

AGENDA
ORGANIZATIONAL COMMON COUNCIL MEETING
CITY OF BERLIN, WISCONSIN
APRIL 18, 2023 – 4:30 p.m.
Zoom Meeting ID: 854 8943 1406
Password: berlin

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 RECOMMENDATION: Motion to approve Mayoral Appointments as presented.
5. City Attorney Retainer Contract Renewal. RECOMMENDATION: 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. RECOMMENDATION: Motion to Appoint City Attorney as presented.
8. Adjourn.

2023 MAYORAL APPOINTMENTS				
		Term	Re-	New
<u>Officers</u>	<u>Current Incumbent</u>	<u>Expires</u>	<u>Appointment</u>	<u>Appointment</u>
City Attorney	Chier Law Office LLC	5/1/2024	YES	
Health Officer	Green Lake County Health Unit	5/1/2024	YES	
Humane Officer	Berlin Police Department	5/1/2024	YES	
Building Inspector	Kunkel Engineering	5/1/2024	YES	
Official Newspaper	Berlin Journal	5/1/2024	YES	
Weed Commissioner	Scott Zabel	5/1/2024	YES	
		Term	Re-	New
<u>Commission</u>	<u>Current Incumbent</u>	<u>Expires</u>	<u>Appointment</u>	<u>Appointment</u>
Travel & Tourism Commission	Mary Kubiak	1/1/2024	YES	
Travel & Tourism Commission	Janet Broesch	1/1/2024	YES	
Travel & Tourism Commission	Michelle Omichinski	1/1/2024	YES	
Travel & Tourism Commission	Andi Rogers	1/1/2024	YES	
Travel & Tourism Commission	Joel Bruessel	1/1/2024	YES	
Travel & Tourism Commission	Susan Trampf	1/1/2024	YES	
Park & Recreation Commission	Bruce Tetzke	5/1/2026	YES	
Park & Recreation Commission	Jane Waalkes	5/1/2026	NO	Kayla Reeves
Planning Commission	Mary Kubiak	5/1/2026	YES	
Police & Fire Commission	Chad Martin	5/1/2028	NO	
Water & Sewer Commission	Paul Roethel	10/1/2028	YES	
		Term	Re-	New
<u>Board</u>	<u>Current Incumbent</u>	<u>Expires</u>	<u>Appointment</u>	<u>Appointment</u>
Cemetery Board	Mary Kay Blazel	4/30/2026	YES	
Cemetery Board	Vacancy	4/30/2026		
Cemetery Board	Vacancy	4/30/2024		
Library Board	Michelle Draves	5/1/2026	YES	
Library Board	Robert Malchetske	5/1/2026	YES	
Board of Appeals	Vacancy	11/1/2026		
Board of Appeals 2nd Alternate	Vacancy	11/1/2026		
Board of Review	Mary Kubiak	7/1/2028	YES	
Board of Review 1st Alternate	Vacancy	7/1/2027		
Board of Review 2nd Alternate	Vacancy	7/1/2025		
		Term	Re-	New
<u>Committee</u>	<u>Current Incumbent</u>	<u>Expires</u>	<u>Appointment</u>	<u>Appointment</u>
Committee on Aging	Paul Hanan	4/30/2026	YES	
Committee on Aging	Judy Hale	4/30/2026	NO	
Committee on Aging	Jim Jodarski	4/30/2026	YES	
Community Development Authority	Vacancy	8/20/2026		
Community Development Authority	Vacancy	8/20/2026		
Liaison				
<u>Board/Commission/Committee Liaisons</u>	<u>Current Incumbent</u>	<u>Expires</u>	<u>Appointment</u>	<u>Appointment</u>
BCDC	Joshua Nigbor	4/18/2023		Emmett Durtschi
Cemetery Board	Luke Dretske	4/18/2023		Kristina Boeck
Committee On Aging	Catrina Burgess	4/18/2023		Kristina Boeck
Community Development Authority	Joshua Nigbor	4/18/2023		Luke Dretske
Library Board	Kristina Boeck	4/18/2023		Samantha Stobbe
Park & Recreation Commission	Luke Dretske	4/18/2023		Josh Nigbor
Planning Commission	Roberta Erdmann	4/18/2023		Luke Dretske
Police & Fire Commission	Kristina Boeck	4/18/2023		Josh Nigbor
Sewer & Water Commission	Samantha Stobbe	4/18/2023		Catrina Burgess
*TBD - to be determined				

CITY OF BERLIN
BOARD, COMMITTEE, COMMISSION & COMMON COUNCIL
APPLICATION FORM

Name: Kayla Reeves
Address: 289 N Wisconsin St. Berlin WI, 54923
Phone: Day 920-376-3933 Evening 920-376-3933

City residency is required for appointment to a City board, committee or commission. Other eligibility requirements may also exist.

