

COMMITTEE OF THE WHOLE MEETING AGENDA
TUESDAY, APRIL 4TH, 2023, 7:00 PM
BERLIN COMMON COUNCIL CHAMBERS
Zoom Meeting ID: 893 1930 8907 Password: 123456
1 312 626 6799 US TOLL-FREE

1. Roll Call
2. Virtual Attendees Seated (if necessary)
3. General Public Comments. Registration card required (located at podium in Council Chambers).
4. Approval of Minutes. RECOMMENDATION: Approve the minutes from the March 7th, 2023 Committee of the Whole meeting.
5. Delta 8 / Vaping Ordinance. RECOMMENDATION: Discussion with recommendation to Common Council as appropriate.
6. City Parking Discussion. RECOMMENDATION: Listen to staff presentation with recommendation to Common Council as appropriate.
7. No Mow May Resolution #23-03 Discussion. RECOMMENDATION: Recommend to Common Council to approve No Mow May Resolution #23-03.
8. Adjourn.

Note: In adherence to the City of Berlin Public Meeting Participation Policy, public participation will be allowed under each agenda item at the discretion of the presiding officer, with the exception of the Consent Agenda. Attendees must register their intention to participate on either a general comments section or a specific agenda item prior to the meeting by filling out a Registration Card, which can be obtained from the Internet, City Clerk's office or in the City Hall Council Chambers at the podium. Registration Cards should be turned in prior to the meeting to either the presiding officer or City Clerk.

CITY OF BERLIN COMMITTEE OF THE WHOLE MEETING MINUTES
TUESDAY, March 7, 2023 7:00 PM
COMMON COUNCIL CHAMBERS

Mayor Bruessel called the Committee of the Whole meeting to order at 7:02 p.m. Present: Ald Boeck, Erdmann, and Stobbe. Burgess, Nigbor, and Dretske not present. Staff present: Sara Rutkowski, Caitlin Hilgart, Scott Zabel, Tim Ludolph, and Chief Brian Pulvermacher.

Boeck made a motion to seat Dretske who joined virtually, Erdmann seconded the motion, which passed on a voice vote.

Erdmann made a motion to approve the minutes from the February 7, 2023 Committee of the Whole Meeting. Stobbe seconded the motion which passed on a voice vote.

Next was the Handicap Parking on Broadway. Boeck made a motion to open Agenda item #6 the 15-minute parking request on Broadway / Mill St. and combine the discussions on both Agenda items. Stobbe seconded the motion and motion passed on a voice vote. Zabel stated that there would be enough room on Mill St. next to Tbird Aircraft LLC to add 2 parking spots, and still leave 14 feet for truck entrances to the rear of other neighboring businesses. There was discussion held about safety concerns about the 15- minute parking on Mill St. Stobbe made a motion to postpone the comprehensive parking issue till next month. Boeck seconded the motion which passed with a voice vote.

Next on the Agenda was the Planning Commission Recommendation to modify Animal Service as a Conditional use in the Business Districts. Erdmann made a motion to recommend to Common Council to accept the recommendation from the Planning Commission to have Attorney Chier draft options for modifying Animal Service as a Conditional use in the Business Districts. Boeck seconded the motion, which passed on a voice vote.

Item #8 on the Agenda was the Planning Commission Recommendation to add Artisan Manufacturing / Small Scale Manufacturing / Makerspaces as a permitted use in B-1 and B-2 Districts. Erdmann made a motion to recommend to Common Council to accept the recommendation from the Planning Commission to have Attorney Chier look into drafting the permit uses to the B-1 and B-2 Districts. Boeck seconded the motion, which passed with a voice vote.

Last item on the Agenda was the Lafayette Street Reconstruction Project Bid. Zabel presented Kopplin and Kinas came in with the lowest bid for the job. Stobbe made a motion to accept the Bid from Kopplin and Kinas for the Lafayette Street Reconstruction Project. Erdmann seconded the motion that passed on a voice vote.

Stobbe made a motion to adjourn the meeting at 7:26 pm, which was seconded by Boeck, and passed on a voice vote.

Caitlin Hilgart, Deputy Clerk

ORDINANCE PROHIBITING THE PURCHASE OR POSSESSION OF TOBACCO PRODUCTS BY A MINOR, THE SALE OR GIFT OF CIGARETTES OR TOBACCO PRODUCTS TO MINORS, AND THE PURCHASE OR POSSESSION OF VAPOR PRODUCTS BY A MINOR

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

ARTICLE IV. - OFFENSES BY JUVENILES, of the Code of Ordinances of the City of Berlin shall be renamed to, "ARTICLE IV - OFFENSES INVOLVING JUVENILES."

Sec. 46-113 of the Code of Ordinances of the City of Berlin shall be created as follows:

Sec. 46-113 - Purchase or possession of tobacco products by a minor prohibited

- (a) *Definitions.* The following words, terms and phrases when used in this section shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Cigarette means any roll of tobacco wrapped in paper or any other substance.

Nicotine product means a product that contains nicotine and is not any of the following:

- (1) A tobacco product.
- (2) A cigarette.
- (3) A product that has been approved by the U.S. Food and Drug Administration for sale as a smoking cessation product or for another medical purpose and is being marketed and sold solely for such approved purpose.

Tobacco products means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plus and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but "tobacco products" does not include cigarettes.

State Law reference - Cigarette tax, definitions, Wis. Stat. § 139.30(1m); Definitions, Wis. Stat. § 139.76(12); Restrictions on sale or gift of cigarettes or nicotine or tobacco products, Wis. Stat. § 134.66(f).

- (b) *Prohibition.* The provisions of Wis. Stat. § 254.92 relating to the purchase or possession of cigarettes or tobacco products by a person under age 18 are adopted as a portion of this section as far as may be applicable to the city. Except as provided in subsection (c), no person under 18 years of age may

do any of the following:

- (1) Buy, attempt to buy, or possess any cigarette, nicotine product, or tobacco product; or
- (2) Falsely represent his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product.

State Law reference - Purchase or possession of cigarettes or tobacco products by person under 18 prohibited, Wis. Stat. § 254.92.

(c) *Exemption.*

- (1) A person under 18 years of age may purchase or possess cigarettes, nicotine products, or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer licensed under Wis. Stat. § 134.65(1).
- (2) A person under 18 years of age, but not under 16 years of age, may purchase, attempt to purchase or possess cigarettes, nicotine products, or tobacco products in the course of his or her participation in an investigation under Wis. Stat. § 254.916 that is conducted in accordance with Wis. Stat. § 254.916(3).

State Law reference - Purchase or possession of cigarettes or tobacco products by person under 18 prohibited, Wis. Stat. § 254.92.

- Necessary* →
- (d) *Penalty for violation.* Upon conviction in court, any person under age 18 found to be in violation of subsection (b) shall be subject to a forfeiture as set forth in section 1-16, except that such forfeiture shall not be less than \$50.00, as well as any other penalties that may be imposed by the court as set forth in section 1-16. ~~Any such conviction shall include a finding that the minor alone is financially able to pay the forfeiture and shall allow up to 12 months for the payment.~~ If a minor fails to pay the forfeiture, the court may suspend the minor's operating privilege as defined in Wis. Stat. § 340.01(40) for not less than 30 days nor more than 90 days. Thereupon, the court shall immediately take possession of the suspended license and forward it to the Wisconsin Transportation Department, together with the notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the period of suspension, the court shall immediately notify the Wisconsin Transportation Department, which will thereupon return the license to the minor.

- (e) *Seizure by law enforcement officer.* A police officer shall seize any cigarette, nicotine product, or tobacco product that has been sold and is in the possession of a person under the age of 18.

