

ORDINANCE #09-21

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AN ORDINANCE AMENDING THE ZONING CODE TO REDEFINE PERMANENT AND TEMPORARY STRUCTURES AND TO CHANGE LIMITATIONS RELATING TO THE SIZE AND NUMBER OF ACCESSORY STRUCTURES

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WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance as set forth herein, on April 27, 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. 82-4 of the Code of Ordinances shall be amended as follows:

**Sec. 82-4. – Definitions**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. 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 "shall" is mandatory and not permissive.

...

~~*Minor structure* means a small, movable accessory erection or construction such as birdhouses, tool houses, pet houses, play equipment, arbors, walls and fences which are under four feet in height.~~

...

*Permanent location* means a location intended to remain for seven days or more.

...

*Structure* means anything constructed or erected, ~~The term "structure" shall be construed as though followed by the words "or parts thereof."~~ The term, "structure" shall include any object, including a mobile object, constructed or installed by any person, including but not limited to buildings, walls, fences, towers, cranes, smokestacks, silos, earth formations, poles, overhead electric transmission lines, flag poles, tents, canopies, and carports~~the use of which requires a permanent location on the ground or attached to something having a permanent location on the ground.~~

...

Structure, permanent means a structure which requires a permanent location on the ground or attached to something having a permanent location on the ground.

...

Structure, temporary means a structure which is not a permanent structure but which remains on a lot for seven days or more ~~movable structure which is not designed for human occupancy, nor for the protection of goods or chattels, and does not form an enclosure, such as billboards.~~

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Sec. 82-22 of the Code of Ordinances shall be amended as follows:

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

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~~(7) There shall not be more than one residential building and one accessory building on one lot, except that a small storage building of 100 square feet or less, and one children's play structure, may be permitted in addition the requirements of this subsection.~~

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Sec. 82-289 of the Code of Ordinances shall be amended as follows:

**Sec. 82-289. - Area regulations.**

Area regulations in the R-1 district shall be as follows:

...

(5) *Percentage of lot covered.* All ~~buildings~~ structures, including the principal structure, ~~detached garages and accessory buildings~~ structures (including permanent structures and temporary structures), shall not cover more than 30 percent of the area of the lot, nor shall the total of all detached garages and accessory ~~building(s)~~ structures (including permanent structures and temporary structures) cover more than 30 percent of the rear yard. ~~The combination of two previously platted or certified survey lots adjoining on the rear and both separately fronting on streets shall not be effective for purposes of increasing the total area of either lot for purposes of the 30 percent coverage requirements under this paragraph. Further, if two such lots are attempted to be combined into one lot via a new plat or certified survey map, the~~

applicant for the plat or certified survey map shall be required, as a condition of approval, to record a notation on the plat or the certified survey map indicating that the combination of the two previous lots shall not be effective for purposes of increasing the total area of either lot for purposes of the 30 percent coverage requirements under this paragraph.

Chapter 82, Article IV of the Code of Ordinances shall be amended as follows:

#### **ARTICLE IV. - ACCESSORY USES**

##### **Sec. 82-551. - Building permit required; application.**

Within the city, no owner shall build, construct, use or place any accessory ~~building structure, including prefabricated accessory whether a permanent structure or temporary structure buildings whether a permanent structure or temporary structure,~~ except for (i) walks at ground level, patios/terraces at ground level, small decorative garden accessories such as decorative pools (not designed for swimming), fountains, statuary, sundials, flag poles, and (ii) structures, such as signs, which already require a special permit from the building inspector under this chapter 82, until a building permit shall have first been obtained from the building inspector. Application for an accessory building permit shall be made in writing to the building inspector. With such application, there shall be submitted a fee pursuant to chapter 14 of this Code, and a complete set of plans and specifications, including a plot plan or drawing which shall accurately show the location of the proposed accessory ~~building structure~~ with respect to adjoining alleys, lot lines and buildings other structures. If such application meets all requirements of this article, the application shall be approved.

##### **Sec. 82-552. - Principal use to be present.**

Except as otherwise provided hereafter, an accessory use or accessory structure in any zoning district shall not be established prior to the principal use or principal structure being present or under construction. On lots of five acres or more in A-1 or A-2 districts, accessory structures may be constructed prior to the principal structure, so long as the accessory structure is consistent with a permitted use for that district. Any accessory use or accessory structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided in this chapter.

##### **Sec. 82-553. - Residential district ~~placement restrictions~~ area and construction regulations.**

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

- (1) Accessory building/structure number and size limits. Except as expressly stated otherwise hereafter in this paragraph, in addition to the principal building structure (which includes any attached garage), a detached garage, one additional accessory building, and four play structures, and an unlimited number of

additional accessory structures (whether permanent structures or temporary structures) may be placed on a lot, subject to all percentage of lot covered limitations and other area regulations for the applicable district. However, accessory structures (whether permanent structures or temporary structures) having an individual floor area of greater than 50 square feet shall be limited to a cumulative maximum of three per lot (except that chicken coops shall not be counted toward this three per lot limit), and shall be limited to a cumulative floor area cap of 1,400 square feet for lots less than one acre, which cumulative floor area cap amount shall be increased by 100 square feet for every additional acre (or portion thereof) of lot size above one acre, up to a maximum cumulative floor area cap of 1,800 square feet, again subject to all percentage of lot covered limitations and other area regulations for the applicable residential district. However, Also, 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.

