall be thirty feet, and in cases of corner lots shall be required on both street frontages.
- B. Front Yard Requirements for Lots that are Less than Eighty Feet Wide. Minimum front yard setback shall be an average of the setbacks of the buildings located on each side of the lot and shall under no circumstances be more than thirty feet nor less than twenty feet. The setback on corner lots shall be no closer than the average of the setback of the buildings on the lots adjacent to the corner lot. Corner lots shall comply with front yard requirements on both street frontages.
- C. Side Yard. Minimum side yard setback shall be six feet. In considering a conditional use permit, the plan commission may require an increase side yard setback, but not more than twenty feet.
- D. Rear Yard Requirements for Lots that are at Least Eighty Feet Wide. Minimum rear yard setback shall be twenty-five feet.
- E. Rear Yard Requirements for Lots that are Less than Eighty Feet Wide. Minimum rear yard setback shall be an average of the setbacks of the buildings located on each side of the lot and shall under no circumstances be more than twenty-five feet nor less than seventeen feet.
- F. Accessory Buildings. Accessory buildings may not project into the front yard of the main building, may not be closer than ten feet to the principal building (unless attached), and may not be closer to any lot line than three feet. Exception: For existing parcels created prior to 2006, quarter of an acre (ten thousand eight hundred ninety square feet) or less, accessory buildings may be located a minimum of five feet from the principal building with a fire wall extending the equal distance of ten feet.
- G. Lot Area and Minimum Lot Dimensions. Every lot in residence district 1 created after the adoption of the ordinance codified in this title shall have area of not less than eight thousand square feet, a width of not less than fifty feet at the front yard building setback line, and an average width of not less than eighty feet.
- H. Percentage of Lot Coverage. All buildings including accessory buildings shall not cover more than thirty percent of the area of the lot.
- I. Minimum Usable Floor Area Per Family Unit. In residence district 1, no building shall be erected or structurally altered to have less than eight hundred square feet of usable living floor area.

(Ord. 1210, 2006).

(Ord. No. 1475, 6-11-2019)

20.12.040 - Off-street parking regulations.

- A. Spaces Required. Not less than two spaces per dwelling unit. One space per five seats at places of public gathering. Other public and quasi-public buildings permitted in this district by conditional use permit must provide off-street parking and must submit plans for such parking to the plan commission for approval, showing evidence that the area is sufficient to meet the parking space needed by the occupants or users of the building.
- B. Design Standards. Refer to Section 20.52.060 of this title for design requirements.
- C. Parking in Front Yards. There shall be no parking permitted from the front plane of the house to the front property line, except on driveways designed for vehicular parking. Any person desiring to create a parking area in the front plane shall complete a conditional use application. The application shall designate an area no greater than 10 feet wide abutting an existing drive. The addition shall be a concrete-like surface, tapered to the property line with a minimum sixty degree angle. See attached diagram.
- D. Exterior Storage. Nothing shall be stored in the required front yard except as set forth in Section 20.12.040(C). All materials shall be kept in a building or shall be fully screened, so as not to be visible from any public right-of-way. Stacked firewood may be placed in the side or rear yard and does not need to be screened. Materials required to be stored in a building or fully screened shall not include boats, vehicles, trailers, portable carport type structures, children's toys, playground equipment, grills and lawn furniture that are in working condition or are not in disrepair, as well as any other similar types of items, as long as such items are in working condition or are not in disrepair. The foregoing list is intended to be illustrative and not exclusive.

(Ord. 1187 (part), 2004; Ord. 1170, 2003; Ord. 1127 (part), 1998).

(Ord. No. 1468, 6-25-2018)

Sec. 17.72.010. - General requirements.

- A. *Building Permit Required.* No owner shall, within the city, build, construct, use or place any type of an accessory building, including prefabricated accessory buildings, until a building permit has first been obtained from the building inspector. Application for an accessory building permit shall be submitted in writing with a fee pursuant to the city's fee schedule and a complete set of plans and specifications, including a plot plan or drawing accurately showing the location of the proposed accessory building with respect to adjoining alleys, lot lines and buildings. If such application meets all requirements of this section, the permit shall be approved.
- B. *Principal Use to Be Present.* An accessory use or structure in any zoning district shall not be established prior to the principal use or structure being present or under construction. Any accessory use or structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided.
- C. *Placement Restrictions; Residential District.* An accessory use or structure in a residential district may be established, subject to the following regulations:
1. *Accessory Building Number Limits.* In any residential district, in addition to the principal building, with or without an attached garage, a detached garage, and one additional accessory building, and one temporary children's play structure may be placed on a lot.
 2. *Attached Accessory Buildings.* All accessory buildings which are attached to the principal building shall comply with the yard requirements of the principal building and the dwelling code footing requirements.
 3. *Detached Accessory Buildings; Yard Requirements.* No detached accessory building, but a garage, shall occupy any portion of the side yard. Garages and other detached accessory buildings shall be less than 15 feet in height. The total of accessory building shall not occupy more than 25 percent of the rear and side yards or exceed 1,200 square feet in size, whichever is more restrictive. The 1,200 square foot limit includes attached and detached garages, storage buildings and sheds, boathouses, play structures, and decks, kennels and any other structures. No detached accessory building shall be located within ten feet of any other accessory building, five feet in the mobile home park. Setbacks shall be as prescribed by district regulations. The dimensions of any children's play structure, detached and attached garage, television dish antenna larger than two feet in diameter, dog kennel and other detached accessory buildings/structures shall be included in the determination of available lot area coverage for accessory structures. An accessory building shall not be nearer than ten feet to the principal structure unless the applicable building code regulations in regard to one-hour fire-resistive construction are complied with. In no event can the detached accessory use or structure be forward of the front line of the principal structure. A detached garage located within ten feet of the principal building shall meet principal building setbacks and have frost footings. Finished grade or floor level of detached accessory buildings shall be a maximum of 12 inches above existing grade. On sloped ground, the corner or side on the lowest existing ground may be a maximum of 24 inches above existing grade.
- D. *Use Restrictions; Residential District.* Accessory uses or structures in residential districts shall not involve the conduct of any business, trade or industry, except for home occupations as defined herein and shall not be occupied as a dwelling unit. Accessory buildings shall not be used for residential purposes.
- E. *Corner Lots.* For setback purposes a corner lot is considered having two front yards, one side yard, and one backyard.

- F. *Landscaping Uses.* Accessory structures and vegetation used for landscaping and decorating may be placed in any required yard area. Permitted structures and vegetation include flag poles, ornamental light standards, lawn furniture, bird baths, fountains, trees, shrubs, flower gardens, and gardens. Under no circumstances may a tent be used as a dwelling, or an accessory structure.
- G. *Temporary Uses.* Temporary accessory uses such as real estate sale field offices or shelters for materials and equipment being used in the construction of the permanent structure may be permitted by the building inspector.
- H. *Outdoor lighting.* Outdoor lighting installations shall not be permitted closer than three feet to an abutting property line and, where not specifically otherwise regulated, shall not exceed 15 feet in height and shall be adequately shielded or hooded so that no excessive glare or illumination is cast upon the adjoining properties and shall not register more than one-half footcandles at the property line.
- I. *Accessory Buildings.* Accessory buildings shall be designed and finished to be compatible with the primary structure, using similar building methods, materials and colors.
- J. *Retaining Walls.* Retaining walls may be permitted anywhere on the lot, provided, however, that no individual wall shall exceed four feet in height, and a terrace of at least four feet in width shall be provided between any series of such walls.
- K. *Children's Play Structures.* For purposes of this section, children's play structures, including play houses, tree houses, or elevated play structures, and climbing gyms, shall be considered accessory structures and shall comply with the requirements of this section, whether such play structures are placed on a foundation or not. Tree houses or elevated play structures within 80 feet of a neighbor's home shall require the neighbor's written approval. Swing sets, slides and sandboxes are not considered children's play structures for purposes of this section and a building permit is not required.
- L. *Terrace Area or City Right-of-Way Restrictions.* No person shall place any accessory structure or use, including landscaping ornaments, stones and basketball backboard/hoops, in the terrace area.

(Prior Code, § 13-1-200; Code 1998, § 17.72.010; Ord. No. 346, § 1(part), 1997; Ord. No. 371, § 1, 2001)

Sec. 17.72.020. - Outside storage of firewood.

- A. No person shall store outdoors, nor shall any person permit, or allow the outside storage of, firewood on any property used or zoned for residential use, except as permitted in this section.
- B. Firewood shall not be stored in the front yard of such property or within the setback, except that firewood may be temporarily stored for a period not to exceed 14 days from date of delivery to property.
- C. When adjacent to a fence, firewood shall be stacked no higher than the uppermost horizontal position of fence.
- D. No person shall permit the infestation of mice, rats, other rodents; or insects in, under or near the stack.
- E. No person shall allow any brush, debris or refuse from the processing of firewood to remain anywhere on the property.
- F. Not more than ten percent of the side yards and rear yards combined may be used for storage of firewood at any time.