State Law reference - Purchase or possession of cigarettes or tobacco products by person under 18 prohibited, Wis. Stat. § 254.92(3).

Sec. 46-114 of the Code of Ordinances of the City of Berlin shall be created as follows:

Sec. 46-114 – Sale or gift of cigarettes or tobacco products to minors prohibited

- (a) *Definitions.* The following words, terms and phrases when used in this section shall have the

Commented [MC1]: Note that \$50.00 actually equates to \$124 when mandatory court costs/fees are added.

Note also that the Racine ordinance (upon which this ordinance is based) states "not more than \$50." Chief Pulvemacher has informed me that the PD's TRACS system would automatically recommend a deposit of \$20 (\$86.20 including costs) for a violation of Wis. Stat. ch 254 for possession by a minor. Chief Pulvemacher thought that \$20 is too low and suggested we create a different minimum forfeiture amount for this type of violation. He suggested \$50 is more reasonable and would likely be consistent with other communities. Accordingly, I'm recommending that we use the \$50 base forfeiture amount in the ordinance, but assert it as a minimum, rather than a maximum. This also allows the court to go much higher in the event of repeated multiple violations. If we copied Racine exactly, we would always be limited to \$50.

Agreed min.

meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cigarette, nicotine product, and tobacco products have the definitions set forth in subsection 46-113(a).

Distributor means any of the following:

- (1) A person specified under Wis. Stat. § 139.30(3).
- (2) A person specified under Wis. Stat. § 139.75(4).

Identification card means any of the following:

- (1) A license containing a photograph issued under Wis. Stats. ch. 343.
- (2) An identification card issued under Wis. Stat. § 343.50.
- (3) An identification card issued under 1987 Wis. Stat. § 125.08.
- (4) A tribal identification card, as defined in Wis. Stat. § 134.695(1)(cm).

Jobber has the meaning given in Wis. Stat. § 139.30(6).

Manufacturer means any of the following:

- (1) A person specified under Wis. Stat. § 139.30(7).
- (2) A person specified under Wis. Stat. § 139.75(5).

Retailer means any person licensed under Wis. Stat. § 134.65(1).

School has the meaning given in Wis. Stat. § 111.257(1)(d).

Subjobber has the meaning given in Wis. Stat. § 139.75(11).

Vending machine has the meaning given in Wis. Stat. § 139.30(14).

Vending machine operator has the meaning given in Wis. Stat. § 139.30(15).

State Law reference -Beverage and tobacco taxes, Wis. Stats. Ch. 139; Operators' licenses, Wis. Stats. Ch. 343; Proof of age, Wis. Stat. § 125.08 (1987); Liability for referral to police, Wis. Stat. § 118.257(1)(d).

(b) *Restrictions*

- (1) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor,

jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes, nicotine products or tobacco products to any person under the age of 18, except as provided in Wis. Stat. § 254.92(2)(a). A vending machine operator is not liable under this paragraph for the purchase of cigarettes, nicotine products or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

- (2) No retailer, direct marketer, manufacturer, distributor, jobber, subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may provide for nominal or no consideration cigarettes, nicotine products or tobacco products to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the person who is younger than 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

(3) *Notices.*

- a. A retailer shall post a sign in areas within his or her premises where cigarettes or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful under this section and Wis. Stat. § 254.92(2)(a).
- b. A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under Wis. Stat. § 254.92(2)(a) and that the purchaser is subject to a forfeiture of not less than \$50.00.

Commented [MC2]: See previous comment above.

- (4) A retailer or vending machine operator may not sell cigarettes or tobacco products from a vending machine unless the vending machine is located in a place where the retailer or vending machine operator ensures that no person younger than 18 years of age is present or permitted to enter unless he or she is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.
- (5) Notwithstanding subsection (4), no retailer may place a vending machine within 500 feet of a school.
- (6) No retailer or direct marketer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under Wis. Stats. § 139.32(1).

State Law reference - Restrictions on sale or gift of cigarettes or nicotine or tobacco products, Wis. Stat. § 134.66.

(c) *Defense of retailer*

Proof of all the following facts by a retailer, manufacturer, jobber, subjobber or distributor, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber, or an agent or employee of an independent contractor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of subsection (b)(1).

Agreed min.

- (1) That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card.
- (2) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18.
- (3) That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of 18.

State Law reference - Restrictions on sale or gift of cigarettes or nicotine or tobacco products, Wis. Stat. § 134.66.

(d) **Penalties**

- (1) In this subsection, "violation" means a violation of subsection (b)(1), (2), (4), (5) or (6).

a. A person who commits a violation is subject to a forfeiture under section 1-16 except that such forfeiture shall:

1. Not be less than \$200 nor more than \$500.00 if the person has not committed a previous violation within 12 months of the violation; or
2. Not be less than \$500.00 if the person has committed a previous violation within 12 months of the violation.
3. A court shall suspend any license or permit issued under Wis. Stats. § 134.65, 139.34 or 139.79 to a person for:
 - (i) Not more than three days, if the court finds the person committed a violation within 12 months after committing one previous violation;
 - (ii) Not less than three days nor more than ten days, if the court finds that the person committed a violation within 12 months after committing two other violations; or
 - (iii) Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing three or more other violations.

4. The court shall promptly mail notice of a suspension under subdivision 3 to the department of revenue and to the clerk of each municipality which has issued a license or permit to the person.

- (2) Whoever violates subsection (b)(3) is subject to a forfeiture under section 1-16 except that such forfeiture shall not more than \$50.00.

150/300 as min.

↓

Commented [MC3]: Note also that the Racine ordinance (upon which this ordinance is based) states "not more than \$500" for sub 1, and "not less than \$200 nor more than \$500 for sub 2. I didn't discuss this with Chief Pulvermacher, but I thought those amounts seemed rather low as well, so I recommended alternative amounts. Please consider these amounts carefully and I will look for Chief Pulvermacher to give his opinion as well at a meeting.

Commented [MC4]: Note that this is the penalty for failure to install the notices required in (b)(3). Racine's ordinance states, "not more than \$25.00". I again thought that was particularly low, and changed that to \$50, but Chief Pulvermacher can also give his opinion on this.

\$50 agreed min.

State Law reference - Restrictions on sale or gift of cigarettes or nicotine or tobacco products, Wis. Stat. § 134.66.

(e) *Procurement for persons under 18 years of age prohibited*

No person may purchase cigarettes, nicotine products, or tobacco products on behalf of, or to provide to, any person under the age of 18. Any person who violates this subsection is subject to a forfeiture under section 1-16 except that such forfeiture shall be not less than \$200.00 nor more than \$500.00 if the person has not committed a previous violation within 30 months of the violation, nor less than \$800.00 if the person has committed a previous violation within 30 months of the violation.

State Law reference - Purchase or possession of cigarettes or tobacco products by person under 18 prohibited, Wis. Stat. § 254.92(2m).