Area of Interest:

<input type="checkbox"/> Board of Review	<input type="checkbox"/> Oakwood Cemetery Board
<input checked="" type="checkbox"/> Parks & Recreation Commission	<input type="checkbox"/> Zoning Board of Appeals
<input type="checkbox"/> Committee On Aging	<input type="checkbox"/> Plan Commission
<input type="checkbox"/> Sewer & Water Commission	<input type="checkbox"/> Police & Fire Commission
<input type="checkbox"/> Library Board	<input type="checkbox"/> Common Council Vacancy, Ward # <u> </u>
<input type="checkbox"/> Other <u> </u>	

Applicant Questions: Please return only Page one for consideration.

1. Please indicate why you are interested in serving on any of the above Board, Committee or Commission: As a parent of a youth that utilizes the park system and a board member/coach/parent of BYBS, i would like to contribute to making our parks and rec programs the best they can be by bring new ideas, ways to fundraise and a new point point of view.
2. What knowledge, experience, or abilities do you have that would make you an effective board member: I am a board member of Berlin youth baseball & softball, staff/board member of Thrasher Opera house. I have experience in non-profit organizations and clubs, volunteering management, volunteering, event planning, delegation and so much more.
3. Do you have any issues with attending meetings at the specified times? (See Meeting Schedule)
No
4. Please provide any additional information for consideration: As someone who was raised in Berlin and has started a family of my own here, I want to be a part of our community's growth. I want Berlin to be a destination for people from across the area and state. Berlin has so much potential, beauty and charm. It really could be the Berlin of the good ol' days once again.

CITY OF BERLIN ATTORNEY RETAINER CONTRACT

This Agreement dated May 1, ~~2022~~2023, between the CITY OF BERLIN (hereinafter referred to as "CITY") and City Attorney MATTHEW G. CHIER and CHIER LAW OFFICE LLC (hereinafter collectively referred to as "CHIER").

WHEREAS, the parties are willing to enter into this Agreement with respect to the retained services of CHIER 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 employees of CHIER, be considered independent practitioners for all purposes, and not employees of the CITY or State of Wisconsin.

NOW, THEREFORE, the parties hereto agree as follows:

1. Retainer

The CITY shall retain CHIER, and CHIER shall serve the CITY, upon the terms and conditions hereinafter set forth.

2. Term and Extension

The retainer of CHIER hereunder shall commence May 1, ~~2022~~2023, and shall continue to and including April 30, ~~2023~~2024, 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'S Common 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 will 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 fees for CHIER'S services as follows:

- a. In consideration for CHIER providing up to 800 hours of service, CHIER shall receive, in the aggregate, the amount of ~~\$98,800.00~~\$101,766.00. Such aggregate amount shall be divided and paid in 24 equal installments of \$4,240.25 throughout the contract period of May 1 through April 30. Each installment shall be due on the 1st and the 15th day of each calendar month, with the exception of the first month, May 2023, for which the first payment shall not be due until May 5, 2023. Also, if a payment deadline falls on a non-business day such as a holiday or weekend, the payment shall be due on the first business day prior to such deadline date. ~~Such aggregate amount shall be~~

~~divided and paid in equal biweekly installments and paid within the contract period of May 1 through April 30.~~

- b. At such time as CHIER'S services exceed 800 hours of service, CHIER shall be paid for additional services at the following rates:

- | | | |
|-----|----------------|--|
| (1) | 801-825 hours | \$142 <u>\$146.00</u> /hour |
| (2) | 826-850 hours | \$150 <u>\$154.50</u> /hour |
| (3) | Over 850 hours | \$162 <u>\$167.00</u> /hour |

CHIER shall, on a monthly basis, submit to the City Administrator a chart of CHIER'S 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 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 so that the City 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 800-hour threshold, the CITY shall be obligated to pay CHIER for the supplementary hours, at the rates indicated above, within 15 days of CHIER'S submission of each monthly chart.