(Prior Code, § 13-1-201; Code 1998, § 17.72.020; Ord. No. 346, § 1(part), 1997)

Sec. 17.72.030. - Fences.

- A. *Fence Permit.* No person shall erect a fence in the city unless a permit is first obtained by the owner or his/her

agent from the building inspector. The applicant shall submit design specifications for approval and pay required permit fees at the time of making application.

- B. *Fences Defined.* For the purpose of this section, a "fence" is herein defined as a structure serving as a barrier, enclosure or boundary, consisting of materials including, but not limited to, vegetation, wood, stone, vinyl, brick, fieldstone, wrought iron, or metal intended to prevent ingress or egress. For the purpose of this section, the term "vegetation" shall include plantings, such as hedges and shrubbery, that when closely placed, grow to form a barrier, enclosure or boundary.
- C. *Vision Triangle Defined.* For the purposes of this section, a "vision triangle" is defined as a triangle formed by connecting the following three points:
1. The point of intersection of the property lines adjacent to the lot of the intersecting streets;
 2. A point 20 feet from said point of intersection along one lot line; and
 3. A point 20 feet from said point of intersection along one lot line.
- D. *Fences Categorized.* Fences shall be categorized into seven classifications:
1. *Boundary Fence.* A fence placed along or within seven feet six inches of the border of the property line.
 2. *Protective Fence.* A fence constructed to enclose a hazard to the public health, safety and welfare.
 3. *Architectural or Aesthetic Fence.* A fence constructed to enhance the appearance of the structure or the landscape.
 4. *Hedge.* A row of bushes or small trees planted close together which grows to form a barrier, enclosure or boundary.
 5. *Picket Fence.* A fence having a pointed post, stake, pale, or peg laced vertically with the point or sharp part pointing upward to form a part of the fence.
 6. *Dog Kennel Fence.* A chainlink enclosure allowed in the side or rear yard of the property to secure canine animals.
 7. *Sport Safety Fence.* Fences erected surrounding baseball, softball, or tennis facilities to prevent the projectile balls from injuring spectators.
- E. *Fences Permitted Without a Permit.* The following types of fences are permitted, as specified, without a permit, subject to the following restrictions and providing that said fence does not in any way interfere with traffic visibility, or block, redirect or cause a drainage problem for the adjacent or downstream properties:
1. Temporary fences erected for the protection of planting or to warn of construction hazard, or for similar purposes, shall be clearly visible or marked with colored streamers or other such warning devices at four-foot intervals. Such fences shall comply with the setback and height requirements set forth in this section. Such fences shall not be erected for more than 45 days or, in the case of a construction project, shall only be for the duration of said construction project.
 2. Snow fencing shall be permitted in all districts not exceeding four feet in height provided it is removed between May 1 and November 1 of each year. No snow fence shall extend into the street right-of-way unless installed by the city or a contractor having a permit from the city.
 3. Underground fences are permitted in all districts.
- F. *Prohibited Fences.*
1. No fence shall be constructed which is in a dangerous condition, or which conducts electricity, or is designed to electrically shock, or which uses barbed wire; provided, however, that barbed wire may be used in agriculturally or industrially zoned areas if the devices securing the barbed wire to the fence are eight feet

above the ground in height and project toward the fenced property and away from any public area.

2. No person shall construct or install:

- a. Any wire or chainlink-type fence with the cut or salvage end of the fence exposed at the top.
- b. A fence which creates a hazard to users of the street, sidewalk or to nearby property.
- c. An incomplete fence, consisting only of posts and supporting members.
- d. A fence on a vacant lot or parcel, except when connected to a lot owned by the same property owner.
- e. A dog kennel fence in a front yard.

G. *Fencing Materials Suitable.* Fences shall be constructed using materials suitable for residential-style fencing, including, but not limited to, vegetation, stone, vinyl, brick, fieldstone, wrought iron, metal, stockade or board-on-board wood.

1. No chainlink or galvanized steel fencing shall be constructed of less than a minimum of nine-gauge tensile strength and without top rail supports and post caps.
2. No fence or fence panels shall be constructed with multiple building materials or more than one pattern of the same materials on any given lot line with the exception of a fence that sits atop a decorative retaining wall or decorative stone wall which is a part of the fence. For example, a wooden stockade fence cannot be constructed with a wooden picket fence as part of the same fence.
 - a. This shall not prohibit two intersecting fences from having different materials if the fences are owned by different property owners.
3. No fence shall be constructed with used or discarded materials in disrepair, including, but not limited to, pallets, tree trunks or limbs, trash, tires, junk, or other similar items.
4. No fence shall be constructed of materials not specifically manufactured for fencing, such as, but not limited to, railroad ties, doors, landscape timbers or utility poles.
5. No fence shall be constructed of unsightly or dangerous materials which would constitute a nuisance.

H. *Construction of Fences.*

1. The height of the fence shall be measured from the established grade.
2. Wooden fences shall be constructed with vertical members, or horizontal members of rail-type fences, placed on the side of the supporting members facing the adjoining property.
3. Fences shall not have sharp or pointed pickets, which can be dangerous to personal safety.
4. Fences can be placed so that the face is toward the neighboring property and is flush with the lot line. The dress side of the fence, or "face" shall be on the outside. All parts of the fence shall be erected on the owner's property.
5. Obstruction of ingress/egress area of a dwelling. No fence shall be installed in any yard that will shield any window or opening in a habitable space of a dwelling. A minimum distance of six feet shall be maintained between any solid fence and any such window or opening in a dwelling.
 - a. The fire department may grant a waiver to the building inspector to approve a fence adjacent to a required ingress/egress opening of a dwelling between four and six feet if the fence has one of the following features:
 - i. For basement ingress/egress openings, the fence opening or gate shall be the width of the ingress/egress opening or four feet whichever is greater with no ability to lock or secure said gate, or a four-foot wide approved breakaway fence panel and the area on both sides of the gate/fence shall

continuously be free from all obstruction including vegetation and snow and ice buildup and shall swing or break away in the direction of egress.

- ii. For ingress/egress opening above grade, the fence opening or gate shall be the width of the ingress/egress opening or four feet whichever is greater with no ability to lock or secure said gate, or a four-foot wide approved breakaway fence panel, or the top of the fence shall be no taller than the bottom of the sill of the ingress/egress opening and the area on both sides of the gate/fence shall continuously be free from all obstructions including vegetation and snow and ice buildup and shall swing or break away in the direction of egress.

6. Fences Placed on Property Lines.

- a. **Property Boundary Determinations.** Fences shall be erected on the owner's property and responsibility for establishing the property line shall rest with the property owner erecting the fence.
 - i. The lot survey markers indicating the property line must be located and exposed for inspection by the neighboring property owner and the building inspector.
 - ii. A document from all adjoining property owners where a fence is proposed must be provided that indicates that they are in agreement with the applicants proposed fence location and that the fence does not extend onto any of their adjoining property.
 - iii. Should the applicant not be able to locate the lot survey markers indicating the property line location, or if there is a disagreement as to the validity of the location of the lot survey markers, the applicant shall be required to contract a licensed surveyor to establish the validity of the lot survey markers or to set new lot survey markers should the markers be absent or incorrectly placed.
 - iv. It is recommended that the fence be constructed off the lot line if maintenance will need to be done to the fencing without going onto the neighboring property. Hedges shall be trimmed or confined to the property on which they are planted.

7. Height of Fences Regulated.

a. *Nonresidential.*

- i. *Commercial or Industrial.* An industrial or commercial fence shall be no higher than eight feet in height and shall be compliant with the vision triangle height restrictions designated in Subsection H. (7)(iv) of this section. Fences may not exceed forward of the city right-of-way line. Arms or extensions which project from the fence on commercial and industrial properties shall project into the lot proper.
- ii. *Agricultural.* Fences allowed on agricultural zoned property shall not exceed eight feet in height.
- iii. *Park.* Fences associated with baseball and/or softball fields and surrounding tennis courts may be erected in conformance with accepted industry standards for height.

b. *Residential.* The maximum height of fences, where permitted in the yard of or along the following lot lines shall be as follows:

- i. *Rear Yard.* Six feet in height or less may be located within the rear yard or along the rear lot line.
- ii. *Side Yard.* Six feet in height or less may be located in the side yard or along the side lot line for a distance measured from the rear lot line to any part of the lot that is at least 25 feet from the front lot line. If a house/principal structure is closer than 25 feet to the front lot line, then a six-foot high fence may be installed on any part of the lot that is as far back from the front lot line as the front of the house, except in the case of a corner lot resulting in a need for a vision triangle restriction.
- iii. *Front Yard.* Fences four feet or less may be located within the required front yard, except fences that are more than 50 percent solid shall not be permitted within 25 feet of the front lot line. If the

house/principal structure is closer than 25 feet to the front lot line, then the four-foot fence height limitation applies only to the area between the front plane of the house and the front property line.

iv. *Vision Triangle.* Exception for corner lot properties requiring intersection sight distance. Fences may only be a maximum of 30 inches in height and be no more than 30 percent solid, when located in the vision triangle as described in Subsection C. of this section.