Sec. 46-115 of the Code of Ordinances of the City of Berlin shall be created as follows:

Sec. 46-115 – Purchase or possession of vapor products by a minor prohibited

(a) *Statement of purpose*

- (1) The purpose of this section is to protect the public health, safety and welfare of the property and persons in the City of Berlin by prohibiting persons under 18 years of age from possessing nicotine and vapor products, and prohibiting the sale of these products to persons under 18 years of age.
- (2) Over the last few years, the popularity of electronic cigarettes has increased substantially, particularly among the youth population. Electronic cigarettes are tobacco-less handheld devices that allow its user to simulate cigarette smoking, and are also commonly referred to as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," or "electronic nicotine delivery systems." For purposes of this section, all of these electronic smoking devices are referred to as an electronic nicotine delivery system (ENDS).
- (3) ENDS vary in their appearance and specific method of operation, although they do have a few basic elements in common. The devices work by heating up an "e-liquid" that generates an aerosol or vapor to be inhaled by its user. These e-liquid solutions typically contain nicotine, propylene glycol, glycerine and other flavorings. The concentration of nicotine contained in the solution can be customized by the retailer to the buyer's specifications, and many manufacturers make nicotine-free solutions.
- (4) ENDS often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products. These devices may be manufactured to look like conventional cigarettes, cigars or pipes. Some resemble pens or USB flash drives. Larger devices, such as tank systems or mods, bear little or no resemblance to cigarettes. Currently, these products come in many different flavors that appeal to young people.
- (5) The U.S. Food and Drug Administrative (FDA) currently regulates the manufacture, import, packaging, labeling, advertising, promotion, sale and distribution of all electronic nicotine

\$150 / 300
min. 500 w/in 30 mo

Commented [MC5]: Note that Racine states no more than \$500 for persons who haven't committed previous violation in 30 months, and no more than \$1,000 for those who have committed a previous violation in 30 months. I again thought those amounts were likely too low and made adjustments similar to what I did above, but I would again encourage Chief Pulvermacher's further opinion on these amounts.

delivery systems and prohibits the sale of such products to persons under 18 years of age. Under Wisconsin law, persons under 18 years of age are prohibited from purchasing or possessing cigarettes, tobacco products, or nicotine products, and retailers are prohibited from selling them to minors. Wisconsin law, however, does not currently regulate nicotine-free vapor products or prohibit the sale of such products to persons under 18 years of age.

- (6) Existing studies on vapor emissions and the cartridge contents of electronic smoking devices have found a number of dangerous substances including:
- a. Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium;
 - b. PM 2.5, acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects such as skin, eye, and respiratory irritation, neurological effects, damage to reproductive systems, and even premature death from heart attacks and stroke.
- (7) Some cartridges used by electronic smoking devices can be refilled with liquid nicotine solution, thereby creating the potential for exposure to dangerous concentrations of nicotine.
- (8) Clinical studies regarding the safety and efficacy of such products have not been submitted to the FDA for the over 400 brands of electronic smoking devices that are on the market and for this reason, consumers have no way of knowing whether electronic smoking devices are safe, what types of potentially harmful chemicals the products contain, and what dose of nicotine the products deliver.
- (9) Despite current FDA rules banning the sale of such products to persons under 18 years of age, the use of e-cigarettes and similar devices by middle and high school students have continued to increase significantly in recent years.
- (10) The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverses the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.
- (11) It is the intent of the common council, in enacting the ordinance codified in this section, to provide for the public health, safety and welfare by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; by reducing the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle; and by prohibiting the sale or distribution of electronic smoking devices to minors.
- (12) Therefore, the City of Berlin Common Council determines that prohibiting the sale, giving, or furnishing of electronic nicotine delivery systems and vapor products to minors and prohibiting the purchase, possession, or use of such products by minors is in the city's best interest and will promote public health, safety, and welfare.

- (b) *Definitions.* The following words, terms and phrases, when used in this subsection, shall have the

meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

Electronic nicotine delivery system means a portable device capable of producing a vapor or aerosol, containing ingredients such as nicotine, propylene glycol, vegetable glycerin, and other chemicals, to be inhaled by the user. Electronic nicotine delivery systems include but are not limited to vapes, vaporizers, vape pens, vaping devices, mod systems, pod systems, hookah pens, electronic cigarettes or e-cigarettes, e-pipes and other similar devices, but do not include any products that have been approved or otherwise certified by the United States Food and Drug Administration to be sold as part of a tobacco cessation treatment or other medical purposes, and is being marketed and sold for that approved purpose. Electronic nicotine delivery systems shall include any component part of such a product, whether or not sold separately.

Minor means an individual who is less than 18 years of age.

Possession of a vapor product shall mean either actual physical control of the product without necessarily owning that product, or the right to control the product even though it is in a different room or place than where the person is physically located.

Vapor product means any part of an electronic nicotine delivery system, including the e-liquid solution that is intended to be used with or in an electronic smoking device, whether or not such component contains nicotine, or is sold separately. Vapor product does not include any products that have been approved or otherwise certified by the United States Food and Drug Administration to be sold as part of a tobacco cessation treatment or other medical purposes, and is being marketed and sold for that approved purpose.

(c) *Prohibited conduct*

- (1) No person under 18 years of age may falsely represent his or her age for the purpose of receiving any vapor product.
- (2) No person under 18 years of age may purchase, attempt to purchase, or possess any vapor product except as follows:
 - a. A person under 18 years of age may purchase or possess vapor products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.
 - b. A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess vapor products in the course of his or her participation in an investigation under Wis. Stat. § 254.91 that is conducted in accordance with Wis. Stat. § 254.916(3).
 - c. Any person who violates subsection (1) or (2) is subject to a forfeiture under section 1-16 except that such forfeiture may not be less than \$50.00, as well as any other penalties that may be imposed by the court as set forth in section 1-16. Any such conviction shall include a finding that the minor alone is financially able to pay the forfeiture and shall allow up to 12 months for the payment. If a minor fails to pay the

Commented [MC6]: Note that Racine states not less than \$50 nor more than \$100. I didn't think the cap was appropriate, especially for repeat offenders.

Agreed

Necessary?

forfeiture, the court may suspend the minor's operating privilege as defined in Wis. Stat. § 340.01(40) for not less than 30 days nor more than 90 days. Thereupon, the court shall immediately take possession of the suspended license and forward it to the Wisconsin Transportation Department, together with the notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the period of suspension, the court shall immediately notify the Wisconsin Transportation Department, which will thereupon return the license to the minor.

Commented [MC7]: Note that none of this was not in Racine's ordinance, but I thought it was appropriate to add.

- (3) No person may purchase vapor products on behalf of, provide to, or sell to any person who is under 18 years of age. Any person who violates this subsection is subject to a forfeiture under section 1-16 except that such forfeiture shall not be less than \$200.00 nor more than \$500.00 if the person has not committed a previous violation within 30 months of the violation, nor less than \$800.00 if the person has committed a previous violation within 30 months of the violation.

Commented [MC8]: Note that Racine's forfeiture limitations are as follows:

- (4) A law enforcement officer shall seize any vapor product that has been sold to or is in the possession of a person under 18 years of age.

(d) *Severability*

In the event any section, subsection, clause, phrase or portion of this section is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this article. It is the legislative intent of the common council that this section would have been adopted if such illegal provision had not been included or any illegal application had not been made.

- a.
Forfeit not less than \$100.00 if the person has not committed a previous violation within 30 months of the violation.
b.
Forfeit not less than \$300.00 if the person has committed a previous violation within 30 months of the violation.
c.
Forfeit not less than \$500.00 if the person has committed two previous violations within 30 months of the violation.
d.
Forfeit not less than \$1,000.00 if the person has committed three or more previous violations within 30 months of the violation.

I thought this was too complicated and cumbersome. I also equate this violation to procurement of tobacco products for a minor, so I used the same forfeiture structure as I did above for that type of violation. Again, I will look for further input from the Council, and would ask that Chief Pulvermacher provide his opinion as well.

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 _____, 2023.

ROLL CALL VOTE:

CITY OF BERLIN

____ AYES
____ NAYS
____ ABSENT

BY:

Joel E. Brussel,
Mayor

APPROVED AS TO FORM:

ATTEST:

Sara L. Rutkowski,
City Administrator/City Clerk

Matthew G. Chier,
City Attorney

Sara Rutkowski

From: Brian Pulvermacher <bpulvermacher@berlinpd.wi.gov>
Sent: Friday, March 10, 2023 2:39 PM
To: legalsolutions@chierlaw.com; Sara Rutkowski
Subject: FW: COB ORDINANCES TOBACCO, NICOTINE PRODUCTS, & VAPOR PRODUCTS
Attachments: Nicotine Ord draft.pdf

Hi guys,

I had a chance to speak with Judge Jay at court on Wednesday. In short there are a few things worth noting...