5. Services Separately Billed

When CHIER performs legal services relating to the CITY'S Community Development Block Grant housing and Industrial Revolving Loan Fund programs, CHIER shall separately bill the CITY for those services at the rate of ~~\$130~~\$134.00/hour. When CHIER performs legal services for the Berlin Community Development Corporation, for which the CITY agrees to pay, CHIER shall separately bill for those services at the rate of ~~\$175~~\$180.00/hour. When CHIER performs legal services for the CITY'S Sewer & Water Utility, CHIER shall separately bill for those services to the CITY'S Sewer & Water Utility at the rate of ~~\$133~~\$137.00/hour, unless otherwise directed by the City Administrator to be included in the services compensated for under paragraph 4 above, CHIER'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 Section 6 below. For these services which are separately billed, payment shall be due upon receipt of the invoice, subject to a 1% per month late fee if not paid within 30 days.

6. Operating Expense Reimbursements

- a. Variable Operating Expenses. Except as stated below in this Section 6, the CITY, in addition to the general compensation described above in Section 4 and the general overhead expenses described below in Subsection 6.b., shall be responsible for variable operating expenses incurred during the course of CHIER'S services hereunder including, but not limited to, photocopy expenses, telephone charges, filing fees, form fees, paper and supply expenses, postage, 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'S

clients. Such variable operating expenses shall also include actual out of pocket expenses incurred by CHIER necessarily related to CHIER'S attendance of CITY related functions and continuing legal education events, including lodging and travel expenses if the function or event is over 45 miles from Berlin. Such variable operating expenses shall also include a per diem payment for meals incurred during attendance of such CITY related functions and events based at the same per diem rate for meals used for federal employees in Wisconsin set by the United States General Services Administration (currently \$59.00). The parties understand that the CITY has budgeted the amount of ~~\$2,380.00~~\$2,451.40 for these variable operating expenses for the contract year. When this budgeted amount is approached during the contract year, the parties agree that the City Administrator may present the issue 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, with the goal of minimizing the incurrence of additional variable operating expenses and staying within budget.

- b. General Overhead Expenses. Except as stated below in this Section 6, the CITY, in addition to the general compensation described above in Section 4 and the variable operating expenses described above in Subsection 6.a., shall be responsible for certain general overhead expenses related solely to CHIER'S services provided to the CITY hereunder, including, but not limited to, secretarial expenses, and books and legal library expenses, but such general overhead expenses shall be capped at ~~\$3,585.00~~\$3,692.55. If CHIER believes such general overhead expenses will exceed such annual cap, CHIER may so advise the CITY and CHIER 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 will perform 800 hours of annual service. Accordingly, at such time as CHIER exceeds such 800 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 is expected to perform for the remainder of the year.
- c. Billing Procedures. The CITY will reimburse CHIER for all such operating expense reimbursements upon submission of invoices or statements of accounts therefore while so retained during such period, and such invoices or statements shall be paid upon receipt of the CITY'S receipt thereof, subject to a 1% per month late fee if not paid within 30 days. In order to minimize the CITY'S administrative burden, CHIER agrees to advance all such operating and overhead expenses and add such expenses to CHIER'S 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 or unless such direct payment is to a special prosecutor appointed to handle municipal court cases due to a recusal by CHIER for any reason. All special prosecutors' invoices for municipal court cases shall be paid directly by the CITY.

7. Relationship Between Parties

CHIER is retained by the CITY only for the purposes and to the extent set forth in this Agreement, and CHIER'S relation to the CITY shall, during the period or periods of CHIER'S

retainer and services hereunder, be that of an independent practitioner. CHIER shall be free to dispose of such portion of CHIER'S entire time, energy, and skill during regular business hours as CHIER is not obligated to devote hereunder to the CITY in such manner as CHIER sees fit and to such persons, firms or corporations as CHIER deems advisable. CHIER, and employees of CHIER, shall not be considered as having employee status in relation to the CITY, nor be 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 the CITY'S regular employees.

8. Professional Responsibility

Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by CHIER in accordance with CHIER'S independent and professional judgment. CHIER shall perform CHIER'S 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 OFFICE LLC is Limited Liability Company

CHIER LAW OFFICE LLC 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 OFFICE LLC 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 OFFICE LLC 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 City Administrator, SARA L. RUTKOWSKI and Mayor, 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:

SARA L. RUTKOWSKI,
City Administrator

MATTHEW G. CHIER,
individually and as sole Member of
CHIER LAW OFFICE LLC

CITY OF BERLIN

BY:

JOEL E. BRUESSEL,
Mayor