I. *Fences to Be Repaired and Maintained.* All fences shall be maintained and kept safe and in a state of good repair and the finished side or decorative side of a fence shall face adjoining property. Hedges shall be trimmed and maintained at a height that does not violate the height restrictions for its permitted location.

J. *Nonconforming Fences.* Any fence existing on the effective date of this Code and not in conformance with this section may be maintained, but no alteration, modification, enlargement, extension, replacement or improvement of the fence shall be made except in strict compliance with all the requirements of this chapter.

(Prior Code, § 13-1-202; Code 1998, § 17.72.030; Ord. No. 346 § 1(part), 1997; Ord. No. 472, 8-4-2015)

Sec. 17.72.040. - Swimming pools.

A "swimming pool" is defined as a body of water or an outdoor structure containing a body of water in a receptacle or other container having a depth for water at any point greater than 15 inches located above or below the surface of ground elevation, installed in such a manner that the pool will remain in place as a fixture throughout the full year and will be considered as a permanent or semi-permanent structure on the land. The term includes all structural facilities, appliances and appurtenances, equipment and other items used and intended to be used for the operation and maintenance of a private or residential swimming pool.

A. *Exempt Pools.* Storable children's swimming or wading pools with a maximum dimension of 15 feet and maximum wall height of 15 inches, which are so constructed that it may be readily disassembled for storage and reassembled to its original integrity are exempt from the provisions of this section.

B. *Permit Required.* Before work is commenced on the construction or erection of private or residential swimming pools or on any alterations, additions, remodeling or other improvements, an application for a swimming pool building permit to construct, erect, alter, remodel or add must be submitted in writing to the building inspector. Plans and specifications and pertinent explanatory data should be submitted to the building inspector at the time of application. No work or any part of the work shall be commenced until a written permit for such work is obtained by the applicant. The required building permit fee pursuant to the building code shall accompany such application.

C. *Construction Requirements.* In addition to such other requirements as may be reasonably imposed by the building inspector, the building inspector shall not issue a permit for construction as provided for in Subsection B. of this section, unless the following construction requirements are observed:

1. *Approved Materials.* All materials and methods of construction in the construction, alteration, addition, remodeling or other improvements and pool installation shall be in accord with all state regulations, codes and ordinances of the city now in effect or hereafter enacted.

2. *Plumbing.* All plumbing work shall be in accordance with all applicable ordinances of the city and all state codes. Every private or residential swimming pool shall be provided with a suitable draining method and, in no case, shall waters from any pool be drained into the sanitary sewer system, onto lands of other property owners adjacent to that on which the pool is located or in the general vicinity.

3. *Electrical Installations.* All electrical installations, including lighting and heating, but not limited thereto, which are provided for, installed and used in conjunction with a private swimming pool shall be in

conformance with the state laws and city ordinances regulating electrical installations. Do not locate pool under overhead electrical wires.

D. *Setbacks and Other Requirements.*

1. Private swimming pools shall be erected or constructed in the rear yard only and on a lot occupied by a principal building. No swimming pool shall be erected or constructed on an otherwise vacant lot, unless the lot is contiguous and owned by the same owner and the lot is occupied by a principal building.
2. All swimming pools or surrounding decks shall be at least 7½ feet from any lot line or building unless designed and approved as an addition to a building.

E. *Enclosure.*

1. *Fence; In-Ground Pools.* All outdoor, below grade swimming pools shall have a fence or other solid structure not less than four feet in height completely enclosing the pool with no opening therein (other than doors or gates) larger than three inches square.
 - a. When not in use, gate or door openings through the enclosure shall be kept securely closed and locked at all times, shall be equipped with a self-closing and self-latching device designed to keep and be capable of keeping such door or gate securely locked at all times.
 - b. No part of the fence shall provide footholds that would allow a person to climb over it.
2. *Above-Ground Pools; Pool Wall Barrier.*
 - a. An approved barrier shall consist of a solid wall of durable material of which the pool itself is constructed and shall extend directly above the vertical water enclosing the wall of the pool. Such walls shall extend more than four feet above the level of the ground immediately adjacent to the pool. Such a solid pool wall barrier shall not be located within six feet of any other wall, or fence, or other structure, which can and may be readily climbed by children.
 - b. Every entrance to a pool, such as a ladder, must be secured and adequately safeguarded to prevent unauthorized entries into the pool.
 - c. Pool enclosure may be omitted where portable pools are installed above ground and have a raised deck around entire pool perimeter with an attached enclosed railing a minimum of 36 inches high on top, without footholds within four feet of ground.

F. *Compliance.* All swimming pools existing at the time of passage of this Code not satisfactorily fenced shall comply with the fencing requirements of this section or when water is placed in the pool. Variations in enclosure requirements that do not adversely affect safety of the public may be approved.

G. *Draining and Approval Thereof.* No private swimming pool shall be constructed so as to allow water therefrom to drain into any sanitary sewer nor to overflow upon or cause damage to any adjoining property. Provisions may be made for draining contents of any swimming pool into a storm sewer, but such installation shall be subject to prior approval by the plumbing inspector.

H. *Filter System Required.* All private swimming pools within the meaning of this title must have, in connection therewith, some filtration system to ensure proper circulation of the water therein and maintenance of the proper bacterial quality thereof.

I. *Dirt Bottoms Prohibited.* All swimming pools permanent in nature shall have sides and bottoms of a smooth finish and no sand or dirt bottoms shall be permitted.

(Prior Code, § 13-1-203; Code 1998, § 17.72.040; Ord. No. 346, § 1(part), 1997)

- A. *Purpose.* The purpose of this section is to protect public and private property from the effects of poorly designed and constructed retaining walls.
- B. *Permit Required.* A permit shall be required for all retaining walls constructed that exceed 24 inches in height, including terraced retaining wall projects where the total height of all walls exceeds 24 inches, and are closer than 15 feet to a property line.
- C. *Application.* Application shall be made to the building inspector on forms provided, shall include a site plan, a set of construction plans sealed by a professional engineer registered in the state, and any other information deemed necessary by the building inspector to review the proposed retaining wall plans.
- D. *Performance Standards.* A retaining wall shall be designed to resist lateral pressure of the retained material in accordance with accepted engineering practice. Walls retaining drained earth may be designed for pressure equivalent to that exerted by an equivalent fluid weighing not less than 30 pounds per cubic foot and having a depth equal to that of the retained earth. Any surcharge shall be in addition to equivalent fluid pressure.
- E. *Setbacks.* Setbacks for retaining walls shall be at least two feet. If less, then written permission by the neighbors is required.
- F. *Maintenance of Retaining Walls Adjacent to Sidewalks and Streets.* Where public projects are concerned and retaining walls are required, it is expected that once constructed, the care, maintenance, and future replacement of the retaining wall is, and shall remain, the sole responsibility of the property owner whose property is served and benefitted by the retaining wall.

(Prior Code, § 13-1-204; Code 1998, § 17.72.050; Ord. No. 346, § 1(part), 1997; Ord. No. 443, 4-20-2010)

Chapter 430. Zoning

Article XI. Accessory Uses and Structures; Fences

§ 430-83. Accessory uses or structures.

- A. Principal use to be present. An accessory use or structure in any zoning district shall not be established prior to the principal use or structure being present or under construction. Any accessory use or structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided.
- B. Placement restrictions in residential districts. An accessory use or structure in a residential district may be established subject to the following regulations:
- (1) ^[1]Attached accessory building limits. No attached accessory building or structure shall exceed the height of the principal building or structure. All accessory buildings which are attached to the principal building shall comply with the yard requirements of the principal building.
[1] Editor's Note: Original Section 13-1-140(b)(1), Accessory building number limits, which immediately preceded this subsection, was repealed 4-10-2007 by Ord. No. 2007-04.
 - (2) Detached accessory buildings. No detached accessory building (non-garages) shall occupy any portion of the required front yard, and no detached accessory building shall be larger than 1,200 square feet or occupy more than 20% of the required rear yard (whichever is more restrictive), or be located within three feet of any other accessory building or rear or side lot line or within five feet of an alley. An accessory building shall not be nearer than 10 feet to the principal structure unless the applicable building code regulations in regard to one hour fire resistive construction are complied with. In no event can the accessory uses or structures be forward of the front line of the principal structure.
 - (3) Attached garages. Attached garages shall comply with the dimensional requirements of the zoning district in which located. Attached garages shall comply with the setback requirements applicable for principal structures on the lot.
 - (4) Detached garages. Detached garages are permitted in the rear yard and side yards only. They shall not exceed the area requirements found in the standards for each zoning district and the roof pitch shall not exceed the steepest pitch of the principal structure. The total lot coverage shall not exceed the total allowed as set forth in the zoning district where the garage will be located. Total lot coverage shall include all buildings located on the lot. Detached garages shall not be located nearer than three feet to a rear or side yard or within five feet of an alley.
- C. Use restrictions in residential districts. Accessory uses or structures in residential districts shall not involve the conduct of any business, trade or industry except for home occupations as defined herein and shall not be occupied as a dwelling unit.
- D. Placement restrictions in nonresidential districts. An accessory use or structure in a business or manufacturing district may be established in the rear yard or side yard and shall not be nearer than three feet to any side or rear lot line or within five feet of an alley.