- "status offenses" (those only illegal to person under 18y) are capped at a \$50 deposit. I think for Underage Possession of tobacco, using the \$50 is appropriate for \$124 fine with costs.
- The court is mandated to find that a juvenile is capable of paying a forfeiture—I don't think that language needs to be in the ordinance.
- DOT doesn't want them (or us) to take a juveniles license. DOT notifies juveniles of suspensions and lifting of suspensions. We likely don't need to include that language either.
- The ordinance as drafted includes a suspension of 30-90d. The "standard" or automatic suspension for failing to pay is 2y. Unless we want something separate, I think we could also leave that language out.

Please contact me with questions,

Brian

From: Brian Pulvermacher
Sent: Tuesday, March 7, 2023 4:21 PM
To: 'legalsolutions@chierlaw.com' <legalsolutions@chierlaw.com>; srutkowski@cityofberlin.wi.gov
Subject: RE: COB ORDINANCES TOBACCO, NICOTINE PRODUCTS, & VAPOR PRODUCTS

Hi guys,

I think it is a great start for a discussion. I noted a few things in blue ink. In short, I might be a tad lower than Matt on some of the base forfeitures.

Please contact me with questions,

Brian

From: Chier Law Office LLC <legalsolutions@chierlaw.com>
Sent: Tuesday, February 28, 2023 12:29 PM
To: srutkowski@cityofberlin.wi.gov
Cc: Brian Pulvermacher <bpulvermacher@berlinpd.wi.gov>
Subject: COB ORDINANCES TOBACCO, NICOTINE PRODUCTS, & VAPOR PRODUCTS

This email message (including all attachments) may contain confidential, proprietary, privileged, and/or private information intended only for the use of the individual or entity

Date: 03/30/2023

To: COTW

From: Sara Rutkowski, City Administrator
Brian Pulvermacher, Chief of Police
Scott Zabel, Director of Public Works/Streets Superintendent

RE: Parking in the Berlin Community

Background:

The city of Berlin has a few City Code Sections that address parking. They are attached and cover all night parking (Section 70-456(a)), emergency vehicle parking (Section 70-456(b)), 15 minute parking zones (Section 70-456(c)), 30 minute zone (Section 70-456(d)), two hour restricted zone (Section 70-456(e)), Winter Parking (Section 70-458), and Off Street Parking (Section 82-682(b)(1-3)). I have attached two maps to help visualize where the zones apply.

Emergency Vehicle Parking:

Staff sees no need to change anything related to emergency vehicles parking zones. They are all in the proper areas and are utilized on a regular basis.

Off Street Parking:

Staff sees no need to change anything related to Off Street Parking but does plan to do stronger enforcement of this ordinance this year, which may affect other parking options.

All Night Parking:

Staff sees no need to change anything related to All Night Parking (2:30-5:30am) and finds it useful in keeping downtown parking open to visitors and important for our Department of Public Works to be able to maintain that area with least amount of traffic.

30 Minute Zone:

Current City Code/Process:

There is only one location in the city that is 30-minute parking.

Staff Suggestions:

Change the parking from 30 minute to 2-hour parking, similar to the other parking areas on that street.

Reasons for Suggestions:

Having only one area in the city designated as 30-minute parking makes it confusing both for members of the public trying to find parking and for staff who have to enforce the code. We have to order specific signs only for that area. Changing this area from 30-minute parking to 2-hour parking would also assist in Council's request to simplify the parking in our downtown to make it easier for members of the public to navigate.

15 Minute Parking Zones:

Current City Code/Process:

There are currently nine designated locations in the City that are 15-minute parking zones with a total of 16 spots, but only 12 spots have current signage. There is one in front of City Hall, one in front of the Library, one on Pearl Street by Farmer's & Merchant's Bank, one located on Broadway in front of Malchetske's, five on the West side of Pearl St in front of the Post Office, three on W Franklin St on the side of the Post Office.

Staff Suggestions:

Staff is suggesting eliminating all 15-minute parking spots, with the exception of the one in front of City Hall. The spots would all become 2-hour parking spots, except for the three spots on W Franklin, which would become long term parking.

Alternative Suggestion: Turning the five 15-minute parking spots on Pearl St to 2-hour and leave the three 15-minute parking spots on W Franklin for Post Office customers.

Reasons for Suggestions:

This would create additional parking opportunities for members of the public in the downtown area. This would also contribute to more uniformity in our downtown and make it easier for the Police Department to patrol/enforce. City Hall sees a variety of quick stops for members of the public for the Police Department, Clerk's Department, and Water & Sewer Department. Also, that spot is in such an outlier position, it would not make sense to turn it into a 2-hour. It is easier to monitor and manage with it being right in front of the Police Station Entrance.

2-hour Restricted Zones:

Current City Code/Process:

There are a few blocks in the downtown that are restricted to two-hour parking. Please see following map labeled two-hour parking to indicate those locations.

Staff Suggestions:

Keep the code as is and place more signs indicating where longer term parking is available, as well as offer maps on the City Website and at local businesses.

Reasons for Suggestions:

Staff has heard from many business owners, members of the public, shoppers and frequenters of salons share their thoughts on the two-hour parking. When presented with a map indicating where the 2-hour parking zones are located, many were surprised the area was so small. Having a map available would assist tourists, shoppers, patrons, and business staff in the area with finding additional parking options and would not require any code adjustments.

Winter Parking:

Current City Code/Process:

City code does not allow a person to park on any city streets between 2:00-7:00am from November 30 – March 30, except by permit. This is to assist city staff with snow removal. A permit is applied for at City Hall in the Clerk's Department, approved by Street's Superintendent as to location and the permit is then placed on the bumper of the person's vehicle. The Police Department will then look for the bumper sticker and if not present, issue a winter parking ticket.

Staff Suggestions:

Staff suggests changing from a permit-based system to an alternative side system. An alternative side winter parking system would allow residents to park vehicles on the even house-

numbered sides of the streets on even numbered days of the month, and on odd house-numbered sides of the street on odd-numbered days of the month.

Reasons for Suggestions:

Alternative side parking is utilized by a variety of other municipalities. This system will save staff time in the Clerk's office and at DPW as there is no need to issue permits. This would be easier for the Police Department to enforce as they would not need to get out and see if there is a parking pass on a vehicle's bumper. This would eliminate issues where people have claimed parking permits have been stolen from their vehicles. There would be a loss of revenue issued from purchases of winter parking permits, however the time saved by the Clerk's staff would offset that. In 2022, we received \$1,700.00 in winter parking permits. In 2021, we received \$1,675.00. Any tickets issued for those parked wrong would still generate revenue.

Additional Parking Items:

1. Additional Parking on the Side of TBird: Staff spoke with the insurance company who is not sure this option is feasible. In the case of adding parking stalls, Insurance would advise the City to purchase the land where the spots would go. However, after the Insurance agent was shown the location of the potential spots, with having the spots that close to the building, it raises other issues of which entity would be liable for doors hitting the building or any other type of car/building damage. Insurance is advising this not be an option at this time and staff agrees.
2. Handicap Stall on the corner of Broadway: With the two other spots not being feasible, staff was unsure if Council wanted to lose another parking stall in the downtown area. Staff has placed a stand-up sign at the other Handicap Spot across the street to provide a clearer indication to residents that an additional handicap stall there is available.

Sec. 70-456. - Prohibited parking on certain streets.

