

AGENDA
ORGANIZATIONAL COMMON COUNCIL MEETING
CITY OF BERLIN, WISCONSIN
APRIL 20, 2021 - 6:00 p.m.
<https://zoom.us/s/84045476931>
Meeting ID: 840 4547 6931

1. Call to order/Roll Call.
2. Ceremonial swearing in of Mayor and Alderpersons.
3. Election of Council President.
4. Mayoral appointments with Council Confirmation (appointments forthcoming)
5. City Attorney Retainer Contract Renewal. RECOMMENDATION: Review and if appropriate, approve City Attorney contract renewal proposal. If necessary, motion to convene into closed session pursuant to Sec 19.85(1)(e), of the WI Statutes, to deliberate or negotiate the purchase of public property, investment of public funds or conduct other specified public business, whenever competitive or bargaining reasons require a closed session (city attorney contract)
6. Reconvene into open session and take appropriate action from closed session discussion.
7. Appointment of City Attorney with Council Confirmation.
8. Fourth Ward Common Council Vacancy. RECOMMENDATION: Review Policy on Filling Common Council Vacancies and direct staff to commence the nomination process for the 4th Ward Alderperson vacancy.
9. Adjourn.

CITY ATTORNEY RETAINER CONTRACT

This Agreement dated May 1, 2020/2021, between the CITY OF BERLIN (hereinafter referred to as "City"), CITY ATTORNEY MATTHEW G. CHIER (hereinafter referred to as "Chier"), and Chier's law firm, CHIER LAW OFFICE LLC (hereinafter referred to as "Chier Law").

WHEREAS, the parties are willing to enter into this Agreement with respect to the retained services of Chier and Chier Law upon the terms and conditions hereinafter set forth, and

WHEREAS, the parties are willing to enter into this Agreement with the intention that Chier, and other attorneys of Chier Law, be considered independent practitioners for all purposes, and not employees of the City or State.

NOW, THEREFORE, the parties hereto agree as follows:

- 1. **Retainer.** The City shall retain Chier and Chier Law, and Chier and Chier Law shall serve the City, upon the terms and conditions hereinafter set forth.
- 2. **Term and Extension.** The retainer of Chier and Chier Law hereunder shall commence May 1, 2020/2021, and shall continue to and including April 30, 2021/2022, representing a full one-year term. This contract shall be automatically renewable for an additional one-year period, so long as Chier remains the City Attorney, as appointed by the Mayor and approved by the City Council, pursuant to the Berlin Municipal Code and Wisconsin Statutes. All the terms and conditions of this Agreement applicable thereto shall continue in full force and effect for such additional periods. The terms and conditions of this Agreement may be amended at any time, in writing, upon mutual agreement of both parties.
- 3. **Duties.** During the period or periods covered hereunder, Chier, and other attorneys of Chier Law under the direction of Chier, shall serve the City and shall perform any and all services pursuant to the duties of City Attorney as described by the Berlin Municipal Code and the Wisconsin Statutes.
- 4. **Compensation.** Except for those services described in paragraph 5, the City shall pay Chier Law fees for Chier's and Chier Law's services as follows:
 - a. In consideration for Chier/Chier Law providing up to 600 hours of service, Chier Law shall receive, in the aggregate, the amount of \$66,926.77/68,599.94. Such aggregate amount shall be divided and paid in equal biweekly installments.
 - b. At such time as Chier/Chier Law's services exceed 600 hours of service, Chier Law shall be paid for additional services at the following rates:
 - i. 601-675 hours: \$129/132/hour
 - ii. 676-725 hours: \$136/138/hour
 - iii. 726-750 hours: \$144/145/hour
 - iv. Over 750 hours: \$151/155/hour

Commented [c1]: This represents a 2.5% increase which I believe was budgeted for, consistent with similar increases given to city employees.

Commented [c2]: These all represent approximately 2.5% increases.

Commented [c3]: This is just to reflect that I send my hours chart to Jodie in her capacity as City Administrator, as opposed to in her capacity as City Clerk.

Commented [c4]: I am the only attorney at Chier Law Office LLC, which will remain that way for the foreseeable future.