- E. Reversed corner lots. When an accessory structure is located on the rear of a reversed corner lot, it shall not be located beyond the front yard required on the adjacent interior lot to the rear, nor nearer than three feet to the side line of the adjacent structure.
- F. Landscaping and decorative uses. Accessory structures and vegetation used for landscaping and decorating may be placed in any required yard area. Permitted structures and vegetation include flagpoles, ornamental light standards, lawn furniture, sun dials, birdbaths, trees, shrubs and flowers and gardens.
- G. Temporary uses. Temporary accessory uses such as real estate sale field offices or shelters for materials and equipment being used in the construction of the permanent structure may be permitted by the Zoning Administrator.
- H. Garages in embankments in front yards. Where the mean natural grade of a front yard is more than eight feet above the curb level, a private garage may be erected within the front yard, provided as follows:
 - (1) That such private garage shall be located not less than five feet from the front lot line;
 - (2) That the floor level of such private garage shall be not more than one foot above the curb level; and
 - (3) That at least 1/2 the height of such private garage shall be below the mean grade of the front yard.
- I. Outdoor lighting. Outdoor residential lighting installations shall not be permitted closer than three feet to an abutting property line and, where not specifically otherwise regulated, shall not exceed 15 feet in height and shall be adequately shielded or hooded so that no excessive glare or illumination is cast upon the adjoining properties.
- J. Lawn accessories. Walks, drives, paved terraces and purely decorative garden accessories such as pools, fountains, statuary, flagpoles, etc., shall be permitted in setback areas but not closer than three feet to an abutting property line other than a street line.
- K. Retaining walls. Retaining walls may be permitted anywhere on the lot; provided, however, that no individual wall shall exceed three feet in height, and a terrace of at least three feet in width shall be provided between any series of such walls and provided further that along a street frontage no such wall shall be closer than three feet to the property line.
- L. Agricultural structures. Agricultural structures such as barns, silos and windmills shall not exceed in height twice their distance from the nearest lot line.

Green lake

SEC. 13-1-145 THROUGH SEC. 13-1-149 RESERVED FOR FUTURE USE.

ARTICLE K

Accessory Uses and Structures; Fences and Hedges

SEC. 13-1-150 ACCESSORY USES OR STRUCTURES.

- (a) **Principal Use to be Present.** An accessory use or structure in any zoning district shall not be established prior to the principal use or structure being present or under construction. Any accessory use or structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided.
- (b) **Placement Restrictions - Residential Districts, Except as Set Forth in Section 13-1-24(g) for Accessory Buildings Located in the Single-Family Lake Shore District (R).**
An accessory use or structure in a residential district may be established subject to the following regulations:
- (1) Accessory Building Number Limits. In any residential district, in addition to the principal building, a detached garage or attached garage and one (1) additional accessory building may be placed on a lot.
 - (2) Accessory Building Size Limits. Garages and other detached accessory buildings shall be less than fifteen (15) feet in height.
 - (3) Attached Accessory Buildings. All accessory buildings which are attached to the principal building shall comply with the yard requirements of the principal building.
 - (4) Detached Accessory Buildings. Detached accessory buildings and private garages are permitted in the rear yard only. They shall not be closer than ten (10) feet to the principal structure, exceed fifteen (15) feet in height, occupy more than twenty percent (20%) of the rear yard area, and be closer than three (3) feet to any lot line nor five (5) feet to any alley line. A detached garage, if in the rear yard, is an accessory structure and the foregoing applies. If the garage is entirely or any part thereof in the side yard, attached or not, it is considered an integral part of the principal structure and the district yard requirements apply.
- (c) **Use Restrictions -- Residential District.** Accessory uses or structures in residential districts shall not involve the

conduct of any business, trade or industry except for home occupations as defined herein and shall not be occupied as a dwelling unit.

- (d) **Placement Restrictions -- Nonresidential Districts, Except as Set Forth in Section 13-1-36(c)(5) for Accessory Buildings Located in the Recreational Business District (RB).** An accessory use or structure in a business or manufacturing district may be established in the rear yard or side yard and shall not be nearer than three (3) feet to any side or rear lot line.
- (e) **Reversed Corner Lots.** When an accessory structure is located on the rear of a reversed corner lot, it shall not be located beyond the front yard required on the adjacent interior lot to the rear, nor nearer than three (3) feet to the side line of the adjacent structure.
- (f) **Landscaping and Decorative Uses.** Accessory structures and vegetation used for landscaping and decorating may be placed in any required yard area. Permitted structures and vegetation include flag poles, ornamental light standards, lawn furniture, sun dials, bird baths, trees, shrubs and flowers and gardens.
- (g) **Temporary Uses.** Temporary accessory uses such as real estate sale field offices or shelters for materials and equipment being used in the construction of the permanent structure may be permitted by the Zoning Administrator.
- (h) **Garages in Embankments in Front Yards.** Where the mean natural grade of a front yard is more than eight (8) feet above the curb level, a private garage may be erected within the front yard, provided as follows:
 - (1) That such private garage shall be located not less than five (5) feet from the front lot line;
 - (2) That the floor level of such private garage shall be not more than one (1) foot above the curb level; and
 - (3) That at least one-half (1/2) the height of such private garage shall be below the mean grade of the front yard.
- (i) **Outdoor Lighting.** Outdoor lighting installations shall not be permitted closer than three (3) feet to an abutting property line and, where not specifically otherwise regulated, shall not exceed fifteen (15) feet in height and shall be adequately shielded or hooded so that no excessive glare or illumination is cast upon the adjoining properties.
- (j) **Lawn Accessories.** Walks, drives, paved terraces and purely decorative garden accessories such as pools, fountains, statuary, flag poles, etc., shall be permitted in setback areas but not closer than three (3) feet to an abutting property line other than a street line.
- (k) **Retaining Walls.** Retaining walls may be permitted anywhere on the lot, provided, however, that no individual wall shall exceed six (6) feet in height, and a terrace of at least three (3) feet in width shall be provided between any series of such walls and provided further that along a street frontage no such wall shall be closer than three (3) feet to the property line.
- (l) **Agricultural Structures.** Agricultural structures such as barns, silos and windmills shall not exceed in height twice their distance from the nearest lot line.

shall apply:

- (a) District boundary lines are either the centerlines of railroads, highways, streets, alleys, or easements, or the boundary lines of sections, quarter sections, divisions of sections, tracts or lots, or such lines extended otherwise indicated.
- (b) In areas not subdivided into lots and blocks, wherever a district is indicated as a strip adjacent to and paralleling a street or highway, the depth of such strips shall be in accordance with the dimensions shown on the maps measured at right angles from the centerline of the street or highway, and the length of frontage shall be in accordance with dimensions shown on the map from section, quarter section, or division lines, or centerlines of streets, highways, or railroad rights-of-way unless otherwise indicated.
- (c) Where a lot held in one (1) ownership and of record on the effective date of this Chapter is divided by a district boundary line, the entire lot shall be construed to be within the less-restricted district, provided that this construction shall not apply if it increases the less-restricted frontage of the lot by more than twenty-five (25) feet.

SEC. 13-1-23 ZONING OF STREETS, ALLEYS, PUBLICWAYS, WATERWAYS, AND RIGHTS-OF-WAY.

All streets, alleys, publicways, waterways, and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting upon such alleys, streets, publicways, or waterways and railroad rights-of-way. Where the center serves as a district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such centerline.

SEC. 13-1-24 SINGLE-FAMILY RESIDENTIAL LAKESHORE DISTRICT (R).

(a) **Principal Use.** Single-family dwellings, except mobile homes. No building may cover more than twenty-five percent (25%) of the lot area, and no more than fifty percent (50%) of the lot area may be covered by an impermeable surface. This District is intended to provide a quiet, pleasant and spacious area along Green Lake, protected from traffic hazards and the intrusion of incompatible land uses.

(b) **Conditional Uses.** (See also Article E).