- (a) *All night parking.* The term "all night parking" means parking between the hours of 2:30 a.m. and 5:30 a.m. on any given morning. When signs are erected within the city giving notice of an all night parking restriction, no person shall park or leave standing, during the applicable hours, any vehicle or trailer upon any of the following highways, streets, alleys, or parts thereof, except temporarily for the purpose of and while actually engaged in receiving or discharging passengers:
- (1) Broadway Street commencing at the bridge to Jefferson Street.
 - (2) Commercial Street from Broadway Street to Southwest Franklin Street.
 - (3) East Franklin Street from South Wisconsin Street to South Adams Street.
 - (4) East Huron Street from Quarry Street to Wisconsin Street.
 - (5) Market Square between and including the north boundary of West Park Avenue, the east boundary of North Capron Street and the west boundary of Water Street, and any and all streets included and contained therein.
 - (6) Mound Street from Broadway Street to Southwest Ceresco Street.
 - (7) North Adams Avenue from East Huron Street to East Park Avenue.
 - (8) North Brooklyn Street from Broadway Street to Webster Street.
 - (9) North Capron Street from West Park Avenue to West Noyes Street.
 - (10) North Pearl Street from West Huron Street to West Noyes Street.
 - (11) North Wisconsin Street from the intersection of East and West Huron Streets to East Liberty Street.
 - (12) Pierce Street from Broadway Street to Southwest Ceresco Street.
 - (13) South Adams Avenue from East Huron Street to East Ceresco Street.
 - (14) South Brooklyn Street from Broadway Street to Southwest Franklin Street.
 - (15) South Capron Street from West Huron Street to West Ceresco Street.
 - (16) South Fox Alley from West Huron Street to West Ceresco Street.
 - (17) South Grove Street from Broadway Street to Southwest Ceresco Street.
 - (18) South Pearl Street from West Huron Street to West Ceresco Street.
 - (19) South Washington Street from Broadway to Southwest Franklin Street.
 - (20) South Wisconsin Street from the intersection of East and West Huron Streets to the intersection of East and West Ceresco Streets.
 - (21) Southwest Franklin Street from Commercial Street to South Washington Street.
 - (22) Water Street from West Park Avenue to Frontier Street.
 - (23) West Franklin Street from South Capron Street to South Wisconsin Street.
 - (24) West Huron Street.
 - (25) West Park Avenue from North Capron Street to North Wisconsin Street.
- (b) *No parking except for authorized emergency vehicles.* No person shall park any vehicle or trailer within the city, except authorized emergency vehicles, in any of the following areas:
- (1) The north 45 feet of the south 117 feet on the west side of North Fox Alley.
 - (2) The north 20 feet of the south 127 feet on the east side of North Capron Street.
 - (3) The east side of North Fox Alley from West Huron Street to West Park Avenue.
 - (4) South Fox Alley from West Huron Street to West Franklin Street.
 - (5) River Street between Spring Street and South Adams Street.
 - (6) Eighty feet of that portion of South Adams Avenue lying north of and commencing at the intersection of River Street and South Adams Avenue.
 - (7) Two hundred twenty-five feet of that portion of South Adams Avenue lying north of and commencing at the intersection of River Street and South Adams Avenue.
 - (8) The south side of Union Street between South Pearl Street and South Wisconsin Street.
 - (9)

The west side of North Pearl Street from West Huron Street to a point 100 feet north from the intersection of West Huron Street and Pearl Street.

- (10) South Church Street between Ripon Road and June Street.
 - (11) The east side of South Johnson Street from a point where the centerline of June Street intersects the east curbline of South Johnson Street to a point 57 feet north of such intersection.
 - (12) The east side of South Johnson Street beginning 177 feet north of and from a point where the centerline of June Street intersects the east curbline of South Johnson Street to a point 30 feet north of such intersection.
 - (13) The west side of South Johnson Street 90 feet north of the northwest monument marker at the intersection of June Street and South Johnson Street, and the west side of South Johnson Street 65 feet south of the southwest monument marker at the intersection of June Street and South Johnson Street.
 - (14) All of North Grove Street north of Webster Street.
 - (15) The east 240 feet of the north side of Webster Street beginning at the intersection of North Grove Street and Webster Street.
 - (16) The north side of Darling Street.
 - (17) Broadway Street from Brooklyn Street to Washington Street.
 - (18) The west side of Swimming Pool Road.
 - (19) The south side of Southwest Franklin Street from South Washington Street to the center of the Fox River Bridge.
 - (20) The north side of Southwest Franklin Street from the center of the Fox River bridge to Pierce Street.
 - (21) The south side of West Ceresco from South Wisconsin Street to the center of the Fox River Bridge.
 - (22) The north side of West Ceresco from South Fox Alley to the center of the Fox River Bridge.
 - (23) The south side of East Ceresco from Spring Street to South Wisconsin Street.
- (c) *Fifteen-minute restricted parking zones.* The following areas shall be designated as 15-minute restricted parking zones:
- (1) The east side of North Pearl Street north of the West Huron Street intersection in the designated area.
 - (2) The north side of West Park Avenue east of the North Pearl Street intersection in the designated area.
 - (3) The south side of West Huron Street east of the South Fox alley intersection in the designated area.
 - (4) The east side of North Capron Street north of the West Huron Street intersection in the designated area.
 - (5) The north side of Broadway east of North Brooklyn Street intersection in the designated area.
 - (6) The west side of South Pearl Street from a point 50 feet north of where the north curbline of West Franklin Street intersects the west curbline of South Pearl Street to a point 45 feet north of such intersection.
 - (7) The east side of South Pearl Street north of the West Franklin Street intersection in the designated area.
 - (8) The north side of West Franklin Street east of the South Pearl Street intersection and west of the South Wisconsin Street intersection in the designated area.
 - (9) The east side of North Pearl Street north of the West Park Avenue intersection in the designated area.
- (d) *Thirty-minute restricted parking zones.* The following areas shall be designated as 30-minute restricted parking zones:
- (1) The north 117 feet of the west side of South Capron Street between West Huron Street and West Franklin Street in the designated area.
- (e) *Two-hour restricted parking zones.* The following areas shall be designated as two-hour restricted parking zones:
- (1) Broadway Street from the Fox River to Brooklyn Street, except where designated as 15-minute restricted parking zone under subsection 70-456(c).
 - (2) East Huron Street from Wisconsin Street to Spring Street.
 - (3) Market Square between and including the east boundary of North Capron Street and the west boundary of Water Street, and any and all streets included and contained therein, but excluding the north boundary of West Park Avenue.
 - (4) North Fox Alley, west side, from West Huron Street to West Park Avenue, with the exception of the designated official police parking.
 - (5) North Pearl Street from West Park Avenue to West Huron Street, except where designated as a 15-minute restricted parking zone under subsection 70-456(c).

- (6) North Wisconsin Street from Park Avenue to Huron Street.
- (7) South Capron Street from West Huron Street to West Franklin Street in the designated areas.
- (8) South Pearl Street from West Franklin Street to West Huron Street, except where designated as 15-minute restricted parking zone under subsection 70-456(c).
- (9) South Wisconsin Street from Franklin Street to Huron Street.
- (10) West Huron Street from the Fox River to Wisconsin Street, except where designated as 15-minute restricted parking zone under subsection 70-456(c).
- (11) West Park Avenue from North Pearl Street to North Wisconsin Street, except where designated as 15-minute restricted parking zone under subsection 70-456(c).

(Code 1989, § 10-1-26; Ord. No. 23-01, 12-11-2001; Ord. No. 05-07, 3-13-2007; Ord. No. 08-09, 7-14-2009; Ord. No. 07-10, 10-12-2010; Ord. No. 06-12, 7-17-2012; Ord. No. 10-13, 12-10-2013)

Cross reference— Streets, sidewalks and other public places, ch. 58.