Chier Law shall, on a monthly basis, submit to the City Clerk-Administrator a chart of his hours performed under this Agreement during the previous calendar month. At a minimum, said chart shall, for each day of the month, designate each file name or general subject matter for which work was performed by Chier or any attorney of Chier Law on that day, and the number of hours worked on that day on that file or subject. Also in said chart, files for which the City is legally allowed to pass on legal expenses to citizens or developers (such as for developer's agreements, conditional use permit reviews, subdivision reviews, collection matters, enforcement and cleanup matters, and the like) shall be specially marked and individually totaled so that the City Clerk-Administrator may

produce bills for reimbursement for said services to be submitted to the applicable citizen or developer. Each monthly chart shall also include a running total of annual hours performed, and once such running total exceeds the 600 hour threshold, the City shall be obligated to pay Chier Law for the supplementary hours, at the rates indicated above, within 15 days of his submission of each monthly chart.

5. Services Separately Billed. When Chier ~~and or~~ Chier Law perform legal services relating to the City of Berlin Community Development Block Grant housing and industrial revolving loan fund programs, Chier Law shall separately bill the City for those services at the rate of ~~\$119~~\$121/hour. When Chier ~~and or~~ Chier Law perform legal services for the Berlin Community Development Corporation, for which the City agrees to pay, Chier Law shall separately bill for his services at the rate of ~~\$158.00~~162/hour. When Chier ~~and or~~ Chier Law perform legal services for the Berlin Sewer & Water Utility, Chier Law shall separately bill for Chier Law's services to the Utility at the rate of ~~\$120.00~~123/hour, unless otherwise directed by the City Administrator to be included in the services compensated for under paragraph 4 above. Chier ~~and or~~ Chier Law's operating expenses for files separately billed under this paragraph shall be included in the separate billings for such files, and are exclusive of the operating expense reimbursements described in paragraph 6 below.

Commented [c5]: Approximately 2.5% increase

Commented [c6]: Approximately 2.5% increase

Commented [c7]: Approximately 2.5% increase

6. Operating Expense Reimbursements. Except as stated below, the City, in addition to the fees described above, will be responsible for variable operating expenses incurred during the course of Chier's and Chier Law's services hereunder including, but not limited to, photocopy expenses, fax fees, telephone charges, filing fees, form fees, paper and supply expenses, postage, check charges, witness fees, travel expenses, expert witness fees, service of process fees and investigative expenses. These variable operating expenses shall be billed at the same standard rates utilized for all Chier Law's clients. Such variable operating expenses shall also include actual out of pocket expenses (except for the per diem meal charges listed below) incurred by Chier necessarily related to Chier's attendance of the annual League of Wisconsin Municipalities Attorney conference, including lodging and travel expenses if the conference is over 45 miles from Berlin. The parties understand that the City has budgeted the amount of \$1,750.00 for these variable operating expenses for the contract year. When this budgeted amount is approached during the contract year, the parties agree that the issue will be presented to the City's Common Council for a decision on prioritizing Chier's project list where possible, and possibly limiting the number, scope and nature of Chier's projects, for the remainder of the contract year, for the purpose of minimizing the incurrence of additional variable operating expenses and staying within budget.

Commented [c8]: This amount is not a cap on expenses, but is intended to be a guide for the City Administrator for purposes of budgeting. This amount hasn't been increased for years. I'm not suggesting any specific change, but I do recommend this be discussed during the city's budget in the Fall and possibly increased, because I believe these variable expenses have been higher than this in recent years.

In addition to variable operating expenses described above, Chier ~~and or~~ Chier Law may also bill the City for certain general overhead expenses related solely to Chier ~~and or~~ Chier Law's services provided to the City hereunder, including secretarial expenses, internet expenses, and books and legal library expenses, but such general overhead expenses shall be capped at ~~\$2,205.00~~\$1,530.00 for the period of May 1, 2021 through December 31, 2021, and \$1,133.34 for the period of January 1, 2022 through April 30, 2022 per year. If Chier believes such general overhead expenses will exceed such annual cap, Chier may so advise the City and Chier/Chier Law will incur such additional general overhead expenses only after having obtained the City's advance authority to do so. Further, the parties agree that the annual cap specified is based on the anticipation that Chier/Chier Law will perform 600 hours of annual service. Accordingly, at such time as Chier/Chier Law exceeds such 600 hours, some reasonable increase for general overhead expenses will be required, and the parties shall be required to mutually negotiate in good faith as to the amount of that increase based on the anticipated additional hours Chier/Chier Law is expected to perform for the remainder of the year.