- (1) Churches, public recreational and community center buildings and grounds, including playgrounds and parks for public use.
- (2) Existing motels, cabins, etc., are permitted and are not considered nonconforming uses. Said motels and cabins may maintain signs designating their name and location as approved by the City Plan Commission, but not to exceed four (4) feet in area.
- (3) Detached garage and accessory building.
- (4) Uses customarily incident to any of the above uses provided that no such use generates traffic or noise

- that would create a public nuisance.
- (5) Riparian property owners shall not provide docking or mooring facilities for more than one (1) boat not owned by the property owner or tenant of the property.
- (c) **Lot Size.**
- (1) Width. Minimum one hundred (100) feet.
 - (2) Area. Minimum twenty thousand (20,000) square feet.
- (d) **Principal Building.**
- (1) Minimum Living Area. Two thousand five hundred (2,500) square feet; or a minimum surface area of one thousand two hundred (1,200) square feet.
 - (2) Height. Maximum thirty-five (35) feet.
- (e) **Principal Building Yard Setbacks.**
- (1) Street. Minimum twenty-five (25) feet.
 - (2) Side. Minimum fifteen (15) feet.
- (f) **Shore Yard Setback.** All principal buildings shall be not less than seventy-five (75) feet measured horizontally, from an ordinary highwater mark. (See Exhibits No. 1, & 2).
- (1) Increased Shore Yard Setback:
 - a. Where there is a principal building on each side of the proposed site, the shore yard setback for the proposed principal building shall be the average of the shore yard setbacks of the existing principal buildings. (See Exhibits No. 3 & 4).
 - b. If there is an existing principal building on only one side, the shore yard setback for the proposed principal building shall be the average of the required (75 foot) shore yard setback and the existing principal building's shore yard setback (See Exhibits 5 & 6).
- (g) **Accessory Building Yard Setbacks and Building Requirements, Except Piers and Hoists.**
- (1) Number Limits. In addition to the principal building, a detached garage or attached garage and one (1) additional accessory building may be placed on a lot.
 - (2) Attached Accessory Buildings. All accessory buildings that are attached to the principal building shall comply with the setback requirements of the principal building. (See Exhibit 7).
 - (3) Detached Accessory Buildings.
 - (a) Building Height. Maximum fifteen (15) feet.
 - (b) Street Setback. Minimum twenty-five (25) feet.
 - (c) Side Setback. Minimum three (3) feet.If however, the detached accessory building is entirely or any part thereof in the side yard, attached or not, it is considered an integral part of the principal building and the principal building side yard requirements apply.
 - (d) Shore Yard Setback. Detached accessory buildings shall comply with the shore yard setback requirements of the principal building.
 - (e) Alley Line. Minimum five (5) feet.
 - (f) (f) Detached accessory buildings shall not be closer than ten (10) feet to the principal building.
 - (g) Detached accessory buildings shall not occupy more than thirty percent (30%) of the street or

16.02 - DEFINITIONS.

Waipun

For the purpose of this Ordinance, certain words and terms are defined as listed below. Also, words used in the present tense include the future; the singular number includes the plural number and the plural number includes the singular number; the word "building" includes the word "structure"; the word "shall" is mandatory and not directory. Any words not herein defined shall be construed as defined in the State and City Building Codes.

- (1) **ACCESSORY BUILDING OR STRUCTURE.** (Ord. 01-08) Any detached building or structure subordinate to the main building or structure, and used for a purpose customarily incidental to the permitted use of the main building, structure or the use of the premises, not including detached garages as defined herein. Accessory buildings and structures include, but are not limited to, utility storage buildings less than 144 square feet in area, carports, greenhouses, screened enclosures, decks, swimming pools, bathhouse and filter equipment sheds, playhouses, gazeboes and satellite dish antennas.
 - (a) [Utility Buildings.] Utility buildings exceeding 144 square feet in area will require a building permit and shall be included in the calculation of the allowable square footage for a detached private garage.
 - (b) Outdoor Wood Burning Furnaces. (Cr. #05-06) Includes an accessory structure or appliance designed for location ordinarily outside the principal structure and to transfer or provide heat via liquid or other means, by burning wood, corn, pellets or other solid fuels for heating any principal or accessory structure on the premises. Does not include fire pits, barbecues, fryers or chimneys.
 - (i) Prohibited in all districts.
- (2) **BOARDING HOUSES.** A building other than a hotel or restaurant where meals or lodging are regularly furnished by prearrangement for compensation for 4 or more persons not members of a family, but not exceeding 6 persons and not open to transient customers.
- (3) **BOATHOUSE.** An accessory building designed for the protection or storage of boats, which shall not be used for either temporary or permanent dwelling purposes, and shall not exceed 8 feet in height, but this shall not prohibit the erection of a temporary flexible covering or sunshade over flat roofs or decks not to exceed 15 feet in height.
- (4) **BUILDING.** Any structure used, designed or intended for the protection, shelter, enclosure, or support of persons, animals, or property. When a building is divided into separate parts by unpierced walls extending from the ground up, each part shall be deemed a separate building.
- (5) **BUILDING HEIGHT.** The vertical distance from the average curb level; in front of the lot or the finished grade at the building line, whichever is higher, to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the average height of the highest gable or a gambrel, hip or pitch roof.
- (6) **DWELLING, ONE-FAMILY.** (Ord. 89-19; 94-13) A detached building designed for or occupied exclusively by one family, and excluding manufactured homes. A building with any of the following shall be presumed not be designed for one family:
 - (a) A separate entry way to the outside without convenient open and usable interior passages way between them.
 - (b) Separate electric or utility services.
 - (c) Separate cooking facilities.
 - (d) Separate post office addresses.

- (e) Other factors on a case by case basis that show an intent for occupancy by more than one family.
- (7) DWELLING, MULTIPLE. (Ord. 94-13) A building or portion thereof designed for and occupied by more than 2 families, including row houses, apartment houses and condominiums, and excluding manufactured homes.
- (7m) DWELLING, SPLIT TWO-FAMILY. (Ord. 00-19A) A building designed for or occupied exclusively by a single-family, which is attached on one side to another one-family dwelling, provided that:
 - (a) The dwelling is not a manufactured home as defined in this Code;
 - (b) The dwelling complies with the State of Wisconsin One-and Two-Family Dwelling Code as codified in §101.60-60, Wis. Stats.;
 - (c) The dwelling maintains a minimum one-hour-fire rated wall assembly division between the 2 dwelling units separating all areas from the lowest level to flush against the underside of the roof.
 - (d) No more than 2 one-family dwellings are so attached, and each one-family dwelling is located on an individual lot.
- (8) DWELLING, TWO-FAMILY. (Ord. 89-19; 94-13) A detached or semi-detached building designed for or occupied exclusively by 2 families, and excluding manufactured homes. A building with any of the following shall be presumed to be designed for more than 2 families.
 - (a) More than 2 separate entry ways to be out-side without convenient open and usable interior passage ways between them.
 - (b) More than 2 separate electrical or utility services.
 - (c) More than 2 separate cooking facilities.
 - (d) More than 2 separate post office addresses.
 - (e) Other factors on a case by case basis that show an intent for occupancy by more than 2 families.
- (9) ESSENTIAL SERVICES. Services provided by public and private utilities necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface or overhead gas, electricity, steam, water, sanitary sewage, stormwater drainage, and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations, and hydrants, but not including buildings.
- (10) FAMILY. Any number of persons related by blood, adoption, or marriage, not to exceed 4 persons not so related, living together in one dwelling as a single housekeeping entity.
- (11) FARMING. The raising of crops and keeping of farm animals including, but not limited to cattle, fowl, rabbits, sheep, goats and horses.
- (12) FENCES. Any barrier constructed of wood, wire, metal, stone, or a combination thereof, excluding single strand or barbed wire fences. Such fences shall not exceed 72 inches in height except in industrial districts in the side or rear yard or 48 inches in height in the front yard. All fences in the front yard or a vision triangle shall not exceed 48 inches in height, shall be 90% see-through, and shall not obstruct the vision of pedestrians or motorists.
- (13) FRONTAGE. All the property abutting on one side of a road or street, between 2 intersecting roads or streets or all of the property abutting on one side of a road or street and the dead end of a road or street.
- (14) GARAGE, PRIVATE (ATTACHED). (Ord. 01-08) A building in residential areas for the storage of motor-driven vehicles that is physically attached to the principal building. Commercial vehicles except for cars, pickup

trucks and vans may not be parked in a private attached garage and parking of such vehicles on a residential lot is prohibited in residential areas.

(a) Attached private garage shall comply with the same setback requirements as for principal buildings.

(14a) GARAGE, PRIVATE (DETACHED). (Ord. 01-08) A building in residential areas for the storage of motor-driven vehicles. Commercial vehicles except for cars, pickup trucks and vans may not be parked in a private detached garage and parking of such vehicles on a residential lot is prohibited in residential areas. Detached private garages shall comply with subsections (a), (b), (c), (d) and (e).