Sec. 70-457. - Certain hours regulated.

- (a) *School zones*. When signs are erected in a block within the city giving notice thereof, no person shall park a vehicle for longer than the following periods of time:
- (1) East Park Avenue between Sumner Street and North Swetting Street on school days between 7:30 a.m. and 4:30 p.m.
 - (2) The north side of West Moore Street between North Wisconsin Street and North Pearl Street on school days between 7:30 a.m. and 4:30 p.m.
 - (3) The west side of South Washington Street between Broadway Street and West Franklin Street on school days between 7:30 a.m. and 4:30 p.m.
 - (4) The south side of Broadway Street between South Washington Street and Jackson Street on school days between 7:30 a.m. and 4:30 p.m.
 - (5) The east side of Mound Street between West Franklin Street and West Ceresco Street on school days between 7:30 a.m. and 4:30 p.m.
 - (6) The south side of West Franklin Street commencing 20 feet east of Mound Street to a point 92 feet east, in the designated area, on school days between 7:30 a.m. and 4:30 p.m.
 - (7) The east side of North Swetting Street between East Huron Street and East Noyes Street on school days between 7:30 a.m. and 4:30 p.m.
 - (8) The north side of East Huron Street between North Swetting Street and North Johnson Street on school days between 7:30 a.m. and 4:30 p.m.
 - (9) The west side of North Johnson Street between East Huron Street and East Park Avenue on school days between 7:30 a.m. and 4:30 p.m.
 - (10) The south side of East Park Avenue between North Johnson Street and Center Street on school days between 7:30 a.m. and 4:30 p.m.
 - (11) The west side of North Swetting street from East Moore Street to a point 67 feet south from the intersection of East Moore Street and North Swetting Street on school days between 7:30 a.m. and 4:30 p.m.
 - (12) The south side of East Moore Street from Sumner Street to a point 92 feet east from the intersection of Sumner Street and East Moore Street on school days between 7:30 a.m. and 4:30 p.m.
 - (13) Commercial Street from Broadway Street to Southwest Franklin Street between 8:00 p.m. and 5:30 a.m.
 - (14) On a portion of the south side of Memorial Drive from Oak Street running east to a point 376.50 feet west of Center Street on school days between 7:30 a.m. and 4:30 p.m.
 - (15) On a portion of the north side of Memorial Drive beginning 145 feet east of the south margin of Oak Street to a point 435 feet east thereof on school days between 7:30 a.m. and 4:30 p.m.
 - (16) On a portion of the north side of Memorial Drive beginning 893 feet east of the south margin of Oak Street to a point 1,477.50 feet thereof on school days between 7:30 a.m. and 4:30 p.m.

(17) On a portion of the north side of Broadway Street from Washington Street to Jackson Street on school days between 3:30 p.m. and 6:00 p.m.

- (b) *Restricted time parking zones.* All areas designated as 15-minute, 30-minute and two-hour restricted parking zones in subsections 70-456(c) through (e) shall be restricted parking zones only between the hours of 9:00 a.m. and 5:00 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, and Saturdays, excluding Sundays and holidays, unless otherwise specified in such subsections. The superintendent of streets shall erect official regulatory signs which shall specify restricted time parking zones at locations authorized in accordance with this chapter.
- (c) *Memorial Drive restricted parking zones.* No person shall stop, park or leave standing any vehicle, trailer or other device or object, at any time, on the north side of Memorial Drive beginning 435 feet east of the south margin of Oak Street to a point 893 feet east thereof.

(Code 1989, § 10-1-27; Ord. No. 05-10, 6-8-2010; Ord. No. 07-10, 10-12-2010; Ord. No. 06-12, 7-17-2012)

Sec. 70-458. - Winter parking.

- (a) *Seasonal parking restrictions.* No person shall park any motor vehicle or trailer upon any street in the city between 2:00 a.m. and 7:00 a.m. from November 30—March 30, except as provided in subsection (b) of this section.
- (b) *Exceptions.*
- (1) A permit, with the parking location specified thereon, shall be issued by the clerk-treasurer, subject to confirmation by the superintendent of streets, upon application and after investigation by the person designated by the common council, to those persons who have no off-street parking available within a reasonable distance of their residence, allowing such persons to park in a designated area, which area shall be as near to the residence of the applicant as practicable. All such permits shall terminate on March 30 of each year, and the permit fee shall be as established in the fee schedule adopted by the common council on file in the city clerk-treasurer's office.
 - (2) Upon application to the police department, a temporary parking permit, valid for up to 24 hours, shall be issued to any person for just cause, and shall be valid for a specified location only.
 - (3) Annual parking permits shall be subject to appeal, review or revocation by the common council, upon public hearing, after giving five days' notice to all interested parties.
- (c) *Notice of winter overnight parking restrictions.* Signs shall be posted on all highways at the entrance to the city which shall state: "Winter Overnight Parking Restricted. Contact Police Department for Information."

(Code 1989, § 10-1-28)

Sec. 70-459. - Municipal parking lots.

When signs are erected giving notice thereof, no person shall park a vehicle or trailer in the following municipal parking lots for longer than the period specified in this section:

- (1) West Franklin Street parking lot: Twenty-four-hour restricted.
- (2) Commercial Street parking lot: Two-hour restricted. Further, parking in the Commercial Street parking lot shall be prohibited from 8:00 p.m. to 5:30 a.m.
- (3) Water Street parking lot: Twenty-four-hour restricted except for those parking stalls reserved for the exclusive use and parking by city hall employees in designated areas in accordance with posted restrictions.
- (4) West Park Avenue parking lot: Twenty-four-hour restricted, except for those parking stalls reserved for private use and for Berlin Public Library use in designated areas in accordance with posted restrictions.
- (5) South Capron Street parking lot: All parking north of a line 75 feet north of the centerline of Franklin Street shall be three-hour restricted. The remaining portion of the lot shall be 24-hour restricted, except for motor vehicles over capacity and bearing a commercial registration, including school buses, and commercially licensed trailers, including semi-trailers, which shall be prohibited from being parked or stored in this lot.

(Code 1989, § 10-1-30; Ord. No. 23-01, 12-11-2001; Ord. No. 12-04, 11-9-2004; Ord. No. 08-06, 4-11-2006)

Sec. 82-682. - Off-street parking.