Commented [c9]: For the last 4 years, these actual fixed expenses have averaged around \$3,400.00, so it seems appropriate to permanently increase this cap accordingly. There was no increase included in the city's general budget for 2021. I would ask for the Council to increase the 2022 budget for this to \$3,400.00. Then, because this contract is from May 1, 2021 through April 30, 2022, I reflected the two separate time periods for purposes of the expense cap in this contract.

For purposes of reimbursement for meal expenses hereunder during city related functions or travel, Chier Law shall be paid on a per diem basis ~~as follows~~at the same per diem rate used for federal employees in Wisconsin set by the United States General Services Administration (currently \$55.00).

Breakfast \$8.00

Lunch- \$12.00
Dinner- \$26.00

The City will reimburse Chier Law for all such operating, overhead and per diem expenses on a monthly basis upon submission by him of bills or statements of accounts therefore while so retained during such period, and such bills shall be paid within 15 days of the City's receipt thereof. In order to minimize the City's administrative burden, Chier Law agrees to advance all such operating and overhead expenses and add such expenses to Chier Law's monthly billing, unless such advance expenses are unreasonably large whereby Chier will work with the City Administrator to arrange for payment directly by the City. No direct payment to third parties of such expenses shall be paid by the City, unless specifically authorized by the City Administrator.

Commented [c10]: There have been a few times when these expenses have been extremely large and would have been burdensome on my relatively small office's cashflow, so I thought it was reasonable to include a minor exception like this to accommodate those situations.

7. Relationship Between Parties. Chier and Chier Law are retained by the City only for the purposes and to the extent set forth in this Agreement, and Chier and Chier Law's relation to the City and it shall, during the period or periods of Chier's and Chier Law's retainer and services hereunder, be that of an independent practitioner. ~~Chier, and attorneys of Chier Law,~~ shall be free to dispose of such portion of their entire time, energy and skill during regular business hours as they are not obligated to devote hereunder to the City in such manner as they see fit and to such persons, firms or corporations as they deem advisable. ~~Chier, and attorneys of Chier Law,~~ shall not be considered as having employee status or as being entitled to participate in any plans, arrangements or distributions by the City pertaining to or in connection with any pension, stock, bonus, profit sharing or other similar benefits for their regular employees.
8. Professional Responsibility. Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by Chier ~~and or~~ Chier Law in accordance with their independent and professional judgment. Chier and Chier Law shall perform their services substantially in accordance with the ethical responsibilities and rules as established by the Wisconsin Supreme Court and State Bar of Wisconsin.
9. Chier Law is Limited Liability Company. Chier Law operates as a limited liability company. The law governing limited liability entities shields its owners from vicarious liability. This means that in the event of an error, Chier Law and its insurer may be liable, as may the attorneys who worked on or directly supervised the matter, but not other attorneys who did not work on or directly supervise the matter. As a limited liability company organized under Chapter 183 of the Wisconsin Statutes, Chier Law is required to register annually with the State Bar of Wisconsin and to carry certain minimum professional liability insurance coverage.

IN WITNESS WHEREOF the City of Berlin, has caused this Agreement to be executed in its name by its Administrator, Jodie K. Olson and Mayor, ~~Richard D. Schramer~~ Joel E. Bruessel, and City Attorney Matthew G. Chier has set his hand, both individually and as sole Member of Chier Law Office LLC, as of the day and year first above written.