(a) A detached private garage shall not occupy more than 1,400 square feet of area. (Am. #04-11)

(b) Reserved. (Rep. #04-11)

(c) No detached private garage shall be constructed on a residential lot until a principal structure is present or under construction.

(d) Detached private garages shall comply with the setback requirements for accessory buildings.

(e) Detached private garages shall be separated from the principal building by not less than 3 feet.

(15) GARAGE, PUBLIC. Any building or premises, other than a private or storage garage, where motor-driven vehicles are equipped, repaired, painted, serviced, hired, sold or stored.

(15a) GROUP CHILD CARE CENTER. (Ord. 14-09) A group child care center is licensed under DCF 251, Wisconsin Administrative Code, to provide care and supervision to 9 or more children for less than 24 hours a day. A group child care center can also be certified under DCF 202, Wisconsin Administrative Code, to provide care and supervision to school-age children 7 and older.

(16) HOME OCCUPATIONS. Any occupation for gain or support conducted entirely within buildings by resident occupants, which occupation is customarily incidental to the principal use of the premises, is allowed provided the proposed home occupation meets the requirements of this Ordinance.

(17) HOTEL. A building where rooms, with or without meals, are supplied to transient public, or to anyone who may apply, for compensation.

(18) JUNKYARD. An area consisting of buildings, structures, or premises where junk, waste, discarded or salvage materials are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including automobile wrecking yards, but not including the purchases or storage of used furniture or household equipment or used cars in operable condition.

(19) KENNEL. The use of land with related buildings and structures for the breeding, rearing, boarding, or training of more than 4 dogs and/or cats over 5 months of age.

(20) LOT. A parcel of land having frontage or legal access to a public street, occupied, or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area, yard, parking area, and other open space provisions of this Ordinance.

(21) LOT, CORNER. A lot abutting on 2 or more streets at their intersection, provided that the interior angle of such intersection is less than 135 degrees.

(22) LOT, DEPTH OF. The mean horizontal distance between the front and rear lot lines.

(23) LOT, THROUGH. An interior lot having frontage on 2 nonintersecting streets.

(24) LOT LINES. The lines bounding a lot as defined herein.

(25) LOT WIDTH. The width of a parcel of land measured at the rear of the specified setback lines.

(25m) MANUFACTURED HOME. A structure certified and labeled as a manufactured home under 42 U.S.C. §§5401—

Waukegan

Sec. 66-227. - Accessory uses and structures.

- (a) Accessory uses and structures are permitted in the rear yard only; they shall not be closer than ten feet to the principal structure; shall not exceed 15 feet in height; shall not occupy more than 20 percent of the rear yard area, and shall not be closer than three feet to any lot line, nor five feet to any alley line.
- (b) Accessory building, structure or use on a corner lot, a reversed corner lot or a through lot, shall be set back from the property lines adjoining a street the distance required for a front yard, unless otherwise required herein for a specific permitted or conditional use.

(Code 1988, § 10-1-12; Ord. No. 1997-003, § 10-1-12, 4-14-1997)

To: Plan Commission

From: Lindsey Kemnitz

Subject: DNR Lease Renewal for Berlin Locks Area

Background:

The twenty-year lease with the DNR for the Berlin Locks area expired June 1, 2020. The DNR has sent a renewal lease for us to consider which would run November 1, 2020 thru October 31, 2040 for a fee of \$1. I have included the original lease and the new proposed lease for you to review. Since the 2000 lease came into effect, the City had made many improvements to the locks area through grant funding.

Recommendation: Recommend to Common Council for approval of DNR lease renewal for Berlin Locks area.

State of Wisconsin
Department of Natural Resources
Box 7921
Madison, WI 53707

LEASE OF STATE-OWNED PUBLIC ACCESS SITE

Section 23.09(10), Wis. Stats.
Form 3700-008

THIS STATE-OWNED PUBLIC ACCESS SITE LEASE ("Lease") is made by and between the State of Wisconsin Department of Natural Resources ("Lessor") and City of Berlin, a body corporate ("Lessee"), which are collectively referred to herein as "Parties".

RECITALS

WHEREAS, the Lessor is the fee title owner of lands abutting Upper Fox River in the City of Berlin, Green Lake County, Wisconsin, described herein as the "Premises," and commonly known as the Berlin Locks;

WHEREAS, the Premises includes a parking lot, picnic tables, two (2) fishing piers, two (2) boat launches and restroom facility, ("Facilities") used for public day use;

WHEREAS, the Parties wish to continue to provide adequate access to Upper Fox River for public use including boating, fishing, and day use;

WHEREAS, it is the policy of the Lessor to cooperate with local units of government in providing adequate access to the waters of this State; and

WHEREAS, the Department may enter into this Lease pursuant to ss. 23.09(2) and 23.09(10), Wis. Stats. and NR 1.48, Wis. Admin. Code.

NOW THEREFORE, for \$1.00 and other good and valuable consideration and in accordance with the mutual covenants herein set forth, the Lessee hereby leases the Premises, as more fully described below, for the purposes of constructing, operating, maintaining, repairing, removing and replacing Facilities providing public access to Upper Fox River.

I. PREMISES

The Premises is depicted on the attached Exhibit "A" and more particularly described as follows:

Part of the E ½ of the NW ¼, Part of the W ½ of the NE ¼ and Part of the NE ¼ of the NE ¼ of Section 16, Township 17 North, Range 13 East, City of Berlin, Green Lake County, Wisconsin, that is further described below:

All that part of government Lot 1 and 2 lying North of the present main channel of the Fox River and East of the slough; except lands described in Certified Survey Map No. 1824, recorded in Volume 8 Page 1824 of Green Lake County Certified Survey Maps, also excepting and specifically intending by DNR to retain and maintain rights to control and manage water levels of the Fox River by the structures and equipment located on the above described property.

Recording Area

Return: Department of Natural Resources
Bureau of Facilities & Land – LF/6
P.O. Box 7921
Madison, WI 53707-7921
Attn: Bill Peterson (L-8070)

Parcel Identification Numbers (PIN):
026018770000

II. TERM AND TERMINATION

- A. This Lease shall become effective on the 1st day of December 2020, and it shall terminate on the 30th day of November 2040. The Lessor and Lessee agree that this Lease shall terminate if fee title to the Premises is transferred.

The Lessor or the Lessee may terminate this Lease by providing 90 days written notice to the other party of its decision and reason to terminate. In the event of termination, the Lessee shall surrender the Premises to the Lessor. Any improvements made by the Lessee shall become the property of the Lessor upon termination.

- B. This Lease may be renewed upon mutual written agreement of the Lessor and the Lessee.

III. LESSEE'S USAGE

- A. Based on the availability of funding designated by the City of Berlin, including grants in aid, the Lessee may repair, replace, remove, construct, and maintain the Facilities on the Premises. Lessee shall maintain the Premises and will continue to allow access for public use for boaters, anglers, hikers, swimmers, bird watchers, and other users of nearby public lands and waters. The Lessee may regulate in a fashion that is not inconsistent with the Lessor's hunting, trapping and fishing regulations and policies addressing potential uses of the area including discharge of firearms.
- B. The Lessee shall provide the Lessor with a 30-day written notice of any development and or construction plan of any scheduled non-routine maintenance work subject to the limitations on usage in Section IV, unless such work is required or needed on an emergency basis. The Lessor shall approve, modify or disapprove any construction plans submitted by the Lessee. The Lessee shall comply with applicable State and local floodplain regulations.
- C. The Lessee shall comply with section 106 of the National Historic Preservation Act, the Endangered Species Act, State of Wisconsin Historical Society guidelines and other applicable federal and state legislation.
- D. The Lessee shall:
- i. Maintain the Premises in a neat, safe, sanitary, and useable condition.
 - ii. Maintain responsibility for all maintenance duties and upkeep of the Premises.
 - iii. Provide fire protection in a manner to preserve and protect the property and public safety.
- E. The Lessee may post signs and posters along the Premises in order to delineate and locate the Premises as being available for public use and to inform the public of the source of funds used for development and/or maintenance of the Premises. The Lessee may post zoning signs in accordance with local ordinances based upon III.B. The Lessor reserves final approval authority for any additional signs or memorials to be placed on the Premises. Lessee shall obtain Lessor's prior written permission for any sign or memorial except that Lessee may add signs stating property is owned by the Lessor and managed by City of Berlin without obtaining this prior permission.

IV. LIMITATIONS ON USAGE

- A. Any and all improvements made to the Premises shall be accessible to persons with physical disabilities in accordance with the Americans with Disabilities Act.