- (a) *Generally.* In all zoning districts within the city there shall be provided, at the time a building or structure is erected, off-street parking spaces in accordance with the requirements of this section. A site plan, including layout of parking spaces and water drainage, of any parking area for more than five vehicles shall be submitted to the zoning administrator for approval prior to commencement of construction. Requests for such parking lots shall be accompanied with detailed plans of landscaping, parking layout, drainage provisions and driveway locations. In all districts, there shall be provided, at the time any use or building is erected, off-street parking stalls for all vehicles in accordance with the following, except that parking for commercially zoned projects shall be determined by the plan commission:
- (1) *Access.* Adequate access to a public street shall be provided for each parking space.
 - (2) *Design standards.* The size of each parking space shall be not less than 180 square feet, excluding of the space required for ingress and egress. Minimum width of aisles providing access to stalls for one-way traffic shall be 11 feet for 30 degree parking, and 20 feet for 90 degree parking. Minimum width of aisles providing access to stalls for two-way traffic shall be 24 feet. No parking area of more than two spaces shall be designed to require a vehicle to back into a public street. Parking areas of more than five spaces shall be sufficiently screened in the form of a solid fence or shrubbery to protect adjacent residential uses. Large expanses of unchanneled parking areas shall be avoided by the provision of interior landscaping and safety islands.
- (b) *Location.*
- (1) Off-street parking shall be located on the same lot as the principal use or not more than 200 feet from the principal use. However, off-street parking shall not be permitted in any yards or setback areas of lots, except in compliance with the provisions of this subsection.
 - (2) In R-1 and R-2 districts, if a principal structure on a lot is a dwelling, then off-street parking shall not be allowed in the front yard of that lot, or in the setback areas for the side or rear yards of that lot, except in driveways provided that the driveway conforms to the requirements of chapter 58, article V.
 - (3) Off-street parking shall be permitted in all yards and setback areas of lots in districts other than R-1 and R-2, and in R-1 and R-2 districts if a principal structure on the lot is not a dwelling, only after a parking plan for the site has been approved by the plan commission. The plan commission may impose conditions on such approval as reasonably necessary to mitigate negative impacts that the parking may have on neighboring properties or the general public. Such conditions may include, but not be limited to, setbacks, pedestrian and vehicular accessways, fencing, screening, landscaping, and minimum greenspace requirements. Further, no parking space on a lot in any district may be closer than five feet to a lot line, except in driveways provided that the driveway conforms to the requirements of chapter 58, article V.
- (c) *Surfacing.* Off-street parking areas, except three parking spaces with a single-family dwelling, shall be surfaced with a dustless all-weather material which is capable of carrying a wheel load of 4,000 pounds (normally, two inches of bituminous concrete on a four-inch base or five inches of concrete will meet such requirement). Any parking area for more than five vehicles shall have the aisles and spaces clearly marked for handicapped and customer/employee parking. Surfacing shall be completed before an occupancy permit is issued, except between November 1 and April 1, the property owner and city may enter into an agreement that required surfacing be completed no later than June 1.
- (d) *Landscaping.*
- (1) *Accessory landscape area.* All public and private off-street parking areas which serve four or more vehicles, are located within 15 feet of any lot line or public right-of-way and are created or redesigned and rebuilt subsequent to the adoption of the ordinance from which this chapter is derived shall be provided with accessory landscape areas totaling not less than ten percent of the surfaced area. The minimum size of each landscape area shall not be less than 100 square feet.
 - (2) *Location.* Location of landscape areas, plant materials and protection afforded to the plantings, including curbing and provision for maintenance by the property owner shall be subject to approval by the zoning administrator.
 - (3) *Plans.* At the discretion of the zoning administrator, plans for such proposed parking areas shall include a topographic survey or grading plan which shows existing and proposed grades and the location of improvements. The preservation of existing trees, shrubs and other natural vegetation in the parking area may be included in the calculation of the required minimum landscape area.
 - (4)

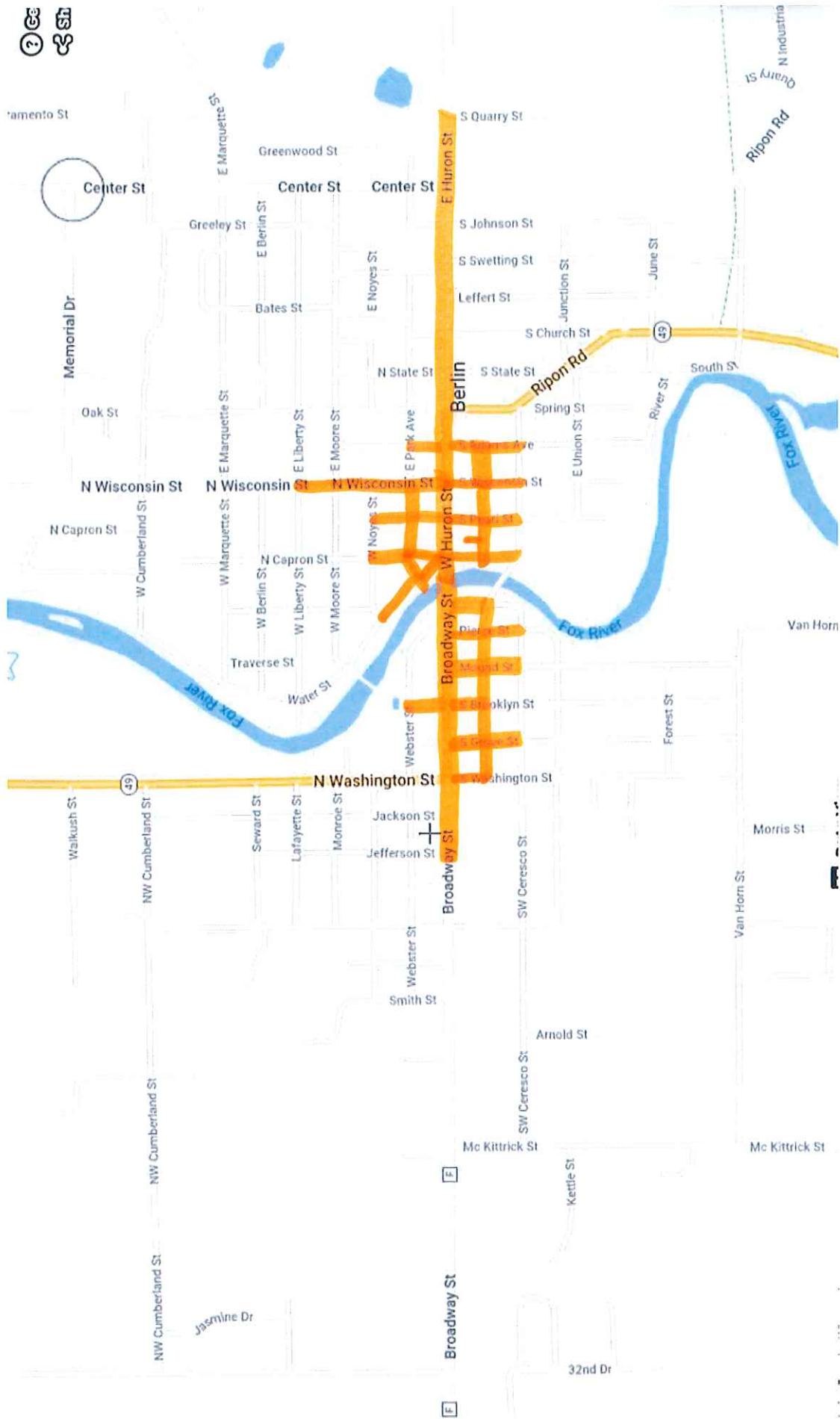
Additional residential requirements. If adjoining a residential use, parking areas for five or more vehicles shall be screened from such use by a solid wall, fence, evergreen planting of equivalent visual density or other effective means, built and maintained at a minimum height of five feet. Where a solidly constructed decorative fence is provided along the interior lot line, the minimum setback for the parking area shall be five feet from the lot line. Such fence shall be located a minimum of one foot from the lot line.

(5) *Nonparking setback area to be green.* All setback areas in all districts not used for parking or a driveway shall be planted in grass, or otherwise landscaped to create a permanent green area.

(e) *Curbs or barriers.* Curbs or barriers shall be installed a minimum of four feet from a property line to prevent parked vehicles from extending over any lot lines.