CITY OF BERLIN

CITY ATTORNEY

BY:

Jodie K. Olson, City Administrator

Matthew G. Chier, individually
and as sole Member of Chier Law
Office LLC

CITY OF BERLIN

BY:

Richard D. Schramer Joel E. Bruessel, Mayor

CITY OF BERLIN
Policy on Filling Mayor and Common Council Vacancies
(Updated January 15, 2019)

According to Wisconsin State Statutes Sec. 17.23(1)(a), vacancies in the office of mayor and alderperson in second, third and fourth class cities are filled by appointment by the common council. In the office of mayor, the person appointed to fill a vacancy shall serve for the residue of the unexpired term unless a special election is ordered by the common council, in which case the person appointed shall serve until his or her successor is elected and qualified. In the office of alderperson, the person appointed shall hold office until a successor is elected and qualified. Unless otherwise ordered by the common council, a successor shall be elected for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, in case it happens no later than December 1 preceding the first Tuesday in April, but if the vacancy happens after December 1 preceding the first Tuesday in April and before that day, then the successor shall be elected on the first Tuesday in April of the next ensuing year. See the following examples for illustration purposes:

- Example 1: Alderperson's term expires in April, 2021 and vacancy occurs on October 13, 2019 (i.e. prior to December 1), and that vacancy is filled by appointment. The person so appointed shall hold office until a special election to fill the remainder of the term is held in April, 2020; meaning the person so elected would then serve until April, 2021 which is when the original term expired.
- Example 2: Alderperson's term expires in April, 2021 and vacancy occurs on December 13, 2019 (i.e. after December 1), and that vacancy is filled by appointment. The person so appointed shall hold office until April, 2021 which is when the original term expired. There is no need for a special election.
- Example 3: Alderperson's term expires in April, 2020 and vacancy occurs on October 13, 2019, and that vacancy is filled by appointment. The person so appointed shall hold office until April, 2020 which is when the original term expired. There is no need for a special election.
- Example 4: Alderperson's term expires in April, 2020 and vacancy occurs on December 13, 2019, and that vacancy is filled by appointment. Even though the vacancy occurred after December 1, the person so appointed shall hold office until April, 2020 which is when the original term expired. There is no need for a special election.

The common council may, if a vacancy occurs before June 1 in the year preceding expiration of the term of office, order a special election to fill a vacancy to be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

The statutes do not set forth a specific procedure by which appointments of the common council must be made. Since no method of appointment is prescribed in the statutes, municipal governing bodies may determine their own procedure for nominating candidates and selecting a person to fill the vacancy.

The following policy is established as a set procedure for the Berlin common council to use in filling mayoral and aldermanic vacancies. This policy is adopted by resolution by the common council, and may be reviewed and revised at the discretion of the common council. Once a vacancy occurs, the following process will be followed:

1. **Nomination Process.** Nominations will be received from the floor of the common council at the nomination meeting, and will be only from the pool of eligible applicants who timely submit an application under paragraph 3 below.
2. **Public Notification.** The vacancy will be noticed in the Official City Newspaper requesting applications for the position via a Class 1 notice. The vacancy will also be noticed in a minimum of three public places as well as on the City's designated cable channel. This notice will include a deadline date for applications, which will be at least one week prior to the nomination meeting.
3. **Nomination and Application Requirements.** Applicants will be required to submit a completely filled out Board, Committee, Commission & Common Council Application Form, which is on file at the Clerk's office. A resume will also be requested as part of the application. The application deadline will be one week prior to the nomination meeting. Only applications received by the published deadline will be considered for common council nomination. Nominations will be based on these applications. No nominations will be considered that have not gone through the appropriate application process.
4. **Multiple Nominations.** In the case of more than two nominations, if after a vote of the common council no applicant receives the requisite majority to be elected, the two highest vote getters will be automatically nominated for a final election of the common council.
5. **Selection Process.** Applicants will be notified of the nomination meeting and requested to attend. During the nomination and selection process, the common council may interview applicants at its discretion. Interview questions will be established by the common council in advance, and will be the same for all applicants. The common council shall then vote on the nominations. If a nominee receives a vote representing a majority of the entire common council (currently 4 votes), then that nominee shall be the newly elected alderperson. If a nominee receives a vote of less than a majority of the entire common council, but a majority of those members present, or by virtue of a tie breaker vote by the mayor (assuming the office of mayor is not the vacant position being filled), then that nominee shall become the final candidate, whereby a final vote shall be held to approve or disapprove of that final candidate. To become elected, the final candidate must receive a final approval vote of majority of the entire common council.