- B. The Lessee shall open the Premises to the general public subject to reasonable rules and regulations, fees and charges, as the Lessee deems necessary for the management and operation of the Premises. Admission fees, if any, charged by the Lessee shall not exceed those established in s. 30.77(3)(e), Wis. Stats. and NR 1.91(11), Wis. Admin. Code. If the Lessee establishes a fee charge for the use of the landing, the Lessee must maintain financial records that will be open to the Lessor's examination at any time. The fund created by the fees must be used to help offset the cost of maintenance of the Premises. The Lessee agrees that vehicles owned by or used in the official business of Federal, State, or local government will not be charged a fee. The vehicles used either by independent contractors or agents of the Lessor or Lessee will also be permitted to park and launch without payment of fee.
- C. The Premises is open for use to all members of the general public without regard to race, creed, marital status, color, sex, national origin, age, handicap, ancestry, sexual orientation, arrest record, or conviction record.

V. GENERAL

- A. Neither this Lease nor any right or duty of the Lessee herein may be assigned, transferred, conveyed, delegated, or contracted without the prior written permission of the Lessor.
- B. The Lessee agrees to save, keep harmless, defend, and indemnify the Lessor and all of its officers, employees, and agents against any and all liability claims, and costs of whatever kind and nature, for injury to or death of any person or persona, and for loss or damage to any property (State or other) occurring in connection with or in any way incident to or arising out of the Lessee's occupancy, use, service, operation, or performance of work in connection with this Lease. The Lessee shall be responsible for obtaining insurance for any improvements or structures located on the Premises. This paragraph is not intended to waive or eliminate any defenses, limits on liability or immunities provided by Wis. Stat. § 893.80, *et. seq.* Lessee shall not indemnify Lessor for claims related to use or occupancy by the general public that are unrelated to an action, improvement, duty or activity by Lessee.
- C. The Lessee acknowledges that it is not an employee or agent of the Lessor.
- D. The Lessee shall have sole control of the method, hours worked, and time and manner of any performance authorized or required under this Lease other than as specifically provided herein. The Lessor reserves the right to inspect the Premises at its discretion. The Lessor assumes no responsibility for supervision or direction of the performance of the Lease by the Lessee or the Lessee's employees or agents. The Lessor further agrees that it will exercise no control over the selection and dismissal of the Lessee's employees or agents.
- E. No Cutting or trimming of trees shall be done without the prior written approval of the Lessor, except for dead and down trees that obstruct passage on the Premises may be removed without such written approval. Any trees removed from the Premises remain the property of the Lessor. All trees having commercial value including firewood shall be cut in standard lengths and be piled at a location on the Premises designated by the Lessor. All stumps, slash, waste materials and other debris shall be disposed of by the Lessee as directed by the Lessor. Use of pesticides and herbicides shall only be allowed with the prior written approval of the Lessor. Any pesticides and herbicides used as part of a management plan must conform to the Forest Stewardship Council list found at <https://ic.fsc.org/en/our-impact/program-areas/forest-program/pesticides>. Lessee shall report to the Lessor at least annually, the chemicals that are applied on the Premises including the date, product

trade name, active ingredient(s) and corresponding CAS number(s), purpose, rate, location with a map, total area treated, and total amount of chemical used.

- F. In connection with the performance of any work under the Lease, the Lessee agrees not to discriminate against any employee or applicant for employment because of age, handicap, physical condition, developmental disability as defined in Wis. Stat. § 51.01(5), race, religion, sex, color, sexual orientation or national origin regarding employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- G. Lessor retains the right to convey easements to one or more person(s), company(s) or entity(s); provided that any such conveyance does not interfere with the rights granted hereunder.
- H. The Lessee shall secure and comply with all federal, state and local permits and licenses required for the operation, installation, operation, maintenance, repair, reinstallation, replacement, of the Facilities for Berlin Locks and river access including, without limitation, zoning, building, health, environmental permits or licenses, and shall indemnify the Lessor against payment of the costs therefore and against any fines or penalties that may be levied for failure to procure or to comply with such permits or licenses as well as any remedial costs to cure violations thereof.
- I. The Lessee will not permit any mortgage, pledge, security interest, lien or encumbrance, including without limitation tax liens or encumbrances and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Berlin Locks or any portion of the Premises.
- J. At all times the Lessee shall be required to provide the Lessor adequate evidence of financial responsibility to meet the liabilities, losses, demands and actions from which the Lessee is required to meet. Evidence of adequate financial responsibility shall be either appropriate evidence that the Lessee is self-insured and has sufficient resources to provide coverage equivalent to an insurance policy having combined single limits of not less than \$500,000.00 or, alternatively, evidence of an appropriate insurance policy having combined single limits of not less than \$500,000.00. Upon request, the Lessee shall furnish the Lessor the requisite certificate, or other proof of insurance showing that the Lessor and its officers, employees and agents, are named as additional insureds under the insurance policy. The Lessee shall furnish the Lessor evidence of adequate financial responsibility on or before the effective date of the Lease. If the Lessor determines that the Lessee has not provided adequate evidence of financial responsibility, Parties shall meet to discuss whether the Lease should be terminated.
- K. All notices or other writings this Lease requires to be given, or which may be given, to either party by the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, prepaid and addressed as follows:
 - i. To the Lessor: Department of Natural Resources Bureau of Facilities and Lands, 101 S. Webster St., Madison, WI 53703.
 - ii. To the Lessee: City of Berlin, PO Box 272, Berlin, Wisconsin 54923.
 - iii. The address to which any notice, demand, or other writing may be given, made or sent to any party as above provided may be changed by written notice given by such party as above provided.
- L. The provisions of chapter NR 45, Wisconsin Administrative Code, remain applicable to the Facilities area and Berlin Locks. Pursuant to Wis. Admin. Code § NR 45.01(1), the Lessor retains management,

supervision, and control over the Premises for the purpose of enforcing Wis. Admin. Code ch. NR 45 when needed to protect the Premises or the public.

- M. All rights, duties and responsibilities of the Lessee shall take effect upon the signature of the Lessee.
- N. The Parties acknowledge that the ability to perform the duties identified in this Lease is limited by the resources allocated by the City of Berlin Board and/or by the limits associated with available state and/or federal funds and the City's appropriations to match those funds.
- O. This Lease shall be construed and enforced in accordance with the laws of the State of Wisconsin.
- P. This Lease contains the entire agreement between the parties relating to the subject matter of this Lease and supersedes all prior understandings and agreements between the Parties. There are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the Parties other than as herein set forth in this Lease. The Lease may not be changed except by a written document executed and acknowledged by the Lessor and the Lessee.
- Q. If any term or condition of this Lease shall be deemed invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
- R. Enforcement of this Lease may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Lease, either to restrain or prevent the violation or to obtain any other relief.
- S. The individuals signing below represent and warrant that they have been duly authorized to execute this Lease on behalf of their respective entities.

END OF TERMS AND CONDITIONS

IN WITNESS WHEREOF the Lessor has caused this instrument to be executed on its behalf this ____ day of _____, 20__.

State of Wisconsin
Department of Natural Resources
For the Secretary

By _____ (SEAL)
Terry H. Bay
Facilities and Lands Bureau Director

State of Wisconsin)
) ss.
County of Dane)

Personally came before me this _____ day of _____, 20__, the above named Terry H. Bay, Facilities and Lands Bureau Director for the State of Wisconsin Department of Natural Resources, to me known to be the person who executed the foregoing instrument and acknowledged that he executed and delivered the same as for the act and deed of said Department of Natural Resources.

Aubrey F. Johnson
Notary Public, State of Wisconsin
My Commission (expires)(is) _____.

IN WITNESS WHEREOF the Lessee has caused this instrument to be executed on its behalf and accepts the terms and conditions this _____ day of _____, 20__.

City of Berlin

By _____ (SEAL)
*Name Jodie Olson,
City Administrator, City of Berlin

State of Wisconsin)
) ss.
_____ County)

Personally came before me this _____ day of _____, 20__, above named Jodie Olson, City Administrator, City of Berlin, to me known to be the person who executed the foregoing instrument and acknowledged that he or she executed and delivered the same as for the act and deed of City of Berlin.

*
Notary Public, State of Wisconsin
My Commission (expires)(is) _____.

* Print Name

This instrument drafted by:
State of Wisconsin
Department of Natural Resources

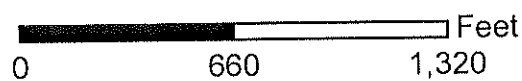
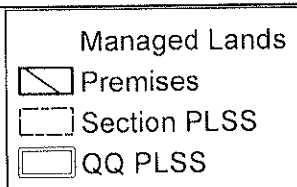
EXHIBIT "A"

Map of Premises; legal description if too lengthy to be included in text of document.

Exhibit "A"

T17N, R13E, City of Berlin, Green Lake County

This exhibit is not to scale, and the data set forth hereon has been obtained from various sources and is of varying, age, reliability and resolution. This exhibit is for illustrative purposes only. No warranty, expressed, or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this exhibit. In the event of any conflicts between the Lease to which this exhibit is attached and this exhibit, the Lease shall control.