(f) *Number of stalls.* The number of parking stalls required shall be as shown in the following table:

Use	Minimum Parking Required
Single-family dwellings	1 stall for dwelling unit
Duplex and multifamily dwellings	1.5 stalls for each dwelling unit
Housing for the elderly	0.75 stall for each dwelling unit with one-half of such spaces to be built before occupancy and the balance of such spaces shall be reserved until such time as the city may order them to be installed
Hotels, motels	1 stall for each guest room, plus 1 stall for each 2 employees
Sororities, dormitories, rooming houses and boardinghouses	1 stall for each 2 sleeping rooms, plus 1 stall for each 2 employees
Retirement homes, orphanages, convents and monasteries	1 stall for each 2,000 feet of principal floor area
Hospitals, sanitariums, institutions, rest homes and nursing homes	1 stall for each 3 beds, plus 1 stall for each 3 employees
Medical and dental clinics	5 stalls for each doctor or dentist
Theaters, auditoriums, community centers, sports arenas and other places of public assembly	1 stall for each 5 seats or spaces equal to 20% of the capacity in persons, whichever is greater
Restaurants	1 stall for each 100 square feet of floor area, excluding the kitchen
Bars and places of entertainment	1 stall for each 75 square feet of floor area
Office buildings and professional offices having less than 6,000 square feet of floor area	1 stall for each 150 square feet of floor area
Office buildings and professional offices having 6,000 square feet or more of floor area, banks and savings institutions	1 stall, at least, for each 200 square feet of floor area
Drive-in establishments	1 stall, at least, for each 15 square feet of floor area in the building



No 2:30-5:30

Section 70-456 (a) All-night Parking

Section 70-456(e)

Date: 03/30/2023
To: COTW
From: City Administrator
RE: No Mow May

Background:

No Mow May is a conservation initiative that encourages people to stop mowing or mow less often for the month of May to create habitat and provide resources for bees and other early-season pollinators. This is particularly important in urban areas where floral resources are often limited. There are a number of communities in Wisconsin that participate in No Mow May, including Ripon, Oshkosh, and Appleton.

City Code Section 78-4 Length of Lawn and Grasses declares grass that exceeds eight inches in height as a public nuisance. Typically, staff would be informed of the high grass and notify the homeowner it must be remedied, or the City will cut it down and charge a fee. If the No Mow May Resolution is passed, the City of Berlin would relax the enforcement of long-grass rules for residents who register with the City, only for the month of May.

Why look into No Mow May?

- Berlin is a Monarch City and should be actively looking for ways to promote that.
- It increases bee presence which is important for pollinating plants.
- Residents will save time, gas, and fertilizer.
- Letting grass grow longer will contribute to more flowers in our community.

There are a variety of ways to manage which residents have signed up for No Mow May. All involve registering with City Staff. The two most common are a simple form, or a yard sign. Ripon has a submission page via their website which asks for Name, Address, Phone Number, and Email. De Pere issues City "No Mow May" yard signs which residents then display in their yards. The signs are then returned in mid-June to the City staff. I recommend the Ripon route, where staff can create a list of properties to track in the City and not cite for long grass and it is easier to implement for Staff.

Recommendation: Recommend to Common Council to pass Resolution #23-03 No Mow May to assist pollinators in the Berlin Community.

Sec. 78-4. - Length of lawn and grasses.

- (a) *Purpose.* Due to the unique nature of the problems associated with lawns, grasses and noxious weeds being allowed to grow to excessive length in the city the provisions of this section are adopted. This section shall not be applicable to lands zoned agricultural, or to lots in subdivisions/plats where less than 50 percent of the lots are developed.
- (b) *Public nuisance declared.* The common council finds that lawns, grasses and noxious weeds which exceed eight inches in height located on lots or parcels of land within the city adversely affect the health and safety of the public because they tend to emit pollen and other discomfoting bits of plants, constitute a fire and safety hazard because debris may be hidden in the grass, interfere with the public convenience and adversely affect property values of other land within the city. For those reason, any lawns, grasses or weeds which exceed eight inches in height which are located on a lot or other parcel of land within the city are declared to be a public nuisance, except for property located in a designated floodplain and/or wetland area, or where the lawns, grasses or weeds are part of a natural lawn approved pursuant to section 74-3.
- (c) *Nuisances prohibited.* No person shall permit any public nuisance as defined in subsection (b) of this section to remain on any premises owned or controlled by such person within the city.
- (d) *Inspection.* The weed commissioner or his designee shall inspect, or cause to be inspected, all premises and places within the city to determine whether any public nuisance as defined in subsection (b) of this section exists.
- (e) *Abatement of nuisance.*
- (1) *First offense.* If the weed commissioner shall determine that a public nuisance as defined in subsection (b) of this section exists on private premises, the weed commissioner, or the weed commissioner's designee, shall serve notice on the person causing or maintaining such nuisance to abate the nuisance within five days from the date of service. If such nuisance is not abated within such five-day period, the weed commissioner, or the weed commissioner's designee, shall cause the nuisance to be abated so as to conform with the provisions of this section and section 78-2. Service of notice hereunder may be made by personal service or U.S. First Class Mail to the person's last known address. For property owners, the owner's address listed in the county tax records department may be utilized for serving notice.
- (2) *Second and subsequent offenses.* If a public nuisance as defined in subsection (b) of this section reoccurs on the same private premises during the same calendar year as a previous nuisance for which notice and abatement by the city has already occurred pursuant to subparagraph (e)(1) above, then the weed commissioner, or the weed commissioner's designee, may, without further notice, immediately cause the nuisance to be abated so as to conform with the provisions of this section and section 78-2.
- (f) In addition to any other penalty imposed by this article, the cost of abating a public nuisance as defined under subsection (b) of this section by the city shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance. The rates charged for such city abatement shall be at the rates set forth on the fee schedule on file in the city clerk-treasurer's office, if applicable, but shall otherwise be at actual cost. The charges shall be set forth in a statement to the clerk-treasurer who, in turn, shall mail the statement to the owner, occupant or person in charge of the premises. If the statement is not paid in full within 30 days thereafter, such cost of abatement shall be assessed against the real estate as a special charge pursuant to Wis. Stats. § 66.0627.

(Code 1989, § 8-1-7; Ord. No. 15-06, 6-13-2006; Ord. No. 05-08, 6-10-2008; Ord. No. 03-17, 3-14-2017)



RESOLUTION #23-03

A RESOLUTION DESIGNATING THE MONTH OF MAY 2023 AS NO MOW MAY

WHEREAS the city of Berlin is a Monarch City and would like to encourage an increase in pollinator-friendly habitat through pollinator-friendly lawn care practices; and

WHEREAS ideal pollinator-friendly habitat is comprised mostly of native wildflowers, grasses, vines, shrubs and trees blooming in succession throughout the growing season, is free or nearly free of pesticides, is comprised of undisturbed spaces including un-mown lawns, and provides connectivity between habitat areas to support pollinator movement and resilience; and

WHEREAS the formative period for establishing of pollinator and other insect species, and the many songbirds and other urban wildlife species which depend on them, occurs in late Spring and early Summer when they emerge from dormancy and require flowering plants as crucial foraging habitat; and these opportunities are dramatically reduced with early Spring grass-mowing; and

WHEREAS staff is recommending registration of properties participating in No Mow May to assure that participation is conscientious, that participants understand the requirements of the municipal code and the parameters of the exception being created and that the exception does not prevent enforcement for persons not actively participating in the No Mow May program; and

NOW THEREFORE BE IT RESOLVED that the Common Council of the City of Berlin recognizes No Mow May to actively promote and educate the community about the critical period of pollinator emergence, generation of crucial pollinator-supporting habitat and early spring foraging opportunities:

BE IT FURTHER RESOLVED that the Common Council of the City of Berlin hereby directs staff to not issue nuisance violations for long grass and weed violations for Properties registered with the City at [enter website address] for the No Mow May Program during the month of May, permitting those residents who are properly registered with the City to voluntarily delay lawn care until June 1st, which may result in ground-cover exceeding established ordinance height-restrictions.

Passed, approved and adopted this 11th day of April 2023.

ROLL CALL VOTE:

_____ AYES

_____ NAYS

_____ ABSENT

APPROVED AS TO FORM:

CITY OF BERLIN

BY: _____
Joel Bruessel, Mayor

ATTEST: _____
Sara Rutkowski
City Clerk

Matthew G. Chier
City Attorney