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(3) *Detached accessory buildings/structures.*

- a. Except as provided in subsection 82-22(a) or elsewhere in this chapter, and for signs, outdoor lighting, and as hereafter provided for accessory structures exceeding 50 square feet in floor area, detached garages and accessory structures buildings shall not exceed 15 feet in height. However, sSuch 15-foot height restriction may be exceeded for accessory structures (whether permanent structures or temporary structures) exceeding 50 square feet in floor area if both of the following conditions are met:
  1. The roof pitch of the detached garage or accessory building structure architecturally matches the roof pitch of the principal structure; and
  2. The height of the detached garage or accessory building structure does not exceed the height of the principal structure.
- b. Detached garages and accessory buildings structures (excluding signs, outdoor lighting, fences and play structures – which are all subject to their own special limitations) shall not exceed 900 square feet, except that if there is more than one such detached garage or accessory building structure on a lot, the second such building accessory structure shall not exceed 500 square feet.
- eb. Except as provided in subsection 82-22(b) or elsewhere in this chapter, Ddetached garages or accessory buildings structures (whether permanent structures or temporary structures, but excluding signs, outdoor lighting, fences and play structures – which are all subject to their own special limitations) up to 100 square feet in size shall not be located closer than three feet to any side or rear lot line. Except as provided in subsection 82-22(b) or elsewhere in this chapter, Ddetached garages or accessory buildings structures (whether permanent structures or temporary structures, but excluding signs, outdoor lighting, fences and play structures – which are all subject to their own

special limitations) 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. Except as provided in subsection 82-22(b) or elsewhere in this chapter, ~~D~~detached garages or accessory buildings structures (whether permanent structures or temporary structures, but excluding signs, outdoor lighting, fences and play structures – which are all subject to their own special limitations) 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.c. Except for signs, outdoor lighting, fences, and as provided in subsection 82-22(b) or elsewhere in this chapter, ~~A~~a detached garage or accessory building structure (whether a permanent structure or temporary structure) 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.
- ed. Except for signs, outdoor lighting, fences, and as provided in subsection 82-22(b) or elsewhere in this chapter, ~~D~~detached accessory buildings or structures (whether permanent structures or temporary 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.
- fe. Play structures shall not be located closer than three feet to any lot line.
- f. In addition to the construction regulations expressly applicable to accessory structures as set forth in this section, accessory structures having an individual floor area of greater than 50 square feet shall be subject to all other construction regulations applicable to the principal structure in the applicable residential district in which the structure is located. In the event of a conflict between a construction regulation specified in this section and a construction regulation for principal structures made applicable to certain accessory structures pursuant to this subsection, the construction regulations specified in this section shall govern.

#### **Sec. 82-554. - Residential use restrictions.**

Accessory uses or accessory structures in residential districts within the city shall not involve the conduct of any business, trade or industry, except for home occupations as defined in section 82-4. Accessory buildings structures shall not be used for residential purposes human occupancy.

#### **Sec. 82-555. - Nonresidential district placement restrictions.**

Except for signs, fences, and as provided in subsection 82-22(b) or elsewhere in this chapter, ~~A~~an accessory use or accessory structure (whether a permanent structure or temporary structure) in a business or manufacturing district may only be established in the rear yard or side yard, ~~and yard~~ and shall not be closer than three feet to any side or rear lot line.

**Sec. 82-556. - Reversed corner lots.**

Except for signs, fences, and as provided in subsection 82-22(b) or elsewhere in this chapter, if an accessory structure (whether a permanent structure or temporary structure) is located on the rear of a reversed corner lot within the city, it shall not be located beyond the front yard required on the adjacent interior lot to the rear, nor closer than three feet to the side line of the adjacent structure.

**Sec. 82-557. - Landscaping; tents.**

- (a) Accessory vegetation used for landscaping and decorating within the city may be placed in any required yard area. Permitted vegetation shall include trees, shrubs, flowers, and gardens.
- ~~(b) Tents may not be used as a dwelling or an accessory structure.~~

**Sec. 82-558. - ~~Temporary uses.~~Reserved.**

~~Temporary accessory uses within the city, such as real estate sales field offices or shelters for materials and equipment being used in the construction of a permanent structure, may be permitted by the zoning administrator.~~

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**Sec. 82-561. - Lawn accessories.**

Walks at ground level, drives, paved patios/terraces at ground level, and decorative garden accessories such as decorative pools (not designed for swimming), fountains, statuary, sundials, flag poles, etc., shall be permitted in setback areas within the city, but shall not be located closer than three feet to an abutting property line, other than a street line.

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**Sec. 82-563. - ~~Children's p~~Play structures.**

Play structures shall be considered accessory structures, and structures and shall comply with the requirements of this article accordingly. Play structures shall not be used for storage or be constructed out of materials that would constitute a nuisance.

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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 11th day of May, 2021.


ROLL CALL VOTE:

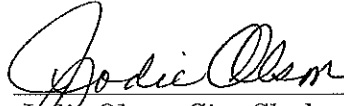
5 AYES  
0 NAYS  
1 VACANCY

APPROVED AS TO FORM:

  
Matthew G. Chier, City Attorney

CITY OF BERLIN

BY:   
Joel Bruessel, Mayor

ATTEST:   
Jodie Olson, City Clerk