Real Estate Section
Bureau of Facilities and Lands
November 19, 2020 RLK



Document Number

LEASE

State of Wisconsin
Department of Natural Resources
PO Box 7921
Madison, Wisconsin 53707-7921

Lease of State-Owned Access Site
Form 3700-008 (R 1/00) Page 1 of 4

Completion of this agreement is required under s. 23.09(2)(h), Wis. Stats.
Personally identifiable information requested on this form will be used for managing public access sites
and is unlikely to be used for other purposes.

Agency or Organization
City of Berlin

Authorized Representative Name: Last First MI
Olson Jodie

Position Title
Clerk, City of Berlin

Street Address City State ZIP Code
PO Box 272, 108 N Capron Street Berlin WI 54923

Tax Parcel Number

Waterbody Name
Fox River

Property Name
Upper Fox River Lock and Dam Access Site, Berlin

Street Address
Morris Street

City State ZIP Code
Berlin WI 54923

County Name
Green Lake County

Town Name
Berlin

Park System
Berlin City Park

Access Site Name
Upper Fox River Lock and Dam Access Site, Berlin

Recording Area

Name and Return Address:

REGISTER OF DEEDS:

Please return original order(s)
Promptly after recording.

THIS LEASE is entered into by and between the State of Wisconsin Department of Natural Resources, hereinafter referred to as DNR and the City of Berlin, hereinafter referred to as City; and

WHEREAS, the DNR and the City wish to provide adequate access to the waters above for public use including boating and fishing; and

WHEREAS, it is the policy of the DNR to cooperate with local units of government and private cooperators in providing adequate access to the waters of the State; and

WHEREAS, land now owned by the DNR located at City of Berlin provides space for boaters and fishers seeking access to these waters of the Upper Fox River and;

WHEREAS, the Department may enter into this lease pursuant to S 23.09(2), Stats., and section NRI.48, Wisconsin Administrative Code.

NOW THEREFORE, for and in consideration of the covenants herein set forth, the DNR leases unto the City the above-described property for the purpose of development and/or maintenance including constructing, operating, maintaining, repairing, removing and replacing with or without state or federal grants in aid, a public access to the above waterbody which shall become a part of the Park system named above and shall be known as the Access site named above.

I. PREMISES

T17N, R13E, Town of Berlin, Green Lake County, Wisconsin

Section 16: All that part of Government Lot 1 & 2 lying North of the present main channel of the Fox River and East of the slough; all more particularly shown on attached map marked as Exhibit "A", except lands described in Certified Survey Map No. 1824 recorded in Volume 8, Page 1824 of Green Lake County Certified Survey Maps; Also excepting and specifically intending by DNR to retain and maintain rights to control and manage water levels of the Fox River by the structures and equipment located on the above described property.

II. TERM AND TERMINATION

- A. This lease shall become effective when signed by both parties and recorded and shall remain in effect for a period of 20 years commencing on June 1, 2000 and may be modified or renewed upon written agreement of both parties.
- B. 1. The City may terminate the lease with the DNR by providing ninety (90) days written notice of said termination. In the event the City terminates the lease, the City shall assume compliance responsibility for any other grants accepted by the City for the property and satisfy those responsibilities to the satisfaction of the grantors.
2. The DNR may terminate this lease/easement with the City in the event that:
- a. The City breached any term or condition of the Memorandum of Agreement or the lease and said breach remains uncorrected for a period of sixty (60) days from receipt of the DNR's written notification of said breach by the City. In the event the City breached any term or condition of the Memorandum of Agreement or the lease from the DNR the City shall assume compliance responsibility for any state or federal recreation grant fund assisted areas; OR
- b. The DNR determines that the continued use of the premises as a public access site would be inconsistent with the management needs or objectives of the DNR or the State of Wisconsin. In exercising its termination rights under this provision the DNR shall give the City 180 days notice of termination and reimburse the City for developed improvements on the remaining useful life values of the improvements, subject to the availability of future appropriations.
- c. DNR represents that it has made reasonable inquiry and has no reason to believe that hazardous waste, noxious waste, or any other condition of the land subject to this lease exists that would inhibit the ability of the City to possess and improve the property as contemplated by this lease. If, however, such prohibitive conditions are discovered, either DNR shall take all steps reasonably necessary to remove such conditions or the intent of this lease agreement being frustrated, the lease shall terminate.

III. CITY'S USAGE

- A. The City may develop, repair, replace, remove, construct, and maintain an access site for public use including parking and launch facilities for boaters, fishers, hikers, bird watchers, and other users of local public lands. The City may also develop shore fishing, sanitary, and picnic facilities. The City may regulate, in a fashion that is not inconsistent with the DNR's guidelines, uses of the area including swimming and the discharge of firearms. All activities must be consistent with the purpose for which the land was originally acquired.
- B. The City may require and impose town or county rules and regulations pertaining to user fee payments for boat launching, shore fishing and vehicles using a described parking area. If fees are charged for boat launching, such fees shall not exceed the fee charged for daily entrance into State Parks, unless a higher fee is approved by the DNR according to s. NR 1.91, Wis. Adm. Code.
- C. The City shall comply with all applicable State Statutes, NR Codes and local regulations pertaining to navigable waters, permits, floodplain and dam safety.
- D. The City shall comply with all State of Wisconsin Historical Society guidelines for development of the described area. When Federal funds were used to originally acquire the property, the City must comply with Section 106 of the National Historic Preservation Act, the National Environmental Policy Act, the Endangered Species Act and other applicable Federal legislation.
- E. The City shall maintain the area in a neat, safe, sanitary, and usable condition, remove litter and solid waste and in compliance with the standards in s. NR 1.91(8), Wis. Adm. Code. The area should be operated in a manner to achieve safety, preserve and protect property, public health and welfare.

- F. The City shall post signs or posters at the access site, which identify the property for public use and inform the public of the source of funds used for the development and/or maintenance of the area. The City agrees that any advertising or display material relating to the access site shall clearly identify the property as owned by the DNR and under the management and control of the City.

IV. LIMITATIONS ON USAGE

- A. The City shall design and maintain the public access site to meet Americans with Disabilities Act (ADA) Standards for public boat launching, shore fishing and restroom purposes.
- B. DNR's vehicles shall be exempt from any and all user fees while said vehicles and/or boats and trailers are being used on official business or official discharge of duties.
- C. In the exercise of its rights herein, including but not limited to the operation of the property as a public access site, the City shall not discriminate against any member of the public on the basis of age, race, creed, color, handicap, sex, marital status, arrest or conviction records, ancestry, sexual orientation or membership in the National Guard, state defense force or any other reserve component of the military forces of the United States.
- D. In connection with the performance of work under this lease, the City agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the City further agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

V. GENERAL

- A. Neither this lease nor any right or duty of the City herein shall be assigned, transferred, conveyed, delegated, or contracted without prior written permission of the DNR.
- B. The City agrees to save, keep harmless, defend, and indemnify the DNR and all of its officers, employees, and agents against any and all liability, claims, and costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the City's occupancy, use, service, operation, or performance of work in connection with this lease.
- C. The City shall be responsible for obtaining insurance for any and all improvements or structures located on subject property.
- D. The City acknowledges that it is not an employee or agent of the DNR.
- E. The City shall have sole control of the method of work to be performed, hours worked, and the time and manner of any performance under this lease other than specifically provided herein. The DNR assumes no responsibility for supervision or direction of the performance of the lease by the City or the City's employees or agents. The DNR further agrees that it will exercise no control over the selection and dismissal of the City's employees or agents.

VI. OTHER MUTUALLY AGREED UPON CONDITIONS

NONE.

IN WITNESS WHEREOF, these individuals as authorized representatives of their respective party's sign and agree to the terms of this lease.

Authorized Representative Name (Print)	Signature	Date
Jodie Olson, Clerk	<i>Jodie Olson</i>	5-16-00

STATE OF WISCONSIN
COUNTY OF GREEN LAKE

Personally came before me this 11th day of May, 2000, the above-named Clerk, City of Berlin, Jodie Olson, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Nancy L. Trochinski

Notary Public State of Wisconsin
My Commission expires/is 04-01-01

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary:

By: State Real Estate Director, Natural Resources

Name: Last	First	MI	Signature	Date
Steffes	Richard	E.	<i>Richard E. Steffes</i>	7-10-00

STATE OF WISCONSIN
COUNTY OF DANE

Personally came before me this 10th date of July, 2000, the above-named Real Estate Director of the Wisconsin Department of Natural Resources, Richard E. Steffes, to me known to be the person who executed the foregoing in the capacity therein stated and for the purpose therein contained.

Cheryl B. Housley

Cheryl B. Housley
Notary Public State of Wisconsin
My Commission expires/is March 21, 2004

This instrument was drafted by the Department of Natural Resources.